



LEGAL AND HUMAN RIGHTS CENTRE

HUMAN RIGHTS AND BUSINESS REPORT 2018/2019 Tanzania Mainland

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For a Just and Equitable Society



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Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
AIDS	Acquired Immune Deficiency Syndrome
CAG	Controller and Auditor General
CEDAW	Convention on the Elimination of All forms of Discrimination Against Women
CHODAWU	Conservation, Hotel, Domestic and Allied Workers Union
CSR	Corporate Social Responsibility
ELRA	Employment and Labour Relations Act
GGM	Geita Gold Mine
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
LATRA	Land Transport Regulatory Authority
LHRC	Legal and Human Rights Centre
LIA	Labour Institutions Act
NBS	National Bureau of Statistics
OHS	Occupational Health and Safety
OSHA	Occupational Health and Safety Authority
P.A.Y.E	Pay As You Earn
PLHIVs	Persons living with HIV
PWDs	Persons with Disabilities
SMEs	Small and Medium-sized Industries
TAMICO	Tanzania Mines, Energy, Construction and Allied Workers Union
TBS	Tanzania Bureau of Standards
TDV	Tanzania Development Vision
TPAWU	Tanzania Plantation Workers Union
TRA	Tanzania Revenue Authority
TUICO	Tanzania Union of Industrial and Commercial Workers
UDHR	Universal Declaration of Human Rights
UNGPBH	UN Guiding Principles on Business and Human Rights



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About LHRC

The Legal and Human Rights Centre (**LHRC**) is a private, autonomous, voluntary non-Governmental, non-partisan and non-profit sharing organization envisioning a just and equitable society. Its broad objective is to create legal and human rights awareness among the public and in particular the underprivileged section of the society through legal and civic education, advocacy linked with legal aid provision, research and human rights monitoring. LHRC was established in 1995 and its operations mainly focus on Tanzania Mainland, with specific interventions in Zanzibar.

Vision: The LHRC envisages a just and equitable society, in which the three arms of the State as well as non-state actors practice accountability, transparency and there is rule of law; and where there is public awareness, respect and engagement for human rights and good governance; where justice and respect for human dignity are a reality.

Mission: To empower the public, promote, reinforce and safeguard human rights and good governance in Tanzania through legal and civic education and information; sound legal research and advice; monitoring and following-up on human rights violations; and advocacy for reforms of policies, laws and practices in conformity with international human rights standards.

LHRC's Values: *Integrity; Equality; Transparency; Accountability; Professionalism; and Voluntarism and Volunteerism.*



Foreword

In December 2018, the Universal Declaration of 1948 reached its 70th anniversary; and various measures have been taken at international, regional and national levels to ensure protection and promotion of fundamental rights and freedoms contained in this historic international human rights instrument. The impact this Declaration has made on peoples' lives around the globe cannot be underestimated. Yet, abuses and violations of human rights continue to be a major concern in different parts of the world, including Tanzania.

The Human Rights and Business Report, produced annually by LHRC since 2012, highlights the state of human rights in the business sector, including compliance of business entities with relevant labour, land, environment and human rights standards. This is an important tool for measuring the progress made in protection of human rights in line with international human rights standards, including the Universal Declaration of Human Rights (UDHR). Fundamental human rights enshrined in the UDHR include the right to equality before the law and equal protection of the law; right to work and just and favourable conditions of work; right to equal pay for equal work; right to just and favourable remuneration; right to form and join trade unions; right to own property; and right to adequate standard of living.

The financial year 2018/19 has shown realisation of these fundamental human rights in the business sector is still a challenge, as business entities continue to disregard or fail to fully comply with relevant laws, regulations and standards – harming workers and community members in the process. While it is evident that progress has been made in promotion and protection of human rights in the business sector, it is still little. We cannot take human rights for granted if we want to achieve human development and semi-industrialised Tanzania, in line with the Development Vision 2025. It is our sincere hope that the readers of this report will become change agents towards attaining just and equitable society.

Prof. Geoffrey Mmari
Chairperson - LHRC Board



Executive Summary

Introduction

LHRC has been preparing an annual report on the situation of human rights and business in Tanzania since 2012. This is the seventh of such reports to be produced by the organization, assessing corporate compliance with labour laws and standard, corporate responsibility to respect human rights, state duty to protect human rights and remedy for violation of human rights in the business sector in Tanzania Mainland for the financial year 2018/19.

The main objective of this report is to shed light on the situation of human rights and business in Tanzania in the financial year 2018/19; to establish progress between the present and the previous years on business compliance with labour and human rights. The report is to be used as an advocacy tool to advocate for and promote human rights and business in Tanzania. Furthermore, the report provides some useful information on human rights and business in Tanzania and can be used for academic purposes.

This report is divided into nine chapters. *Chapter One* provides an overview of Tanzania; introduces business and human rights; and covers report preparation, objectives and structure, while *Chapter Nine* provides general conclusion and recommendations. The other chapters touch on issues of labour rights and standards; land acquisition for investment; tax responsibility; businesses giving back to the community; duty for businesses to protect and promote environmental rights; corporate respect for human rights on issues of gender and discrimination and regulatory authorities.

Methodology

Primary and secondary data collection methods were employed to obtain data during the survey. Primary data was through fieldwork conducted in selected 15 regions of Tanzania Mainland, while secondary data was obtained through desk research and review of various reports, laws, policies, regulations and other documents on labour laws, rights and standards produced by domestic and international actors.

A total of 2,118 respondents were engaged for the human rights and business survey, namely community members; corporate management officials; employees/workers; regulatory authority officials; trade union



officials; women market traders; service users and local government officials. Services users and market traders were part of a special mini survey conducted in the city of Dar es Salaam. The survey also involved a total of 151 companies, including small-scale and medium sized industries.

Key Findings

Business compliance with labour laws and standards

1. Employment Contracts

- ◆ 84% of employees indicated that they have employment contracts, while 16% said they did not have employment contracts. The situation has slightly improved compared to the year 2017, whereby 74% of employees had employment contracts. Mtwara was only region with less than 50% of the respondents with employment contracts, while Arusha topped the ranks with 94% of respondents with employment contracts.
- ◆ A quarter of employees interviewed had written employment contracts.
- ◆ Employees raised a concern of not being provided with copies of employment contracts. This concern was especially expressed by interviewees in Geita, Mbeya and Kilimanjaro Regions
- ◆ 50% of the respondents were provided with ready-made contracts, which leave no room for collective bargaining. This was said to be especially the case in regions of Shinyanga, Geita, Tanga, Mtwara, Shinyanga and Iringa.
- ◆ Contracts written in language employees do not understand was said to be an issue of concern for workers, especially in Tanga, Dodoma and Geita Regions.
- ◆ During interviews, employees claimed that there is a tendency of employers breaching terms of their contracts by paying lesser wages than those agreed in the contracts.

2. Working Hours

- ◆ Majority of employees engaged in the survey (90%) indicated that they are aware of the working hours limit as stipulated in the Employment and Labour Relations Act of 2004.
- ◆ 83% of employees acknowledged that they are free to leave workplace after the working hours limit, while 17% said they were not allowed to



leave, especially in Iringa, Kilimanjaro, Shinyanga, Songwe and Tanga Regions.

- ◆ 95% of employees indicated that they work overtime and only 57% of them said they get paid, while 43% claimed they do not get paid at all. Some of them claimed during interviews they are sometimes made to work beyond the 12-hour daily limit (which includes overtime).

- ◆ Over 50% of workers in Geita, Mwanza, Mtwara, Songwe, Mara and Dodoma indicated that they do not get paid for overtime work and at times paid less for the work.

- ◆ Hotel workers, long distance truck drivers, security guards and bus drivers were among employees who were found to work long hours and get inadequate rest.

3. Remuneration

- ◆ The payment of wages was found not to be in line with current costs of living contributed by the minimum wage requirements.

- ◆ Employers were accused of delaying payment of wages, especially in Iringa, Njombe, Dodoma, Shinyanga, Arusha and Songwe Regions.

- ◆ Some employers were said to deduct wages when employees miss work due to illness or have to take leave for other reasons. 18.6% of workers indicated that common form of disciplinary action taken against them is deduction of wages, which were already inadequate to begin with

4. Working environment: Occupational health and safety in the workplace

- ◆ 36% of respondents stated the overall working environment was good and 33% said it was very good, but observations made at most of workplaces paint a slightly different picture, especially in terms of state of toilets and availability of personal protective equipment.

- ◆ Majority of respondents suggesting overall working environment is good (36%) or very good (33%), but observations made at most of the workplaces painting a slightly different picture, for instance in terms of state of toilets and availability of personal protective equipment.

- ◆ 52% of workers stated they had not undergone training on occupational health and safety, while 48% said they had, mostly from Pwani, Mtwara, Mara, Tanga, Mwanza, Kilimanjaro and Dodoma Regions.



- ◆ Workers interviewed at surveyed workplaces mentioned poor and irregular labour inspection as a challenge, noting that labour do not regularly visit the workplaces to ensure labour standards are adhered to.

- ◆ 29% of respondents indicated that were not satisfied with the state of personal protective equipment at their workplaces, claiming that they have the equipment bu they are not sufficient, while 23% said they have protective equipment and they are sufficient. 20% of the respondents felt the equipment are somewhat sufficient, while 21% said they did not have any equipment.

5. Compensation for injury sustained at workplace

- ◆ 37% of employees at surveyed workplaces indicated that they are not aware of the existence of compensation arrangement in case of injury at workplace, while 35% acknowledged that they get compensated in case of injury at workplace. 28% claimed that no such arrangement exists at their workplaces.

- ◆ In regions such as Geita, Iringa, Njombe and Tanga, there were complaints about compensation granted not being adequate.

6. Freedom of association and collective bargaining

- ◆ Employers continue to arbitrarily restrict workers' freedom of association and collective bargaining through discouraging them or threatening them from joining trade unions.

- ◆ Trade union branches were found to be non-existent at half of the surveyed workplaces.

- ◆ Almost 50% of respondents felt trade unions are not effective in promoting and protecting labour rights. 23% of respondents felt their trade unions were somewhat effective in this regard, while only 29% were of the view that the trade unions were either effective or very effective.

- ◆ Majority of respondents who felt trade unions were ineffective in promoting and protecting labour rights were in Dar e Salaam (55%), Pwani (68%), Tanga (64%), Mtwara (87%), Mara (67%), Arusha (44%), Njombe (47%) and Kilimanjaro (46%).

7. Child and forced labour

- ◆ Child labour was said to exist in all surveyed regions but was cited to



be a problem in regions such as Dodoma, Arusha and Geita. However, only a few incidents of child labour were reported or observed during the survey.

- ◆ Forced labour was said to be non-existent at most workplaces, although this perception might be contributed by low awareness on labour rights and standards. The survey found complaints about workers being made to work beyond usual working hours, without free consent and overtime pay.

8. Leaves and social security

- ◆ 62% of employees said they take annual leave, while 30% said they do not and 8% said they were not sure if such leave is granted – particularly those who have been at a workplace for less than six months, who are automatically not entitled to leave.

- ◆ Some employers consider leave as a privilege rather than a right and some of them do not grant paid annual leave, as required by the law.

- ◆ 49% of the respondents indicated they had not taken leave in the past year.

- ◆ 62% of female employees indicated that they are granted maternity leave at their workplaces, while 24% said it is not granted and 14% were not sure.

- ◆ Only 41% of male employees said they are granted paternity leave at their workplaces. Some of them were found to be unaware of existence of such leave, especially in regions such as Njombe, Dodoma, Songwe and Mtwara.

- ◆ 19% of employees who participated in questionnaire survey indicated they were denied sick leave, while 68% said such leave is granted.

- ◆ Claims of deduction of wages for sick or compassionate leave granted by employers were made by employees at workplaces in Dar es Salaam, Dodoma, Iringa and Songwe Regions.

- ◆ Some of the respondents interviewed in Tanga, Mbeya and Iringa stated that there is a problem of non-submission of employees' social security contributions.

9. Employment termination

- ◆ Survey revealed several cases of unfair termination in regions such as Dodoma, Iringa, Kilimanjaro, Mtwara and Songwe. Some of the interviewed respondents also claimed that they receive threats of



termination of employment for demanding labour rights.

10. Awareness of labour laws, rights and duties

- ◆ 7 out of 10 workers are not aware of relevant labour laws and regulations.
- ◆ Amongst those who claimed to be aware of labour laws, only 10% could mention 2 such laws, while 3% could mention one law. The majority (87%) could not correctly mention any such laws.
- ◆ Lack of awareness on labour laws and rights was lowest in Dar es Salaam and Arusha at 62%, while in Mwanza, Geita, Shinyanga, Mbeya, Iringa, Kilimanjaro and Dodoma, lack of awareness ranged from 70-76%.
- ◆ 58% of the respondents said they were aware of their rights, while 33% said they were not aware and 9% said they do not remember. However, when asked to mention 3 labour rights they are aware of, only 13% of respondents who said they were aware of such rights mentioned them correctly, while 55% mentioned one or two such rights, and 32% could not mention or mention such rights correctly.
- ◆ Poor knowledge of labour rights amongst workers was highest at workplaces in highest in Mtwara (62%) and lowest in Mwanza (23%).

11. Human rights violations resulting from non-compliance with labour laws and standards

- ◆ Major rights violated as a result of non-compliance with labour laws and standards were freedoms of association and expression, right to fair remuneration, right to enjoyment of just and favourable working conditions, and right to health.

Land Acquisition for Investment

- ◆ 57% of respondents were not sure whether compensation is fairly and timely granted, while 18% noted that compensation is fair but not timely and 12% said it is timely but unfair.
- ◆ Citizen participation during land acquisition for investment is still not satisfactory. Only 22% of the respondents were confident that community members are effectively engaged in cases of land acquisition for investment.
- ◆ Disputes and complaints about unfair/inadequate and untimely compensation were found to be more common in the Lake Zone,



especially around mining areas. Regions include Geita, Shinyanga and Mwanza and most complaints levelled against Acacia's North Mara Gold Mine and Geita Gold Mine.

- ◆ 83 % companies acknowledged that they do not allow community members to access and use their unutilized land.

Business Compliance with Tax Obligations

- ◆ Trends for the past 5 years indicating a general increase in direct taxes collected by the revenue authority, save for the financial year 2014/15, whereby growth declined by 0.7%.

- ◆ There has also been an increase in corporate taxes. However, more taxes would be collected in not for tax evasion, tax avoidance – including through transfer pricing- and tax exemptions.

- ◆ Over half of the respondents in the corporate sector (53%) indicated that the taxes imposed are not fair, while 47% said they taxes imposed are generally fair.

- ◆ Majority of market traders engaged in the survey (41.7%) mentioned high tax rates and low awareness about the importance of tax collection as major reasons for tax evasion.

- ◆ Over 50% of market traders claimed they do not see much benefits following tax collection.

Corporate Social Responsibility

- ◆ 50.5% of the community members engaged during the survey (50.5%) said they benefit from operations of investment companies in their areas, while 44.5% were of the view that they do not benefit from such operations.

- ◆ CSR activities are mainly concentrated on education, health and water sectors.

- ◆ CSR activities are mainly concentrated on education, health and water sectors.

- ◆ 50% of participants of the quantitative survey were not satisfied with CSR activities in their regions, particularly the status and extent of giving back to communities by companies in their respective regions.

- ◆ Standout performers in CSR were Anglogold Ashanti Company/Geita Gold Mine (GGM), Acacia Mining Company, Shanta Gold Mine, Asas Dairies Ltd, Williamson Diamond Mine, TANWAT Co. Ltd and New Forest Company Limited.



- ◆ Concerns over discretion on the part of employers regarding their CSR activities –presents a challenge in addressing priority issues by communities; CSR contributions are not sufficient; complaints about unequal distribution of resources; CSR being used as a leverage to demand something from communities, whereby if such demand is not met then CSR contribution may be cancelled; and companies not honouring their commitments or preferring quick fixes instead of providing more permanent or sustainable solutions.

Environmental Responsibility

- ◆ 77% of community members engaged during the survey said they had not participated in any social impact assessment before investment.
- ◆ Most companies either do not have in place effective environmental strategies or they do not implement them. Only 47% of companies visited indicated that they had in place a policy or strategy on sustainable use of the environment.
- ◆ Incidents of industrial pollution were reported in 11 out of 15 surveyed regions. Most in the form of water pollution and air pollution. But scientific research is needed to determine the extent of pollution.

Corporate Respect for Human Rights

- ◆ Common human rights abuses/concerns by businesses found during the survey were: industrial pollution in the forms of water, air, odour and noise pollution; unfair land acquisition, due to lack of or unfair compensation; torture by security guards or police; killings by security guards or police; and property damage due to drilling and blasting.
- ◆ Most of abuses/concerns were reported around mining areas in Shinyanga, Geita and Mara; as well as in regions such as Njombe, Mwanza, Iringa, Dar es Salaam, Arusha and Songwe.
- ◆ Environmental pollution was mentioned as the biggest human rights concern (19.5%).
- ◆ Access to remedy was also found to be a key human rights concern. Only 37% of surveyed companies acknowledged to have in place an internal grievance mechanism to address community complaints relating to their company's operations.
- ◆ 58.2% of the community members indicated that they were not satisfied with the available dispute settlement mechanisms.



- ◆ Reasons given for dissatisfaction with the dispute settlement mechanisms, both internal and external, include corruption (31.7%), lack of efficiency (21.8%) and delays (25.7%).

Gender and Other Forms of Discrimination in the Business Sector

- ◆ Few female employees were observed at most companies visited. Only 35% of employees engaged in the study were female.
- ◆ Women being paid less for doing the same job as men was stated by respondents interviewed.
- ◆ Discrimination of women at workplaces, especially when they become pregnant, whereby they are denied paid maternity leave and usually forced to find another job.
- ◆ 43% mentioned discrimination based on race or tribe as the most common form of discrimination at workplace, 27% said discrimination based on gender and 13% discrimination based on disability.
- ◆ Discrimination against PWDs when accessing employment still a major concern. Most companies visited did not comply with the Persons with Disabilities Act 2010 in terms of ensuring 3% of employees are PWDs.

Performance and Effectiveness of Regulatory Authorities

- ◆ 46% of regulatory authority officials engaged during the survey said their respective authorities do not have sufficient capacity to execute their functions, however 38% of respondents stated shortage of sufficient skilled officers was mentioned as the biggest capacity gap.
- ◆ Common challenges faced by regulatory authorities include inadequate budget; shortage of human resources/skilled staff; corruption; political interference; lack of knowledge about regulatory authorities and their functions; and inaccessibility of services provided by regulatory authorities.

Business environment and Consumer Protection

- ◆ Factors affecting business environment in Tanzania include complicated administrative procedures; tax burden; lack of access to low-interest loans; lack of effective strategies to assist small and medium-scale businesses; counterfeit and substandard products; bureaucratic “red tape” and corruption; and overregulation of the business sector.



- ◆ Counterfeit and substandard goods still a major challenge in Tanzania, contributing to tax revenue loss and jeopardizing public health and safety.
- ◆ Majority of community members do not report counterfeit and substandard products. Nearly 50% of the respondents who had come across or bought counterfeit or substandard products said they did not take any action as a result..

Key Recommendations

Compliance with labour laws and standards

- ◆ The Government, through the respectively of prime ministers office Labour, Youth Employment and People with Disability, to ensure effective enforcement of labour laws to ensure businesses comply with relevant labour laws and human rights standards.
- ◆ Civil society organizations and the Commission for Human Rights and Good Governance (CHRAGG) to reach out to workers and employers to sensitize them about labour and human rights of both parties in a bid to promote human rights in the business sector.
- ◆ The Government and the Judiciary to improve access to remedy to victims in the business sector, including strengthening key labour institutions such as the CMA.
- ◆ The Government to ensure labour rights are included in the new constitution, should the constitution-making process resume.
- ◆ The Government should regularly review the Wage Order in order to safeguard the right to fair remuneration and adequate standard of living.
- ◆ The media should enhance its watchdog role in the business sector to expose issues of concern in the sector. The media should also enhance understanding of labour and human rights in the business sector

Land acquisition for investment

- ◆ The Government, through the Ministry of Lands, Housing and Human Settlements to ensure that community members effectively participate in the process of land acquisition for investment, including having the relevant legal knowledge and be fully informed about the impact of proposed investment in order to make free prior informed consent.
- ◆ The Government should facilitate amendment of land laws to limit



the size of land that can be acquired by investors in order to cure the problem of unutilized land and community members not having enough land to conduct their economic activities.

- ◆ The Local Government Authorities should facilitate capacity building of Village and Ward tribunals to boost their ability to address land disputes.

- ◆ The Ministry of Lands, Housing and Human Settlements to collaborate with the Ministry of Constitutional and Legal Affairs and the Judiciary to effectively address land-related conflicts between community members and investors in order to guarantee realization of land rights.

- ◆ The Ministry of Lands, Housing and Human Settlements to ensure land acquisition process is fair and the affected community members are fairly remedied, including fair and timely compensation.

Business Compliance with tax obligations

- ◆ The Government, through the Tanzania Revenue Authority (TRA) to continue closely monitoring companies to ensure they comply with their tax obligations, especially those in the mining sector – which have been mainly implicated in tax evasion and avoidance.

- ◆ The Government should reduce tax exemptions and other tax incentives.

- ◆ Companies and other businesses should refrain from tax evasion and avoidance in line with their responsibility to respect human rights and corporate social responsibility.

Corporate social, Environmental responsibility and Respect for Human Rights

- ◆ The Government, through the Ministry of Constitutional and Legal Affairs should enact a comprehensive law on corporate social responsibility (CSR) to supplement the changes in the mining law, which makes CSR a legal requirement for mining companies. This will ensure all businesses, not just mining companies, have a systematic CSR requirement.

- ◆ The Government, through the ministries responsible for investment, land and environment, should ensure compliance with Environmental impact assessment (EIA) and social impact assessment (SIA) requirements in line with the relevant laws, including the



Environmental Management Act.

- ◆ Companies should refrain from causing adverse human rights impact or participate in human rights abuses; and when they are implicated in human rights abuses they should provide effective remedy.

Gender and other forms of discrimination

- ◆ The Government should ensure companies adopt affirmative measures to protect PWDs, women and PLHIVs from any form of discrimination at workplace, including when accessing employment.
- ◆ Business should work at providing favourable working conditions for women and provide them with leave benefits to promote equality at work place and boost staff retention and productivity.
- ◆ Community development officers and other stakeholders should ensure that rights relating to gender and non-discrimination are mainstreamed in all plans and activities of companies.

Regulatory authorities

- ◆ The Government, through the Ministry of Labour, Employment and Youth Development, to strengthen key regulatory authorities in the business sector, especially their institutional capacity, to enable them to conduct regular inspection and monitoring of businesses on compliance with relevant laws and regulations.
- ◆ Regulatory authorities should increase efforts of raising community awareness about their mandates and functions in order to increase accessibility.
- ◆ The Government should ensure all regulatory authorities work in coordination and avoid duplicity and multiplicity of functions. This will help to guarantee and enhance effectiveness.
- ◆ Other stakeholders such as local governments, community members and civil society should work with regulatory authorities to enhance compliance in relevant laws and standards by businesses.



CHAPTER ONE: **INTRODUCTION**



1.1. Overview of Tanzania

Tanzania is located in Eastern part of Africa between longitudes 29° and 41° East, and Latitude 1° and 12° South². Topographically, the country is endowed with beautiful scenery, with mountain ranges and valleys. Tanzania is home to Mount Kilimanjaro, the highest free standing mountain in the world and the highest mountain in Africa (referred as the roof of Africa).

On the Western part there is Lake Tanganyika (the deepest lake in Africa), bordering Zambia, Democratic Republic of Congo (DRC) and Burundi; while Lake Victoria (the largest lake in Africa and the source of the Great Nile River) lies in the northern part of the country, bordering Uganda and Kenya. In the South West lies Lake Nyasa, bordering Zambia, Malawi and Mozambique. There are rivers running across the country including Rufiji, Ruvuma, Malagarasi, Kagera, Pangani, Wami, Ruvu, Ruaha, Kilombero and Mara Rivers.

The Indian Ocean forms the Eastern border of the country with four major ports of Dar es Salaam; Mtwara; Tanga; and Bagamoyo (Mbegani area). These ports have been vital in boosting the country's economic growth as well as those of the landlocked neighbouring countries which depend on Tanzania's ports for exportation and importation of goods³. In 2016, Tanzania entered into agreement with Uganda to construct an oil pipeline which will run from Uganda to the Tanga Port. Tanzania is also planning to construct a standard gauge railway line which will connect the landlocked neighbouring countries of Uganda, Rwanda, Burundi and the Democratic Republic of Congo.

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2 LHRC & ZLSC (2013), Tanzania Human Rights Report 2012, p. 1.

3 These countries include Uganda, Rwanda, Burundi, DRC, Zambia and Malawi.

4 See <http://af.reuters.com/article/investingNews/idAFKBN1360KP>, accessed on 11th November, 2019.

5 See <http://www.tanzaniainvest.com/transport/central-corridor-railway-construction>, accessed on 20th January, 2017.



“ Tanzania is endowed with abundant natural resources (living and non-living), including minerals such as Tanzanite, Gold, Diamond, Copper and Iron, which are found in abundant.

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Tanzania has a tropical climatic condition with the highland temperatures ranging between 10°C to 20°C during the cold and hot seasons respectively. The temperature around the rest of the country does not fall below 20°C. Normally, it is hot around the months of October to February especially in the coastal regions of Dar es Salaam, Pwani, Tanga, Lindi and Mtwara. Cooler temperature is experienced between the months of May and August, particularly in the highlands areas where temperatures may fall below 10°C.

Rainfall distribution is divided into unimodal and bimodal areas.⁶ The unimodal areas experience rainfall once per year whereas the bimodal areas experience rainfall two times a year.⁷ The bimodal regions experience short rainfall (vuli) in the months of October to December and long-rains season (masika) starts around the end of March to early June.⁸ Unimodal regions experience heavy rainfall around November to April. Food security and availability have been satisfactory in recent years.

Further, Tanzania is endowed with abundant natural resources (living and non-living), including minerals such as Tanzanite, Gold, Diamond, Copper and Iron, which are found in abundant. Large reserves of natural gas have been discovered in southern regions of Mtwara and Lindi. It is estimated that

⁶ See www.meteo.go.tz, accessed on 10th December, 2018.

⁷ Unimodal areas include the following localities: Western regions (Rukwa, Katavi, Tabora and Kigoma); Central regions (Dodoma and Singida); Southern highlands (Mbeya, Iringa, Njombe and Southern Morogoro); and Southern regions and Southern Coast regions (Ruvuma, Mtwara and Lindi). The bi-modal areas include the following: Lake Victoria basin (Kagera, Mara, Mwanza, Geita, Simiyu and Shinyanga); Northern coast and hinterlands (Dar es Salaam, Tanga, Coast, Extreme Northern Morogoro areas, and isles of Unguja and Pemba); and North-eastern highlands (Kilimanjaro, Arusha and Manyara).

⁸ Ibid.



there is a reserve of 1 trillion Cubic metres of natural gas in coastal regions.⁹ Further explorations for gas and oil are ongoing in different parts of the country, attracting heavy foreign direct investment through exploration and establishment of manufacturing industry, a good example being the commission of the Dangote Cement plant in Mtwara in 2015, capable of producing high quality grade cement.¹⁰ The plant utilises natural gas as the main source of power generation. Also, natural gas is being utilized to generate power at the Kinyerezi Power Plant for public and commercial consumption. The discovered natural gas is aiming at generating power, with a major project of the Kinyerezi Power Plant.¹¹

The Population of the country is rapidly growing, at the rate of 2.7 per annum. The National Population and Housing Census of 2012 estimated the population at 43,625,354 in Mainland Tanzania and 1,303,569 in Zanzibar, with women making the majority at 51.3% and male at 48.7%.¹² In 2016 the population projection was at a total of 50,144,175, with 24,412,889 males and 25,731,286 females.¹³ Majority of the country's population resides in rural areas, where the number of households found is high compared to urban areas. The number of households in rural areas is 6,192,303, equivalent to 66.6% of the total number of households, and that in

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9 United Republic of Tanzania, The National Natural Gas Policy of Tanzania 2013, p. 2.

10 See <http://www.dangotecement.com/operations/tanzania/> accessed on December 2018.

11 See www.pesatimes.com/news/energy-mining/kinyerezi-power-plant-to-add-150-megawatts, accessed on 10th December 2017.

URT 2012, the National Population and Housing Census.

12 See National Bureau of Statistics (NBS), Sub-Divisional Population Projection for Year 2016 and 2017 based on 2012 Population and

Housing Census, available at

http://www.nbs.go.tz/nbs/takwimu/census2012/Tanzania_Total_Population_by_District-Regions-2016_2017r.pdf, accessed 18th December

2018.



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Currently, the country's economic growth rate is driven by transport, communication, manufacturing, construction and agriculture sectors,
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urban areas is 3,098,792 households, which is 33.4%. The average household size is 4.7 persons per household.

There are estimated 662,287 non-citizens living and working in Tanzania.¹⁴ This number is growing as a result of increased foreign direct investments and corporations. On the other hand, the number of Tanzanians living and working abroad (Diaspora) is estimated at 421,456.¹⁵

The country's literacy rate is 71%, which suggests that education is improving in terms of provision and accessibility in line with the Tanzania Development Vision 2025, Five-Year Development Plan and Sustainable Development Goals (SDG) Millennium Development Goals (MDG) on education. The country has attained 94.6 %, gross primary school enrolment.

Economic Situation

Currently, the country's economic growth rate is driven by transport, communication, manufacturing, construction and agriculture sectors, which accounts for 70% of the Gross Domestic Product (GDP).¹⁶ Therefore reducing donor dependence from 42% in 2005 to 15% in 2015.¹⁷

There are different initiatives that have been taken by the Government to better the economy of the country. Such initiatives include: the Big Results Now

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Delloite (2015), Tanzania Budget Insight 2015: Diving Deep, p. 1, available at http://www2.deloitte.com/content/dam/Deloitte/tz/Documents/tax/Tax_Budget%20Insight%202015_TZ.pdf, accessed on 15th December 2015.

¹⁷ See Speech by Hon. Dr.Jakaya Mrisho Kikwete, President of the United Republic of Tanzania when bidding farewell and dissolving the 10th Parliament of the United Republic of Tanzania, Parliament House, Dodoma on 9th July, 2015, p. 23.



(BIG) model, adopted in 2013-2014, the National Strategy for Growth and Poverty Reduction Phase II and the implementation of the Five Year Development Plan 2016/17 - 2020/21 all these aim to further the country's transition from lower to middle income country.¹⁸

The industrialization drive of the fifth phase Government

Currently Tanzania is implementing a Five-Year Development Plan 2016/17 -2020/21 “Nurturing Industrialization for Economic Transformation and Human Development” under the fifth phase government led by Hon. President Dr. John Pombe Magufuli. The Government has adopted industrialization as its main focus for economic growth, under the popular theme “*Tanzania ya Viwanda.*”¹⁹ The Government in implementing this plan has taken measures to reduce the cost of doing business in Tanzania to attract more investors. These include: amending the Capital Markets and Securities (Foreign Investors) Regulations for foreign investors to purchase securities of listed companies; digitalizing business registration at the Business Registration and Licensing Agency (BRELA); removed barriers of transportation of goods from the Dar es Salaam port and improved port services. It is also working to boost investment in key areas such as manufacturing, agriculture, mining, tourism, infrastructure, fisheries and ICT.

LHRC supports the government's industrialization drive and believes it can lead to economic growth, realization of the right to development and, human development if all rights of communities, public and investors are considered. Caution must be taken to ensure labour and human rights are adhered too by the business sector. LHRC believes industrial development can better be achieved when labour and human rights are respected by businesses and protected by the Government.

¹⁸ <http://www.pmoralg.go.tz/quick-menu/brn/>, BRN is Malaysian development model that helped to transform the economy of Malaysia.

¹⁹ This literally translates to “Industrialized Tanzania.”



1.2. Overview of Human Rights and Business: International Standards

The concept of human rights and business is informed by international standards on business and human rights. According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), these international standards are:

- ◆ Universal Declaration of Human Rights (UDHR)
- ◆ International Covenant on Civil and Political Rights (ICCPR);
- ◆ International Covenant on Economic, Social and Cultural Rights (ICESCR);
- ◆ ILO Declaration on Fundamental Principles and Rights at Work;
- ◆ ILO Tripartite Declaration on principles concerning multinational enterprises and social policy;
- ◆ Geneva Conventions (international humanitarian law);
- ◆ OECD Guidelines for Multinational Enterprises;
- ◆ "Protect, Respect and Remedy: a Framework for Business and Human Rights";
- ◆ UN Global Compact's Ten Principles;
- ◆ Guiding Principles on Business and Human Rights; and
- ◆ The Corporate Responsibility to Respect Human Rights: An Interpretive Guide.

UDHR, ICCPR and ICESCR provide for fundamental human rights which are applicable in the business sector. These include the right to work, freedom of association, right to just and favourable remuneration, right to life, right to health, right to education, right to privacy and right to non-discrimination.

The ILO Declaration on Fundamental Principles and Rights at Work was adopted in 1988. It provides for core labour standards, which are freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced and compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation.

UN Global Compact's Ten Principles are a key set of principles governing human rights and business. The principles are categorized into human rights, labour, environment and anti-corruption, as indicated in the box below.



The Ten Principles of the UN Global Compact

The Ten Principles of the United Nations Global Compact are derived from: the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption.

Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

Labour

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: the elimination of all forms of forced and compulsory labour;

Principle 5: the effective abolition of child labour; and

Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery



Guiding principles on Business and Human Rights (GPs), 31 in total, sought to clarify responsibilities of duty bearers in the business sector and fall under three main pillars, namely: PROTECT, RESPECT & REMEDY. Protect means the State has a duty to protect against human rights abuses, including by companies (10 GPs). Respect means companies have a responsibility to respect human rights (avoid causing or contributing to adverse human rights impacts (14 GPs). Remedy means States and companies must ensure victims have access to remedy in case of human rights abuses (7 GPs).

1.3. Human Rights and Business in Tanzania

Human Rights and Business Approach in Tanzania

Human rights and business is relatively a new concept in Tanzania. Given the increasing investment in the business sector, violations of labour and human rights in the sector are bound to increase. In response to this, different stakeholders, led by civil society organizations, have been on the forefront to increase awareness on business and human rights. They work at enabling rights holders and duty bearers to understand their roles and responsibilities and applicable national, regional and international standards on the subject. All these efforts are geared towards ensuring the Government fulfills its duty to protect human rights in the business sector; businesses adhere to their responsibilities to respect human rights; and victims of human rights abuse by businesses have access to remedy from the Government and business.

On its part, LHRC has been engaging different groups, government officials and institutions. For instance, it was been working closely with the Commission for Human Rights and Good Governance (CHRAGG) to promote human rights and business, including increase awareness on UN Guiding Principles on Business and Human Rights. Collaboration with CHRAGG and other stakeholders enabled incorporation of human rights and business activities in the National Human Rights Action Plan of 2013-2017. Also the LHRC has been preparing the Human Rights and Business report as an advocacy tool for the promotion of human rights and business in Tanzania.

How businesses in Tanzania can impact human rights

Businesses can positively or negatively impact on human rights. Positive



effects by businesses include: enhancing economic development; creating job opportunities; generating revenue for the Government and supporting provision of social services. Negatively, businesses may violate various labor and human rights, when they fail to comply with the relevant national, regional and international labour and human rights standards. Example operations of a business/companies may pose environmental and health risks such as poor disposal of waste, this can pollute water sources, threatening communities' right to health and life. When a businessperson employs children, it can amount to child labour, violating a child's right to education. Therefore, they must abide by human rights and business standards, avoiding causing or contributing to adverse human rights impacts relating to their business operations, products made and services provided. When violations occur, they are not to be complicit in the human rights abuses. They should ensure they provide victims of such violations access to remedy. Chapter Five of this report highlights how businesses fared in their responsibility to respect human rights in the financial year 2018/2019.

1.4. Report Preparation, Objectives and Structure

1.4.1. Sources of Data

Preparation of this report relied on both primary and secondary sources of data. Major source of data was primary data obtained through a business and human rights survey for the financial year 2018/19, conducted in selected 15 regions of Tanzania Mainland. Fieldwork involved visiting businesses/companies, community members, regulatory authorities, local NGOs and trade unions. Primary data obtained during fieldwork in those regions is contained in field reports prepared by research assistants, which are the main references in this report.

Secondary data was obtained through desktop research and review of various reports, laws, policies, regulations and other documents on labour laws, rights and standards produced by domestic and international actors. The data were used to further compliment or supplement field findings.

1.4.2. Research Study Objectives, Areas and Sampling

The main objective of the survey on human rights and business for the year 2018/2019 was to assess compliance with human rights standards; laws, policies and practices relating to labour, land, environment, tax and



corporate social responsibility in the business sector in Tanzania Mainland. The focus was on the following key issues in the business sector:

- a) Labour standards and practices;
- b) Land acquisition for investment;
- c) Tax obligations of companies and other businesses;
- d) Issues of discrimination in the business sector, including sex discrimination;
- e) Corporate social responsibility;
- f) Corporate environmental responsibility;
- g) Corporate respect for human rights; and
- h) State duty to protect human rights in the business sector through access to remedy and regulatory authorities.

Specific objectives of the survey were:

- i. To determine the extent businesses observed labour/employment and human rights standards in the year 2018/2019 as part of their responsibility to respect human rights;
- ii. To examine land laws and human rights standards in business land acquisition for investment ;
- iii. To assess compliance of businesses with tax obligations, corporate social responsibility and environmental responsibility in the year 2018/2019;
- iv. To assess effectiveness and efficiency of regulatory authorities in the business sector as part of the State's duty to protect human rights;
- v. To assess awareness of labour and human rights laws among workers /employees and community members;
- vi. To provide relevant recommendations to promote human rights in the business sector through formulation of new policies or reform of existing laws and policies in the sector; and

Areas of Survey

The survey was conducted in 15 regions of Tanzania Mainland. These regions are: Dodoma (Dodoma Urban, Kongwa, Bahi and Mpwapwa); Dar es Salaam (Ilala, Temeke, Ubungo and Kinondoni); Geita (Geita Municipal Council, Geita District Council and Nyang'wale); Iringa (Iringa Town, Kilolo, and Mufindi); Mara (Tarime, Serengeti and Musoma); Mbeya (Mbeya Urban; Chunya, and Mbarali); Songwe (Mbozi, Songwe and



Tunduma); Kimanjaru (Moshi Rural, Moshi Urban, and Hai); Mtwara (Mtwara DC and Mtwara MC); Mwanza (Nyamagana, Ilemela and Misungwi); Njombe (Njombe, Wang'ing'ombe, Makambako and Ludewa); Pwani (Kibaha, Kisarawe and Mkuranga); Shinyanga (Kishapu, Shinyanga Town, Shinyanga DC and Kahama); Tanga (Tanga CC, Tanga MC and Korogwe); and Arusha (Arusha CC, Meru, Monduli and Karatu).

Sampling

A total of 2,118 respondents (805 female, 1,313 male) were engaged for the human rights and business survey, namely community members; corporate management officials; employees/workers; regulatory authority officials; trade union officials; women market traders; service users and local government officials. Services users and market traders were part of a special mini survey conducted in the city of Dar es Salaam.

Table 1: Number of respondents of human rights and business survey 2019 by sex

Respondents	Female	Male	Total	%
Community members	302	378	680	32.1
Corporate management officials	46	105	151	7.1
Employees/workers	337	704	1,041	49.3
Regulatory authority officials	5	25	30	1.4
Trade union representatives/members	12	33	45	2.1
Local government officials	19	23	42	2
Service users– transport (Dar es Salaam)	45	42	87	4.1
Women market traders (Dar es Salaam)	39	-	39	1.8
Trade Officers (Dar es Salaam)	-	3	3	0.1
TOTAL	805	1,313	2,118	100

Source: Field data, 2019

A total of 151 companies, including small and medium sized industries, were visited and engaged in the survey. Some of these businesses were randomly and purposeful selected. Most of the businesses surveyed engage in manufacturing (55%), followed by service provision (14.6%), 7% construction, 6% mining, 4% on agriculture, 3% on transportation, 1% on fisheries and 9% others.



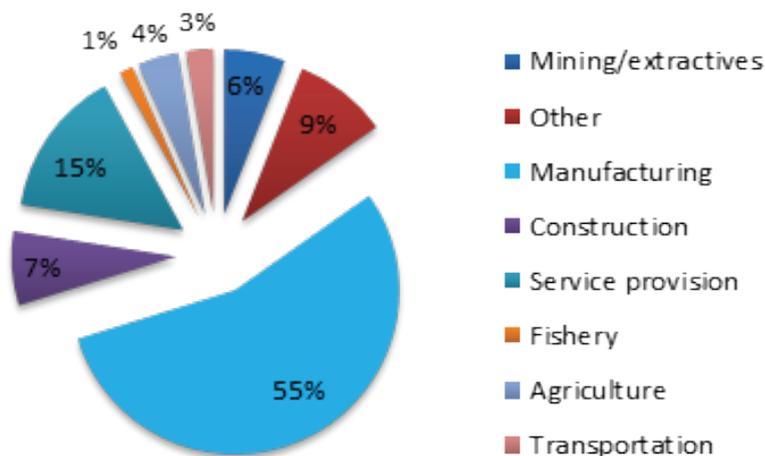


Figure 1: Percentage of companies that took part in the survey (N=151)
Source: Field data, 2019

1.4.3. Methods and Tools for Data Collection

Primary and secondary data collection methods were employed to obtain information during the survey. Primary data was through fieldwork conducted in selected 15 regions of Tanzania Mainland. Secondary data was obtained through desktop research and review of various reports, laws, policies, regulations and other documents on labour laws, rights and standards produced by domestic and international actors.

The main method of data collection employed was questionnaire, observation and key informant interviews. Document review was also used to obtain secondary data to supplement and triangulate the primary data. The table below indicates the tools used for collection of primary data.



Table 2: Tools used to collect primary data in 15 regions targeted for the survey

Method [Tool]	# Respondents	Targeted Group/Area
Questionnaires [Structured Questionnaires]	1,816	Employees/workers Corporate management officials Community members Regulatory authority officials Market traders Service Users
Interviews [Interview Guide]	302	Employees/workers Trade union officials Community members Trade officers Local government officials
Observation [Eyes]	-	Workplaces

Source: Field data, 2019



Picture 1: Interviews with community members in Dodoma (right) and Mbeya (left)



Table 3: Number of respondents of questionnaire by sex

Respondent Group	#Respondents		Total
	Female	Male	
Employees	305 (35%)	569 (65%)	874
Corporate management officials	46 (30%)	105 (70%)	151
Community members	289 (46%)	346 (54%)	635
Regulatory authority officials	5 (17%)	25 (83%)	30
Market traders (Dar es Salaam)	39 (100%)	-	39
Service users (Dar es Salaam)	45 (52%)	42 (48%)	87

Source: Field data, 2019

Table 4: Percentage of respondents of questionnaire (employees & community members) by age

Respondent Group	18-25	26-35	36-60	61+
Employees (N=874)	24.2	47.1	26.1	2.6
Community members (N= 635)	16.5	42.5	36.3	4.8

Source: Field data, 2019

37.6% who were majority of the respondents were the employees who had been working with their current employer for 2-5 years, followed by those who had worked with the employer for one year and less at 18.6%²⁰. While 15% and 10.2% of the employees had worked with the current employer for 5 to 10 years and more than 10 years respectively, while 14.2% had been one year at their workplace.²¹ 34% of the community members who filled out the questionnaires were businesspersons, followed by 26% farmers and 20% employees.

²⁰ LHRC Human Rights and Business Study 2019, Field Dat

²¹ Ibid.



Table 5: Percentage of respondents of questionnaire (employees & community members) by education

Respondent Group	None	Primary education	Secondary O-level education	Secondary A-level education	College/university education
Employees	1.1	23.6	36	17.2	22.1
Community members	15	42.9	28	4.3	9.8

Source: Field data, 2019



Picture 2: Respondents filling in questionnaires in Njombe Region

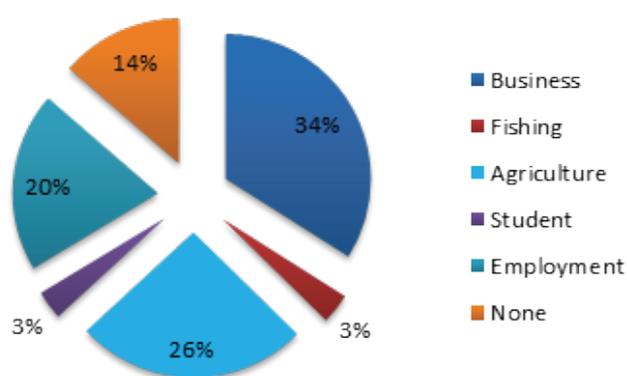


Figure 2: Percentage of respondents of questionnaire (community members) by occupation (N=635)



1.4.4. Data Quality and Ethical Considerations

The research assistants were the university graduates, who attended a two-day training on business and human rights and were familiarized with the data collection tools and research ethics as a measure of ensuring the quality of data and consistency. The LHRC research coordinators were in contact with the research assistants throughout the data collection survey process.

On research ethics, informed consent of the respondents were obtained and confidentiality was observed upon request. Kiswahili language was used as a medium of communication with communities in questionnaires and focus group discussion so as to facilitate communication and reduce information being lost in translation or misunderstanding.

1.4.5. Data Analysis

Data collected during fieldwork was analyzed using the Statistical Package for Social Scientists (SPSS) analysis software, establishing frequencies and key variables. These data were further analyzed and transformed into tables and figures by using Microsoft Excel and Microsoft Word. Qualitative data were grouped and analyzed by the report writers based on the various themes developed.

1.4.6. Limitations

The survey study on human rights and business across 15 regions of Tanzania Mainland was faced with a number of limitations, notably:

- ◆ Reluctance to share information from some of the branches of regulatory authorities and trade unions: Some of the branches of regulatory authorities, such as TRA, were not willing to disclose much of the information that was needed on the grounds of 'confidentiality.'
- ◆ Supervisors prohibiting respondents from revealing 'damaging' information about their workplaces: Some of the respondents engaged in the survey were afraid of being seen filling in the questionnaires, while other were only allowed to do so under strict supervision. This was observed at some of the workplaces that were visited in all of the surveyed regions.
- ◆ Poor cooperation by some companies approached during the study: Some companies gave no or little cooperation to the research assistants, refused to disclose information required or prohibited their work-



ers to participate in the survey. This was especially the case in Iringa, Dodoma, Mbeya, Mwanza and Tanga Regions. Most of the companies' management officials refused to provide relevant documents, such as policies though they claimed to have them in place. This made it difficult for the research assistants to balance some of the information shared, allegations made by the respondents or seek clarifications on some of the issues raised.

◆Lack of or low awareness about labour standards and rights: This means the research assistants had to spend more time with some of the respondents, thus reducing the time to reach others.

1.4.7. Report Objectives

The main objective of this report is to shade light on the situation of human rights and business in Tanzania in the financial year 2018/19. The report also highlights on progress made by providing comparisons with the previous years. It is an advocacy tool for promotion and protection of human rights and business in Tanzania. Furthermore, it provides useful information on human rights and business in Tanzania that can be used for academic purposes.

1.4.8. Report Structure

This report is divided into Nine (9) chapters. Chapter One provides an overview of Tanzania; introduces human rights and business; and covers report preparation, objectives and structure. Chapter Two looks at business compliance with labour laws and standards, while Chapter Three highlights land acquisition for investment purposes, focusing on compensation and awareness on land rights by communities. Chapter Four covers compliance with tax obligations by businesses. Chapter Five is on corporate social responsibility, environmental responsibility and business respect for human rights, focusing on how businesses/companies give back to the community, protect the environment and respect human rights. Chapter Six covers gender and other forms of discrimination in the business sector, while Chapter Seven is on performance and effectiveness of regulatory authorities. Chapter Eight is on business environment and consumer protection; and lastly, Chapter Nine provides general conclusion and recommendations.



CHAPTER TWO:
**BUSINESS
COMPLIANCE
WITH LABOUR LAWS
AND STANDARDS**



2.1. Labour Laws, Rights and Standards applicable in Tanzania

Employment and labour issues in Tanzania are governed by domestic, regional and international laws, which provide for labour rights and standards. At the international level, labour rights and standards are stipulated in conventions and other instruments of the International Labour Organization (ILO), the Universal Declaration of Human Rights (UDHR) of 1948, and International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. Tanzania has been a member of ILO since 1962, working with the organization in different programmes, including labour law compliance. Tanzania has ratified 36 ILO conventions relating to labour rights and standards, including all 8 fundamental conventions, namely:²²

- ◆ Forced Labour Convention, 1930 (No. 29);
- ◆ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
- ◆ Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- ◆ Equal Remuneration Convention, 1951 (No. 100);
- ◆ Abolition of Forced Labour Convention, 1957 (No. 105);
- ◆ Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- ◆ Minimum Age Convention, 1973 (No. 138); and
- ◆ Worst Forms of Child Labour Convention, 1999 (No. 182).

Other key conventions ratified by Tanzania include the Workmen's Compensation (Accidents) Convention, 1925 (No. 17), the Minimum Age (Industry) Convention (Revised), 1937 (No. 59), the Collective Bargaining Convention, 1981 (No. 154) and the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148).²³ These conventions protect fundamental labour rights of workers or employees, rights of employers and duties of both employees and employers. These rights include the right to freedom of association, right to non-discrimination, right to strike, right to collective bargaining, right to fair remuneration, right to just and favourable working conditions and right to compensation. They are connected to the right to work, which is a fundamental human right protected under UDHR, ICESCR and

²² See ILO website at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103476, accessed 19th June 2018.

²³ Ibid. Note: the Working Environment (Air Pollution, Noise and Vibration) Convention was ratified with reservations.



Core labour standards are:

- ◆ Freedom of association and the effective recognition of the right to collective bargaining;
- ◆ Elimination of all forms of forced and compulsory labour;
- ◆ Effective abolition of child labour;
- ◆ Elimination of discrimination in respect of employment and occupation.

Convention on the Elimination of all forms of Discrimination Against Women (CEDAW),²⁴ which also provide for the right to freedom of association,²⁵ right to non-discrimination,²⁶ right to fair remuneration,²⁷ right to just and favourable working conditions,²⁸ right to equal pay for equal work²⁹ and right to strike.³⁰ Key regional conventions ratified by Tanzania, such as the African Charter on Human and Peoples' Rights (ACHPR) and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), also provide for these labour and human rights.³¹

In 1988, ILO adopted the Declaration on Fundamental Principles and Rights at Work, under which member states agreed to respect core labour standards. States, including Tanzania, also agreed to promote and realize these standards, as contained in ILO fundamental labour conventions, regardless of ratification status. These standards are also reflected in the UN Guiding Principles on Business and Human Rights and the The Ten Principles of the UN Global Compact.

At national level, labour and employment relations are governed by the Employment and Labour Relations Act of 2004 (ELRA), which provides for fundamental labour rights and standards, in line with international labour standards. The law applies to all employees in Tanzania Mainland, except to members of the Tanzania People' Defence Forces, the Police Force,

24 UDHR, Article 23(1); ICESCR, Article 6(1); CEDAW, Article 11(1)(a).

25 UDHR, Article 23(4); ICESCR, Article 8(1)(a).

26 UDHR, Article 23(2); CEDAW, Article 11(2).

27 UDHR, Article 23(3); ICESCR, Article 7(a).

28 UDHR, Article 23(1); ICESCR, Article 7(b); CEDAW, Article 11(1)(f).

29 UDHR, Article 23(2); CEDAW, Article 11(1)(d).

30 ICESCR, Article 8(1)(d).

31 See ACHPR, Articles 10 & 15; Maputo Protocol, Articles 2 & 13.



Prisons Service and the National Service.³² ELRA provides the legal framework for effective and fair employment relations and minimum standards regarding conditions of work and a framework for voluntary collective bargaining. It gives effect to constitutional provisions relating to labour and work; provides a framework for resolution of labour disputes; and gives effect to the core ILO and other conventions relating to labour or work as ratified by Tanzania.³³ Fundamental rights and protections provided under ELRA are prohibition of child labour, prohibition of forced labour, prohibition of discrimination in the workplace, prohibition of discrimination in trade unions and employer associations, employees' right to freedom of association, employers' right to freedom of association and rights of trade unions and employer associations. Other domestic laws governing relations between employees/workers and employers in Tanzania include:

- ◆ Constitution of the United Republic of Tanzania of 1977;³⁴
- ◆ Law of Contract Act, CAP 345;³⁵
- ◆ Labour Institutions Act, No 7 of 2004;³⁶
- ◆ Workers' Compensation Act, CAP 263, R.E. 2015;³⁷
- ◆ Non-Citizen (Employment Regulations) Act, 2014;³⁸ and
- ◆ Occupational Health and Safety Act, 2003.³⁹

There are also rules, regulations and policies relating to labour and employment. These include the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007; Labour Institutions (General) Regulations 2017 (GN 45 2017); the national Employment Policy of 2008; the Tripartite Code of Conduct on HIV/AIDS at the Workplace in Tanzania Mainland of 2008; and the National Strategy for Gender Development of 2005.

This chapter examines the extent to which businesses complied with the relevant labour laws and key labour standards on employment contracts,

³² Section 2(1) of ELRA.

³³ Ibid, Section 3.

³⁴ The Constitution provides for the right to work under Article 22(1), right to fair remuneration under Article 23 and freedom of association under Article 20.

³⁵ Employment contracts must comply with the Law of Contract Act.

³⁶ Establishes institutions and mechanisms for resolution of labour disputes. Institutions include the High Court Labour Division and the Commission for Mediation and Arbitration.

³⁷ Establishes the compensation fund in case of injury at work.

³⁸ Governs employment of non-Tanzanians.

³⁹ Provides for protection of workers' working conditions to ensure their safety and protect their health.



working hours, remuneration, working conditions, compensation for injury sustained at work, employment termination, leaves and social security in the financial year 2018/2019. It also looks at realization of fundamental labour rights of freedom of association and collective bargaining, situation of forced and child labour, situation of access to remedy in case of violation of labour and human rights, and awareness of labour laws, rights and duties. The Chapter concludes by summarizing human rights violations resulting from non-compliance with labour laws and standards.

2.2. Employment contracts

The Law of Contract Act (LCA)⁴⁰ defines a contract as an agreement made by free consent of parties competent to contract, for a lawful consideration and with a lawful object.⁴¹ Employment contracts are legally-binding agreements between employers and employees, creating rights and duties for both parties. The Employment and Labour Relations Act (ELRA) provides for three types of contract with an employee, namely:

- ◆ Contract for an unspecified period of time;
- ◆ Contract for a specified period of time for professional and managerial cadre; and
- ◆ Contract for a specific task.

Both oral and written employment contracts are permissible under the ELRA. However, where there is no written employment contract an employer must supply an employee with Written Statement of Particulars, containing:⁴²

- ◆ Name, age, permanent address and sex of the employee;
- ◆ Place of recruitment;
- ◆ Job description;
- ◆ Date of commencement;
- ◆ Form and duration of the contract;
- ◆ Place of work;
- ◆ Hours of work;
- ◆ Remuneration, the method of its calculation, and details of any benefits or payments in kind; and
- ◆ Any other prescribed matter.

40 Law of Contract Act, CAP 345, R.E 2002.

41 Ibid, Section 10.

42 Ibid, Section 15(1) & (2).



Employer has a duty to explain the written particulars above to an employee if they do not understand and keep the particulars for at least five years after termination.⁴³ If employer fails to produce a written contract or written particulars in case of labour dispute, such dispute may be decided against them.⁴⁴ Moreover, an employee must work for more than 6 days in a month in order to qualify for any rights stipulated in the employment contract.

Payment of remuneration must be done on a monthly basis, or any other period agreed between employer and employee, but an employee must be provided with a written statement of particulars supporting remuneration paid.⁴⁵ The statement must contain: the name of employee; date, month and year of payment; the name of employer or logo; employment or check number; statutory deductions; other deductions; gross or basic salary; and net salary⁴⁶

2.2.1. Workers with employment contracts

The 2018/19 human rights and business survey conducted in 15 regions of Tanzania Mainland revealed an improved situation of provision of employment contracts compared to the previous survey conducted in 2017. When asked about having employment contract, 84% of workers indicated they have employment contracts, while 16% claimed they had no such contracts. In the previous survey, 74% of workers reached claimed to have employment contracts.

Do you have an employment contract?

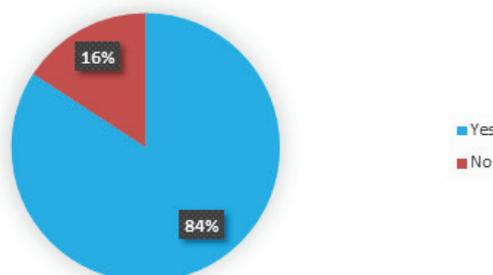


Figure 3: Workers with and without employment contracts (N=867)
Source: Field data, 2019

43 Ibid, Section 15(3) & (5).

44 Ibid, Section 15(6).

45 Regulation 13(1) & (2) of the Employment and Labour Relations General Regulations, GN. 47 of 2017.

46 Ibid, Regulation 13(3).



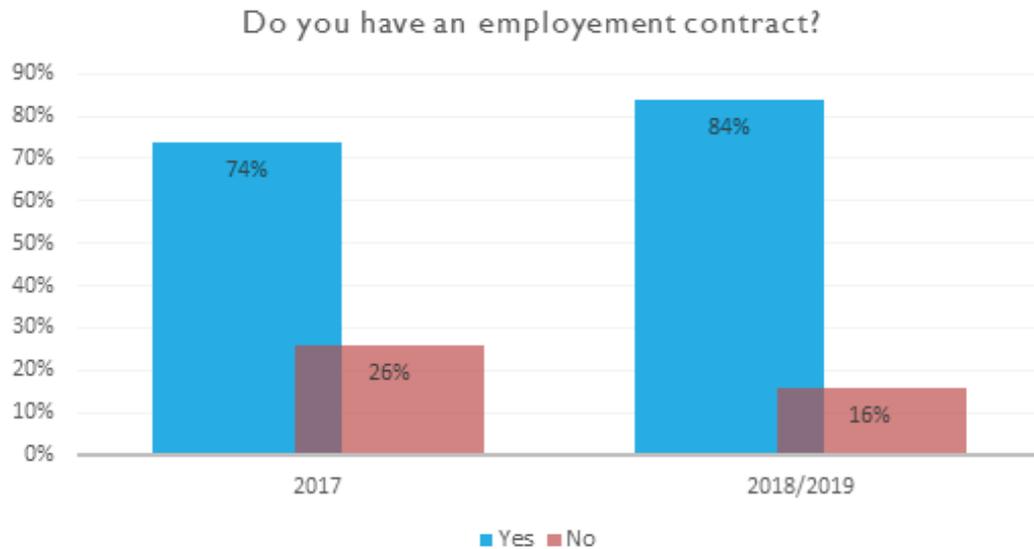


Figure 4: Status of employment contracts amongst workers in 2017 and 2018/2019
 Source: Field data, 2017 & 2019

According to the survey, only Mtwara had less than 50% of respondents who had employment contracts - at 44%. In all other regions, the survey indicated that the percentage of respondents who had employment contracts ranged from 55% in Geita Region to 94% in Arusha Region.



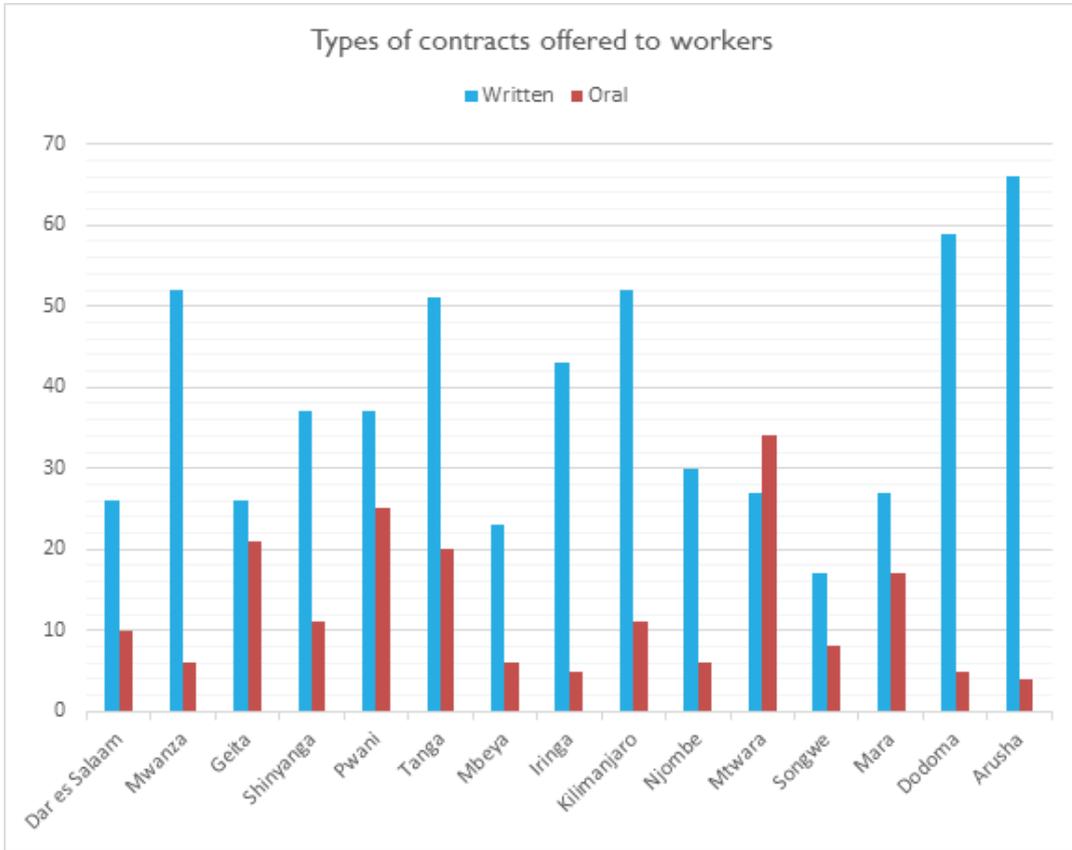


Figure 5: Types of contracts offered to workers
 Source: Field data, 2019



In Mtwara, it was found that only skilled workers were provided with contracts, while unskilled workers are left without contracts despite working for a company/factory for many years. For instance, concerns over lack of employment contracts were expressed during interviews with respondents at Shebby Mix Investment, DOTT Services Company, SERC Construction Company and YALIN Cashewnut Co. Ltd.⁴⁷ At companies such as Adili Mills, neither employers nor employees could present copies of contracts despite claiming to have them. In Dodoma, similar concerns were expressed at companies such as ABC Transportation Company, Kimolo Super Rice Company and Total Petrol Station Company, despite the respondents working for more than three years.⁴⁸

The survey further found that there is a tendency of employers breaching terms of contract, including changing terms and conditions of the contraction without consulting the employee and not paying salary agreed in the contract. This concern was particularly expressed by respondents in Njombe and Songwe Regions. One employee in Njombe (preferred anonymity) who, had this to say:

“The salary indicated in my contract, which I signed at the headquarters is different from the one I am getting here in Njombe, and every time I followed up on the matter my fellow workers told me that this is how things are done at the company, that they also started with the same salary and then it was increased within two years.”

Another respondent at Jambo Musyani Brand Ltd in Songwe indicated that he was paid less than half the salary agreed in the contract.⁴⁹ He alleged that when he asks the boss about the salary he is usually told to leave as ‘there are many people who would be happy take the amount provided.’⁵⁰ At Mbozi Maziwa Ltd, which is also based in Songwe, one respondent stated during an interview that the employer was looking to modify and change terms of contract, telling employees to make fresh applications for jobs. When asked about this issue by the survey team, the corporate management official at the company said:

⁴⁷ LHRC Human Rights and Business Survey 2019, Mtwara Field Report
⁴⁸ LHRC Human Rights and Business Survey 2019, Dodoma Field Report
⁴⁹ LHRC Human Rights and Business Survey 2019, Songwe Field Report
⁵⁰ Ibid.



“The workers do not agree with the changes made by the new management of the company...each management has its own plans and procedures...”

Labour laws and the Law of Contract allow changing or modification of terms of contract, but both parties must participate in this process. LHRC recommends that employers engage in participatory consultations with employees before making changes or modifications in employment contracts, providing an opportunity for employees to discuss issues affecting them and be part of the decision-making process - helping to improve labour relations.

2.2.2. Written contracts and copies of contracts

While the situation of workers with employment contracts appears to have improved in 2018/19, a quarter of respondents indicated that they had no written employment contracts or Written Statement of Particulars as required by law. As shown in the figure below, 25% of the respondents indicated they had no written employment contracts, which puts them at risk of their basic labour rights being violated and at a disadvantage where a labour dispute occurs.

What type of employment contract do you have?

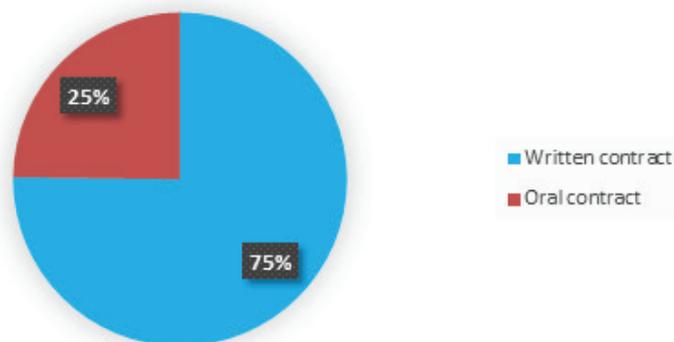


Figure 6: %Type of employment contract (N=762)
Source: Field data, 2019



In Shinyanga an employee at Kom Group of Companies Ltd stated that he had not been given an employment contract, despite working for the company for more than 10 years.⁵¹ In Pwani Region, the survey found that 40% of respondents working at various companies/industries did not have written employment contracts⁵²

“Only a few workers get written employment contracts, but even they only look for where to sign.....they do not read the contract. It is also difficult to know your employer.”– Official at National Union of Mine & Energy Workers of Tanzania (NUMET)

“A large percentage of workers do not have copies of their employment contracts. This is the major problem for us. Those who receive contracts are not even allowed to read them, pressured into signing them and then the contracts are kept in the office....they are not allowed to remain with copies. The amount of salary contained in the signed contract kept in the office is not the same as that paid in practice. They signed a contract indicating salary of Tshs. 120,000, but they receive Tshs. 90,000, and sometimes they are forced to work for up to 24 hours.” – a worker at a security company in Geita

In Geita, an official at National Union of Mine & Energy Workers of Tanzania (NUMET) interviewed by the survey team indicated that most employees do not have written employment contracts and most of those who are provided with written contracts usually sign them without reading and clearly understanding the terms of such contracts.⁵³ It was also revealed that some companies are reluctant in providing their employees with copies of signed contracts.⁵⁴ An official from Geita Drivers Association lamented the lack of employment contracts for drivers in the region.⁵⁵ During an interview, the official stated that no

51 LHRC Human Rights and Business Survey 2019, Shinyanga Field Report

52 LHRC Human Rights and Business Survey 2019, Pwani Field Report.

53 LHRC Human Rights and Business Survey 2019, Geita Field Report.

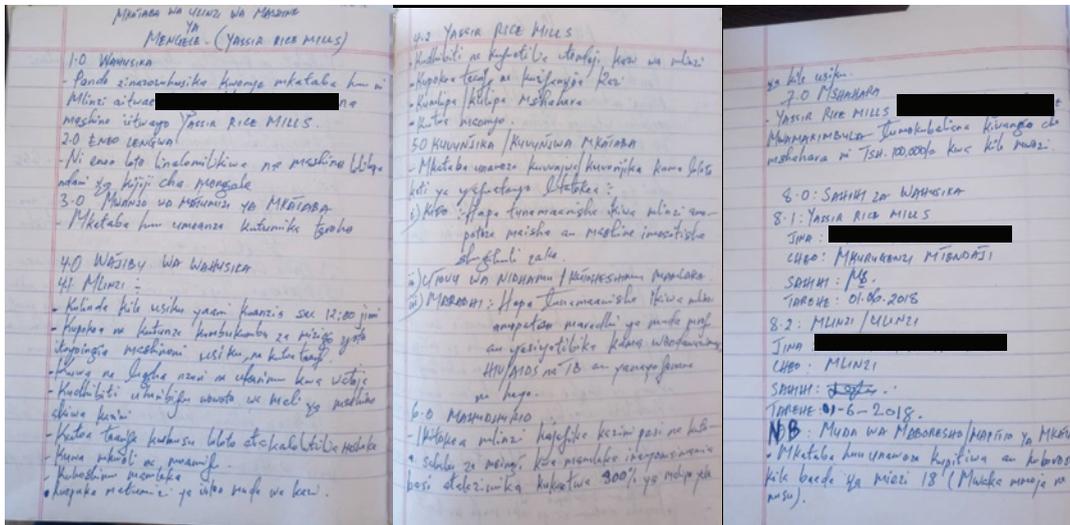
54 Ibid.

55 LHRC Human Rights and Business Survey 2019, Geita Field Report.



member of the association has a written employment contract, which in his experience, makes it difficult for them to claim or demand their basic labour rights since they do not have a signed document that shows the terms and conditions of their employment.⁵⁶

In Mbeya Region, 21% of respondents employed at various factories indicated that they only had oral employment contracts, while 79% said they had written employment contracts. Lack of written employment contracts was said to be an issue at Kaponda Group Ltd, Herocean ENTT Ltd and Yassir Rice Mill Company Ltd.⁵⁷ Denial of copies of the signed contracts was also mentioned as an issue of concern at these workplaces; and similar concerns was expressed at China Paper Co. Ltd in Kilimanjaro Region, whereby respondents interviewed during the survey alleged that all signed contracts are kept in the management office.⁵⁸ On the other hand, at companies such as Shanta Gold Mining Company, ALAF Limited and TBL-Mbeya Ltd, majority of the respondents indicated they have written employment contracts.⁵⁹



Picture 3: Employment contract written in a counter book

56 Ibid.

57 LHRC Human Rights and Business Survey 2019, Mbeya Field Report.

58 LHRC Human Rights and Business Survey 2019, Kilimanjaro Field Report.

59 LHRC Human Rights and Business Survey 2019, Mbeya Field Report.



At Yassir Rice Mill Company Ltd, the survey team found that employee contracts were hand-written in a counter book⁶⁰ – meaning the employer gets to keep all contracts and employees left without copies of their own. Some of the employers who were interviewed stated reasons for not providing written employment contracts to their workers. For instance, at MCCCCO, a coffee processing company in Songwe, a company management official stated that they prefer to issue oral contracts due to the seasonal nature of coffee production and nature of the work in general. Similar claims were made during interviews with management officials at GDM Company, Dominick Milling Group Ltd and Coffee Management Services.

2.2.3. Ready-made contracts and room for collective bargaining

Ready-made contracts do not grant room for any form of discussion or negotiation with an employee. In this regard, employers employ the so-called ‘take it or leave it approach’, which leaves no room for collective bargaining and is thus not a good labour practice. This trend has been observed by LHRC in its previous reports on the situation of human rights and business in Tanzania Mainland.⁶¹ Nearly half of the respondents who

Did you discuss terms with employer before signing contract?

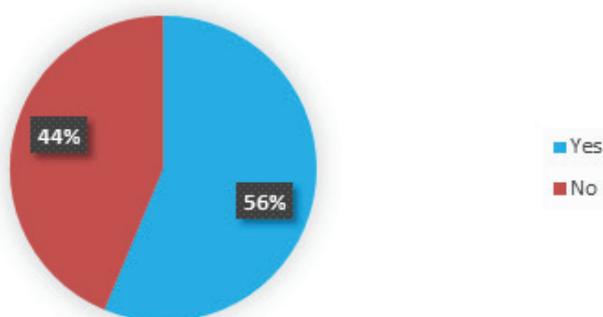


Figure 7: % Responses on negotiating or discussing contract terms with employer (N=683)
Source: Field data, 2019

⁶⁰ Ibid.

⁶¹ See LHRC (2016), Human Rights and Business Report 2015; LHRC (2017), Human Rights and business Report 2016; and LHRC (2018), Human Rights and Business Report 2017.



were engaged claimed that they were not afforded an opportunity to negotiate their contracts, hence having no choice but to sign ready-made contracts.

When asked how their salaries were determined, 66% of the 874 respondents stated the employer decided the amount to be paid as salary, while 16.5% said their salaries were negotiated on their behalf by trade union and 13.6% said they negotiated the salary package.⁶² Denial of an opportunity to negotiate terms of their contracts was mentioned as an issue of concern in all surveyed regions.

“We don’t discuss anything regarding the contract with the employer, you just receive a ready-made contract and you sign; and some of us do not even read what is written in the contract, as long as we secure the job.”

Employee in Tanga

“I have worked for more than 7 years at more than 4 different companies and not once have I ever negotiated terms of my contract. They just decide themselves what salary to give you.”

Employee Mara

Concerns regarding ready-made contracts were expressed at companies such as ALLY’s STAR BUS Company based in Shinyanga Region, Fabec and GIPCO Companies in Geita Region, Serengeti Security Company based in Mara Region and Tanga Pharmaceutical and Plastics Ltd (TPPL) in Tanga Region. In Mtwara, only 6% of respondents indicated they negotiated their contracts with employers before signing them.⁶³

“We are not afforded time to read contracts, they just given them to us to sign without reading terms; and, at times, there are also delays in issuing contracts and we don’t get signed copies.”

⁶² LHRC Human Rights and Business Survey 2019, Field data.

⁶³ LHRC Human Rights and Business Survey 2019, Mtwara Field Report.



“There are no negotiations between the employer and employee, the employer just decides on the terms and conditions and the employee must comply.”– Fabec employee

“I have signed the contract but I don’t know what terms are contained in it because after it was brought to me to sign I was told contracts must be collected and I was not given a copy.” – Fabec employee

“We are usually pressured into signing contracts even if we have not read them properly and understood them; and the wages are not adequate, but we sign because we really need the job.” - Employee at Sao Hill Industries Ltd

The survey also found that there is a tendency of employers rushing employees into signing contracts instead of affording them time to read and understanding them. For instance, this issue emerged during interviews with respondents in Njombe Region, particularly those at TANWATT Company and Njombe Milk Factory. Similar allegations were made by respondents interviewed at Fabec Company and Massa Security Company in Geita Region and Sao Hill Industries Ltd in Iringa. In Shinyanga, an employee at Ally’s Star Bus Company noted that: The best practice regarding employment contracts was found at Agro Processing Africa Ltd in Dodoma, which has been doing well to promote and adhere to labour standards. The survey in Dodoma revealed that employees at the company had written employment contracts and had discussed and negotiated terms before signing them.

2.2.4. Language of employment contracts

In Tanzania, one of the major concerns regarding employment contracts is understanding of the terms of the contract on the part of employees. This issue has been raised in previous LHRC surveys on human rights and business.⁶⁴ The 2019 survey revealed that this problem continues to exist. For instance, in Tanga Region, interviewed employees indicated that it was difficult for them to understand the contracts written in English,

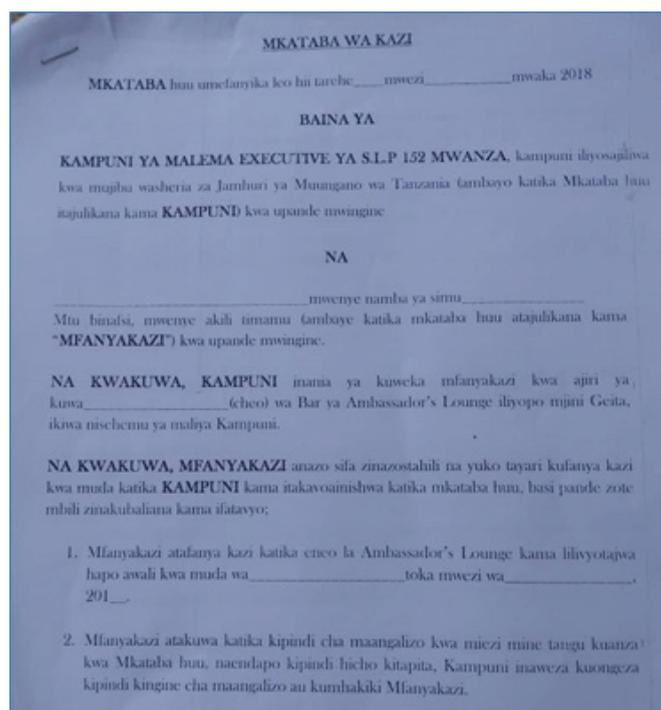
⁶⁴ See, for example, LHRC (2018), Human Rights and Business Report 2017; and LHRC (2016), Human Rights and Business Report 2015



considering their level of education (most of the had attained education levels of Standard 7 to Form Four).

In Dodoma Region, one respondent at Herocean Enterprises Ltd stated that his employment contract was written in English Language and is if one complains they are told to leave, if they do not want to sign the contracts.⁶⁵ He noted that they sign the contracts anyway because they really need a job.⁶⁶ The LHRC survey team was able to obtain and see a sample of employment contract, which was indeed written in English.

A good practice regarding the language of employment contracts was found at Fabec and Malema Companies in Geita Region. The survey team was able to obtain copies of contracts at these companies, which were written in Swahili Language, hence easy for employees to read and understand the terms of contract.



Picture 4: Extract of a sample of contract offered to employees at Malema Executive Company in Geita Region

65 LHRC Human Rights and Business Survey 2019, Mtwara Field Report.

66 Ibid.



2.2.5. Contracts with unfair or discriminatory terms

At most workplaces that were surveyed, company managements were reluctant to share samples of employment contract. However, the team was able to obtain a few samples of such contracts and interview workers regarding the fairness of terms of their contracts. For instance, a sample contract obtained at Yassir Rice Mill Ltd was found to contain a provision that discriminates against employees who are found to be HIV positive, stipulating that suffering from diseases such as HIV/AIDS and TB may lead to termination of one's employment. Putting this as a ground for termination of employment contract amounts to discrimination, which is prohibited under the Employment and Labour Relations Act 2004 and the HIV (Prevention and Control) Act of 2008. The former provides for employers to ensure that they promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice,⁶⁷ while the latter prohibits compulsory HIV testing and stigmatizing or discriminating another person in any manner on the groups of such person's actual, perceived or suspected HIV status.⁶⁸

The contract also provides for a too severe a punishment where an employee misses work without valid reasons.⁶⁹ The contract provides that if an employee misses work without valid reasons then they would be deducted 300% of their wages, which is essentially 3 months without pay.⁷⁰

⁶⁷ See Section 7 of the Employment and Labour Relations Act 2004.

⁶⁸ See Sections 15 & 31 of HIV (Prevention and Control) Act of 2008.

⁶⁹ LHRC Human Rights and Business Survey 2019, Mbeya Field Report.

⁷⁰ Ibid.



4.2 YASSIA RICE MILLS

- Kudhibiti na kufuatilia itanaji, kazi wa mlinzi
- Kupokea tanga na kuisenyua kazi
- Kuanlipa / kulipa mshahara
- Kutua mcombo.

5.0 KUVUNJIKWA / KUVUNJIKWA MKATABA

- Mkatiba unaozua kuvunjwa / kuvunjika kama joto kati ya yafuatayo litatokea:

- i) KIRO: Hapa tunamaanisha ikiwa mlinzi anapoteza maisha au machine imoshitishwa shughuli zake.
- ii) UTOU WA NIDHAMU / KATIYESITAMU MAMBARA.
- iii) MARADHI: Hapa tunamaanisha ikiwa mlinzi anapotea maridhi ya muda prof au yasiyotibika kama wadawanyu HAV/AIDS na TB au yanayofanana na hayo.

6.0 MASHUDHIKIO

- Kitokea mlinzi hajafika kazi pasipasi au kuba sababu za mbingi, kwa mamlaka inayomisisirika basi atakarimika kukatwa 300% ya mola ya

Picture 5: Extract of a contract containing discriminatory and unfair terms of contract

"..there is not a single person here with a written contract, all our contracts are oral...if the boss sees that you are demanding contract you get fired on the same day..." – Respondent, Songwe



2.2.6. Employment contract and fear of losing one's job

The human rights and business survey generally found that there is fear of losing jobs amongst workers, given the high unemployment rate and difficulty in landing a job. As such, employers take advantage of this situation to deny employees their basic labour rights and threaten them with termination of their contracts if they keep demanding certain labour rights. One such right is right to be provided with an employment contract. For instance, concerns over the possibility of losing one's job for demanding an employment contract were expressed during with interviews with respondents at East Star International (T) Ltd⁷¹ in Pwani and at Jambo Musyani Brand Ltd in Songwe.

2.2.7. Long term contracts versus short-term contracts

The human rights and business survey conducted in most regions indicated a trend of employers seeking to replace long-term contracts with short-term contracts, usually one-year renewable contracts. This was reported during interviews with workers at 55% of workplaces surveyed in Arusha Region.⁷² Short-term contracts bring about job insecurity, putting employees at risk of their contracts not being renewed, especially for those who 'appear to be active in demanding employee rights.'

2.3. Working hours

Working hours or working time has been an issue of concern across the world since 19th Century, with excessive working hours seeming to pose danger on workers' health and harm family life. This prompted the international community, through the ILO, to agree on international standards on working time, which are set out in different ILO conventions.⁷³ The international standard is now 8 hours per day.⁷⁴ The Employment and Labour Relations Act (ELRA) conforms to the international standard, providing for a maximum number of 45 hours in a week, 6 days in a week and 9 hours in a day permitted to work.⁷⁵ ELRA also prohibits an employer to require or allow an employee to work for more

⁷¹ LHRC Human Rights and Business Survey 2019, Pwani Field Report.

⁷² LHRC Human Rights and Business Survey 2019, Arusha Field Report.

⁷³ See for example the Hours of Work (Industry) Convention, 1919 (No. 1); Hours of Work (Commerce and Offices) Convention, 1930 (No. 30);

⁷⁴ Forty-Hour Week Convention, 1935 (No. 47); Reduction of Hours of Work Recommendation, 1962 (No. 116); Weekly Rest (Industry) Convention, 1921 (No. 14); Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106); and Night Work Convention, 1990 (No. 171).

See ILO, Q&As on business and working time, at

http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_TIM_FAQ_EN/lang--en/index.htm, accessed 20th

August 2019; LHRC (2016), Human Rights and Business Report 2015, p. 87.

⁷⁵ Section 19(2) of the Employment and Labour Relations Act 2004.



than 12 hours in a day.⁷⁶ Overtime work is allowed under the law, but should not exceed 50 hours in any four week cycle⁷⁷ and is subject to an agreement between employer and employee⁷⁸ as well as additional pay (overtime pay).⁷⁹ However, a written agreement may be entered between employer and employee to work for up to 12 hours in a day without overtime pay.⁸⁰ Employer is also required to give employee working continuously for more than 5 hours a break of at least 60 minutes and pay them if they work on a public holiday.⁸¹

2.3.1. Compliance with working hours limit

Over 90% of all respondents engaged for the human rights and business survey indicated that they are aware of the working hours limit stipulated under the Employment and Labour Relations Act 2004, which is 9 hours a day. Asked whether they are free to leave workplace after working hours, majority of them (83%) acknowledged that they are free to leave workplace after the working hours limit, while 17% said they were not.

Are you free to leave workplace after working hours?

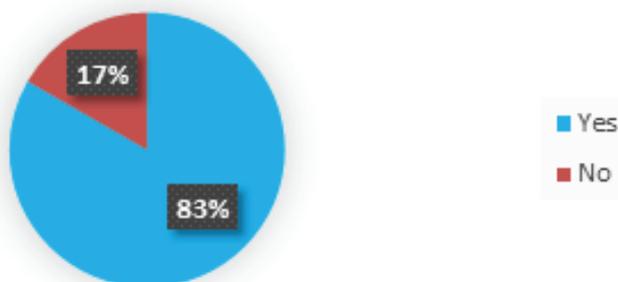


Figure 8: % Responses on freedom to leave workplace after working hours (N= 862)

⁷⁶ Ibid, Section 19(1).

⁷⁷ Ibid, Section 19(3) (b).

⁷⁸ Ibid, Section 19(3) (a).

⁷⁹ Ibid, Section 19(5).

⁸⁰ Ibid, Section 21.

⁸¹ Ibid, Sections 23 and 25 respectively.



During the human rights and business survey, interviewed workers at industry workplaces in Iringa, Kilimanjaro, Shinyanga, Songwe and Tanga, indicated non-adherence to the labour standard of working hours limit. This concern was particularly mentioned at Sao Hill Industries Limited, Sai Energy and Logistic Services Limited, MT Huwel Transport Limited, China Paper Co. Ltd, New Dami Hotel, Iringa Food and Beverages Co Limited, Jambo Musyani Brand Ltd, Mbozi Maziwa Ltd and Unique Steel Rolling Mill. Examples that were mentioned include: making employees work for 10 hours to cover for 1 hour of lunchtime; and requiring employees not to leave work until the supervisor comes and takes a rollcall.

"...time to report for work is known, but there is not specific time to leave work....if you come at 6:00pm you will find people here working, if you force to leave the following day the boss is not happy with you and you might lose your job in the long run.."
Respondent at one of the companies in Songwe

2.3.2. Payment for overtime work

95% of employees who participated in the human rights and business indicated that they work overtime. However, out of these, only 57% indicated they get paid for overtime work, while 43% said they do not get paid at all. At most workplaces visited by the survey team, employees indicated that they are sometimes made to work for up to 14 hours a day, which is 2 hours above the 12-hour daily limit, and yet they receive little pay and sometimes no pay at all. Based on LHRC's assessment, employees who were found to be mostly affected by long working hours without overtime pay were hotel workers, petrol station attendants, security officers and machine operators.



Do you get paid for overtime work?

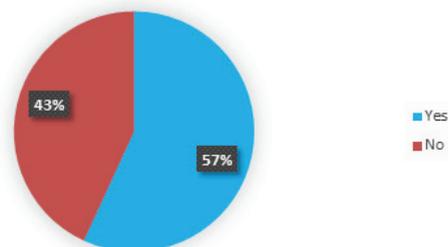


Figure 9: %Response on whether employees get paid for overtime work (N=816)

In regions such as Mwanza, Geita, Mtwara, Songwe, Mara and Dodoma, less than 50% of the respondents indicated they get paid for overtime work. At regional level, the highest number of respondents who are paid for overtime work was in Kilimanjaro Region (79%), followed by Arusha (78%), Tanga (74%) and Dar es Salaam (73%).

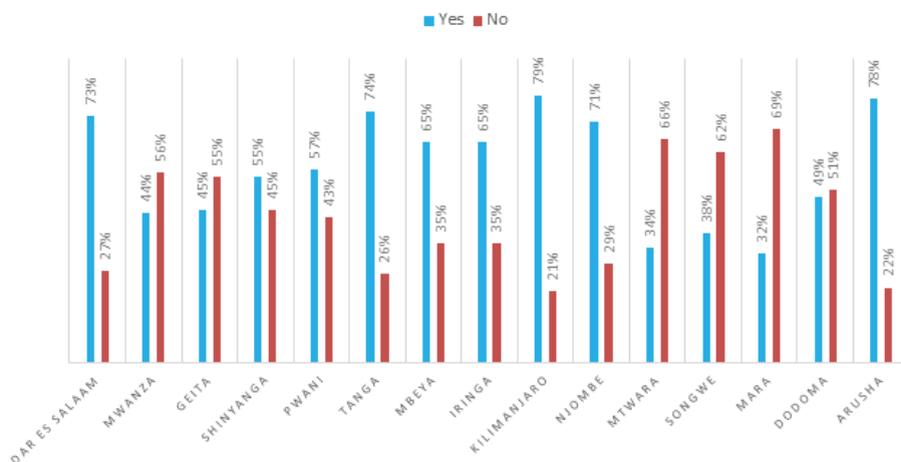


Figure 10: Regional % response on whether employees get paid for overtime work (N= 816)
Source: Field data, 2019



In Dodoma, respondents at half of the companies that were visited indicated that they work for 10 to 11 hours, but they do not get paid for overtime work.⁸² Complaints about lack of pay and inadequate overtime pay in the region were made at NARCO Company Limited and Sunshine Company Ltd. One of the respondents at NARCO Company Ltd stated that they are sometimes requested to work overtime without pay, while another respondent at Sunshine Company Ltd alleged discrimination in overtime pay, whereby some workers get paid and some do not.⁸³ At other companies the survey found that overtime is paid but the pay is inadequate. One respondent at Nyanza Road Works Limited noted that they are usually not paid for working overtime; and when they ask about the pay they are usually told “it is just a small work.”⁸⁴ However, the survey in Dodoma found that companies such as Agro Processing Africa Ltd and New Dodoma Hotel comply with the requirement of overtime pay

“I work from 7:00am to 7:30pm or 8:30pm, or you may find yourself reporting for work at 5:00pm and leave 7:00am and there is no overtime pay, even during weekends. There is not much time to rest, you work for many hours each day.”
Petrol station employee - Geita

In Arusha, a respondent working at High View Hotel noted that when there are many clients at the hotel they are often required to work overtime without pay.⁸⁵ Similar grievances were made by respondents at Massa Security, KK Security, Bageni Petro Station, G.M.L hotel, Fabec and GIPCO in Geita. At Massa Security Company one respondent claimed that he is usually required to work a lot longer time than required by law but only gets Tshs. 2,000 as overtime pay.⁸⁶ A petrol station employee at Bageni Petrol Station in Nyang’hwale also claimed to be required to work long hours without overtime pay. An interview with an official from the National Union of Mine & Energy Workers of Tanzania (NUMET) in Geita Region confirmed the grievances of employees in relation to overtime work. According to the official, lack of overtime pay is a big challenge for members of the trade union. He specifically noted that:

82 LHRC Human Rights and Business Survey 2019, Dodoma Field Report.

83 Ibid.

84 Ibid.

85 LHRC Human Rights and Business Survey 2019, Arusha Field Report.

86 LHRC Human Rights and Business Survey 2019, Geita Field Report.



“Most workers are not paid for working overtime; employers refuse to pay. In order to get paid, a labour dispute is more likely to occur and sometimes you may lose your job because of it.”

In Shinyanga Region, concerns over long working hours without overtime pay were particularly expressed by interviewed respondents at New Dami Hotel and Ally’s Star Bus Company.⁸⁷ The respondents at these companies claimed to be very aggrieved by the situation of increased workload at their workplaces, but have no choice but to persevere with their working conditions because they have families to feed.⁸⁸ In Mara Region, respondents at 8 out of 15 industries that were surveyed mentioned long working hours without overtime pay or fair pay as one of the major challenges they face. The 8 industries include Serengeti Loaf Company, Afro Oil Company, Brac Microfinance Company, Serengeti Security Company, Girrafe Hotel, Elegance Hotel and Musoma Milk Group.⁸⁹ Similar grievances were shared by majority of respondents (70%) in Mwanza Region, including at Fresh Juice Industries and Nyanza Bottling Company Ltd.⁹⁰ On the other hand, some employees at Prince Pharmaceuticals Company Ltd and Serengeti Breweries Ltd indicated that they are paid for working overtime.⁹¹

“We work for up to 12 hours a day...usually you leave home for work, but you don’t know what time you will be coming back. The worst thing is that you are not paid for overtime work; and sometimes you even work on Sundays. As you can see, we are at work today, even though it is Saturday...we don’t get overtime pay, despite working until 6:00pm.” Employee in Mara Region

⁸⁷ LHRC Human Rights and Business Survey 2019, Shinyanga Field Report.

⁸⁸ Ibid.

⁸⁹ LHRC Human Rights and Business Survey 2019, Mara Field Report.

⁹⁰ LHRC Human Rights and Business Survey 2019, Mwanza Field Report.

⁹¹ Ibid.



In Njombe Region, working overtime was said to be a common occurrence by interviewed respondents. However, the problem is lack of overtime pay and inadequate overtime pay. This was raised as an issue by respondents at Njombe Milk Factory, Kibena Tea Company Ltd, TANWATT Company, Apple Craft Company Ltd, and Rosper Company Ltd. Some of the respondents at these companies indicated that sometimes they are only paid half of what was promised as overtime pay.⁹² In Pwani Region, 43% of respondents also indicated that they do not get paid for working overtime.

2.3.3. Inadequate rest for workers

The Employment and Labour Relations Act of 2004 clearly stipulates that an employee should not be made to work more than 12 hours a day, inclusive of overtime. Even where the employee has agreed to work beyond this limit, “the employer shall not require or permit an employee to work more than 12 hours in any day.”⁹³

The law also requires an employer to ensure an employee gets a daily rest period of at least 12 consecutive hours between ending and recommencing work.⁹⁴ The law does provide, however, for possibility of daily rest period being reduced, if there is a written agreement to that effect; and ordinary working hours are interrupted by an interval of at least 3 hours or employee lives on the premises of the workplace.⁹⁵ The law further guarantees a 1 hour break for any employee who works continuously for more than 5 hours.⁹⁶ In practice, there is a tendency of disregarding or not adhering to these standards. Employees are usually made to work beyond 12 hours, which significantly reduces their daily rest period.

Respondents interviewed at workplaces in all surveyed regions mentioned not being granted breaks and working low hours as concerns. In Tanga Region, respondents at Tanga Mining Company Limited and Unique Steel Rolling Mills indicated that they were not granted their 1-hour lunch break, despite being included as a term in their employment contract.

⁹² LHRC Human Rights and Business Survey 2019, Njombe Field Report.

⁹³ See Section 19(1) of the Employment and Labour Relations Act 2004.

⁹⁴ Ibid, Section 24(1)(a).

⁹⁵ Ibid, Section 24(2).

⁹⁶ Ibid, Section 23(1).



Studies have indicated that working long hours without getting adequate rest adversely affects workers' health and wellbeing.⁹⁷ Health-related impact of long working hours and inadequate rest for workers includes putting them at increased risk of fatigue, stress, depression and hypertension.⁹⁸ Findings of the human rights and business survey show that workers in the hospitality and transportation industries, such as hotel workers, long distance truck drivers and bus drivers, work very long hours; and for drivers fatigue caused by not getting enough rest could even lead to road accidents, risking their lives and those of other road users.

A study on impact of overtime and long working hours on occupational injuries and illnesses conducted in the United States of America shows that workers who work long hours are at increased risk of work injuries and illnesses.⁹⁹ Another study conducted in France has found that regularly working for more than 10 hours increases risk of having a stroke.¹⁰⁰ A study on impact of working hours on sleep and mental health, conducted in the United Kingdom in 2017 has also shown that employees working for long hours without adequate rest are more likely to have poor mental health.¹⁰¹ It was also found that excessive working hours can negatively affect one's sleep quality.¹⁰²

Having workers who are depressed and have mental issues is also consequential for a company or factory in terms of productivity. Working long hours also affects an employee's social life as they get very little time to interact with and spend time with family members and other members of the community. It is therefore LHRC's opinion that employers should ensure employees work in stress-free environment and get enough time to rest, so that they become more motivated to work – which will in turn enhance performance and increase productivity. With increased productivity, the Government will also get more revenue from companies.

97 See Dembe AE, Erickson JB, Delbos RG, et al
The impact of overtime and long work hours on occupational injuries and illnesses: new evidence from the United States Occupational and Environmental Medicine 2005;62:588-597, at <https://oem.bmj.com/content/oemed/62/9/588.full.pdf>, accessed 14th September 2019.
98 Ibid.
99 Ibid.
100 See Marc Fadel, MD et al, Association Between Reported Long Working Hours and History of Stroke in the CONSTANCES Cohort, Aha Journals, July 2019 Vol 50, Issue 7 at <https://www.ahajournals.org/doi/pdf/10.1161/STROKEAHA.119.025454>, accessed 14th September 2019.
101 P. Afonso, M. Fonseca, J. F. Pires, Impact of working hours on sleep and mental health, Occupational Medicine, Volume 67, Issue 5, July
102 Ibid



2.4. Remuneration

Right to just and favourable remuneration is a fundamental human and labour right, protected under the Constitution of the United Republic of Tanzania of 1977, the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, the African Charter on Human and Peoples' Act (ACHPR), the ILO Equal Remuneration Convention, 1951 (No. 100) and the ELRA, among other instruments. The ELRA provides for the right to remuneration under Section 27(1), which is defined as 'total value of all payments, in money or in kind, made or owing to an employee arising from the employment of that employee,'¹⁰³ including wage or salary.

Every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work.

Article 15 of African Human Rights Charter

2.4.1. Wages and the Wage Order

Wages in Tanzania Mainland are determined based on the Wage Order of 2013. Wage boards, established under the Labour Institutions Act of 2004, are mandated with reviewing the Wage Order every 3 years, seeking to provide more favourable wage, allowances, terms and conditions of employment to be negotiated annually between employers and employees.¹⁰⁴ However, as indicated in previous LHRC report on human rights and business, the wage order is yet to be reviewed and the minimum rates are not in line with the current costs of living.

Inadequate wages continue to be a major problem relating to remuneration in Tanzania as wages provided for under the Wage Order are largely not proportionate to the actual costs of living. The Wage Order has not been reviewed since 2013, In her paper on working conditions in Tanzania released in 2009, the current Deputy Speaker of the National

¹⁰³ Section 4 of the ELRA.

¹⁰⁴ Regulation 8 of the Labour Institutions (General) Regulations 2017 (GN 45 2017).



Assembly, Hon. Tulia Ackson acknowledged that the minimum wage rates for employees in the commercial, industrial and trade sectors were low and disproportionate to the actual costs of living.¹⁰⁵ She notes in her paper, and correctly so, that the minimum wage for employees in these sectors is Tshs. 150,000 for large industries and Tshs. 80,000 for small and medium enterprises (based on the Wage Order of 2007), but then by 2007 the actual living costs were Tshs. 315,000.¹⁰⁶ In 2010, when the new Wage Order was adopted, the minimum wage for these sectors were set at Tshs. 80,000,¹⁰⁷ before it was increased to Tshs. 100,000 in the 2013 Wage Order,¹⁰⁸ as indicated in the table below.

LHRC shares the Deputy Speaker's point of view on the Wage Order, that is it does not reflect the costs of living, especially in the current settings – given the rising costs of living since the current order was adopted seven years ago. The Wage Order of 2013 needs to be reviewed in line with the current situation and costs of living. The table below outlines minimum wage for some of the key areas in the private sector.

¹⁰⁵ See Tulia Ackson, *Regulating working conditions in the Globalising World: Recent Trends in Tanzania*, Faculty of Law, University of Dar

¹⁰⁶ es Salaam, Tanzania, at <https://www.ilo.org/legacy/english/protection/travail/pdf/dwpaper14b.pdf>, accessed 14th September 2019.

¹⁰⁷ Ibid; see also Labour Institutions (Regulation of Wages and Terms of Employment) Order 2007 (GN 223 of 2007).

¹⁰⁸ See Labour Institutions (Regulation of Wages and Terms of Employment) Order 2010 (GN 172 of 2010).

¹⁰⁹ See Labour Institutions (Regulation of Wages and Terms of Employment) Order 2013 (GN 196 of 2013).



Table 6: Current minimum wage rates in some of the key area

Sector	Area	Minimum Wage Rates (Tshs.)				
		Per Hour	Per Day	Per Week	Per Fortnight	Per Month
Domestic and Hospitality Services	Domestic Workers employed by diplomats and potential businessmen	769.30	5769.65	34,618.05	69,236.10	150,000.00
	Domestic workers employed by entitled officers	666.70	5000.40	30,002.30	60,0004.60	130,000.00
	Domestic workers, other than those employed by diplomats	410.30	3077.15	18,463.00	36,925.90	80,000.00
	Other domestic workers not specified in (a), (b) and (c) above.					40,000.00
	Potential and tourist hotels	1282.15	9616.10	57,696.75 ¹⁰⁴	115,393.50	250,000.00
	Medium hotels	769.30	5769.85	34,618.05	69,236.10	150,000.00
	Restaurants, guest house and bars	666.70	5000.40	30,002.30	115,393.50	130,000.00
Private Security Services	International and potential companies	769.30	5769.65	34,618.05	69,236.10	150,000.00
	Small companies	615.45	4615.75	27,694.45	55,388.85	120,000.00
Construction Services	Contractors class I	1666.80	12,500.95	75,005.75	150,011.55	325,000.00
	Contractors class II-IV	1436.05	10,770.05	64,620.35	129,240.35	280,000.00
	Contractors class V-VII	128.15	9616.10	5769.75 ¹	115,393.50	250,000.00
Mining	Mining and prospecting licenses	2051.45	15,385.80	92,314.80	184,629.60	400,000.00
	Primary mining licenses	1025.80	7692.90	46,157.40	92,314.80	200,000.00
	Dealers' licenses	1538.55	11,539.35	69,236.10	138,472.20	300,000.00
	Brokers licenses	1025.80	7692.90	46,157.40	92,314.80	200,000.00
Trade, industries and commercial services	Trade, industries and commerce	512.85	3,846	23,078.70	46,157.40	100,000.00
	Financial institutions	2051.45	15,385.80	92,314.80	184,629.60	400,000.00

104 This rate appears to be incorrect as it is lower than the daily wage rate.



The respondents engaged during the survey stated that the wages they are paid are generally inadequate and not proportionate to the current costs of living. This issue was raised during interviews at Dodoma Hotel in Dodoma, High View Hotel in Arusha; Kisumo Hotel in Geita; Uniliver Tea Tanzania Ltd, Chai Bora Company Limited, Sai Energy and Logistic Co. Limited and Dabaga Company Limited in Iringa; China Paper Co. Ltd in Kilimanjaro; Njombe Milk Factory and TANWAT Company Ltd in Njombe; Musyani Brand Ltd in Songwe; Unique Steel and Rolling Mill in Tanga; and Ally's Star Bus in Shinyanga. A respondent at Ally's Star Bus Company indicated that a driver is paid between Tshs. 150,000 and Tshs. 200,000.¹¹⁰ However, according to the Wage Order of 2013, the minimum monthly wage in the transportation services (inland transportation) is Tshs. 200,000.¹¹¹

"My sister, I have children who are at school and my wife's business is not sufficient to cater for our needs, so I can't dare to confront the boss. I will be fired. He usually tells us we can leave if we want as there are many Tanzanians out there without a job who would be happy to take the Tshs. 7000 per day."

Employee - China Paper Co. Ltd in Kilimanjaro

"The day I receive my salary is the day I use it all of. Even if you pass by the market to buy food and other household items, the money is not enough, considering the rising cost of living...it is not a joke, the salary is not adequate at all!"

Employee in Tanga

On the other hand, at workers at ALAF Limited in Dodoma and TPC Sugar and Harsho Group in Kilimanjaro, indicated greater satisfaction with remuneration and that they were happier because of good working environment and incentives provided by their employers. For instance, at Harsho Group, it was stated that workers get incentives such as housing, free breakfast and free lunch, while an employee of the year may even get a car or a land plot. LHRC commends this practice as it serves to increase motivation amongst workers and in turn enhance performance and productivity at workplaces.

¹¹⁰ LHRC Human Rights and Business Survey 2019, Shinyanga Field Report.

¹¹¹ See Labour Institutions (Regulation of Wages and Terms of Employment) Order 2013 (GN 196 of 2013).





Picture 6: Staff houses provided by TPC Sugar Factory in Kilimanjaro



Also, in Mbeya, majority of interviewed respondents at TBL and Shanta Gold Mining Company expressed satisfaction with their wages.¹¹² Similar satisfaction was expressed at Kilimanjaro Cement Company in Tanga, where the minimum salary was said to be Tshs. 300,000.¹¹³

2.4.2. Timely payment of salaries

The issue of delays in payment of wages was raised by respondents during the human rights and business survey, especially in Iringa, Njombe, Dodoma, Shinyanga, Arusha and Songwe Regions. In Iringa, for example, such claims were made by respondents at Sao Hill Industries Limited, where one respondent remarked that they wages are sometimes not paid on time and the employees are not supposed to ask why¹¹⁴ (for fear of losing their jobs). Similar claims (of delay in payment of wages) were made by respondents at Agro Processing Company and Tanzania Meat Company in Dodoma; Group 12 Security Company in Shinyanga; Njombe Milk Factory in Njombe; High View Hotel and A to Z Company in Arusha; and Mbozi Maziwa Ltd and Jambo Musyani Brand Ltd in Songwe. Two interviewed respondents at Group 12 Security Company stated that they had not been paid wages for more than 4 months; and were told the reason for this is some company clients not paying their bills on time.¹¹⁵ Other respondents were not willing to share much information, claiming that they had been threatened not to reveal any information by their supervisors.¹¹⁶



"We receive the salary from 7th to 11th of each month, when the landlord has already kicked you out of his house – since he doesn't care about your work situation or salary delays, all he wants is his rent. It is such a pity."

Employee – Arusha

"Our boss does not pay our wages on time, considering the fact that they are also low, something which gives us a hard time."

Employee – Arusha

"My boss has not paid me on time but has promised me that he is working on ensuring I get paid as soon as possible. He owes me a two-month salary."

Employee - Njombe



2.4.3. Deduction of wages because of absence from work

The human rights and business survey found that some employers to deduct their employees' wages due to various reasons, including illness or leave of absence, which is contrary to labour standards at domestic and international levels. When asked what disciplinary action is commonly taken against workers, majority of respondents (71.5%) indicated that they receive a warning, whether oral or written, followed by 18.6%, who said their wages are usually deducted by employers. In Iringa Region, a respondent at Jambo Musyani Brand Ltd claimed during an interview that some employees at the company had their wages deducted due to reporting to work late.¹¹⁷

2.5. Working environment: Overall environment and occupational health and safety in the workplace

Right to safety and health at work is a fundamental human right that is closely connected to right to health and right to life.¹¹⁸ According to the joint ILO/WHO Committee on Occupational Health, occupational health 'should aim at: the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations; the prevention amongst workers of departures from health caused by their working conditions; the protection of workers in their employment from risks resulting from factors adverse to health; the placing and maintenance of the worker in an occupational environment adapted to his physiological and psychological capabilities; and, to summarize: the adaptation of work to man and of each man to his job.'¹¹⁹

Occupational health and safety is an issue of great and global concern, whereby it has been reported by ILO that an estimated 2.02 million people die each year from work-related accidents or diseases, while more than

¹¹⁷ LHRC Human Rights and Business Survey 2019, Iringa Field Report.

¹¹⁸ See Article 23 of Universal Declaration of Human Rights (UDHR); Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966.

¹¹⁹ Benjamin O. Allii (2008), Fundamental Principles of Occupational Health and Safety, International Labour Office-General: ILO, Second Edition, available at http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_093550.pdf, accessed 20th August 2019; International Commission on Occupational Health (ICOH), International Code of Ethics for Occupational Health Professionals, available at http://www.icohweb.org/site_new/multimedia/core_documents/pdf/code_ethics_eng_2012.pdf, accessed 20th May 2018.

¹²⁰ See ILO, International Labour Standards on Occupational Safety and Health, at <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm>, accessed 20th August 2019.



300 million people suffer from work-related diseases and another 300 plus million people experience fatal and non-fatal accidents.¹²⁰ This has prompted the international community, through ILO, to develop more than 40 international labour standards on occupational health and safety, as contained in various ILO instruments.¹²¹ Key among the instruments providing for labour standards on occupational health and safety is the Occupational Safety and Health Convention, 1981 (No. 155), which is yet to be ratified by Tanzania.¹²²

In Tanzania, issues relating to occupational health and safety are mainly governed by the Occupational Health and Safety Act, 2003 and the Employment and Labour Relations Act 2004. The Occupational Health and Safety Act contains provisions seeking to protect the health and welfare of workers and improve working environment, including supply of drinking water, washing facilities, first aid facilities, protective equipment and medical examination.¹²³ The Act also prohibits work that is not adapted to workers and provides for workers to be protected from toxic materials and employers to provide occupational health and safety services. Among the key aspects of the Act is **inspection** of workplaces, whereby inspectors are empowered to enter a workplace and inspect or examine it without notice.¹²⁴ The Employment and Labour Relations Act empowers the Minister responsible for labour to make regulations in respect of matters of occupational health and safety standards and working environment.¹²⁵ Employers must ensure safe working environment and report occupational hazards, accidents or diseases occurring at workplace to authorities, promoting the culture of health and safety at work. They must also train their workers on occupational health and safety.

¹²⁰ See ILO, International Labour Standards on Occupational Safety and Health, at <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm>, accessed 20th August 2019.

¹²¹ Ibid.

¹²² Other instruments include the Occupational Health Services Convention, 1985 (No. 161), which provides for enterprise-level occupational health services, focusing on prevention; Occupational Safety and Health Recommendation, 2006 (No. 197); Safety and Health in Construction Convention, 1988 (No. 167); Safety and Health in Mines Convention, 1995 (No. 176); and Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148).

¹²³ Sections 24, 54, 56, 58 & 62 of the Occupational Health and Safety Act, 2003.

¹²⁴ Ibid, Section 6(1).

¹²⁵ Section 98(1) of the Employment and Labour Relations Act, 2004.

¹²⁶ See Benjamin O. Alli (2008), Fundamental Principles of Occupational Health and Safety, ILO (Second Edition) at https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_093550.pdf, accessed 9th September 2019



Key principles related to occupation health and safety are:¹²⁶

- i. All workers have rights (they must be protected)
- ii. Occupational safety and health policies must be established
- iii. Occupational safety and health programmes and policies must aim at both prevention and protection
- iv. Continuous improvement of occupational safety and health must be promoted
- v. Information is vital for the development and implementation of effective programmes and policies (workplace surveillance and monitoring)
- vi. Health promotion is a central element of occupational health practice (enhance workers' physical, mental and social well-being)
- vii. Education and training are vital components of safe, healthy working environments
- viii. Policies must be enforced (inspection to check compliance with occupational safety and health standards)

2.5.1. Overall working environment

Good working environment is basic labour standard that all employers are supposed to adhere to. During the survey, workers at surveyed companies/factories were asked to assess their working environment in terms of equipment, air, light, water availability, toilets, fire equipment, disability friendliness, first aid, women-friendliness and state of buildings. Overall, majority of respondents indicated that the working environment in terms of these items is either good (36%) or very good (33%), except for the items of disability-friendliness and first aid. 46.8% of respondents indicated that their workplaces were not disability friendly.

¹²⁶ See Benjamin O. Allii (2008), Fundamental Principles of Occupational Health and Safety, ILO (Second Edition) at https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_093550.pdf, accessed 9th September 2019



Table 7: % Responses on overall working environment at surveyed companies and factories

	Very bad	Bad	Good	Very good	N
Equipment	12.2	21.5	43.7	22.6	842
Air	6.8	14.2	45.1	33.9	827
Light	4.4	11.2	43.3	41.1	818
Water	6.0	13.6	39.1	41.3	821
Toilets	8.6	17.5	40.4	33.5	788
Fire equipment	14.5	16.7	37.9	30.9	773
Disability friendliness	23.4	23.4	30.8	22.4	749
First aid	15.2	21.9	36.6	26.3	771
Women-friendliness	9.6	19.2	41.1	30.1	751
State of buildings	4.7	12.2	39.2	43.9	763

First aid kits and fire extinguishers

Some workplaces were observed to have in place first aid kits and fire extinguishers. In Mtwara, for example, fire extinguishers were found to be available and well-placed at companies such as BCEG, DANGOTE, and YALIN.¹²⁷



Picture 7: First aid kit at ALAF Limited in Dodoma

¹²⁷ LHRC Human Rights and Business Survey 2019, Mtwara Field Report.





Picture 8: Well-placed fire extinguishers a Dangote and CBEG Companies in Mtwara

State of toilets

While the majority of workers who participated in questionnaire survey indicated that the state of toilets at their workplaces was either good (40.4%) or very good (33.5%), the survey teams observed the state of toilets at some of the surveyed industry workplaces to be unhygienic. Some toilets were found to be characterized by bad smells, dirty floors, cracked tiles, and not flushing properly.



Picture 9: Workplace toilets at Sai Energy and Logistic Co Limited in Iringa (left) and China Paper Corporation in Kilimanjaro



In Kilimanjaro, workplace toilet at China Paper Corporation was found to be in poor condition, characterized by bad smell and dirty floor, as well as a broken toilet door. At Sai Energy and Logistic Co Limited in Iringa a toilet was found to be dirty and in need of refurbishing. In Mara, the survey team found that toilets at 9 workplaces (64%) were dirty, without clean water and in need of refurbishing.



Picture 10: Toilets at Brac Microfinance Company (left) and Musoma Milk Groupo (right)



Picture 11: Workplace toilets at TANWATT Company in Njombe (left) and Twiga Lime Production Ltd in Songwe



LHRC calls upon the company and factory owners to improve the working environment by ensuring the workplace toilets are refurbished and maintained, in order to preserve occupational health and safety.

2.5.2. Training on occupational health and safety

During the survey, workers were asked about training on occupational health and safety. When asked whether they had received occupational health and safety training, 48% said they had received such training, while 52% said they had not. Majority of the respondents (41%) had undergone the training once, followed by those who had undergone the training 3 times (28.1%) and twice (25.1%). Only 5.8% of the respondents indicated they had received the training more than 3 times. Majority of workers who indicated they had received such training were from Pwani, Mtwara, Mara, Tanga, Mwanza, Kilimanjaro and Dodoma Regions.

Have you received any training on occupational health and safety?

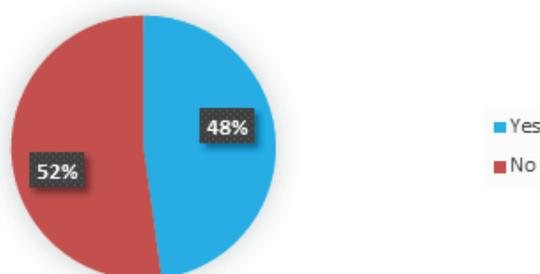


Figure 11: % Responses on receiving training on occupational health and safety (N=822)
Source: Field Data, 2019



Training on occupational health and safety is very important for workers, in order to guarantee safety at workplaces and reduce or prevent occupational hazards – which are present in all types of industries. It is also in the employer’s best interest to prevent workplace accidents and injuries as much as possible as they can lead to costs of leaves and associated costs. Knowledge on occupational health and safety is vital in preventing accidents to save lives and property. It can also help to keep employees focused and motivated, and in turn enhance productivity. Regular training on occupational health and safety can also help to avoid legal disputes with employees following serious injuries leading to disability and boost employee retention and job satisfaction. It is therefore LHRC’s view that industries in Tanzania make occupational health and safety a priority in order to ensure safety of employees at workplaces, reduce labour disputes and enhance productivity.

2.5.3. Labour inspection a major concern for workers

Labour inspection mandate in Tanzania Mainland mainly falls under the labour section with the ministry responsible for labour and employment (Prime Minister's Office, Labour, Youth, Employment and Persons with Disability) and the Occupational Safety and Health Agency (OSHA). A strong labour inspection system is essential for ensuring compliance with labour laws and standards on the part of employers and employees. Inspection services help to ensure decent working conditions, promote compliance and ensure enforcement of labour laws.

Workers at most workplaces that were surveyed were not happy with labour inspection, claiming that the inspectors do not regularly visit workplaces to conduct inspection to ensure labour standards are adhered to. Some of them suggested that during visits some inspectors tend to just meet with the management and not workers, which could create an environment for corrupt practices. For instance, in Tanga, some workers who were interviewed, including at Unique Steel and Rolling Mill, stated that OSHA inspectors do not regularly visit their workplaces; and when they do they do not actually inspect working conditions, but rather meet and speak with the company management.¹²⁸

Concerns over poor labour inspection were also expressed by respon-

¹²⁸ LHRC Human Rights and Business Survey 2019, Tanga Field Report.



dents at Sao Hill Industries in Iringa; Apple Craft (T) Ltd in Njombe; and Kisarawe Cement Co. Ltd in Pwani. One respondent in Iringa mentioned that OSHA officers come to conduct health checkup of employees, but do not inspect their working environment.¹²⁹ Similar claim was made by a respondent at Apple Craft (T) Ltd in Njombe.¹³⁰

Poor labour inspection may be attributed to inadequate financial and human resources (labour inspectors). Strengthening the labour inspection system, including through setting aside adequate budget for inspection, is key in protecting labour rights and ensuring adherence to labour standards and consumer protection.

2.5.4. Availability of personal protective equipment

Personal protective equipment (PPE) refers to any equipment that protects user against health or safety risk at work. It includes helmets, goggles, protective clothing, safety footwear, gloves and eye protection. These equipment are meant to protect workers and visitors at workplaces from injury or infection.



Figure 12: %Responses on availability of personal protective equipment at workplaces (N=852)
Source: Field data, 2019

¹²⁹ LHRC Human Rights and Business Survey 2019, Tanga Field Report.

¹³⁰ LHRC Human Rights and Business Survey 2019, Iringa Field Report.



Workers who were engaged to participate in the survey were asked about having personal protective equipment at their workplaces. Majority of them (29%) were not happy with the state of personal protective equipment at their workplaces, saying they have gear but not sufficient, followed by those (23%) who said they have the equipment and they are sufficient. 20% of the respondents indicated that they had protective equipment at their workplaces, but they are somewhat sufficient, while 21% said they did not have personal protective equipment.

In Dar es Salaam, an employee at Hua Yang Gang ind. Ltd informed the survey team that some workers have no masks to protect themselves from smell and sometimes are forced to share masks, which puts them at risk of skin diseases and TB.¹³¹

Complaints about lack of or shortage of personal protective equipment were also made at China Paper Corporate Co. Limited in Kilimanjaro; Kaponda Rice Mills and Yassir Rice Mills in Mbeya; Njombe Milk Factory, TANWAT Company Limited and Rosper Company in Njombe; DOTT Services Limited, Gianxi Construction and SERC Construction Company in Mtwara; East Star International (T) Ltd and UNIFLY Trading Corporation (T) Ltd in Pwani; and Jambo Lime Production Ltd and Jambo Plastic Ltd in Songwe.

Masks, protective footwear, high visibility clothing, protective helmets, eye protection and protective gloves were found to personal protective equipment in short supply at most workplaces. For instance, in Mtwara some of the workers from DOTT Services Limited and Gianxi Construction Company were found at site without proper protective footwear (wearing slippers). At Yalin Cashewnut Co. Ltd, workers were found deshelling the nuts (removing the shells) without wearing protective gloves; and as indicated in previous LHRC report on human rights and business, this is a common practice in Mtwara and it is considered to be a safe practice. However, a study conducted in India has indicated that the nuts produce corrosive liquid that burns skins and may lead to skins diseases and even cause morbidity and disability in the long term.¹³²

¹³¹ LHRC Human Rights and Business Survey 2019, Dar es Salaam Field Report.

¹³² See Bee Wilson "Blood cashews: the toxic truth about your favourite nut" The Telegraph Newspaper (online), available at <https://www.telegraph.co.uk/foodanddrink/foodanddrinknews/11577928/Blood-cashews-the-toxic-truth-about-your-favourite-nut.html>, accessed on 2nd August 2019.



"We work in a very difficult environment...we don't have personal protective equipment and our work is associated with a lot of dust as you can see, hence the possibility of acquiring diseases is high."

An employee - Tanga

"You may only be given a single pair gloves and that's it, if it wears out you are told there are no more gloves."

An employee – Dodoma



Picture 12: Workers at Gianxi Construction Company found without proper protective footwear



Picture 13: Left: Workers at Yalin Cashewnut Co. Ltd in Mtwara working without protective gloves. Right: Workers at TANWAT Company Limited in Njombe packing powder without wearing masks



In Iringa, workers at most industries were found to have relevant personal protective equipment and generally expressed satisfaction with the state of their personal protective equipment.¹³³ These companies include Iringa Food and Beverages Limited, ASAS Dairy Limited, Chai Bora Company Limited (Dabaga) and Sao Hill Industries. Good practice in relation to personal protective equipment was also observed at Herocean ENT (T) Ltd, TBL-Mbeya, Shanta Gold Mining and ALAF Ltd in Mbeya; and Kilimanjaro Cement Company in Tanga.



Picture 14: Workers in full protective gear at Chai Bora Company Limited (Dabaga) in Iringa



Picture 15: Workers at Herocean ENT (T) Ltd, who were found to have sufficient personal protective equipment

¹³³ LHRC Human Rights and Business Survey 2019, Iringa Field Report.



At Kibena Tea Ltd in Njombe, the survey team observed a notice reminding employees to wear masks. LHRC commends this good labour practice, seeking to promote occupational health and safety of workers.



Picture 16: A notice reminding workers at Kibena Tea Factory in Njombe to wear masks

2.5.5. Some workers opting not to wear personal protective equipment

Apart from the problem of inadequate personal protective equipment, the survey found that at some workplaces it was not necessarily the lack of equipment that was an issue but rather employees themselves were reluctant to wear personal protective equipment. This may be attributed to lack of knowledge about the importance of wearing personal protective equipment, given the fact that half of the workers who participated in the quantitative survey indicated that they had not undergone any training on occupational health and safety.

One respondent at SERC Construction Company in Mtwara acknowledged that some of them do not like to wear protective footwear while carrying concrete blocks during construction because they tend to



‘slow them down as they are heavy.’¹³⁴ At YALIN Cashewnut Co. LTD, women workers who were found deshelling cashewnuts without wearing protective gloves told the survey team that they prefer not wearing gloves because they make their hands heavy, that they work faster without gloves.¹³⁵

There is need for workers to be trained on the importance and use of personal protective equipment and employers to make sure that the same are used properly for the protection of the employees health and wellbeing, consumer of goods and the employer from liability.

2.6. Compensation for injury sustained at work

Where occupational accidents or hazards occur, employers have a duty to provide compensation. This is an international standard as provided for under the ILO Workmen's Compensation (Accidents) Convention, 1925 (No. 17), which has been ratified by Tanzania. Other ILO compensation conventions include the Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18), Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) and the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19). Right to compensation in case of injury also forms part of social protection, thus covered under the International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides for the right to social security.

Domestically, there is the Workers' Compensation Act,¹³⁷ which provides for the right to compensation for occupational injury (resulting in disablement or death)¹³⁸ and right to compensation for occupational diseases.¹³⁹ It also establishes the Workers Compensation Fund¹⁴⁰ and creates an obligation for an employer to contribute to it

One of the issues the human rights and business survey sought to determine is the extent to which the right to compensation is respected and implemented at surveyed companies. When asked whether

¹³⁴ LHRC Human Rights and Business Survey 2019, Mtwara Field Report.

¹³⁵ Ibid.

¹³⁶ Article 1 of the Convention states that “Each Member of the International Labour Organisation which ratifies this Convention undertakes to ensure that workmen who suffer personal injury due to an industrial accident, or their dependants, shall be compensated on terms at least equal to those provided by this Convention.”

¹³⁷ CAP 263, R.E. 2015.

¹³⁸ Section 19(1) of the Workers' Compensation Act.

¹³⁹ Ibid, Section 22(1).

¹⁴⁰ Ibid, Section 5(1).



employees receive compensation in case of injury at workplace, majority of workers who participated in the quantitative survey (37%) indicated that they were not sure, followed by 35% who said they do. However, 28% said no such arrangement exists in practice at their workplaces, as indicated in the figure below.

States parties should ensure that workers suffering from an accident or disease, and where relevant, their dependents, receive adequate compensation, including for costs of treatment, loss of earnings and other costs, as well as access to rehabilitation services
Committee on Economic, Social and Cultural Rights, General Comment No. 23 of 2016

Do employees get compensation in case of injury at workplace?

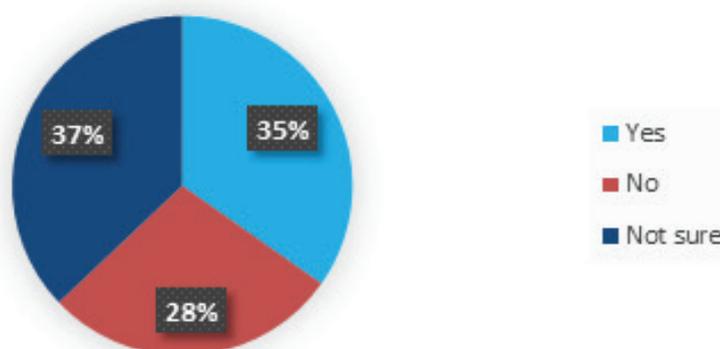


Figure 13: %Responses on compensation for injury sustained at work (N=874)
Source: Field data, 2019



In all surveyed regions, not all companies and factories were found to be members of the Workers' Compensation Fund (WCF). In Dodoma, most of the workers at companies owned by Chinese nationals complained about mistreatment they get when they sustain an injury that leads to disability, noting that in most cases it results into dismissal.¹⁴¹ However, at Herocean Enterprise Ltd, it was revealed that the employer takes good care of employees when they get injured at workplace, including paying for medical treatment, despite not being registered with the Workers Compensation Fund (WCF).¹⁴²

Concerns over lack of or inadequate compensation for injury sustained at workplace were expressed by respondents at Fabec Company in Geita; Sao Hill Industries Limited in Iringa; KK Security Tanzania in Kilimanjaro; TANWAT Company in Njombe; Tanga Cement PLC, SFI Tanzania Limited and Rhino Ltd in Tanga.

At Fabec Company in Geita, one respondent claimed that he sustained an injury while at work and was promised to be refunded his medical treatment costs incurred, but until the time of the survey he was yet to receive any form of compensation.¹⁴³ At Sao Hill Industries Limited in Iringa, the interviewed respondents complained about inadequate compensation and 'restrictive laws' relating to compensation.¹⁴⁴

At TANWAT Company in Njombe, one of the respondents complained about delays in receiving compensation in case of injury at workplace.¹⁴⁵ Respondents in the region also generally stated that they receive threats of termination of employment when they push for compensation and ask for adequate compensation.

In Tanga, the survey found the case of Athanas Christom Mahenge, a former employee at Rhino Ltd, who died at Bombo Hospital after sustaining an injury at work in August 2018. However, according to community members who were interviewed by the team, the family of

¹⁴¹ LHRC Human Rights and Business Survey 2019, Dodoma Field Report.

¹⁴² Ibid.

¹⁴³ LHRC Human Rights and Business Survey 2019, Geita Field Report.

¹⁴⁴ LHRC Human Rights and Business Survey 2019, Iringa Field Report.

¹⁴⁵ LHRC Human Rights and Business Survey 2019, Njombe Field Report.



the deceased is are yet to receive any compensation.¹⁴⁶ They also claimed that 6 deaths have reportedly occurred at the company due to workplace accidents.¹⁴⁷ The survey team's efforts to seek the company management's comments on these allegations proved futile.¹⁴⁸ At SFI Tanzania Limited, it was reported that a former employee, Omari Athumani Msutu, had been killed by robbers while on duty as watchman, but his family is yet to receive compensation from the Workers' Compensation Fund.¹⁴⁹

In Kilimanjaro, respondents at Harsho Group Co. Ltd indicated that they do receive compensation, through the Workers' Compensation Fund, while their counterparts at Marenga Millers Co. Ltd and China Paper Co. Ltd said their employers pay for their medical bills.¹⁵⁰ Similar statements were made by respondents at Burhan Furnitures Saw Mill and SFI in Tanga.¹⁵¹ In Mtwara, the survey team came across a worker Haji Rufai from UCC/Dangote Company, who sustained an injury while operating a machine at work and his employer paid for his medical bills (except when he was transferred to Muhimbili National Hospital) and provided him his salary during the period he was receiving medical treatment.¹⁵²

In Mara, only 3 companies out of 15 companies that were visited (20%), namely Acacia, Musoma Fishery, and Brac Microfinance, indicated that they had registered with the Workers Compensation Fund,¹⁵³

146 LHRC Human Rights and Business Survey 2019, Tanga Field Report.

147 Ibid.

148 Ibid.

149 Ibid.

150 LHRC Human Rights and Business Survey 2019, Kilimanjaro Field Report.

151 LHRC Human Rights and Business Survey 2019, Tanga Field Report.

152 LHRC Human Rights and Business Survey 2019, Mtwara Field Report.

153 LHRC Human Rights and Business Survey 2019, Mara Field Report.





Picture 17: An employee at Herocean Enterprise Ltd in Dodoma who was injured at workplace

Injury at workplace: The case of Jacob Albert – Tanga Region

In Tanga, the survey team came across a man named Jacob Albert (57), resident of Kifumbini, who claimed to be a former employee at Tanga Cement PLC located in Pongwe Factory Area, Korogwe Road from 1980 to 1998. In 1987, he was badly injured at work following an accident, whereby 40% of his body was burnt by hot cement, including his limbs. He claimed that he was unfairly terminated after his employer rendered him incapable of continuing with work, despite the medical report indicating he could do some light-duty work; and he was not given a copy of the termination letter he was forced to sign. He noted that he was only given Tshs. 108,000 by the company as compensation in 1998, while he has needed several operations over the years, including in 1991, 1994 and recently in December 2018. According to him, his latest operation cost about Tshs. 9.9 million; and despite repeated visits to the company to seek assistance, the company insists he is not recognized as a former employee. The survey team sought audience with the company management to discuss this matter and seek clarifications to no avail.



2.7. Freedom of association, collective bargaining and right to strike

Freedom of association is a fundamental human right, provided for under various regional and international human rights instruments, including the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples' Rights (ACHPR).¹⁵⁴ ICCPR states that everyone has the right to freedom of association with others, which includes right to form and join trade unions for the protection of one's interests. This right is thus also a labour right and it provides a platform for enjoyment of another fundamental labour right, the right to collective bargaining. It is protected under several ILO labour conventions, including the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Collective Bargaining Convention, 1981 (No. 154). Domestically, this right is incorporated in the Employment and Labour Relations Act (ELRA), providing for the right of workers to form or join trade unions and employers to form or join employers' association.¹⁵⁵

ILO defines collective bargaining as **'a voluntary process through which employers and workers discuss and negotiate their relations, in particular terms and conditions of work'** and recognizes it as an essential part of freedom of association.¹⁵⁶ It is important for employer-employee relations as it ensures that both parties have a say and fairly negotiate their employment relation, concluding what we call collective bargaining agreement (CBA). Section 68 of ELRA imposes a duty upon an employer or his association to bargain in good faith.

Closely associated with freedom of association and collective bargaining is the right to strike. This right has been upheld at ILO, whereby the ILO's Government Group now recognizes that 'without protecting a right to strike, freedom of association, in particular the right to organize activities for the purpose of promoting and protecting workers' interests, cannot be

¹⁵⁴ Articles 20(1) & 23(4) of UDHR; Article 22(1) of ICCPR; Article 8(1)(a) of ICESCR; and Article 10 of ACHPR

¹⁵⁵ Sections 9(1) & 10(1) of ELRA.

¹⁵⁶ See ILO, Right to collective bargaining at

http://www.ilo.org/empent/areas/business-helpdesk/WCMS_DOC_ENT_HLP_CB_EN/lang--en/index.htm, accessed 20th May 2018.

¹⁵⁷ United Nations Human Rights Office of the High Commissioner, UN rights expert: "Fundamental right to strike must be preserved" at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21328&LangID=E>, accessed 20th May 2018; "Right to Strike upheld at ILO" at <http://www.industrial-union.org/right-to-strike-upheld-at-ilo>, accessed 20th May 2018.



fully realized.¹⁵⁷ ELRA also recognizes the right of employees to strike under Section 75.

With respect to the right to join trade union and collective bargaining, the LHRC study on business and human rights sought to determine whether employees engaged in collective bargaining with their employers, situation of right to strike and availability and effectiveness of collective bargaining. Generally, the findings indicate that most employers discourage workers from joining them. Workers also fear joining trade unions for two major reasons: threats or discouragement from employers; and contributions made to trade unions. Workers also generally do not trust trade unions and do not think they are doing enough to protect them.

2.7.1. Trade union membership at surveyed workplaces

Trade unions are essential for realization of workers' freedom of association at workplaces. In Tanzania several trade unions have been registered to date. These include:

- ◆ Tanzania Union of Industrial and Commercial Workers Union (TUICO);
- ◆ Telecommunication Workers Union of Tanzania (TEWUTA);
- ◆ Tanzania Plantation and Agriculture Workers Union (TPAWU);
- ◆ Tanzania Media Workers Union (TMWU);
- ◆ Communication and Transport Workers Union of Tanzania (COTWUT);
- ◆ Tanzania Teachers Union (TTU);
- ◆ Tanzania Agro-Forestry Workers Union (TAWU);
- ◆ Tanzania Mines, Energy, Construction and Allied Workers Union (TAMICO);
- ◆ Tanzania Railways Workers Union (TRAWU);
- ◆ Tanzania Fishing and Maritime Workers Union (TAFIMU);
- ◆ Tanzania Seafarers' Union (TASU);
- ◆ Tanzania Road Transport Workers Union (TARWOTU);
- ◆ Tanzania Local Government Workers Union (TALGWU);
- ◆ Printing Publishing and Packaging Workers Union of Tanzania (PRIPPAWUTA);

¹⁵⁷ United Nations Human Rights Office of the High Commissioner, UN rights expert: "Fundamental right to strike must be preserved" at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21328&LangID=E>, accessed 20th May 2018; "Right to Strike upheld at ILO" at <http://www.industrial-union.org/right-to-strike-upheld-at-ilo>, accessed 20th May 2018.



- ◆ Conservation, Hotels, Domestic, Social Services and Consultancy Workers Union (CHODAWU)
- ◆ National Union of Mine and Energy Workers (NUMET);
- ◆ Tanzania Social Services Industry Workers Union (TASIWU);
- ◆ Tanzania Union of Journalists;
- ◆ Dock Workers Union of Tanzania (DOWUTA);
- ◆ Tanzania Union of Private Security Employees;
- ◆ Tanzania Drivers Workers Union (TADWU);
- ◆ Tanzania Union of Government and Health Employees (TUGHE); and
- ◆ Researchers, Academicians and Allied Workers Union (RAAWU)

Most of these trade unions are members of the Trade Union Congress of Tanzania (TUCTA), which is the federation of trade unions in Tanzania. By June 2016, TUCTA had 13 trade union members¹⁵⁸ with a total membership of around 650,000.¹⁵⁹ In this report, the discussion centres around trade unions under the business sector.

Previous LHRC reports on human rights and business have indicated that employers have been discouraging and even threatening employees from joining trade unions.¹⁶⁰ Most of the employers see trade unions as a nuisance and have been accused of sometimes bribing trade union officers. During the survey, workers who participated in a quantitative survey were asked whether a trade union branch exists at their workplaces.

Is there a trade union branch at your workplace?

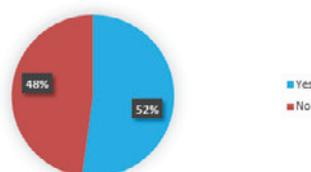


Figure 14: %Responses on existence of trade union branch at surveyed workplaces (N=809)
Source: Field data, 2019

¹⁵⁸ Tanzania Teachers Union (TTU); Tanzania Union of Industrial and Commercial Workers Union (TUICO); Researchers, Academicians and Allied Workers Union (RAAWU); Tanzania Local Government Workers Union (TALGWU); Tanzania Mines and Construction Workers Union (TAMICO); Tanzania Plantations and Agricultural Workers Union (TPAWU); Tanzania Railways Workers Union (TRAWU); Tanzania Union of Government and Health Employees (TUGHE); Tanzania Seamen's Union (TASU); Communication and Transport Workers' Union of Tanzania (COTWUT); Conservation, Hotels, Domestic and Allied Workers' Union (CHODAWU); Telephone Workers' Union of Tanzania (TEWUTA); and Dock Workers' Union of Tanzania (DOWUTA).

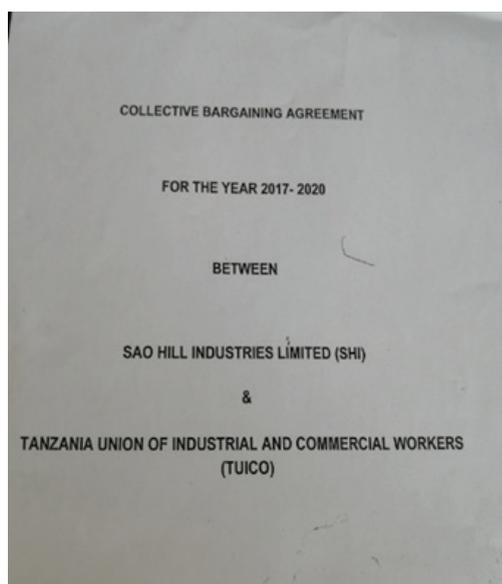
¹⁵⁹ See TUCTA website at <https://www.tucta.or.tz/post/About-TUCTA>, accessed 17th September 2019.

¹⁶⁰ See LHRC (2016), Human Rights and Business Report 2015, P. 63, at www.humanrights.or.tz; LHRC (2018), Human Rights and Business Report 2017, p. 49, at www.humanrights.or.tz.



As indicated above, almost 50% of surveyed workplaces did not have trade union branches. This trend is not good as it suggests less protection of employees' rights and could explain why awareness about labour rights is low amongst the majority of employees who participated in the human rights and business survey.

In Dar es Salaam, majority of employees (69%) who participated in the survey indicated they are not members of any trade union.¹⁶¹ The survey revealed a similar situation in Iringa, where some workers claimed they were threatened by employers and warned against joining trade unions.¹⁶² At Sao Hill Industries, the survey found that employees were free to join trade unions and engage in trade union activities.¹⁶³ However, there were complaints about the company not implementing some of the recommendations agreed through collective bargaining.¹⁶⁴



Picture 18: A copy of collective bargaining agreement between Sao Hill Industries Limited and TUICO

¹⁶¹ LHRC Human Rights and Business Survey 2019, Dar es Salaam Field Report.

¹⁶² LHRC Human Rights and Business Survey 2019, Iringa Field Report.

¹⁶³ Ibid.

¹⁶⁴ Ibid.



In Kilimanjaro, over 80% of the workers engaged during the survey indicated that they are members of trade unions.¹⁶⁵ China Paper Co. Ltd was mostly implicated in restricting freedom of association and collective bargaining in the region.¹⁶⁶ Some of the respondents at the company claimed that an employee who is active in trade union activities and in the forefront in demanding labour rights is at risk of having their salary reduced.¹⁶⁷ In Mwanza, majority of workers indicated they are members of trade union, save for those from Sayona Juice Industry, which is still in the process of establishing union at the workplace.¹⁶⁸

In Njombe, trade union branches were found to be non-existent at workplaces such as Dragon Ltd, Rosper Company Limited and Apple Craft Company. On the other hand, the branches were found at companies/factories such as TANWAT Company Ltd, Kibena Tea Limited and Njombe Milk Factory. In Dodoma, trade union branches were said to be non-existent at Nyanza Road Works Company, Kimolo Super Rice Co. Ltd, Sangito Akyoo Mills Ltd, Ark General Company Ltd, Benso Fresh Bread, Shabiby Line, ABC Upper Class and Total Petrol Station.¹⁶⁹

In Pwani, 77% of workers claimed to be members of trade union. In contrast, majority of workers in Tanga said they are not members of trade union, due to little trust they have over them.¹⁷⁰ They claimed that they withdrew their membership after the Workers' Day in May 2019.¹⁷¹

2.7.2. Violation of employees' freedom to joint trade unions by employers

There were no trade unions established in some of the workplaces visited due to In Dodoma, some employers were accused of discouraging employees from joining trade unions. For instance, an employee at Cetawico in Dodoma, said his employer banned TUICO branch and promised to invite another trade union, but no other trade union branch has been formed.

¹⁶⁵ LHRC Human Rights and Business Survey 2019, Kilimanjaro Field Report.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ LHRC Human Rights and Business Survey 2019, Mwanza Field Report.

¹⁶⁹ LHRC Human Rights and Business Survey 2019, Dodoma Field Report.

¹⁷⁰ LHRC Human Rights and Business Survey 2019, Pwani Field Report; LHRC Human Rights and Business Survey 2019, Tanga Field Report.

¹⁷¹ Ibid



“The major challenge for workers is they are under a one-year contract and when the contract nears its end they are told to withdraw from trade unions as a condition for their contracts to be renewed; and because of the need to protect their jobs, most of the workers decide to withdraw, hence we lose the collective bargaining agreement.”

“There have been several redundancies which do not make sense. For instance, today we have received reports of 10 redundancies and hiring of 10 new people to replace the workers on condition that they do not join trade unions.”
– NUMET Official

In Geita, the survey team was able to meet with an official from the¹⁷²National Union of Mine & Energy Workers of Tanzania (NUMET), who shed light on the situation of freedom of association and trade unions in the region. He noted that most employers, including Capital Drill, do not like the idea of their employees being members of a trade union and some of them go as far as threatening employees from joining NUMET.¹⁷²

In Pwani, an interview with a high-ranking official at TUICO revealed the problem of arbitrary restriction of freedom of association by employers. The official mentioned that some factories are reluctant to even let trade union officers through their gates to discuss challenges relating to employment contract between employer and employee.¹⁷³

In Kilimanjaro, a Chinese-owned company “Chinese Paper Company Ltd” also implicated in violating labour standards by prohibiting or discouraging workers from joining trade unions and participating in trade union activities. It was reported that, the company deducted the wage of one of the workers who had been working for more than seven years in the company from 10,000 to 7000 per day because he sided with other employees in demanding better working conditions.¹⁷⁴

¹⁷² LHRC Human Rights and Business Survey 2019, Geita Field Report

¹⁷³ LHRC Human Rights and Business Survey 2019, Pwani Field

¹⁷⁴ LHRC Human Rights and Business Survey, Kilimanjaro Field Report 2019



2.7.3. Effectiveness of trade unions

Previous LHRC reports have highlighted some key factors that hamper effectiveness of trade unions in Tanzania Mainland.¹⁷⁵⁶ These factors include lack of sufficient resources, both financial and human, in order to monitor and protect labour rights at workplaces; trade unions not being in close proximity to workplaces, especially at district level; and lack of

Table 8: # Response on effectiveness of trade unions in promoting and protecting labour rights (N=596)

Response	Frequency	%
Very effective	61	10.2
Effective	112	18.8
Somewhat effective	137	23.0
Not effective	117	19.6
Not effective at all	169	28.4

Source: Field data, 2019

strong leadership.¹⁷⁶ The 2019 survey also sought to determine employees' perceptions around effectiveness of trade unions. The survey found that nearly 50% of respondents felt trade unions are not effective and not effective at all in promoting and protecting labour rights. 23% of respondents felt their trade unions were somewhat effective in this regard, while only 29% were of the view that the trade unions effective and very effective, as indicated in the table below.

Majority of respondents who felt trade unions were ineffective in promoting and protecting labour rights were from Dar e Salaam (55%), Pwani (68%), Tanga (64%), Mtwara (87%), Mara (67%), Arusha (44%), Njombe (47%) and Kilimanjaro (46%).¹⁷⁷

¹⁷⁵ See LHRC (2016), Human Rights and Business Report 2015, P. 58, at www.humanrights.or.tz

¹⁷⁶ Ibid.

¹⁷⁷ Field data (SPSS), 2019.



“Trade union representatives tend to side with the Indian (the boss) instead of protecting our labour rights and they do not inform the boss about our grievances.”
A respondent at Agro Processing Company Ltd – Dodoma

In Dodoma, some of the respondents accused some of the officers from the Tanzania Union of Industrial and Commercial Workers (TUICO) of siding with employers, instead of protection employees’ interests.¹⁷⁸ However, at Sunshine Industrial Limited, the survey found that TUICO helped a female worker who had been sexually harassed by her supervisors and unfairly terminated, and managed to help her get her job back.¹⁷⁹ Interviews with some trade union officials in the region revealed that sometimes workers do not come forth when they have grievances, hence difficult to assist them.¹⁸⁰ They also mentioned that in some cases workers are at fault but still want to be defended and complain when disciplinary action is taken against them. They further noted that some company managements deliberately infringe employee rights because they know they have the backing of powerful individuals and politicians.¹⁸¹

In Geita, concerns over effectiveness of trade unions were expressed during interviews at Fabec Company. A respondent working at the company said that they were encouraged to join the Tanzania Mines, Energy, Construction and Allied Workers Union (TAMICO), but believes it is not strong enough and they have not seen much changes since joining it.¹⁸²

“Trade unions tend to be very close with the company management; and at the moment the management has more power than the trade union, TUICO, hence becoming less effective in protecting our labour rights.”

¹⁷⁸ LHRC Human Rights and Business Survey 2019, Dodoma Field Report

¹⁷⁹ Ibid.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² LHRC Human Rights and Business Survey 2019, Geita Field Report



In Iringa, a concern was expressed that TUICO was siding with employers, particularly at Sao Hill Industries Limited. Similar concern was expressed at TANWATT Co. Ltd in Njombe, where one worker mentioned that their trade union is closer with the company management than them and often sides with the employer.¹⁸³ At Sao Hill Industries Limited, one of the workers who were interviewed said:

In Iringa, the survey also found that trade union representatives find themselves at a difficult position in keeping their jobs in the wake of protecting and demanding labour rights. According to a former employee of Sao hill Industries Limited, who was also secretary of TUICO branch at his workplace, during his time at the company they prepared a collective agreement to promote and protect employees' welfare but the company did not like the agreement and decided to come up with an agreement of its own. He added that he initially refused to sign the pro-management agreement, but later reluctantly signed amid fears of losing his job. However, he was later suspended from work for the reason of 'the company losing faith in him' before he was eventually fired in 2017.



Picture 19: An extract from the CMA decision in the case of Bathlomeo Madenge vs Sao Hill Industries Limited

183 LHRC Human Rights and Business Survey 2019, Njombe Field Report



He then instituted proceedings against his employer at the Commission for Mediation and Arbitration (CMA) for unfair termination, whereby the proceedings were heard *ex parte*. The CMA decision was made in his favour (the survey team obtained a copy of the decision) in June 2018. The CMA ordered his reinstatement. The CMA ordered his reinstatement. However, the company management appealed against the decision, and the case is currently at CMA Iringa region level.

In Njombe, some of the workers at Kibena Tea Ltd indicated that their trade union has not been able to set up a meeting with the new investor to discuss employee rights and welfare, as the employer has been

“Trade unions are only there for their own interests, because once they come and register workers, we hardly see them again. When they do come, they listen to our complaints and go talk to the bosses, but nothing much is done to protect our rights.”

reluctant to meet with them.¹⁸⁴ Their counterparts at Njombe Milk Factory also expressed dissatisfaction with the performance of their trade union.¹⁸⁵

In Mara, awareness about trade unions was found to be high. However, majority of respondents indicated that they had little faith in their unions. For instance, at only 2 out of 15 workplaces reached, Acacia Gold Mine and Musoma Fishery Company, were employees somewhat happy with trade union efforts.¹⁸⁶ One respondent at Acacia Gold Mine had this to say about trade unions:

In Mbeya, there were claims of trade unions to being ‘toothless’ in promotion and protection of labour rights by interviewed respondents. Similar sentiments were expressed by a respondent at High View Hotel in Arusha, who mentioned that their trade union, CHODAWU, is not helpful to them as it does not intervene to protect their labour rights.¹⁸⁷ Similar remarks were made during interviews in Njombe and Songwe. For

¹⁸⁴ LHRC Human Rights and Business Survey 2019, Njombe Field Report

¹⁸⁵ *Ibid.*

¹⁸⁶ LHRC Human Rights and Business Survey 2019, Mara Field Report

¹⁸⁷ LHRC Human Rights and Business Survey 2019, Arusha Field Report



instance, at Jambo Musyani Brand Ltd and D&M Logistic Company in Songwe, two respondents were quoted saying:

"TAMICO does not do anything for us, rather than collecting our money...just recently they came and we shared with them our grievances, but surprisingly after they left the boss came and fired all those who complained to them and we have not seen them (TAMICO) coming to defend us.."

Respondent at Jambo Musyani Brand Ltd

"...I don't think our drivers' trade union (CHAMAMATA) does anything for us. I used to contribute to the union but later stopped because it is only them who are benefitting..."

Respondent at D&M Logistic Company

LHRC recommends that trade unions address the negative perception of its effectiveness that has been an issue amongst workers. Trade unions should engage its members more and help them to address the challenges they face at workplaces.

2.8. Child and forced labour

Child labour and forced labour are universally condemned and prohibited as violations of human rights. Regional and international human rights and labour instruments prohibit child and forced labour. These include the Forced Labour Convention, 1930 (No. 29), Abolition of Forced Labour Convention, 1957 (No. 105), Worst Forms of Child Labour Convention, 1999 (No. 182) and Minimum Age Convention, 1973 (No. 138).

Forced labour contravenes fundamental human rights, including right to economic development, freedom of movement and right to just and favourable working conditions. The Forced Labour Convention defines forced labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."¹⁸⁸

¹⁸⁸ Article 2 of the Forced Labour Convention, 1930 (No. 29).



Child labour denies a child their fundamental human rights, including right to education and freedom from all forms of violence. It also hinders children's development.¹⁸⁹ Child labour is defined as "work or employment situation where children are engaged on a more or less regular basis to earn a livelihood for themselves or their families."¹⁹⁰ Child labour is said to be exploitative labour as a child is used as cheap labour, paid less than the labour provided (unequal payment) and exposed to various hazards.¹⁹¹ Child labour may lead to impairment of a child's physical, mental, moral, spiritual and social development.¹⁹² Poverty remains the major cause of child labour in Tanzania, hindering a child's basic social and economic rights, such as the right to education and right to protection.

The Minimum Age Convention provides for the minimum age of employment or work at 15 years for light work (after completing compulsory schooling) and 18 years for hazardous work (work that could jeopardise health, safety or morals).¹⁹³

Domestically, labour standards on child and forced labour are provided under the Employment and Labour Relations Act 2004 (ELRA). It prohibits employment of a child under the age of 14 years, providing an exception of light work for a 14-year-old, provided it is not harmful to their health and development or does not hinder school or training attendance.¹⁹⁴ A person under 18 years of age is also not allowed to be employed in a mine, factory or any other worksite in conditions the **minister responsible for labour considers hazardous**.¹⁹⁵ Forced labour is prohibited and amounts to an offence under the ELRA.¹⁹⁶ It includes bonded labour or any work exacted from a person under the threat of a penalty and to which that person has not consented¹⁹⁷.

189 ILO, International Labour Standards on Child labour at <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/child-labour/lang--en/index.htm>, accessed 21st May 2018.

190 Law Reform Commission of Tanzania, Report on Labour Law, presented to the Minister of Justice and Constitutional Affairs, Ministry of Justice and Constitutional Affairs, 2001.

191 Ibid, pp 63-76.

192 Ibid.

193 Articles 2(3) & 3(1) of Minimum Age Convention, 1973 (No. 138).

194 Section 5(1) & (2) of ELRA.

195 Ibid, Section 5(3).

196 Ibid, Section 6(1).

197 Ibid Section 6(2).



2.8.1. Child labour

According to the Food and Agriculture Organization of the United Nations (FAO), child labour refers to “work that is inappropriate for a child’s age, affects children’s education, or is likely to harm their health, safety or morals.”¹⁹⁸ The first schedule of the Employment and Labour Relations (General) Regulations of 2017 provides a list of work considered hazardous for children.¹⁹⁹ The list includes hazardous works in the sectors such as agriculture, fishery, mining, construction, service, trade and transport. Examples include: fetching and carrying fire wood, feeding farm animals, crushing ore, drilling and blasting, cement mixing, painting, brick making, carpentry, welding, stone crushing, water vending, masonry, cleaning toilets and electrical repair.

In 2016, the National Bureau of Statistics (NBS) released its report on child labor survey, conducted in collaboration with ILO in 2014.²⁰⁰ According to this survey, 28.8% of children aged 5-17 in Tanzania are in child labour; and majority of them **(89.3%)** are in the **agriculture and fishery** sectors.²⁰¹ Since then, the government and its partners have continued to take various measures to combat child labour, including conducting sensitization and empowerment programmes, which have contributed to reduce the problem. However, despite perceived decline in child labour, the survey found that child labour is still prevalent and a major issue in some parts of Tanzania, especially around mining areas and in the agriculture sector.

As indicated above, child labour is prohibited in Tanzania and while some of the children aged 14 and above are allowed to work, there are certain conditions that must be fulfilled for such labour not to constitute child labour, including not interfering with education and only being some light work (not hazardous). Agriculture and fishery sectors are dominant

¹⁹⁸ See FAO “Child Labour in Agriculture” at <http://www.fao.org/childlabouragriculture/en/>, accessed 17th September 2019

¹⁹⁹ Employment and Labour Relations (General) Regulations, GN. 47 of 2017.

²⁰⁰ Tanzania national child labour survey 2014: Analytical Report / International Labour Office; Fundamental Principles and Rights at Work (FUNDAMENTALS); Tanzania National Bureau of Statistics. - Geneva: ILO, 2016

²⁰¹ Ibid.



Child Labour in Agriculture

Child labour is mostly found in agriculture. 108 million boys and girls are engaged in child labour in farming, livestock, forestry, fishing or aquaculture, often working long hours and facing occupational hazards. Child labour violates children's rights.

Food and Agriculture Organization of the United Nations (FAO)

in terms of child labour; and most works under these sectors are hazardous under Tanzanian laws. Moreover, according to FAO, “much of the work children do in agriculture is not age-appropriate, is likely to be hazardous or interferes with children’s education.”²⁰²

In Dodoma, the survey team came across children working in the agriculture sector, especially in rice and grapes plantations. For instance, the team came across children aged 12-15 years working at Mpunguzi Grapes Plantation during school hours, which means they were not attending school.²⁰³ The survey found that they were paid between Tshs. 5000 and 12,000 per day, for harvesting, carrying grapes and packing them into vehicles.²⁰⁴ During an interview, one of them remarked that his parents did not want to send him to the school he wanted, so he decided to work at the farm instead; and when he gets enough money he buys and resells chicken.²⁰⁵

202 See FAO “Child Labour in Agriculture” at <http://www.fao.org/childlabouragriculture/en/>, accessed 17th September 2019

203 LHRC Human Rights and Business Survey 2019, Dodoma Field Report

204 Ibid.

205 Ibid.





Picture 20: A 14-year-old child found working at a grapes plantation in Dodoma during schools hours



In Arusha, an interview with a community development officer from Monduli District revealed that child labour in the district appears to be on the rise, although there were no official statistics. In Meru District, the survey also found that child labour was common in Oltepesi, Emartini and Engikareti areas.²⁰⁶ However, in Karatu, the survey found that child labour was in decline, based on the statistics made available by the district authority – from 150 cases of child labour 2016-2017 to 49 in 2018-2019.²⁰⁷

In Geita, child labour was found to be a major problem, especially in Geita and Nyang'hwale Districts. Interviews with key informants in the region revealed a slight decline in child labour, but the situation is far from ideal, as many children are still working at and around mining and other areas.²⁰⁸ For instance, at Mgusu mining site, children were found working for small scale miners, even during school hours.²⁰⁹ The survey also found a billboard prohibiting child labour vandalized.²¹⁰ The billboard read “Sheria ya mtoto namba 21 ya mwaka 2009 inakataza utumikishwaji wa watoto katika migodi” (The Law of the Child Act No. 21 of 2009 prohibits employing children in mining).



Picture 21: A vandalized billboard at Mgusu gold mining site in Geita

206 LHRC Human Rights and Business Survey 2019, Arusha Field Report

207 Ibid.

208 LHRC Human Rights and Business Survey 2019, Geita Field Report

209 Ibid.

210



According to the interviews with a social welfare officer in Geita DC and District Administrative Secretary of Nyang’hwale District, businessmen and miners in the district prefer child labour because it is cheap labour. They noted that:

“The source of child labour in the fishery sector is the rich people who are in the fishing business near the Rubondo Island National Park, who pay the children about Tshs. 3000 per day and give other children fish as payment. So, it depends with how many fish have been caught, if no fish are caught then the child also gets nothing.”
Social Welfare Officer – Geita DC

“Child labour is a problem here in Nyang’hwale because children are taken to be cheap labour; and these children are supposed to be in school, but you find them working around mining areas..”
DAS - Nyang’hwale



Picture 22: Children found crushing ores and stones in Karumwa Ward in Geita DC, some of them accompanying and assisting their mothers





Picture 23: Children found working together with women at Mgusu gold processing site



Picture 24: Left: Children found in Nkombe Ward in Geita DC carrying logs during school hours for payment of Tshs. 30,000. Right: Children carrying bricks in Nkome Ward for payment of Tshs. 100 per 10 bricks.



Recorded statistics on child labour cases in the fishery sector in Geita DC for the years 2018 and 2019²¹¹ show that 5 child labour cases were recorded in 2018, while from January to July 2019 the number had more than doubled, at 11.²¹² The ages of the children involved range from 12 to 17 years.²¹³

“Many children are engaged by the rich people to graze livestock under the promise of being given some cows or salary at the end of the year, but what usually happens is that when the end of the year approaches they create some false accusations against the children so that they can kick them out without paying them or fulfil whatever promises made to them.”

Social welfare officer at Geita DC

Child labour in the livestock sector: Children herding livestock in Geita

An interview with a social welfare officer in Geita DC revealed that there are many children employed to herd livestock by rich livestock owners in the district on the promise of giving them some livestock or salary. However, according to the social welfare officer, there is a tendency of the livestock owners exploiting these children and then later claiming or alleging that they have done something wrong and chase them away without paying them or fulfilling promises made to them.

The survey team came across a case of a child aged 14 years who had been hired to herd livestock. The child, Mabula Samora, from Nyugwa Village in Nyugwa Ward, was hired to herd livestock on the promise of being paid Tshs. 200,000 per year. At a latter point in time, the child was later accused by the livestock owner’s 19-year-old son of stealing a music speaker, solar machine, a solar battery and Tshs. 200,000. The child was severely beaten with a heavy stick on his buttocks until he passed out; and they even wanted to torch him. The part of his buttocks that was badly injured later started to rot. He was taken to the hospital but was later released before he was healed and went to stay with a good Samaritan nearby the hospital. He was later taken to Kakole Dispensary for further medical treatment.

211 LHRC Human Rights and Business Survey 2019, Geita Field Report

212 Ibid.

213 Ibid.





Picture 25: The child who was employed to herd livestock, showing his big wound following a heavy beating from livestock owner's family



Picture 26: Children aged 10 and 12 employed to herd livestock in Geita



In Shinyanga, child labour was observed in the mining sector, whereby artisanal miners in Mwakitolyo Ward – Shinyanga DC were implicated. Causes of child labour were found to include poverty, death of parents, economic hardships, school dropout and family disputes.²¹⁴ During the survey, a 16-year-old child working at a gold smelting industry in Mwakitolyo was interviewed; and he said that he is paid Tshs. 6,000 per day to work from from 6:00am to 4:00pm.²¹⁵ He was also found without personal protective equipment and was found washing his body after he was done with work with what appeared to be contaminated water.²¹⁶ The team also found other children working at mining sites around the area.



Picture 27: A 16-year-old boy who was found working at a smelting industry in Mwakitolyo – Shinyanga DC

²¹⁴ LHRC Human Rights and Business Survey 2019, Shinyanga Field Report.

²¹⁵ Ibid.

²¹⁶ Ibid.



2.8.2. Forced labour

As discussed above, forced labour includes "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."²¹⁷ Based on this definition by ILO under the Forced Labour Convention of 1930, forcing or asking workers to work beyond working hours limit without an agreement of overtime work and pay also constitutes forced labour; and majority of workers who were interviewed claimed that they usually do whatever work they are given, even beyond work hours, because they are afraid of losing their jobs. This means when they continue working beyond working hours limit they usually do not do so voluntarily, hence forced labour.

In Geita, for example, complaints about forced labour were made at MASSA Security Ltd, whereby one of the respondents interviewed by the survey team claimed that they are sometimes required or expected to work well beyond the working hours limit without adequate overtime pay and being afforded a break. Another respondent working at a motel in the stated that she is often made to work from 7:00am to 10:00pm; and when she spoke to the employer about her concern, she was told to quit if she cannot work for that long.

2.9. Leaves

There are no international standards on leaves in general, except for maternity leave. Recognizing the need for special protection for expectant and nursing mothers, the international community, through ILO, developed some international labour standards on maternity protection, stipulated under various ILO conventions - including the Maternity Protection Convention, 2000 (No. 183),²¹⁸ which has not been ratified by Tanzania.

Domestically, labour standards on leaves are adequately covered under the Employment and Labour Relations Act 2004 (ELRA). It provides for four main types of leaves, which are **annual leave (28 days), maternity leave (84 to 100 days), paternity leave (3 days) and sick leave (126 days maximum).**²¹⁹

²¹⁷ Article 2 of the Forced Labour Convention, 1930 (No. 29).

²¹⁸ Provides for maternity leave of not less than 14 weeks and cash benefits 'at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.'

²¹⁹ Sections 31(1), 32(1), 33(1) & 34(1) of ELRA.



An employee with less than six months of service is not entitled to paid leave.²²⁰ However, if an employee with less than six months service has worked more than once in a year for the same employer and the total period of work exceeds six months in that year, then he or she is entitled to paid leave.²²¹ An employee employed on seasonal basis is also entitled to paid leave.²²²

Employer has a duty of ensuring that no employee is continuously working in any leave cycle without applying for annual leave.²²³ The employer also has a duty to allow a female employee to leave the office for a maximum of two hours during working hours for breast feeding of her baby for a period of not less than six consecutive months after maternity leave.²²⁴

2.9.1. Leaves granted as privileges rather than rights

Participants of quantitative survey were asked whether they get annual leave, maternity leave, paternity leave and sick leave. They were also asked whether they had taken leave in the past 12 months. Regarding taking annual leave, 62% of the respondents indicated that they do, while 30% said they did not get any and 8% of them said they were not sure.

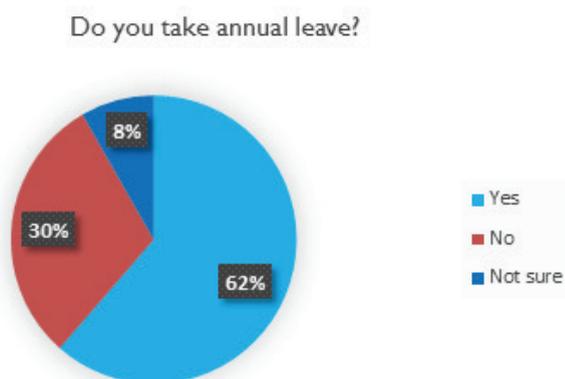


Figure 15: %Responses on getting annual leave (N=832)
Source: Field data, 2019

220 Ibid, Section 29(1).

221 Ibid, Section 29(b).

222 Ibid, Section 29(a).

223 Regulation 14(2) of Employment and Labour Relations (General) Regulations, GN. 47 of 2017.

224 Ibid, Regulation 15.



Female workers were asked whether they get maternity leave at their workplaces. Majority of them (62%) claimed such leave is granted at their workplace, while 24% claimed it is not granted and 14% indicated they were not sure.

Do you take maternity leave?

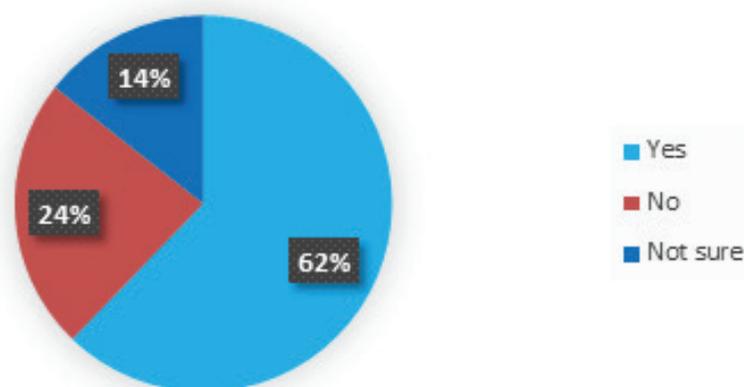


Figure 16: %Responses on getting maternity leave (N=299)
Source: Field data, 2019

For the case of paternity leave, only 41% of the male respondents claimed such leave is granted at their workplaces, while 33% said it is not granted and 26% were not sure whether it is granted or not. Interviews with male workers at some of the workplaces revealed low awareness about the existence of paternity leave. This was especially observed in regions such as Njombe, Dodoma, Songwe and Mtwara.



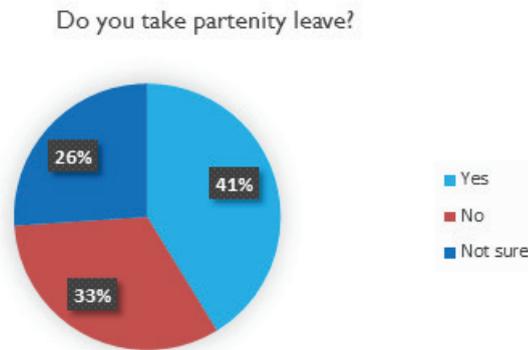


Figure 17: %Responses on getting parternity leave (N=526)
 Source: Field data, 2019

Regarding sick leave, majority of responds (68%) indicated they are provided with sick leave in case of illness, while 19% said there is no such arrangement and 12% were not sure.

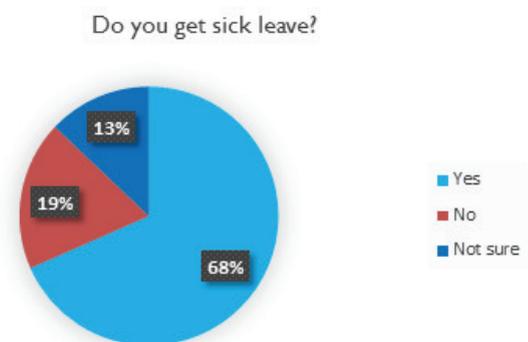


Figure 18: % Response on getting sick leave (N=813)
 Source: Field data, 2019

In Geita, interviewed workers at Fabec Company, Bageni Petrol Station and at MASSA Security Company claimed to have been denied leave. The workers at these companies had the following to say:



“There is not leave, no holiday for us...you are here every day, including on Saturdays and Sunday..– MASSA company

“There is not maternity or paternity leave, what happens is that you quit your job for the number of days you need to be away and when you are done, you write a letter to reapply for the job; and the ‘leave’ is without pay.”– Bageni Filling station respondent

In Kilimanjaro, leave was found to be treated as more of a privilege than a right at China Paper Ltd. One of the interviewed workers claimed that the employer determines when leave can be taken and for how long; and it is leave without pay. When asked whether he does not get tired working throughout the year, one employee said:

“My sister, you want to play with my boss, huh?! How do I take a leave? Will I eat stones? During holidays we close business early and go celebrate with our families. There is no time to rest in this world, if you want to rest you wait until you die then you have plenty of rest.”

“Leave was also said to be granted as a privilege by respondents at Mbozi Maziwa Ltd, Jambo Musyani Brand Ltd, Jambo Plastic Ltd, and Jambo Lime Production Ltd in Songwe, whereby most respondents indicated they are usually denied annual leave.²²⁵ Some of them also stated that the conditions for obtaining sick leave are difficult.²²⁶

In Iringa, the survey found that all types of leaves are granted by most companies, but mainly for workers with written employment contracts. However, some of the workers who were interviewed indicated that they are not guaranteed any type of leave. For instance, one respondent at Sai Energy and Logistic Limited mentioned that leave, including sick leave, is more of a privilege than a right; and there is a tendency of deducting wages for number of days absent from work.²²⁷

²²⁵ LHRC Human Rights and Business Survey 2019, Songwe Field Report.

²²⁶ Ibid.

²²⁷ LHRC Human Rights and Business Survey 2019, Iringa Field Report.



In Mtwara, most human resources officers interviewed by the survey team claimed that some male workers themselves choose to waive their right to paternity leave so that they continue working.²²⁸

In Dodoma, a respondent at Sunshine Industry Ltd complained about denial of sick leave. Similar claims were also made at DOTT Services Limited and Rampant Security in Mtwara; Mbozi Maziwa Ltd, Jambo Musyani Brand Ltd, Jambo Plastic Ltd, and Jambo Lime Production Ltd in Songwe.

In Mwanza, majority of respondents who were interviewed indicated that they were not denied leave, but rather granted lesser number of days than those stipulated by law, particularly in the case of annual leave. For instance, some of the respondents at Sayona Drinks Limited and Prince Pharmaceuticals Co. Ltd claimed to get a 15-day and 21-day leave respectively, instead of the stipulated duration of 28 days.²²⁹ Similar claims on limitations on annual leave were also made by some respondents at TANWAT Co. Ltd and Kibena Tea Ltd. in Njombe²³⁰ and Ally's Star Bus Company in Shinyanga.²³¹

Most of the interviewed workers in Mwanza also indicated that they do not get paid annual leave. Regarding sick leave, majority of them indicated they take such leave, usually for 3 days. They also revealed that maternity leave and paternity leave are generally granted for 84 days and 3-10 days respectively.²³²

In Njombe, female respondents acknowledged during interviews that they are entitled and are granted maternity leave, but it is not a paid leave. Regarding paternity leave, interviewed male respondents at companies such as TANWATT Company Ltd, Njombe Milk Factory, G2L Company Ltd, Kibena Tea Ltd, Apple Craft Co. Ltd and Rosper Company Ltd indicated that they were not aware of paternity leave being granted at their workplaces and had not heard of such leave being granted.²³³ Sick leave is

228 LHRC Human Rights and Business Survey 2019, Mtwara Field Report.

229 LHRC Human Rights and Business Survey 2019, Mwanza Field Report.

230 LHRC Human Rights and Business Survey 2019, Njombe Field Report.

231 LHRC Human Rights and Business Survey 2019, Shinyanga Field Report.

232 Ibid.

233 LHRC Human Rights and Business Survey 2019, Njombe Field Report.

234 Ibid.



generally granted, but subject to submission of medical certificate.²³⁴

2.9.2. Taking annual leave in the past year

When asked whether they had taken leave in the past year, nearly 50% of the respondents said they had not. For the case of annual leave, some of them did not get it because they had not worked for more than 6 months as required by the law, hence not entitled. However, in other cases employees were simply denied leave and some were afraid of taking leave

Have you taken any leave in the past year?

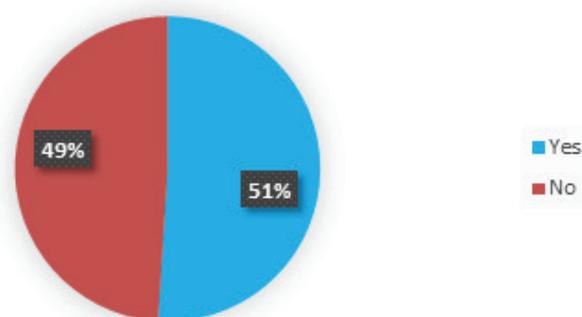


Figure 19: %Responses on taking leave in the past year (N=812)
Source: Field data, 2019

for fear of losing their jobs.

In Dodoma, majority of respondents (53%) revealed that they had taken leave in the past year. In most other regions less than 50% of the respondents claimed they had taken leave in the past year. Generally, the survey found that lack of employment contracts and copies of signed contracts puts employees at a disadvantage and contributed to denial of some of the basic labour rights, including right to leave.

2.9.3. Deduction of wages following granting of sick leave or compassionate leave

In Dar es Salaam, a worker at Yua Yanga Ganga, a factory that manufactures sandals, said:

²³⁴ Ibid.



"I do not see why I should demand a contract while even if I get it my wages will still be deducted if I get sick and miss work...that is why I do not see the whole point of contracts."

In Mtwara interviewed employees at Yalin Cashew-nut Company Limited claimed that the employer does not only grant sick leave, but also pays their medical bills.²³⁵ On the other hand, a respondent at Sunshine Industry Ltd in Dodoma indicated that there are cases of denial of leave, especially sick leave, at his workplace. He noted that if an employee is absent from work due to illness their wages are deducted for all the days they miss work. Similar remarks were made by respondents at Sai Energy and Logistic Limited in Iringa,²³⁶ and at workplaces such as SERC Construction Co. Ltd, BCEG Construction Company and GIANXI in Mtwara – especially for the case of casual workers.

In Songwe, respondents at Jambo Musyani Brand Ltd, Jambo Plastic Ltd, and Jambo Lime Production Ltd noted during interviews that their employers deduct their wages for number of days missed at work due to sickness.²³⁷ Complaints about deduction of wages in case of sick or compassionate leave for number of days missed at work were also levelled against employer at Sai Energy and Logistic Limited in Iringa.²³⁸

2.9.4. Maternity leave signaling the end of employment for women

Previous LHRC reports have touched on the subject of discrimination of women when seeking employment at some workplaces, whereby employers prefer employing male workers. One of the reasons for this preference is the issue of maternity leave and associated benefits, which most employers consider to be a problem. For instance, in Mtwara, the survey found that only 33% of employees at surveyed workplaces were female. When asked about the reason for this, workers who were interviewed stated reasons include: the nature of jobs in construction

²³⁵ LHRC Human Rights and Business Survey 2019, Mtwara Field Report.

²³⁶ LHRC Human Rights and Business Survey 2019, Iringa Field Report.

²³⁷ LHRC Human Rights and Business Survey 2019, Songwe Field Report.

²³⁸ LHRC Human Rights and Business Survey 2019, Iringa Field Report.



sites and industries, which are perceived to be ‘more suitable for men’; and issues of pregnancy, menstrual cycle, delivery and breastfeeding, that can lead to women missing work most of the time.²³⁹

The survey in the region also found that in most cases when a woman delivers it usually signals the end of her employment, which amounts to unfair termination of employment contract.²⁴⁰ However, due to low awareness on labour rights and lack of signed written employment contracts or signed employment contracts, it becomes difficult for them to fight this unfair termination of employment.

2.9.5. Low awareness about paternity leave at some workplaces

Paternity leave refers to leave period – paid or unpaid- reserved for fathers in relation to childbirth. This is one of the leaves provided for in the Employment and Labour Relations Act, Act, 2004. The survey found that some of the male workers did not know that they are entitled to paternity leave. This was especially revealed during interviews with workers in regions such as Mtwara and Njombe.

“I have never heard of these laws and I do not think they apply here at our workplace, especially that about paternity leave.”
Respondent at G2L Company Ltd

In Njombe, interviewed male respondents at companies such as TANWATT Company Ltd, Njombe Milk Factory, G2L Company Ltd, Kibena Tea Ltd , Apple Craft Co. Ltd and Rosper Company Ltd indicated that they were neither aware of paternity leave being granted at their workplaces nor heard of such leave.²⁴¹

2.10. Social security

The right to social security is a fundamental human right, protected under various human and labour rights instruments. Core international human rights instruments protecting this right include the Universal Declaration of Human Rights (UDHR),²⁴² the International Covenant on Economic, Social and Cultural Rights (ICESCR)²⁴³ and the Convention on

²³⁹ LHRC Human Rights and Business Survey 2019, Mtwara Field Report.

²⁴⁰ Ibid.

²⁴¹ LHRC Human Rights and Business Survey 2019, Njombe Field Report.

²⁴² Article 22 of UDHR.

²⁴³ Article 9 of ICESCR.



the Elimination of all forms of Discrimination Against Women (CEDAW).²⁴⁴ Key international labour rights instruments providing for the right to social security are Social Security (Minimum Standards) Convention, 1952 (No. 102) and Equality of Treatment (Social Security) Convention, 1962 (No. 118)²⁴⁵. The essence of social security is to address 'insecurities related to making a living through work.'²⁴⁶

In Tanzania, efforts to enhance social security have seen establishment of various social security schemes, including the National Social Security Fund (NSSF) the Parastatal Pension Fund (PPF), the Local Government Authority Pension Fund (LAPF), the Government Employees Pension Fund (GEPF), the National Health Insurance Fund (NHIF) and the Public Service Pension Fund (PSPF). Both employers and employees are obligated to make monthly payments to these schemes. The schemes are established by different laws and regulated by the Social Security Regulatory Authority (SSRA), established under the Social Security (Regulatory Authority) Act 2008.

2.10.1. Submission of employees' social security contributions

According to the law each month employers are to deduct more amount of employees salary and also employer is to contribute a certain amount of percentage as per employees salary and submit the same to a social security scheme registered. The amount of contribution varies from one social scheme and another. In 2018, the Government was in the process of merging the social security scheme and standardize the amount of contribution to be paid.

During the human rights and business survey, respondents were asked about the state of their contributions to the social security schemes . Some of the workers interviewed at different workplaces in surveyed regions indicated that their social security contributions were not being submitted to the social security fund. For instance, in Iringa one of the

²⁴⁴ Article 11(f) (e) of CEDAW.

²⁴⁵ Note: These two conventions have not been ratified by Tanzania.

²⁴⁶ ILO, International Labour Standards on Social security at

<http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang--en/index.htm>, accessed 21st May 2018.



“There is a former fellow worker who had to quit his job after being injured, but when he made follow up on his benefits, he only found about Tshs. 3 million, while he had worked for 10 years...he learned that his contributions were not submitted... we don't know what to do to ensure our contributions are submitted...”

An employee in Tanga

“Our salaries are deducted for purposes of contributions at NSSF but when we make follow up we find that contributions for some of the months have not been submitted.”

employees interviewed by the survey team mentioned that a former fellow employee, who had worked for 10 years, was informed by his social security fund that his monthly contributions had not been submitted for a long time. Similar claimes were made at Kibena Tea Ltd. in Njombe, where one respondent said during an interview:

Complaints and concerns regarding submission of social security contributions were also made by some of the respondents in Tanga and Mbeya. In Tanga, the survey found a story of a worker at Unique Steel Rolling Mill who has been working there for almost 10 years, but his employer allegedly only started submitting social security contributions in January 2019. In Mbeya, some of the interviewed respondents at Shanta Gold Mining Company also expressed concern with submission of their monthly social security contributions.²⁴⁷

2.11. Employment termination

ILO provides for international labour standards on employment security under the Termination of Employment Convention, 1982 (No. 158), prohibiting termination of employment unless valid reasons for such termination exist, based on employee's capacity/conduct or operational requirements.²⁴⁸ While Tanzania has not ratified this Convention, it provides for clear standards on termination of employment under the

²⁴⁷ LHRC Human Rights and Business Survey 2019, Mbeya Field Report.

²⁴⁸ ILO, International Labour Standards on Employment security at <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/employment-security/lang--en/index.htm>, accessed 21st May 2018



Employment and Labour Relations Act 2004 (ELRA). Sub-Part E of the Act covers unfair termination of employment, applying only to an employee with 6 or more month-employment with same employer.²⁴⁹ It states that termination of employment includes:²⁵⁰

- ◆ A lawful termination of employment under the common law;
- ◆ Termination by an employee because the employer made continued employment intolerable for the employee;
- ◆ Failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal;
- ◆ Failure to allow an employee to resume work after taking maternity leave granted under this Act or any agreed maternity leave; and
- ◆ Failure to re-employ an employee if the employer has terminated the employment of a number of employees for the same or similar reasons and has offered to re-employ one or more of them.

Unfair termination of employment is prohibited under the ELRA and occurs if employer fails to prove that:²⁵¹

- ◆ The reason for the termination is valid;
- ◆ The reason is a fair reason related to the employee's conduct, capacity or compatibility; or based on the operational requirements of the employer; and
- ◆ The employment was terminated in accordance with a fair procedure.

Unfair reasons for termination of employment include: an employee disclosing information that they are allowed under the law; employee refusing to do anything that employer is not lawfully permitted or required to ask them to do; employee exercising their right under contract or law; and participation in trade union and its activities,

Remedies for unfair termination/dismissal

- ◆ *Reinstatement (back to work)*
- ◆ *Re-engagement (on any terms decided by Court or arbitrator)*
- ◆ *Compensation (not less than 12-month remuneration)*

²⁴⁹ Section 35 of ELRA.

²⁵⁰ Ibid, Section 36(a).

²⁵¹ Ibid, Section 37(1) & (2).



including a lawful strike.²⁵² Other reasons include pregnancy and disability. In proceedings relating to unfair termination, the burden of proof lies with the employer to prove that it was actually fair.²⁵³

The ELRA also provides for conditions of termination based on operational requirements, which include a notice by employer on intention to retrench as soon as possible and disclosing relevant information, measures to minimize entrenchment, timing of retrenchment, severance pay and reasons for retrenchment.²⁵⁴ It also provides for remedies for unfair termination,²⁵⁵ notice of termination,²⁵⁶ severance pay,²⁵⁷ transport to place of recruitment,²⁵⁸ payment on termination²⁵⁹ and certificate of service upon termination.²⁶⁰

The human rights and business survey generally found that dismissal or termination of employment is not a common form of disciplinary measure taken against workers. When about common disciplinary action taken by employer, 7.7% of respondents mentioned dismissal or termination, while the majority (71.5%) mentioned warning (both written and oral), and 18.6% mentioned salary deduction. 2.2% mentioned other type of disciplinary action. However, as discussed in above, threatening employee with termination of employment when they demand their rights has become the order of the day and survey found several cases of unfair termination in regions such as Dodoma, Iringa, Kilimanjaro, Mtwara and Songwe.

In Dodoma, the survey found a case of a former employee of MML Company, who claimed that his employment was terminated without any valid reason. During an interview he claimed that his contract was ending 31st July 2019 but was offered and signed a new contract which was only awaiting the employer's signature. However, he was later called by the

252 Ibid, Section 37(3).

253 Ibid, Section 39.

254 Ibid, Section 38 (1).

255 Ibid, Section 40(1).

256 Ibid, Section 41(1). [7 days if given in first month of employment; 4 days if employment of daily or weekly basis; and 28 days if employment on a monthly basis].

257 Ibid, Section 42. [Amount at least equal to 7 days' basic wage for each completed year of continuous service with that employer up to a maximum of ten years.]

258 Ibid, Section 43.

259 Ibid, Section 44(1).

260 Ibid, Section 44(2).



human resources manager and informed that the employer was not keen on renewing his contract. He was given Tshs. 65,000 as payment for days he had worked. He was never told reasons for his employment termination.²⁶¹ In Arusha, a respondent at High View Hotel complained about employment termination for minor misconduct.²⁶² Two former employees of Jambo Musyani Brand Ltd in Songwe, claimed that their employment had been terminated because of demanding better working environment, including personal protective equipment and fair remuneration.²⁶³ Another employee at Sao hill Industries Limited, also claimed that he his employment had been unfairly terminated in 2017 and he instituted proceedings against his employer at CMA in Iringa in 2018.

“He called me into his office and fired me because he found me without my protective footwear – which had washed and was waiting for them to dry. He terminated my employment without notice and salary.

In Kilimanjaro, interviews were conducted with two workers from China Paper Co. Ltd, who claimed to be unfairly terminated. One of them stated that he was fired because an official from Moshi Urban Water Supply and Sewerage Authority (MUWSA) visited the workplace for inspection and fined the company for non-compliance.²⁶⁴ The employer was reportedly furious and blamed him and then fired him on the spot. Another worker claimed that he was fired within 15 minutes since his colleague was fired because his employer found him working while wearing sandals after he had off his footwear for cleaning.²⁶⁵ He noted that:

In Mtwara, an interview was conducted with a man who claimed to be former employee of Shebby Mix Investment – subcontracted under Dangote Industries. According to him, he was working as a cleaner and was supervised by 2 fellow Africans and 1 Indian. He was not provided with any written contract and his salary was not fixed as he was first paid Tshs. 150,000, then the second month he was paid Tshs. 170,000 and the third

²⁶¹ LHRC Human Rights and Business Survey 2019, Dodoma Field Report.

²⁶² LHRC Human Rights and Business Survey 2019, Arusha Field Report.

²⁶³ LHRC Human Rights and Business Survey 2019, Songwe Field Report.

²⁶⁴ LHRC Human Rights and Business Survey 2019, Kilimanjaro Field Report.

²⁶⁵ Ibid



salary was Tshs. 120,000. Three months into his employment, he quarreled with the Indian supervisor and he was reported to the boss. The boss allegedly held a discussion with them and asked him to go back to work, but moments later the Indian supervisor followed him and started insulting him, and he insulted him back. The Indian supervisor became angry and took out a gun and pointed it at him. He then tried to take a picture but the supervisor noticed, took the phone from him, smashed it on the ground and left with it. He added that the Indian supervisors then called the guards and ordered them to throw him out. He went back to work the second day and found his damaged phone in the dustbin, but the memory card was missing. He went to report the incident to his other supervisor, who advised him to wait for the boss to come back from travel and resolve the matter internally, asking him not to go to the police and cause chaos. A couple of weeks later the boss returned and accused him of being a liar and that if he wants to keep his job he should shut up and continue working. When he informed his boss that he was not willing to let go of the matter he was fired. The LHRC survey team also tried to reach out to the company to get some clarifications and their side of the story but they were not willing to speak to the team regarding the matter.



Picture 29: Personal protective equipment found with a man who claimed he was unfairly terminated by former employer



Omary had no proof of employment, since he alleged that he was never given a contract but showed the team some personal protective equipment he was using at the company.

2.12. Labour disputes and mechanism for resolution

The Employment and Labour Relations Act 2004 (ELRA) and the Labour Institutions Act 2004 (LIA) provide for mechanism for resolution of labour disputes. LIA establishes the Commission for Mediation and Arbitration (CMA)²⁶⁶ and the Labour Division of the High Court²⁶⁷ as key bodies for resolution of labour disputes. CMA mediates any dispute referred to it under labour law and determines any labour dispute referred to it by arbitration.²⁶⁸ It appoints mediators and arbitrators to perform its functions.²⁶⁹ The Labour Court 'has exclusive civil jurisdiction over any matter reserved for its decision by the labour laws and over any employment matter falling under common law, tortuous liability, vicarious liability or breach of contract within the pecuniary jurisdiction of the High Court.'²⁷⁰ Part VIII of ELRA provides for dispute resolution in terms of mediation and arbitration under the CMA and the Labour Court, including complaints over the fairness or lawfulness of employment termination or any other contravention of ELRA, other labour law or employment contract²⁷¹. Arbitration is resorted to if mediation fails.²⁷² Unlike mediation, arbitration award is binding on the parties to the dispute.²⁷³ Labour Court may refuse to hear a complaint if not referred to mediation and may conduct reviews and revisions of decisions of CMA.²⁷⁴ ELRA also provides for dispute resolution procedures in collective agreements. It states that a trade union and employer or employer association may conclude a collective agreement providing for resolution of disputes, provided the disputes are mediated or arbitrated in an independent, neutral, expedited and professional manner.²⁷⁵

²⁶⁶ Section 12 of LIA.

²⁶⁷ Ibid, Section 50(1).

²⁶⁸ Ibid, Section 14(1)(a) & (b).

²⁶⁹ Ibid, Section 19(1).

²⁷⁰ Ibid, Section 51.

²⁷¹ Section 88(1) of ELRA.

²⁷² Ibid, Section 88(2).

²⁷³ Ibid, Section 89(1).

²⁷⁴ Ibid, Section 94(1) & (2).

²⁷⁵ Ibid, Section 95(1) & (2).



In the questionnaire survey, respondents at workplaces were asked what they do when they have a labour dispute with their employers; and the majority of them (53.2%) indicated that they report to their immediate boss or supervisor, while 26.6% said they report to trade unions.²⁷⁶ 15.7% of the respondents said they did nothing, while 3.4% said they reported the

7 out of 10 workers are not aware of relevant labour laws and regulations

Human Rights and Business Survey 2019

matter to the police and 1% took the matter to court/tribunal. Poor awareness about their labour rights and grievance mechanisms contributes to workers not seeking intervention of dispute settlement mechanisms such as the CMA and Labour Court. Awareness of such mechanism was observed to be low for the majority of workers in surveyed regions.

2.13. Awareness of labour laws, rights and duties

The survey revealed that awareness of relevant labour policies, laws, rights and duties amongst workers is still very low. For instance, when asked whether they are aware of workplace polices on rights and duties of

Table 9: %Responses on awareness about labor policies and laws (N=874)

	Yes	No	Do not exist
Are you aware of workplace policies on rights and duties of workers in relation to issues of HIV, disability and gender?	17	70	13
Are you aware of any laws in Tanzania that provide for rights and duties of workers and employers?	22	78	N/A

Source: Field data, 2019

²⁷⁶ N=770



workers in relation to issues of HIV, disability and gender, only 17% indicated they were aware, while 70% of the respondents said they were not aware and 13% claimed they did not exist at their workplaces. Regarding labour laws, only 22% of the respondents indicated they were aware of the existence of such laws, while the majority (78%) indicated they were not aware.

G.N. No. 47 (contd.)

SECOND SCHEDULE

FORMS

EMPLOYEES' RIGHTS FORM

LAIF. 9

(Made under Regulation 12)

PART I: RIGHTS UNDER THE ACT

1. Right to exercise freedom of association
2. Right to be supplied with the Contract of Service Statement of Particulars
3. Right to annual leave
4. Right to maternity/paternity/sick leave
5. Right to certificate of service on termination
6. Right to remuneration and written statement of particulars supporting each payment of remuneration
7. Right to payment for the overtime worked and night work allowance
8. Right to daily and weekly rest periods as provided for in the Act
9. Right to be repatriated to place of recruitment on termination
10. Right to daily subsistence allowance between termination date and the date of transporting an employee and family to the place of recruitment
11. Any other rights as provided for under the Act

PART II: GENERAL RIGHTS UNDER CONTACT OF SERVICE

PART III: GENERAL RIGHTS UNDER COLLECTIVE AGREEMENT

Name: Signature:

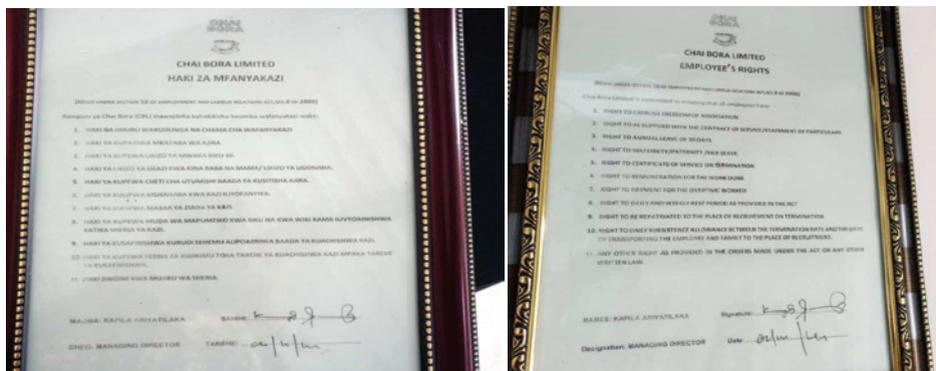
Designation: Date:

Employer's Common Seal:

***NOTE:** Employer shall display duly filled copy of this form, in a conspicuous place at workplace

Picture 30: Employee rights form provided under the labour regulations of 2017





Picture 31: Statement of employee rights in both English and Swahili Languages at Chai Bora Co. Ltd in Iringa

Amongst those who claimed to be aware of labour laws providing for rights and duties of employees and employers, only 10% could mention 2 such laws, while 3% could mention one law. The majority (87%) could not correctly mention any such laws. Lack of awareness about labour laws was highest in Pwani (97%), Mtwara (88%), Mara (87%), Tanga (86%), Njombe (82%) and Songwe (81%).²⁷⁷ Lack of awareness was the lowest in Dar es Salaam and Arusha at 62%, while in Mwanza, Geita, Shinyanga, Mbeya, Iringa, Kilimanjaro and Dodoma, lack of awareness ranged from

What did you do after your labour right(s) were violated?

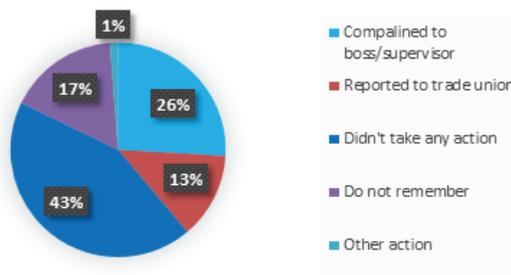


Figure 20: %Response on action take following labour rights violation (N=247)
Source: Field data, 2019

277 Survey SPSS Data, 2019.



70-76%.²⁷⁸

Employees were also asked whether they were aware of their rights as employees. 58% of the respondents said they were aware of their rights, while 33% said they were not aware and 9% said they do not remember. However, when asked to mention 3 labour rights they are aware of, only 13% of respondents who said they were aware of such rights mentioned

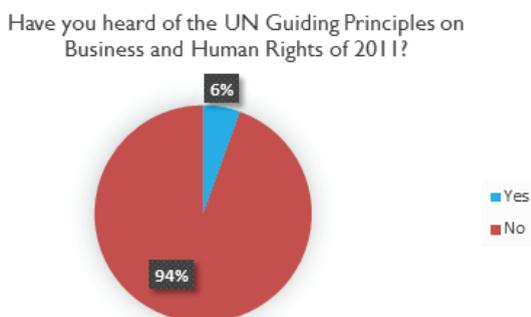


Figure 21: %Responses on awareness about the UN Guiding Principles on Business and Human Rights of 2011
Source: Field data, 2019

them correctly, while 55% mentioned one or two such rights, and 32% could not mention or mention the rights correctly.

Poor awareness about labour rights amongst workers was highest at workplaces in Mtwara (62%) and lowest in Mwanza (23%).²⁷⁹ Extent of poor awareness of such rights in other regions was 59% in Mara; 48% in Pwani and Kilimanjaro; 45% in Njombe Songwe and Geita; 44% in Tanga; 43% in Iringa; 33% in Dodoma; 29% in Shinyanga, Mbeya and Arusha; 27% in Dar es Salaam; and 23% in Mwanza.²⁸⁰

Participants of quantitative survey were also asked whether their

²⁷⁸ Ibid [Mwanza (70%); Geita (76%); Shinyanga (70%); Mbeya (71%); Iringa (77%); Kilimanjaro (70%); and Dodoma (76%)].

²⁷⁹ Survey SPSS Data, 2019.

²⁸⁰ Ibid.



“Most drivers are not aware of their rights and they usually come to complaint to LATRA about their inadequate wages and denial of entitlement such as travel allowances; and when you encourage them to take action they take a step back because they are afraid of losing their jobs.”

“Drivers who travel long distances (truck drivers) are usually told to travel and their allowances would be sent to them, but this does not happen and when they come back they are still not given their allowance and they do not claim them.”

employer had violated any of their rights in the past 12 months. 59% of the respondents said they had no experienced any labour rights violation, while 26% said they had and 15% indicated that they do not remember.²⁸¹ However, the majority of the participants indicating they had not suffered any labour rights violation in the past 12 months could be attributed to the low level of awareness about labour rights as revealed above. This means most of them would not be in a position to know some of their entitlements as employees.

Moreover, as part of efforts to promote awareness of labour rights, the Employment and Labour Relations (General) Regulations provide for a mandatory requirement of employers to place a policy statement on human rights at a place within the workplace where all workers will be able to see.²⁸² However, the survey found that only 25% of the workplaces that were visited had in place a policy statement on human rights. When asked about the existence of such a policy statement, 52% of the corporate management officials said No, while 23% said they were not sure.

Participants of the quantitative survey who indicated they had suffered labour rights violations in the hands of employers were asked what steps they took afterwards. Majority of them (43%) said they did not do anything about it, which some of them indicated is because they were afraid of losing their jobs. 26% said they complained and reported the matter to their immediate boss/supervisor, while 13% reported the matter to their trade unions, as indicated in the figure below.

²⁸¹ A total of 834 respondents responded to this question.

²⁸² See the First Schedule of the Employment and Labour Relations (General) Regulations, GN. 47 of 2017.



The survey on human rights and business also sought to determine employers' awareness of the UN Guiding Principles on Business and Human Rights, adopted by the United Nations Human Rights Council. These are set of guidelines for States and companies to prevent and address human rights abuses committed in business operations.²⁸³ When asked whether they had heard the guiding principles, only 6% of the corporate management officials that were interviewed said Yes.

In Geita, the survey team was able to meet with an officer from the Regional Planning Office, who commented about low awareness of labour laws and rights amongst employers and employees. He noted that sometimes employees do not want to accept that they were wrong even when they are truly at fault and when they are enlightened about the relevant laws and procedures they tend to accuse government officials of siding with employers.²⁸⁴ The team also conducted an interview with an officer from the Land Transport Regulatory Authority (LATRA), who remarked that most bus and truck drivers are not aware of their rights. He said:

The quantitative survey findings were also confirmed by respondents interviewed in Iringa, including at Chai Bora Co. Ltd and Sao Hill Industries Limited. At the latter industry, one employee acknowledged that most of them are not aware of their rights and entitlements, which puts them at greater risk of mistreatment.²⁸⁵ They asked for seminar and trainings on labour rights. Regarding the UN Guiding Principles on Business and Human Rights, a director at one of the surveyed companies in the region (IFB Limited) noted that "...my friend, we comply with the land laws...we don't know about the UN issues and employee rights...I am just hearing that from you...perhaps you could prepare a seminar for us. But I treat my employee well, they don't complain..."²⁸⁶

In Mbeya, poor awareness about labour rights was observed at workplaces such as Yassir Rice Mills and Kaponda Rice Mills, where employees interviewed also appeared to be less informed about trade

²⁸³ See https://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf

²⁸⁴ LHRC Human Rights and Business Survey 2019, Geita Field Report.

²⁸⁵ LHRC Human Rights and Business Survey 2019, Iringa Field Report.

²⁸⁶ Ibid



unions, which would help them to know and protect their rights.²⁸⁷ Some of them even seemed not to comprehend the essence of having written employment contracts.²⁸⁸ At G2L Company Ltd in Njombe, employees who participated in the survey also showed little understanding of labour rights and laws.²⁸⁹

2.14. Human rights violations resulting from non-compliance with labour laws and standards

Non-adherence to labour standards discussed above may lead to violation of human rights as follows:

Table 10: Human rights violated as a result of non-adherence to labour standards

Non-adherence of labour standard	Human right(s) violated
Discouraging/preventing workers from joining trade unions	Right to form and join trade union/Freedom of association
Threatening workers for demanding better working environment	Right to fair remuneration Freedom of expression
Lack of collective bargaining	Right to fair remuneration
Denial of leave	Right to the enjoyment of just and favourable conditions of work Right to family life
Unfair wage cuts/deductions	Right to fair remuneration Right to adequate standard of living
Disregard of occupational health and safety	Right to the enjoyment of just and favourable conditions of work Right to health Right to life
Overtime work without pay	Right to fair remuneration
Making employees work for a long period of time, beyond 12 hours consistently	Right to the enjoyment of just and favourable conditions of work

287 LHRC Human Rights and Business Survey 2019, Mbeya Field Report.

288 Ibid.

289 LHRC Human Rights and Business Survey 2019, Njombe Field Report



Lack of regular workplace inspection	Right to the enjoyment of just and favourable conditions of work Right to safety and personal security
Employing child labour	Right to education Right to health Right to safety and security
Granting unpaid leave	Right to the enjoyment of just and favourable conditions of work
Provision of inadequate wages	Right to fair remuneration Right to adequate standard of living
Denial of written employment contracts	Right to social security

2.15. Comparison of performance indicators on adherence of labour standards

This subchapter provides a summary of key findings for some of the key performance indicators relating to labour rights and standards. The key findings on labour rights and standards for the survey covering the period of 2018/2019 are compared with those of the year 2017. Most of the indicators were assessed during both surveys.



Table 11: Comparison of some of the key performance indicators on labour rights and standards in surveys of 2017 and 2018/2019

Labour Standard	Performance Indicators	
	2017	2018/2019
Employment contracts	<ul style="list-style-type: none"> 74% of respondents (employees) had employment contract, 25% did not 84% of respondents (employees) claimed to have written employment contracts 63% of respondents (employees) claimed they discussed terms with employer before signing contract 	<ul style="list-style-type: none"> 84% of respondents(employees) had employment contract, while 16% did not 75% of respondents (employees) claimed to have written employment contracts 56% of respondents (employees) claimed they discussed terms with employer before signing contract
Trade unions	<ul style="list-style-type: none"> Majority of employee respondents (34.1%) were of the view that trade unions are not effective or only a little effective, while 29% felt they are effective and 17.6% felt they are very active. 	<ul style="list-style-type: none"> Almost 50% of employee respondents were of the view that trade unions are not effective or not effective. 23% of respondents felt they are somewhat effective, while only 29% were of the view that they either effective or very effective.
Working hours	<ul style="list-style-type: none"> 95% of workers indicated they do not work beyond stipulated working hours limit. 67% of workers indicated they get paid for overtime work. 33% said they do not get paid. 	<ul style="list-style-type: none"> 83% of workers indicated they do not work beyond stipulated working hours limit. 57% of workers indicated they get paid when they work overtime. 43% said they do not get paid.
Leaves	<ul style="list-style-type: none"> 90% of workers claimed to be granted annual leave 60% took annual leave in the past one year, while 40% did not. 	<ul style="list-style-type: none"> 62% of workers indicated they are granted annual leave, while 30% said they did not get any and 8% of them said they were not sure 51% took annual leave in the past year, while 49% did not.
Awareness of labour laws	<ul style="list-style-type: none"> 77% of workers were not aware of labour laws providing for rights and duties of employees and employers 	<ul style="list-style-type: none"> 78% of workers were not aware of labour laws providing for rights and duties of employees and employers
Awareness of labour rights	<ul style="list-style-type: none"> About 50% of workers (respondents) claimed to know labour rights, but less than 20% could clearly mention such rights. 	<ul style="list-style-type: none"> 58% of workers (respondents) claimed to know labour rights, but only 13% could clearly mention such three rights, while 55% mentioned one or two such rights,

Source: Field data, 2019



2.16. Comparison of performance indicators on adherence of land rights standards

This subchapter provides a summary of key findings for some of the key performance indicators relating to land rights and standards. Their key findings on labour rights and standards for the survey covering the period of 2018/2019 are compared with those of the year 2017.

Table 11: Comparison of some of the key performance indicators on land rights and standards in surveys of 2017 and 2018/2019

Land Rights Standard	Performance Indicators	
	2017	2018/2019
Participation during land acquisition	<ul style="list-style-type: none"> 67% of respondents indicated that community members are involved in land acquisition for investment, while 33% said they are not involved in such a process 	<ul style="list-style-type: none"> 22% of respondents said community members are involved in the land acquisition process, 30% they are not, & 48% said they were not sure.
Compensation	<ul style="list-style-type: none"> 5% of respondents indicated compensation granted is fair and timely, 9% said it is unfair but timely, 30% said it is fair but not timely, 14% said there is no compensation and 42% said they were not sure. 	<ul style="list-style-type: none"> 18% said they get fair compensation but not timely, 9% said there is fair and timely compensation and 12% said compensation is unfair but timely. 4% claimed that compensation is not granted. 57% indicated that they were not sure whether compensation is granted and timely
Access to unutilized land.	<ul style="list-style-type: none"> 64% of community members said investor does not allow them access to unutilized land for economic activities, while 8% said they are allowed access & 28% were not sure. 	<ul style="list-style-type: none"> 57% of community members indicated that they are not allowed such access, while 31% said they were not sure and 12% said they do.

Source: Field data, 2019



CHAPTER THREE: **LAND ACQUISITION FOR INVESTMENT**



3.1. Overview of land tenure and acquisition in Tanzania

3.1.1. Introduction

The National Land Policy of 1995 was one of the initiatives to uphold ownership of property – a right that is constitutionally guaranteed on right to own property.²⁹⁰ To ensure effective implementation of this policy, two land laws were enacted in 1999, namely the Land Act No. 4 and Village Land Act No. 5. These laws recognize the President of the United Republic of Tanzania as a trustee of land on behalf of all Tanzanians.²⁹¹ They provide for three main categories of lands in Tanzania which are; the general land, village land and reserve land.²⁹² Other key pieces of legislation governing land in Tanzania include Land Acquisition Act, 1967 (Act No. 47), the Land Use Planning Act (Act No. 6) of 2007, the urban Planning Act (Act No. 8) of 2007 and the Land Registration Act (Cap 334). There are also various land regulations, including Village Land Regulations of 2001 and the Land Regulations of 2001.

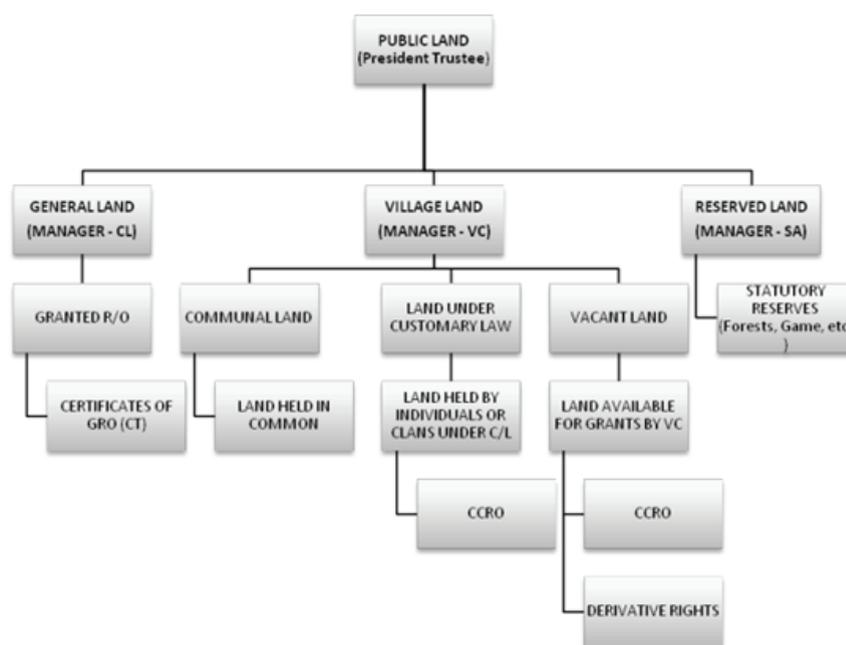


Figure 22: Land Tenure Chart²⁹³

290 See Article 24 of the Constitution of the United Republic of Tanzania, 1977

291 See Section 4 of the Land Act No. 4 of 1999 and Section 3(1) of the Village Land Act No. 5 of 1999.

292 Section 4(4) of Land Act No. 4 of 1999.

293 Dr. Tenga, R. Et Al. (2015) Land Governance Assessment Framework, World Bank Tanzania



Two types of land ownership exist under land laws of Tanzania, namely customary (deemed) right of occupancy and statutory or granted right of occupancy. Under customary right of occupancy, village land is allocated to an individual or group of individuals, with or without limitations, while under granted right of occupancy land is allocated through a periodic title deed of 33, 66, or 99 years depending on type of land use.²⁹⁴ Under the Land (Amendment) Act, 2004, citizens are now allowed to partially transfer interests in land jointly owned for investment activities. Foreign investors, however, can acquire land for the purposes of investment only, in line with the Tanzania Investment Act.²⁹⁵ Non-citizens are also not eligible for customary right of occupancy.²⁹⁶ In some cases, land acquisition must be preceded by transfer of village land to general land and such procedures are stipulated under the Village Land Act of 1999. However, in practice there is a degree of flexibility, which allows slight deviation from the procedure provided for under the Village Land Act. The table below highlights the differences between the procedure provided in the law and procedure in practice.

293 Dr. Tenga, R. Et Al. (2015) Land Governance Assessment Framework, World Bank Tanzania.

294 Tanzania Land Policy Action Node: Policies that work 4 lands; Policy Brief No.4, England, 2014. Available at <https://agriknowledge.org/downloads/4t64gn20s>.

295 Section 20(1) of the Land Act of 1999.

296 See Section 18(1) of Village Land Act of 1999.



Table 12: Procedures for transfer of village land to general land in Tanzania

	Procedure in the Village Land Act	Procedure in Practice
1	A requirement for publication of the notice to the village council by the minister. It has to be sent to the relevant village on the specification of the boundaries of the area to be acquired, reason for the transfer and the date upon which the exercise has to be conducted.	Investor identifies suitable area. The investor, with the help of local brokers or TIC officials or politicians, approaches the district council of the area where suitable land may be found.
2	Notice should also be given to individuals and the rights holders in case an acquired land is allocated to or being used by the villagers; such affected person shall be informed by the village council on the contents of the provided notice.	District Council identifies land. The district council then identifies a suitable location within its jurisdiction and approaches the village council to secure approval of the request for land.
3	Representation by affected rights holders. The affected individual or group rights holders may make representations to the Commissioner and the village council regarding the proposed transfer, which shall be considered in the final decision.	Village Council decides. The village council and the village land council (a land dispute settlement body established under the VLA*) considers the request and decides, usually approving the request.
4	The village council shall convene a meeting to consider the transfer. The reasons for transfer of such land shall be explained by the commissioner or an authorized officer who will attend the meeting so as to explain the reasons for the transfer and answer questions. The investor (s), if identified, shall attend the meeting upon request by the village council or assembly to answer questions.	Village Assembly decides. The village council then convenes the village assembly to decide on the request, usually approving it as well. The minutes of the meeting serve as evidence of approval of the use of village land for investment.
5	Village Assembly decision/recommendation. If the area to be transferred is less than 250 hectares, the village assembly shall decide whether to approve or refuse the proposed transfer. If the area is greater than 250 hectares, the village assembly shall recommend to the Minister who shall make the final decision.	Submission to TIC. The minutes of the village assembly meeting are submitted to either the TIC or the Commissioner in order to facilitate the transfer of village land to general land, subject to compensation.



3.2. Compulsory acquisition of land and compensation

3.2.1. Introduction

As highlighted above, the President is the trustee of land on behalf of the citizens.²⁹⁷ The powers to acquire and denounce cessation of land ownership is also vested upon him through the commissioner for lands. However, every citizen is constitutionally guaranteed the right to own land²⁹⁸ although such acquired land can be deprived upon public interest subject to prompt and fair compensation.²⁹⁹ The President of the United Republic of Tanzania is empowered by the law to exercise compulsory land acquisition in the name of public interest.³⁰⁰ Public interest refers to all purposes where the general interest of the community, as opposed to a particular interest of an individual, is generally and indispensably are concerned.³⁰¹

In all matters concerning compulsory land acquisition fair and prompt compensation must be provided and should consider the market value of the land intended to be taken.³⁰² The Land Acquisition Act governs all matters related to land acquisition in the country, whether be for public interest or investment purposes. Both the Land Act, the Village Land Act and the Land Acquisition Act emphasize on the fair and prompt compensation. They specifically provide that whenever anyone's right of occupancy or recognized long standing occupation or customary is deprived, revoked or interfered with to their detriment, a prompt and fair compensation has to be paid to compensate the incurred loss.³⁰³ Moreover, land acquisition should not be arbitrarily conducted. A number of procedures have to be complied with and the notice of intention to acquire the land must be provided by the persons interested or claiming to be interested in such land, or to the persons entitled to sell or convey the same, or to such of them as shall, after reasonable inquiry, be known to him.³⁰⁴

3.2.2. Compensation or adequate compensation following acquisition of land for investment

During the survey, community members engaged as respondents were

297 Section 4 of the Land Act No. 4, Cap 113 of 1999

298 Article 24 of the Constitution of the United Republic of Tanzania, Cap 2 of 1977

299 Section 3 (1)(g) of the Land Act No. 4 of 1999

300 Ibid, Section 3.

301 Ibid, Section 4.

302 Section 3(1)(g) of the Land Act, Section 3(1)(h) of the Village Land Act and Section 14 (a-c) of the Land Acquisition Act No.47 of 1967

303 Section 3(1)(g) of the Land Act No. 4 of 1999

304 Ibid, Sections 6, 7 & 8.



asked whether they get fair compensation in case of land acquisition and whether there are no delays in granting compensation. Majority of them (57%) indicated that they were not sure whether compensation is granted and timely, while 18% said they get fair compensation but not timely and 12% said compensation is unfair but timely. 4% claimed that compensation is not granted, as indicated in the figure below.

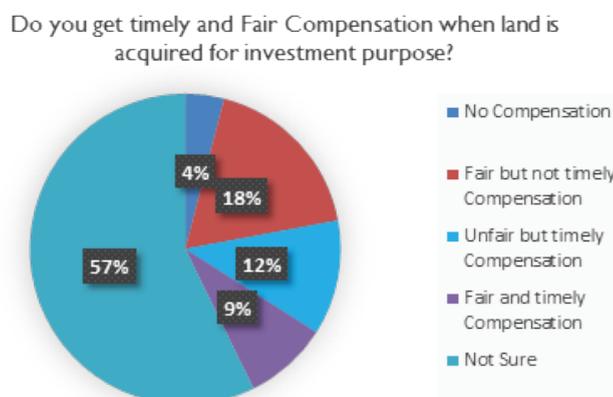


Figure 23: %Responses on timely and fair compensation following land acquisition (N=594)
Source: Field data, 2019

3.2.3. Participation of community members in land acquisition for investment

Land acquisition for the investment and other purposes requires engagement of the local community members in the whole process of acquisition. The village council is mandated to summon the village assembly as one way of engaging community members. For a very long time, it was found that in certain scenarios villagers are neither provided with fully sufficient information regarding investment projects and its potential impacts; nor granted powers to influence the terms of the negotiation and the outcome when scope of the project had already been decided during the village meeting.³⁰⁵

³⁰⁵ Celine S, An Assessment of Community Participation in Land Acquisitions in Mozambique and Tanzania, USAID.



Are community members engaged usually before land acquisition?

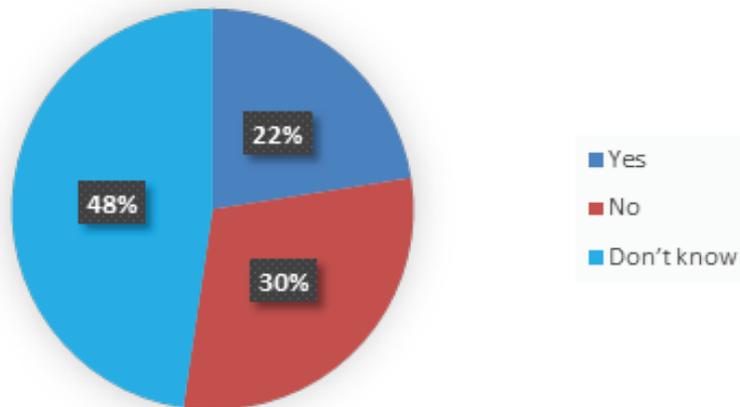


Figure 24: % Responses on citizen participation during land acquisition for investment (N=601)
Source: Field data, 2019

During the survey, community members were asked about their engagement during land acquisition for investment. As indicated in the figure above, only 22% said community members engaged by the investor, while 30% said this is usually not the case – claiming that the investor usually engages the government and local leaders. The survey further showed that almost 50% of the respondents did not know or were not sure about citizen participation during land acquisition for investment process. Most of the interviewed community members indicated to lack or not get accurate information regarding the investment in terms of both negative and positive potential impacts. It is LHRC's view that, Free Prior and Informed Consent (FPIC) is very important before and during investment, as it ensures community members awareness of both positive and negative impacts, including potential threats. FPIC will also help to prevent land-related disputes or conflicts between an investor and the local community.



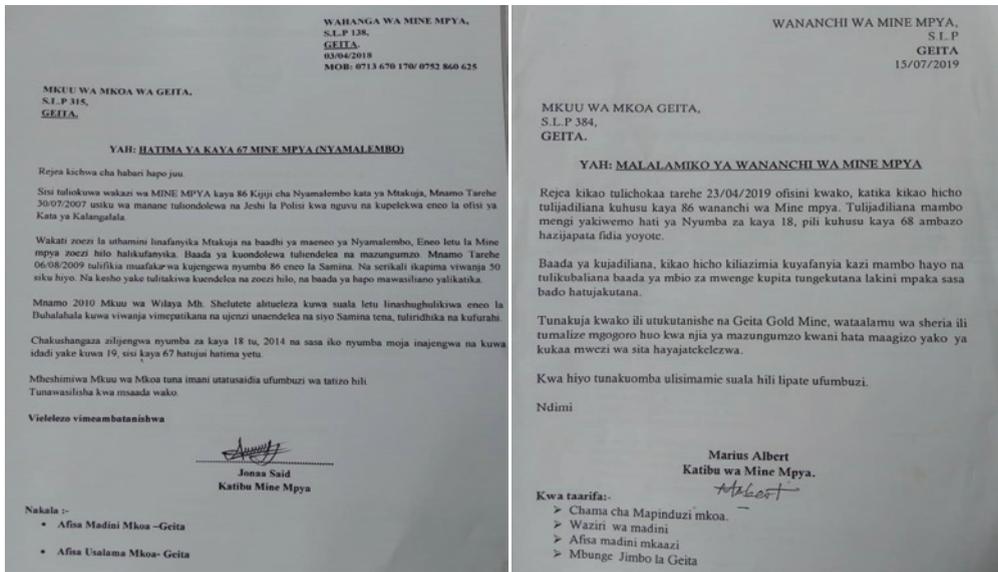
3.2.4. Disputes and Complaints about unfair/inadequate and untimely compensation

The survey found that complaints about unfair compensation were especially made around mining areas. For instance, such complaints were made by some of the villagers in Geita against Geita Gold Mine. The survey conducted in the region included interviews with former villagers of Mine Mpya, who had been relocated to Buharara area as part of their compensation, by Geita Gold Mine.³⁰⁶

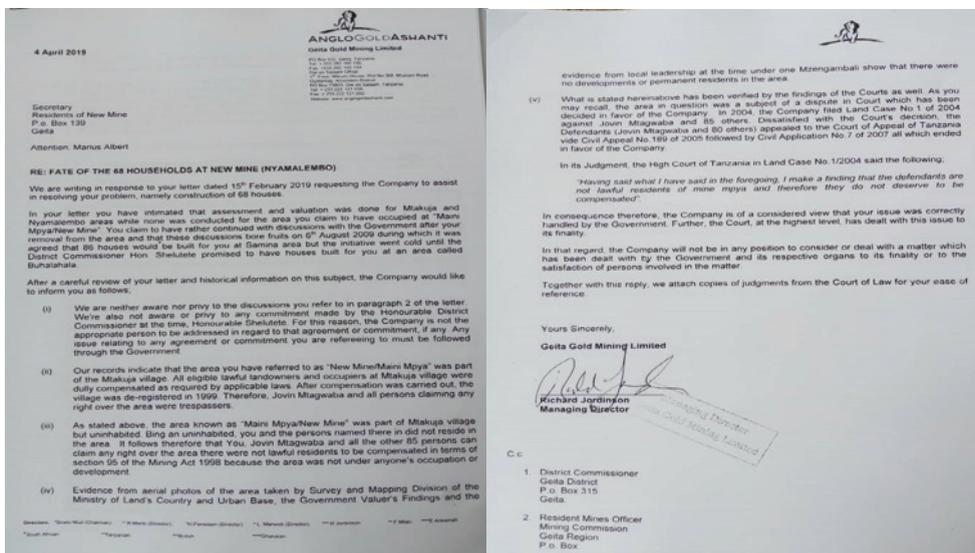
There used to be 86 households in Mine Mpya area within the Mtakuja Village, later the village was declared one of GGM's mining sites. Land compensation assessments were made in 1997, but not Mine Mpya; 2001 GGM wanted them to vacate the area, the community refused to do so due to lack of compensation assessment by GGM. GGM later conducted the assessment in 2003 and 86 households were recorded. In 2004, GGM filed a case against the village in court; in 2007, while the case was ongoing, they were forcefully evicted, their houses and livestock were burned down. As a result they formed a committee and agreed with the government that houses would be built for the 86 households at Samina area. The District Commissioner later informed the village that the area belonged to GGM and they were given another option of Buharahara area. In 2014, only 18 houses had been built and were given to 18 selected households, the rest of the households did not get any house. The villagers had written several letters to the district and regional authorities to seek their intervention on the matter without any success. The survey team was able to obtain copies of the letters written to Geita District Commissioner and Regional Commissioner between 2014 and 2019. The team was also able to obtain a letter from GGM to the villagers, responding to a letter they had written to them regarding claims of compensation following land acquisition. In this latter (see below), GGM indicates that only 18 households had been recognized as lawful residents of Mine Mpya and were compensated; this matter has been addressed by the courts of law and decided in GGM's favour.

³⁰⁶ LHRC Human Rights and Business Survey 2019, Geita Field Report.





Picture 32: Some of the letters written by former residents of Mine Mpya to district and regional authorities between 2014 and 2019



Picture 33: GGM's response to the former residents of Mine Mpya claiming compensation from them following land acquisition



The villagers from the 18 households expressed that they were happy with the condition of the houses but lamented lack of fair compensation, noting that before Mine Mpya they had houses, livestock, cattle and farms. But since they were relocated to the new houses, they have not been provided with any areas to farm or at least some capital to start a business in order to sustain themselves and their families. They complained about lack of easy access to basic social services such as clean water and have not yet been provided with title deeds for the land

In March 2019, reports of complaints of insufficient compensation by North Mara Gold Mine – located in Mara - emerged from four villages around the mine, namely Nyakunguru, Nyabichune, Mjini Kati and Nyangoto.³⁰⁷ Villagers expressed their dissatisfaction with the valuation for compensation and refused to take the amount offered for compensation. They also complained about toxic chemicals leaked into water sources in River Tigite. Following these complaints, the minister responsible for minerals, Hon. Dotto Biteko, ordered the mine to fairly compensate the villagers within seven days and address environmental pollution concerns caused by its sewerage system.³⁰⁸

In Mara, the survey also found a dispute between a 60-year-old villager, Juma Matiko Mahuchani, and Acacia's North Mara Gold Mine. The villager, resident of Nyachibune Village in Tarime District, claimed that he used to reside in Nyatongo Village before he was relocated to Nyachibune Village following a compensation agreement of January 2012 with North Mara Gold Mine. He noted that the agreement was compensation package of Tshs. 122,632,232, but when the payment was issued it was Tshs. 114,786,240, which is Tshs. 7,845,992 less than what was agreed in the contract dated 29th January 2012.³⁰⁹ He added that he was never provided with a copy of the signed contract; and when he follow-up on the remaining balance he was told by a representative of the mine 'to be thankful for what he received.'³¹⁰ The villager also wrote a letter to a committee formed by former Minister responsible for energy and

307 See Samson Chacha "BITEKO ACHACHAMAA, AIPA ACACIA NORTH MARA SIKU 7" HABARILEO Newspaper (online), 7 March 2019 at <https://habarileo.co.tz/habari/2019-03-075c80bb68845c2.aspx>, accessed 20th September 2019.

308 Ibid.

309 LHRC Human Rights and Business Survey 2019, Mara Field Report.

310 Ibid.



Fomu ya Kutolea Lalamiko/Complaint Notification Form	
Jina la Mitalimikaji/Name of Complainant	JUMA MATIKO MAHUCHANI
Jinsia/Gender	MWANAMKE
Umri/Age	MIKA 55
Anwani/Mtaa/Namba ya Nyumba/ Contact Address/Street/House #	0764-153289/0686629584
Namba ya Simu/Phone Number	0764-153289/0686629584
Jina la Kijiji/Kitongoji/ Community/Village/Hamlet Name	KWIMANGE NYANGOTO
Namba ya Rejea ya Lalamiko/ Complaint Ref. No.	S/N 234/868A/102287 YA 29 JAN 2012
Tarehe ya lalamiko / Date Received	14/03/2014
Kichwa cha lalamiko (Rea utupu)/ Complaint short title	MAPUNGUFU YA FIDA
Maelezo kuhusu Lalamiko/ Details of Complaint	MALIPO YA PANGO NYUMBA NA 2 NA NA 4 HAKUNA HESABU YA AWALI IKHARUKI TSH. 174,637,394 ILIYO LIPWA NI TSH. 114,786,210 ZILIZO PUNGUWA NI TSH. 7,845,992/- MABORESHO YA ARDHI NI HAFU KIBWA KOLINGAMBA KIKODIWA WA ENDO LA BETA NA MIZI WA KUDIBUWA
Limepokelewa na/Received by	
Namba Rejea ya Lalamiko/ Reference No.	
Limepokelewa Kupitia/ Received Via	DRESI YA VED NYANGOTO
Eneo Lalamiko lilipokelewa/ Location Received	
Bahiri ya Mitalimikaji/ Complainant's Signature	JUMA MATIKO MAHUCHANI

[Mine Site] Fomu ya Kukiri Kupokea Lalamiko Complaint Acknowledgement Form	
Fomu hii ni ya kukiri kupokea lalamiko lakio. ASB inasitika kusamba (akajitokea) hali ya uchunguzi wa lalamiko lakio ndani ya siku thelathini (30) sanga lalamiko lakio lilipokelewa / This slipform is to acknowledge receipt of your complaint or grievance. Barrock commits to reporting back to you about the status of the grievance investigation within thirty (30) days of the date the complaint or grievance was registered	
Jina la Mitalimikaji/Complainant Name:	JUMA MATIKO MAHUCHANI
Anwani/namba ya nyumba/Address/House #:	SL-P 68
Mji/Kijiji/Kitongoji/Town/Village/Hamlet:	NYANGOTO
Namba ya simu/Phone Number:	0764-153289/0686629584
Namba Rejea ya Lalamiko/Complaint Reference No:	S/N 234/868A/102287 YA 29 JAN 2012
Eneo lalamiko lilipokelewa/Location Complaint Received:	INDABA -19 MAHUSIANO
Jina la mtumishi wa idara ya Mahusiano ya jamii aliyepokea lalamiko (CR Staff Complaint Receiving Name):	MONESTA RYOBA
Sahihi/Signature:	Monesta Ryooba
Tarehe/Date:	18/3/2014
Tarehe ya awali ya kusajili lalamiko (endapo lalamiko hilo lilisajiliwa kwamba kupita ofisi ya Kijiji) Date of original registration or grievance (in case the grievance was initially registered at Village Office)	

Picture 34: Complaints form filled in by Mr. Juma Matiko Mahuchani and submitted to North Mara Goldm Mine

Juma Matiko Mahuchani
Kitongoji cha Kwimange,
Kijiji cha Nyabichune,
01/03/2016
No. 0764153289.

Kamati ya Waziri wa Neshati na Madini

YAH: (1) MALALAMKO YA MAPUNGUFU YA MALIPO YA FIDIA MWARA 1999
(2) MAPUNGUFU YA FIDIA YA 29 JANUARI 2012 S/N. 234/868A/102287

Rejea kichwa cha habari Na. 1 mapungufu ni kama ifuatavyo:-

1. Sikujengewa Nyumba sawa na walengwa wengine
2. Sikulipwa fidia ya pango.
3. Sikulipwa fidia ya usafi wa mali zangu
4. Sikulipwa fidia ya faida ya Ardhi
5. Fidia ndogo ya mali zangu
6. Sikulipwa usumbufu (Disturbance Allowance)

Rejea kichwa cha barua Na. 2

1. Malipo ya pango Nyumba Na. 2 na Na. 4. Hakuna	Tsh.	122,632,232/-
2. Jumla ya hesabu ya mali zangu zote ilisomeka lakini hundi iliandikwa malipo ya jumla ya	Tsh.	114,786,210/-
	Pungufu	7,845,992/-

3. Maboresho ya Ardhi hafu

Malalamiko haya ni ya tangu tarehe 15/08/2013 na 14/03/2014

Hadi leo hii kila nikiulizia Napata majibu haya:-

- Tunayeshughulikia, utajibiwa, endelea kusubili n.k. bado hadi leo hii hakuna jibu lolote.

Kumbukumbu na nakala za malalamiko ya madai hayo zimeambatanishwa na Barua hii

Wenu Mtifu.
Juma M. Mahuchani
Juma M. Mahuchani

Picture 35: A complaints letter written by Mr. Juma Matiko Mahuchani to a committee formed by former minister responsible for energy and minerals



minerals, Hon. Sospether Muhongo, but did not get the assistance needed.³¹¹

In Shinyanga, the survey found a dispute between community members in Mahiga area in Mwakitolyo Village and a Chinese investor, HENAN AFRO ESHA. The villagers claimed the dispute exists since 2016 due to unfair compensation following land acquisition by the investor.³¹² The villagers lamented lack of effective participation in land valuation and compensation assessment processes. Majority of them said they were not satisfied with the compensation amount of Tshs. One million per acre, and questioned the criteria used to arrive at that amount. Others complained about lack of compensation after part of their land was taken to facilitate road expansion. They also noted that the whole acquired area has been fenced, and some of the villagers still reside within the area (for those who refused to relocate) as they are not satisfied with the valuation and compensation processes. Moreover, some of the villagers stated that they can no longer engage in agriculture since their farming areas are now within the fence following the acquisition, after they were forcefully



Picture 36: Fenced Mahiga area in Mwakitolyo village following acquisition by a Chinese investor (left) and houses observed within the fence (left)

³¹¹ Ibid

³¹² LHRC Human Rights and Business Survey 2019, Shinyanga Field Report.



and unfairly evicted by the police. Some of them also claimed they had not received any compensation at all. Another concern raised by the villagers is that the owner of the area in Nyang'ombe Village where they have been relocated, has not yet been paid, hence uneasiness and worry whether they can establish permanent settlements in the area.³¹³

There are human rights violations following unfair land acquisition and compensation, including right to property, right to benefit from natural resources and right to adequate standard of living. These rights are discussed in detail under sub-chapter 5.5. (Corporate respect on human rights).

3.3. Access to unutilized land reserved for investment

The human rights and business survey found several complaints of investors not providing access to communities to utilize part of land that is unutilized. The survey was able to observe such areas in most of the regions reached, where community members claimed they could have been used for production. When asked whether investors allow locals access and use for economic activities the unutilized part of their land, 57% of community members who participated in the questionnaire survey indicated that they are not allowed, while 31% said they were not sure and only 12% said they do.

Company officials were also asked whether they allow community members to access and use unutilized land. 83% which is the majority



Picture 37: Part of TMC land being utilized by community members for agricultural activities

³¹³ Ibid.



indicated that they do not have such an arrangement, this confirms the claims by the majority of community members, while 17% said they do provide such access to community members residing around their areas of operations. However, it was found that in some regions, such as Dodoma, investment companies allow community members to utilize part of the unused land for activities such as grazing and farming.³¹⁴

3.4. Effectiveness of village and ward land tribunals in resolving land disputes

3.4.1. Background

The Land Act of 1999 establishes five courts, vested with hearing and determining all land disputes. These courts are from the village to the national levels, namely: the Village Land Council; the Ward Tribunal; the District Land and Housing Tribunal; the Land Division of the High Court; and the Court of Appeal. Operational mandates of these courts are provided under the Courts (Land Dispute Settlement)Act, No.2 of 2002.

The Village Land Council consists of seven members, three of whom are women – all nominated by the Village Council and approved by the Village Assembly.³¹⁵ It receives land-related complaints, convenes meetings for hearings and mediates between and assists parties to arrive at a mutually acceptable settlement of their dispute.³¹⁶

The Ward Tribunal has jurisdiction and powers in relation to the area of a District Council in which it is established.³¹⁷ Each Tribunal must consist of not less than four nor more than eight members of whom three shall be women who shall be elected by a Ward Committee.³¹⁸ Its primary function is to secure peace and harmony, in the area for which it is established, by mediating between and assisting parties to arrive at a mutually acceptable solution on any matter concerning land within its jurisdiction.³¹⁹ The composition of the Ward Tribunal when sitting for mediation shall consist of three members of whom at least one shall be a woman.³²⁰ It has powers to: order the recovery of possession of land; order

314 LHRC Human Rights and Business Survey 2019, Dodoma Field Report

315 Section 5(1) of Courts (Land Dispute Settlements) Act, No.2 of 2002.

316 Ibid, Section 7.

317 Ibid, Section 10(1).

318 Ibid, Section 11.

319 Ibid, Section 13(1).

320 Ibid, Section 14(1).



the specific performance of any contract; make orders in the nature of an injunction both mandatory and prohibitive; award any amount claimed; award compensation; order the payment of any costs and expenses incurred by a successful party or his witnesses; or make any other order, which the justice of the case may require.³²¹

The District Land and Housing Tribunal is vested with territorial jurisdiction which enables it to operate in a District, Zone or Region within which it is established.³²² It is composed of one Chairman and not less than two assessors, whose opinion the Chairman must take into account in reaching decisions³²³. Proceedings of the tribunal must be held in public, and a party to the proceedings may appear in person or by an advocate, or any relative or member of household, or authorized officer of a body corporate.³²⁴ The District Land and Housing Tribunal has original jurisdiction on all land matters³²⁵ and has mandate to hear appeal against any decision of the Ward Tribunal.³²⁶

The High Court has original jurisdiction in proceedings for the recovery of possession of immovable property in which the value of the property exceeds fifty million shillings; or proceedings where the subject matter capable of being estimated at a money value in which the value of the subject matter exceeds forty million shillings.³²⁷ It also has mandate to entertain proceedings under the investment and land laws, where the Government is involved.³²⁸ The High Court also determines appeals from the District Land and Housing Tribunal; and has revisionary powers.

The Court of Appeal entertains all matters of appeal relating to land disputes from the High Court.³²⁹ It is the supreme Court in Tanzania, and thus has powers to affirm or overturn decisions of the lower courts.

321 Ibid, Section 16(1).

322 Ibid, Section 22(2).

323 Ibid, Section 23.

324 Ibid, Section 30.

325 See Section 33 of the Courts (Land Dispute Settlements) Act, No.2 of 2002.

326 Ibid, Section 34(1).

327 See Section 37 of the Courts (Land Dispute Settlements) Act, No.2 of 2002.

328 Ibid.

329 Ibid, Section 38(1).

330 LHRC Human Rights and Business Survey 2019, Mtwara Field Report.



3.4.2. Survey Findings

During the survey, it was stated that the land tribunals experience a number of challenges. For instance, in Mtwara, interviews with legal and land officers at Mtwara District Council revealed that land tribunals in the region lack adequate legal knowledge – which makes it difficult for them to understand and apply the law; corruption; and biasness.³³⁰ They noted that these factors contribute to unfair decisions making the people loss faith in the tribunals..

In Geita Region, local community leaders engaged during the survey raised similar concerns to those made in Mtwara regarding effectiveness of land tribunals. They accused the tribunals for being ‘unreliable and biased.’³³¹ When interviewed about effectiveness of land tribunals (ward level) in addressing land disputes, Geita DC lawyer indicated that they are effective but face several challenges, including lack of office and equipment; lack of regular seminars for tribunal members; poor legal background; corruption; and political interference.³³²

In December 2019, the Minister responsible for land, Hon. William Lukuvi, also raised concern on land tribunals (village and ward tribunals) and how they operate in different parts of Tanzania Mainland.³³³ He noted that most of tribunal members do not have a legal background and make decisions which are not clearly understood or not in line with the law.³³⁴ He added that this is contributed by lack of capacity building trainings for members of the tribunal and lawyers at district/municipal/city councils not paying close attention to proceedings of the tribunals.³³⁵

330 LHRC Human Rights and Business Survey 2019, Mtwara Field Report.

331 LHRC Human Rights and Business Survey 2019, Geita Field Report.

332 Ibid.

333 See “Lukuvi abaini madudu Mabaraza ya Ardhi” Nipashe Newspaper, 20 December 2018 at <https://www.ippmedia.com/sw/habari/lukuvi-abaini-madudu-mabaraza-ya-ardhi>, accessed 20th September 2019.

334 Ibid.

335 Ibid.



CHAPTER FOUR: **BUSINESS COMPLIANCE WITH TAX OBLIGATIONS**



4.1. Introduction: Taxation as a human rights issue

The growing impact of business activities on the enjoyment of economic, social and cultural rights,³³⁶ led to the UN Committee on Economic, Social and Cultural Rights (CESCR) to issue its General Comment No. 24 in June 2017 titled “State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities.”³³⁷ In this Comment the CESCR clearly indicates that taxation is a human rights issue and among the concerns raised by the committee are practices and policies that leave loopholes for tax avoidance and corporate tax abuses. According to CESCR, “Lowering the rates of corporate tax solely with a view to attracting investors encourages a race to the bottom that ultimately undermines the ability of all States to mobilize resources domestically to realize human rights.”³³⁸ It also reminds states of their obligations to respect, protect and fulfil human rights under the International Covenant on Economic, Social and Cultural Rights, “focusing on their duties to protect, which are the most relevant in the context of business activities.”³³⁹ CESCR further remind states that in order to combat corporate tax abuses, they should combat transfer pricing practices and deepen international tax cooperation.³⁴⁰

Although the UN Guiding Principles on Business and Human Rights (UNGPR) do not cover taxation, one of the major principles provided for is that of due diligence. UNGPR 15 states that corporate responsibility to respect human rights includes **human rights due diligence process to identify, prevent, mitigate and account for how businesses address their adverse impacts on human rights**. Tax avoidance and evasion cause adverse human rights impact by undermining the ability of the Government to meet its human rights obligations. Taxation plays a crucial part in realization of human rights,³⁴¹ especially economic, social and cultural rights. It is essential for achieving economic growth³⁴² as one of the major sources of government revenue.

336 Rights specifically mentioned in this regard in the General Comment are: Right to health, right to housing, right to food, right to water, right to social security, the right to work, the right to just and favourable conditions of work and the right to form and join trade unions.

337 See Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/24&Lang=en, accessed 19th April 2018.

338 Ibid, para 37.

339 Ibid, para 10.

340 Ibid, para 37.

341 See Sebastián López Nieto & Beretta Godoy, Taxation as a human rights issue at <https://www.ibanet.org/Article/Detail.aspx?ArticleUid=4d8668cb-473a-44ea-b8be-1327d6d9d977>, accessed 19th April 2018.

342 See Actionaid, Tax responsibility: The business case for making tax a corporate responsibility issue at



Tanzania has in place legal and institutional taxation frameworks, which have been reformed over the years to improve taxation system and revenue collection. There are various tax laws, including the Income Tax Act,³⁴³ the Value Added Tax Act,³⁴⁴ the Stamp Duty Act³⁴⁵ and the Tanzania Revenue Authority Act.³⁴⁶ The Tanzania Revenue Authority Act establishes the Tanzania Revenue Authority (TRA), which is the main body tasked with administration of tax in Tanzania, revenue collection being among its key functions. In the mining sector, the Mining Act also contains tax-related provisions.

There are various types of taxes paid in Tanzania, including P.A.Y.E, withholding tax, excise duty, import duty, stamp duty, income tax for individuals, corporate tax and VAT. This chapter focuses on corporate tax and tax paid by individual businesspersons.

4.2. Payment of taxes by businesses: trends and current situation

Companies and other businesses are required to pay corporate tax/corporation tax, which the Tanzania Revenue Authority (TRA) defines as “a tax charged on the taxable incomes (profits) of entities such as limited companies and organizations including clubs, societies, associations and other incorporated bodies.”³⁷⁴ It falls under the category of direct taxes. Other direct taxes include Pay As You Earn (P.A.Y.E), individual income tax, withholding tax and gaming tax.

For the past 5 years trends in revenue collection in Tanzania Mainland indicate a general increase in direct taxes collected by TRA, save for the financial year 2014/15, whereby growth declined by 0.7%, which could be attributable to drop in corporate tax collected³⁴⁸ – which was by 20%. For the financial year 2011/18, Tshs. 5,437 billion were collected as direct taxes in Tanzania Mainland, an increase of 6.2% compared to the Tshs. 5,121 billion collected in the previous financial year.³⁴⁹

343 CAP 332, R.E 2008.

344 Act No. 5 of 2014.

345 CAP 189, R.E 2006.

346 Act No. 11 of 1995.

347 See TRA “What is Corporation Tax?” at <https://www.tra.go.tz/index.php/corporation-tax/108-what-is-a-corporation-tax>, accessed 19th April 2018.

348 National Bureau of Statistics, Tax Statistics Report 2017/18 Tanzania Mainland, June 2019, available at https://www.nbs.go.tz/nbs/takwimu/Tax/TAX_STATISTICS_REPORT_2017-18.pdf, accessed 20th September 2019.

349 Ibid.



Table 13: Direct taxes collected by tax type (Tshs. Billion), Tanzania Mainland, 2007/08-2016/2017

Year	Type of Tax							
	P.A.YE	B.Skills & Dev. Levy	Individuals	Corporate taxes	Withholding taxes	Rental	Gaming	Others
2007/08	512.2	76.5	36.3	374.6	81.1	16.9	n.a	8.2
2008/09	662.3	91.7	42.1	414.7	105.3	23.9	2.7	7.2
2009/10	743.4	110.2	48.6	418.3	137.7	29.0	3.2	7.5
2010/11	928.5	120.0	58.4	537.9	142.1	33.0	4.1	16.3
2011/12	1,129.5	138.9	65.8	779.9	279.4	57.4	3.3	17.4
2012/13	1,395.6	155.3	69.9	1,039.9	382.9	68.9	8.9	28.2
2013/14	1,626.5	168.7	87.4	1,483.9	514.6	61.4	7.2	18.5
2014/15	1,750.8	216.1	101.9	1,182.7	592.9	64.4	10.2	21.7
2015/16	2,246.8	261.7	141.8	1,379.7	704.6	83.6	19.0	27.9
2016/17	2,278.1	280.1	178.7	1,450.3	760.0	91.1	26.5	56.2
2017/18	2,344.7	282.8	213.4	1,660.2	722.4	94.5	75.4	43.3

For the past 5 years, contribution of corporate taxes to total direct taxes has generally been increasing, save for the financial year 2014/15, which saw a 20% decline in growth. For the financial year 2017/18, the contribution increased by 14.5% compared to the financial year 2016/17. However, despite the increasing trend of tax contributions, including corporate taxes, it has been widely claimed that Tanzania could earn so much more if not for tax avoidance and evasion, as well as transfer pricing and tax exemptions.



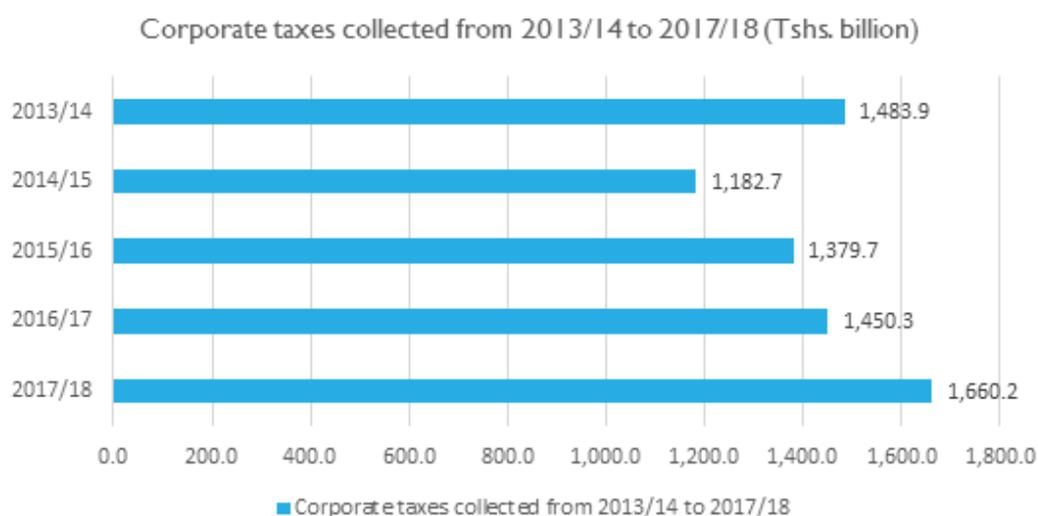


Figure 25: Amount of corporate taxes collected in Tanzania Mainland from 2013/14 to 2017/18 (Tshs. Billion)

Source: Tax Statistics Report 2017/18 Tanzania Mainland

Tax avoidance, tax evasion and tax incentives

Tax avoidance is when an individual or a company takes advantage of loopholes in the law to reduce taxable income or amount of tax paid, and is not illegal; whereas tax evasion is illegal and occurs when one lies about their income so that they pay less tax. Different methods are used to avoid tax, including non-payment of taxes through agreements with governments, subsidies, loopholes, tax havens, creative accounting practices, “transfer-pricing”, and others.³⁵⁰

According to the International Monetary Fund (IMF), developing countries incur loss of USD 100-300 billion due to tax avoidance, inefficient taxation of extractive industries and transfer pricing being major contributing factors.³⁵¹ According to the UN Practical Manual on Transfer Pricing for Development Countries, transfer pricing refers to setting of prices for

³⁵⁰ See Mauricio Lazala “Tax avoidance: the missing link in business & human rights?” at <https://www.business-humanrights.org/en/tax-avoidance-the-missing-link-in-business-human-rights>, accessed 20th September 2019.
³⁵¹ See Nuru Ngaillo, Tax avoidance and the extractive Industries, HakiRasilimali, at <https://www.hakirasilimali.or.tz/transfer-pricing-in-the-extractive-sector-in-tanzania/>



transactions between associated enterprises involving the transfer of property or services.³⁵² It is “the general term for the pricing of cross-border, intra-firm transactions between related parties.”³⁵³ A good example is when Company A sells equipment to Company B, the latter being a subsidiary company (affiliated to Company A).

In the financial year 2018/2019, tax avoidance and evasion continued to be major factors affecting revenue collection, despite improved trends in tax collection in the past five years. In October 2018, Acacia Mining Company was charged by the Prevention and Combating of Corruption Bureau (PCCB) with tax evasion, among other charges.³⁵⁴ Five months earlier, in May 2019, a Petrol dealer from Kenya, Abshir Afrah, was charged with three counts, including tax evasion of Tshs. 8.1 million, before the Kisutu Resident Magistrate’s Court in Dar es Salaam.³⁵⁵ The oil trader was said to have committed the offence between 2015 and 2018³⁵⁶.

In July 2018, President of the United Republic of Tanzania, Hon. John Pombe Magufuli, identified main methods used to avoid tax in Tanzania, including transfer pricing.³⁵⁷ He noted that subsidiary companies tend to seek loans from foreign parent companies and engage in intra-firm transactions in order to increase costs of production as a way of avoiding tax.³⁵⁸ During his meeting with businesspersons from 139 districts of Tanzania Mainland, held in June 2019, Hon. President also revealed that he had obtained a list of 17,446 companies implicated in tax evasion and gave the 30 days to pay their tax dues.³⁵⁹ Some of the companies he mentioned are One Trade Co. Ltd, Energy Milling Co. Ltd and Fresho Investment Co. Ltd.

351 See Nuru Ngaillo, Tax avoidance and the extractive Industries, HakiRasilimali, at <https://www.hakirasilimali.or.tz/transfer-pricing-in-the-extractive-sector-in-tanzania/>, accessed 12th June 2018.

352 United Nations (2013), United Nations Practical Manual on Transfer Pricing for Developing Countries, Department of Economic and Social Affairs, p. 2.

353 Ibid.

354 Cecilia Jamasmie “Tanzania anti-corruption body charges Acacia subsidiaries with tax evasion, money laundering” at <https://www.mining.com/tanzania-anti-corruption-body-arrests-acacia-mining-employees/>, accessed 20th September 2019.

355 See Hadija Jumanne & Fortune Francis “Kenyan arraigned for a-Sh8.1-billion tax evasion in Tanzania” The Citizen Newspaper, 23 May 2019 at <https://www.thecitizen.co.tz/news/Kenyan-arraigned-for-a-Sh8-1-billion-tax-evasion-in-Tanzania/1840340-5128356-154u3gs/index.html>, accessed 20th September 2019.

356 Ibid.

357 Andrew Msechu & Nora Damian “JPM AFICHUA MAKAMPUNI YANAVYOKWEPA KODI” Mtanzania Newspaper (online), 24 July 2019 at <https://mtanzania.co.tz/jpm-afichua-makampuni-yanavyokwepa-kodi/>, accessed on 20th September 2019.

358 Ibid.

359 See EATV “Rais Magufuli atoa siku 30 kwa wafanyabiashara” 7 June 2019 at <https://www.eatv.tv/news/current-affairs/rais-magufuli-atoa-siku-30-kwawafanyabiashara>, accessed 20th September 2019



Over the years, Tanzania has been known as one of the African countries that provide generous tax incentives in a bid to boost investment. The incentives include tax exemptions, which constitute a significant portion of the Gross Domestic Product (GDP), usually worth billions of Tanzanian shillings. A number of government and non-government actors have commented on and raised concern over tax exemptions. The issue of tax exemptions, especially in the mining sector, continues to take centre stage, drawing from recent CAG report – which indicates “unreasonable incentives in tax” for investment companies.³⁶⁰ Major beneficiaries of tax exemptions are multinational investors that possess certificates of incentives from the Tanzania Investment Centre (TIC).³⁶¹

4.3. Tax obligations: perceptions of companies and small business owners

During the survey, company managements were asked about affordability and fairness of taxes imposed by the Government. Over half of the respondents (53%) indicated that the taxes imposed are not fair, while 47% said taxes imposed are generally fair, as indicated in the figure below.

Do you find taxes imposed by the government affordable/fair?

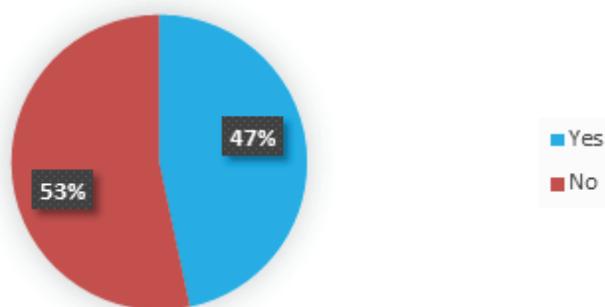


Figure 26: %Responses on perception over taxes imposed by the government (N=135)
Source: Field data, 2019

³⁶⁰ Ibid, CAG Report 2015/2016.

³⁶¹ Twaweza, Tanzania's Tax Exemptions: Are they too high and making us too dependent on foreign aid?, Policy brief TZ.12/2010E, at <https://twaweza.org/uploads/files/Tax%20Exemptions.PDF>, accessed 12th Jun 2018



In Geita, an interview with Geita TRA Regional Manager revealed that compliance level with tax obligations in the past 5 years has been high, with TRA managing to attain its targets.³⁶² In Iringa, it was revealed by a TRA officer that some businesses engage in tax evasion, some claiming to do this because of high tax rates and/or double taxation – which has contributed to closing of some businesses.³⁶³ One of the corporate management officials in the region complained about high taxes imposed on domestic products, compared with tax other East African Countries. He noted that “..Our taxes are too high... sugar tariff is up to 25%, while in countries such as Kenya it is less than 10%. This affects the local industries as imported products from Kenya have lower prices because of their lower taxes...”³⁶⁴ In Mbeya, TRA acknowledged that some businesses in the region, including companies, evade tax, while others are yet to acquire and use EFD machines.³⁶⁵ In Mtwara, most companies that were engaged during the survey indicated that they find the taxes imposed by the Government to be fair and do not have a problem with compliance.³⁶⁶ However, efforts to reach out to TRA office in the region to confirm this were not successful.³⁶⁷ Similar situation regarding compliance was observed in Mwanza, but most corporate management officials called upon the Government to reduce taxes in order to boost business operations and overall business environment.³⁶⁸

In Pwani, complaints about taxes being unfair were made at companies such as CHAWAKIM, SAN HAO Group Co. Ltd and CPL (t) Grain Processing Storage Co. Ltd.³⁶⁹ Similar complaints were made by most corporate managements in Tanga.³⁷⁰

Despite complaints about taxes being unfair in Pwani, compliance with tax obligations was generally found to be high in the region, as was the case in majority of other surveyed regions, including Songwe and Tanga.³⁷¹ This points to improved capacity of TRA in terms of revenue

362 LHRC Human Rights and Business Survey 2019, Geita Field Report.

363 LHRC Human Rights and Business Survey 2019, Iringa Field Report

364 Ibid. [“kodi kubwa sana, tariff yetu ya sukari peke yake inafika asilimia 25, wakati nchi kama Kenya ipo chini ya asilimia 10. Hii inatumiza sana viwanda vya ndani, zikija product za Kenya zinakua bei ndogo, maana kodi yao ndogo.... zetu hatuwezi kwenda kuza kwao”]

365 LHRC Human Rights and Business Survey 2019, Mbeya Field Report.

366 LHRC Human Rights and Business Survey 2019, Mtwara Field Report.

367 Ibid.

368 LHRC Human Rights and Business Survey 2019, Mwanza Field Report.

369 LHRC Human Rights and Business Survey 2019, Pwani Field Report.

370 LHRC Human Rights and Business Survey 2019, Tanga Field Report.

371 Ibid; LHRC Human Rights and Business Survey 2019, Songwe Field Report.



collection and ensuring compliance with tax obligations.

This Survey in Dar es Salaam region also involved market traders who were asked about reasons for tax evasion, and majority of them (41.7%) mentioned high tax rates and low awareness about the importance of tax collection as major reasons.³⁷² Other reasons mentioned were: traders not seeing much change following tax collection (8.3%), negative influence of others (2.8%) and lack of patriotism (2.8%). When asked to what extent they benefit from collection of taxes at their markets and within their communities at large, only 11.1% said they benefit or benefit a lot, while over 50% indicated they do not see any benefits. 19.4% said they benefit a little, while 16.7% said they somewhat benefit.³⁷³ 21.6% of market traders also mentioned increase of taxes as a major challenge they face in their businesses.³⁷⁴

4.4. Human rights violations resulting from non-compliance with tax obligations

Tanzania as a party to the International Covenant on Economic, Social and Cultural Rights of 1966, has an obligation to ensure progressive realization of social, economic and cultural rights of Tanzanians depending on availability of resources.³⁷⁵ To achieve this, the Government needs to mobilize its resources, taxation being one of the major sources of revenue. To this end, corporate practices of tax avoidance and evasion cripple the ability of the Government to ensure progressive realization of the rights under the convention, including right to health, right to adequate standard of living, right to education and right to water. As long as there is adverse human rights impact, business practices that lead to tax avoidance and evasion means failure on the part of businesses, including companies, to adhere to their responsibility to respect human rights. On the other hand, the Government has a duty to protect human rights. This duty includes protection of economic, social and cultural rights, which require mobilization of resources in order to be realized. The Government has a duty to ensure there are no loopholes in taxation laws. To also have in place laws that enable mobilization of resources, including taxes and effective enforcement.

³⁷² Field data 2019 (N=39).

³⁷³ Field data, 2019.

³⁷⁴ Ibid.

³⁷⁵ Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, 1966.



CHAPTER FIVE:
**CORPORATE SOCIAL
RESPONSIBILITY,
ENVIRONMENTAL
RESPONSIBILITY
AND CORPORATE
RESPECT FOR
HUMAN RIGHTS**



5.1. Overview of Corporate Social Responsibility and Environmental Responsibility

The concept of social responsibility started in 1970s, leading to development of several instruments over the years. These are the: Organization for Economic Cooperation and Development (OECD); Guidelines for Multinational Enterprises; United Nations Global Compact; the International Organization for Standardization (ISO) 2600; Guidance on Social Responsibility; United Nations Guiding Principles on Business and Human Rights; and the International Labour Organization³⁷⁶ (ILO) Conventions. They are known as the core set of internationally recognized principles and guidelines regarding CSR.³⁷⁷ The ILO Conventions are not binding, but carries some of the principles and guidelines which reflect human rights principles covered in the international bill of rights.

There are several benefits of CSR including; enhancement of business reputation and popularization of the business in the community. In addition, due to the positive impacts of CSR, it helps the business to operate freely; a good CSR policy also helps to retain employees and keeping them happy. Companies implementing CSR enhance their business protection as the community members feels to be part of the businesses and develop sense of ownership.

Corporate Social Responsibility (CSR) has several definitions and they are not universally accepted. According to the World Business Council for Sustainable Development, which defines CSR as the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce, their families, the local community and society at large.³⁷⁸ The main objective of social responsibility including CSR is to contribute to sustainable development, and to this end businesses/corporates are expected to take responsibility for the impacts of decisions they make and business operations on the society and the environment, through transparent and ethical behaviour.³⁷⁹ For LHRC, CSR goes beyond giving back to the community. It is about the investors ploughing back to the community and creating a sense of belonging.

³⁷⁶ Martje Theuws & Mariette van Huijstee (2013), Corporate Responsibility Instruments: A Comparison of the OECD Guidelines, ISO 26000 & the UN Global Compact, SOMO, at <https://www.somo.nl/wp-content/uploads/2013/12/Corporate-Responsibility-Instruments.pdf>, accessed on 12th June 2018.

³⁷⁷ bid

³⁷⁸ Richard Holme & Phil Watts, Corporate social responsibility: making good business sense, World Business Council for Sustainable Development, January 2000, p. 4 at <http://www.ceads.org.ar/downloads/Making%20good%20business%20sense.pdf>, accessed on 12th June 2018.

³⁷⁹ See ISO, ISO 26000 - Social responsibility at <https://www.iso.org/iso-26000-social-responsibility.html>, accessed on 12th June 2018.



Corporate Environmental Responsibility (CER) is part of CSR. It has been defined as “the duty to cover the environmental implications of the company’s operations, products and facilities; eliminate waste and emissions; maximize the efficiency and productivity of its resources; and minimize practices that might adversely affect the enjoyment of the country’s resources by future generations.”³⁸⁰ Businesses, especially companies, now have a duty to improve their environmental performance and protect the environment. CER stems from the Ten Principles of the UN Global Compact and the UN Guiding Principles on Business and Human Rights. Principle 8 of the Ten Principles of the UN Global Compact requires businesses to **“undertake initiatives to promote greater environmental responsibility.”**

One of the principles in the UN Guiding Principles on Business and Human Rights states that in order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights.³⁸¹ This includes the environment and environmental rights, which are protected under domestic, regional and international laws. Domestically, the legal framework and policy framework on protection of the environmental rights includes the Environmental Management Act 2004; the Public Health Act 2009; and the National Environmental Policy of 1997. The National Environment Management Council (NEMC) established under the Environmental Management Act, is the major body tasked with the protection and management of environment in Tanzania. The Environmental Management Act states that every person living in Tanzania has a right to clean, safe and healthy environment.³⁸² The Act also provides for the right to bring action when an act or omission causes or is likely to cause harm to human health or the environment.³⁸³ It also provide for remedies³⁸⁴ and duty of every person to protect the environment.³⁸⁵

³⁸⁰ See Mazurkiewicz, Piotr. 2004. Corporate environmental responsibility: Is a common CSR framework possible? (English). Washington, DC: World Bank.
<http://documents.worldbank.org/curated/en/577051468339093024/Corporate-environmental-responsibility-is-a-common-CSR-framework-possible>

³⁸¹ Principle 15(b) of the UN Guiding Principles on Business and Human Rights.

³⁸² Section 4(1) of the Environmental Management Act 2004.

³⁸³ Ibid, Section 5(1).

³⁸⁴ Ibid, Section 5(2).

³⁸⁵ Ibid, Section 6.



5.2. Corporate Social Responsibility in Tanzania

In Tanzania, awareness about the concept of CSR continues to grow as more companies are now practicing CSR and have in place CSR policies. CSR in Tanzania is mainly understood along the lines of philanthropy (“doing well with part of the profit”), referring to charitable support to community members.³⁸⁶ However, there are other aspects of CSR, relating to the environment, human rights, labour and anti-corruption, in line with the UN Global Compact Principles and the UN Guiding Principles on Human Rights and Business. These social, economic and environmental aspects are briefly discussed in subchapter 5.4 of this report. CSR provides businesses with a social license to operate.

Awareness of CSR and its practices has been increasing at a significant rate over the past 10 years. International businesses especially extractive industries, being the major players given their desire or need to comply

CSR include a ‘returning back’ to the community as a way of supporting the wellbeing of such community. Benefits associated with CSR include provision of social services such as education, health and water.

with international standards for sustainable management and performance.³⁸⁷ Introduction of the UN Global Compact Principles in 2000s and the UN Guiding Principles on Business and Human Rights in 2011, has also fuelled awareness about CSR, including in Tanzania. Consequently, in 2009, the Government included a CSR component in the Mineral Policy of Tanzania 2009.

5.3. Corporate Social Responsibility in 2018/2019: Field Findings

According to the International Institute for Sustainable Development,

*The Government will require companies to implement credible corporate responsibility policies.
Policy Statement 5.9(i) of the Mineral Policy of Tanzania, 2009*

³⁸⁶ See Karin Mader, Corporate Social Responsibility in Tanzania: An Overview, Dar es Salaam, June 2012 at <https://csroverviewtanzania.files.wordpress.com/2012/08/csr-overview-tanzania3.pdf>, accessed 12th June 2018.

³⁸⁷ Ibid; See also Fulgence S.E. (2016) Corporate Social Responsibility in Tanzania. In: Vertigans S., Idowu S., Schmidpeter R. (eds) Corporate Social Responsibility in Sub-Saharan Africa. CSR, Sustainability, Ethics & Governance. Springer, Cham, at <https://www.springer.com/gp/book/9783319266671>, accessed 12th June 2018.



CSR is beneficial to both companies and community.³⁸⁸ For companies, CSR activities is a win-win situation for them in them due to the following benefits:³⁸⁹

- ◆ Improved financial performance;
- ◆ Lower operating costs;
- ◆ Enhanced brand image and reputation;
- ◆ Increased sales and customer loyalty;
- ◆ Greater productivity and quality;
- ◆ More ability to attract and retain employees;
- ◆ Reduced regulatory oversight;
- ◆ Access to capital;
- ◆ Workforce diversity; and
- ◆ Product safety and decreased liability.

5.3.1. Positive CSR Trends

As part of quantitative survey, selected community members in surveyed regions were asked whether they benefit economically or social from investment companies operating in their areas. In response to this question, 50.5% of the respondents said they do, while 44.5% responded No and 5% they are not sure, as indicated in the table below:

Table 14: Responses on community members benefiting from operations of investment companies in their areas (N=632)

Response	Frequency	%
Yes	319	50.5
No	281	44.5
Don't know/Not sure	32	5

Source: Field data, 2019

When asked in which areas CSR activities were focused on, 19.8% said it is the education sector, 13.3% mentioned the health sector, 5% mentioned road infrastructure, 8.8% mentioned water sector, 3.2% said the employment sector, and 32% mentioned other sectors.³⁹⁰ During the survey CSR activities were generally found to concentrate on the sectors of education, health and water. Below are some of the positive CSR practices that were observed in some of the regions.

³⁸⁸ SPSS Field data, 2019

³⁸⁹ LHRC Human Rights and Business Survey 2019, Dodoma Field Report.

³⁹⁰ SPSS Field data, 2019



CSR activities in the education, health and water sectors

In Dodoma, the survey found that the National Microfinance Bank (NMB) had desks and chairs to Mtitia & Bahi Secondary Schools as part of its CSR initiatives.³⁹¹ The schools facilities provided to these secondary schools were reportedly worth Tanzanian shillings 10 million.



Picture 38: Bahi District Commissioner Mwanahamisi Mkunda (left), receiving desks and chairs donated by NMB Bank Plc in Dodoma
Source: *The Citizen Newspaper*, February 2019

In Geita, the survey team interviewed Geita District Planning Officer who revealed that AngloGold Ashanti Geita Gold Mine (GGM) has been doing very well in terms of giving back to the community and is the only company that contributes to the district revenue. It is contributing 0.7% of its profits.³⁹² He noted CSR activities performed by GGM include in the education sector and road infrastructure sub-sector.³⁹³ The planning officer revealed that the company had built two schools that have cost Tshs. 234 million, Lukalanga Secondary School located in Nyankumbu Ward and Bombabili Primary School located in Bombambili Ward. The company has also constructed teacher houses at both schools.³⁹⁴ The district planning officer added that the company has also contributed

³⁹¹ LLHRC Human Rights and Business Survey 2019, Geita Field Report.

³⁹² LHRC Human Rights and Business Survey 2019, Geita Field Report.

³⁹³ Ibid.

³⁹⁴ Ibid.



Tshs. 700 towards construction of classrooms at two primary schools and completion of health centres of Nyakato and Shiloleli.³⁹⁵

GGM/AngloGold Ashanti Company in Geita also contributed to the health sector. According to the District Planning Officer, the company has implemented several health projects in the district, including construction of health centres in 3 wards, namely Mtakuja, Ihanamilo na Nyakahangola, worth Tshs. 4.9 billion.³⁹⁶ In March 2019, the company also sponsored surgery health services for community to be provided at Geita Regional Hospital.³⁹⁷



Picture 39: Lukalangala Secondary School (left) and Bombambili Primary School (right) built by GGM in Geita

In Iringa, Asas Diaries Ltd and New Forest Company Limited were found to be doing well in terms of giving back to the community, especially in improving availability and accessibility of health services. For instance, the latter was said to have constructed a maternity ward in Kilolo District, while the former contributed some medicines to the Iringa Regional Hospital.³⁹⁸

In Dodoma, KOM Food Products Company Limited, located in Kongwa, built two water taps to supply water to community members around the area free of charge as part of its CSR drive.³⁹⁹

In Geita, the survey found that GGM Company had contributed Tshs. 13 billion towards construction of a gold exchange hub/market in the

³⁹⁴ Ibid.

³⁹⁵ Ibid.

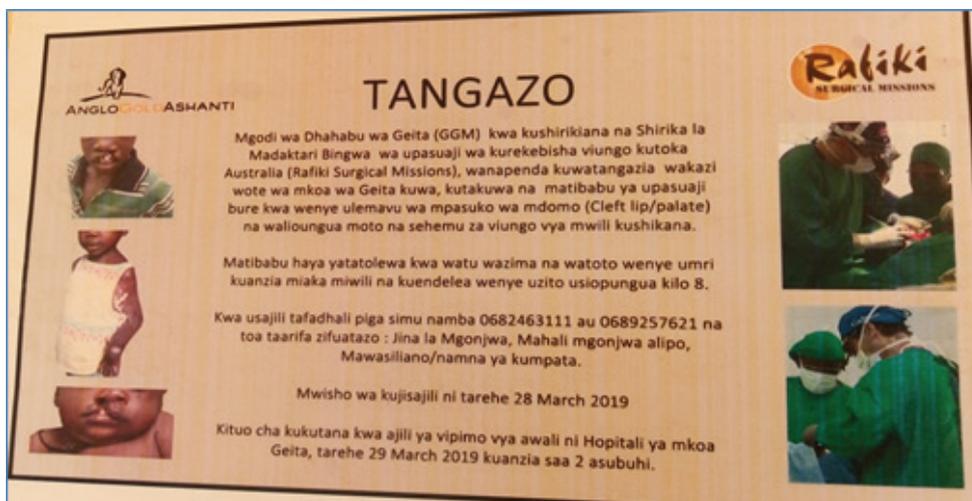
³⁹⁶ LHRC Human Rights and Business Survey 2019, Geita Field Report.

³⁹⁷ Ibid.

³⁹⁸ LHRC Human Rights and Business Survey 2019, Iringa Field Report.

³⁹⁹ LHRC Human Rights and Business Survey 2019, Dodoma Field Report.





Picture 40: A banner advertising free surgery services sponsored by GGM in Geita

region, Tshs. 170 towards construction of a round-about and Tshs. 300 towards placement of traffic lights.⁴⁰⁰

In Iringa, majority of community development officers who were interviewed expressed satisfaction with CSR contributions by companies such as ASAS Dairies Limited, Chai Bora Ltd, Mkwawa Pure Drinking Water Co. Ltd and Iringa Food and Beverages Limited.⁴⁰¹ They noted that these companies have been of great help to government by



Picture 41: A maternity ward constructed by New Forest Company Limited in Kilolo-Iringa

⁴⁰⁰ LHRC Human Rights and Business Survey 2019, Geita Field Report.

⁴⁰¹ LHRC Human Rights and Business Survey 2019, Iringa Field Report.



complementing its efforts of providing social services. For instance, Chai Bora Ltd reportedly built some water tanks, while Mkwawa Pure Drinking Water Co. Ltd contributes to some funds for community development. It was also found that ASAS Dairies Limited has constructed a blood donation centre.

In Mara, North Mara gold mine (ACACIA) continued to take lead in terms of CSR activities conducted in the region. It has reportedly invested Tshs.



Picture 42: Water taps constructed by KOM Food Products Company Limited to supply water to community members

1.3billion to upgrade and renovate a health centre to become a district hospital.⁴⁰² Most other companies in the region were observed to give little back to the community.⁴⁰³



Picture 43: Round-about built in Geita with the help of GGM

⁴⁰² LHRC Human Rights and Business Survey 2019, Iringa Field Report.

⁴⁰³ Ibid.



Moreover, on 30th September 2018, North Mara gold mine (ACACIA) donated TZS 80 million to MV Nyerere ferry tragedy victims and their families. The tragedy occurred in the waters of Lake Victoria, claiming more than 200 lives.⁴⁰⁴

In Mbeya and Songwe, the survey found that, Shanta Gold Mining has developed a close relationship with the community members around the mining area, including holding meetings with them to discuss and identifies CSR priorities like education, health and water.⁴⁰⁵ Now, its CSR policy centres on improvement of education, health and water social



Picture 44: A water built by Chai Bora Ltd (left) and a blood donation centre constructed by ASAS Diaries Limited in Iringa

services. In terms of water service, the company was found to have constructed wells in Mbangala Village and a water harvesting system at Mbangala Primary School. It has also maintained water pipes in Patamela and Maeleze Villages as well as constructed a big well for community use in Saza Vilalge.⁴⁰⁶

Apart from the above financial support, Shanta Gold Mine supports 155 children from poor families including the orphans from Siza, Patamela, Maleza and Mbangala Villages by providing them uniforms, books and other learning materials.⁴⁰⁷ They also support higher learning education expenses for the best performing students and assist with bringing teachers from abroad to come and teach there seasonally.⁴⁰⁸ LHRC commends these CSR initiatives by the mining company and encourage

404 Ibid.

405 LHRC Human Rights and Business Survey 2019, Mbeya Field Report.

406 Ibid.

407 Ibid.

408 Ibid.





Picture 45: A health centre upgraded to district hospital with the help of North Mara Gold Mine (ACACIA)

other companies to borrow a leaf from them. In the health sector, Shanta Mining Company has collaborated with the Government to construct a dispensary in Mbangala Village; it also supported construction of Maleza Hospital, built together with villagers; and it donated solar power and refrigerators at the hospital.⁴⁰⁹



Picture 46: ACACIA official handing over a cheque at Tshs. 80 million for victims of the MV Nyerere ferry tragedy and their families

409 LHRC Human Rights and Business Survey 2019, Mbeya Field Report.



Moreover, Shanta Mining Company has also made efforts to improve livelihood of people in surrounding villages after determining that most of them were living in poverty and their major economic activity was mining. It introduced agricultural training programmes at farmer field schools (popularly known as shamba darasa). The programme started with 350 villagers, but as of 2019, the number has raised to 1500. Apart from Shanta Mining Company, Other companies which were found to engage in CSR in Mbeya include Herocean ENT (T) Ltd and SBC Tanzania Ltd. The former was said to financially support the police force and orphanages, while the latter reportedly contributed Tsh. 12,000,000/= for maintenance of the bus terminal in Sisimba Ward.⁴¹⁰



Picture 47: Water project in Saza Village donated by Shanta Gold Mine

410 LHRC Human Rights and Business Survey 2019, Mbeya Field Report.



In Mtwara, several companies were found to engage in CSR in various ways, including through supporting health and education initiatives. For instance, M&P Companies (Madimba Gas Plant) supported construction of two classrooms at Msimbati Primary School in Msimbati Village; construction of two classrooms at Ruvula Primary school in Ruvula Village; expansion of Mngoji Dispensary in Mngoji Village; as well as providing financial support to Madimba Secondary School in Madimba Village.⁴¹¹ SBC Co. Ltd contributed two chairs and one table for Mdenga



Picture 48: Laboratories constructed by Shanta Gold Mine at Saza Secndary School

411 LHRC Human Rights and Business Survey 2019, Mtwara Field Report.



and Namadi Ward Executive Offices; and desks to Mkonde Primary Secondary School.



Picture 49: Some of the medical equipment donated by M&P Companies (Madimba Gas Plant

In Mbeya, several companies also implement the give back to the community through provision of employment to the residents of the areas and villages around them. However, villagers of the nearby villages alleged that, some companies like DOTTS Company and Dangote Company⁴¹² hired the majority of people from distant villages.

In Njombe, it was observed that companies and industries do CSR mainly by complementing government efforts to provide education, health social services and create employment for community members around them.⁴¹³ These companies include;⁴¹⁴ TANWAT Co. Ltd, Kibena Tea Ltd and Njombe Milk Factory - which provides free milk to the primary school pupils. TANWAT Co. Ltd was also found to provide health services at a hospital it built for its employees. Other companies such as; Apple Craft, Rosper Company, Dragon Limited acknowledged during interviews that they are yet to engage in CSR because 'they are located far from residential areas.'⁴¹⁵

412 Ibid.

413 LHRC Human Rights and Business Survey 2019, Njombe Field Report.

414 Ibid.

415 Ibid.





Picture 50: Milk provided by Njombe Milk Factory to primary school pupils in Njombe



Picture 51: A hospital built by TANWAT Company for its employees, which also provides services to community members



In Shinyanga, during interviews with some of the community members, they expressed more satisfaction with CSR activities by local investors than foreign investors. Artisanal miners in Mwakitolyo have received a huge praise by community members for its efforts of giving back to the community. In collaboration with villagers, the artisanal miners contributed in building a new village office, which will also accommodate the Ward Executive Officer's office. The new office also contains a conference room for use of internal meetings. Moreover, the survey found that the artisanal miners had also collaborated with the community members to build a hamlet office; and the office building also contains a shop.



Picture 52: A former village office in Mwakitolyo, which has now been abandoned (left), and a new village office built with the support of artisanal miners (right)



Picture 53: A hamlet office built by artisanal miners in Mwakitolyo in collaboration with other community members



Apart from the village and hamlet offices, the survey in Shinyanga found that the artisanal and small-scale miners in Mwakitolyo have also supported villagers to construct a laboratory at Mwakitolyo Dispensary. The laboratory building is still under construction, as indicated in the picture below:⁴¹⁶



Picture 54: A laboratory building under construction in Mwakitolyo, supported by artisanal and small-scale miners.

Also, Williamson Diamond Mine in Shiyanga played its part in giving back to the community by supporting the construction of Lohumbo Mwadui Village Office in Kishapu DC. The office accommodates the Village Executive Officer (VEO), Ward Executive Officer (WEO), Ward Education Officer, Extension Officer and Community Development Officer.



Picture 55: Lohumbo Mwadui Village Office constructed by Williamson Diamond Mine

⁴¹⁶ LHRC Human Rights and Business Survey 2019, Shinyanga Field Report.



The company also made its mark in Kishapu DC through its CSR activities in the education and health sectors. For instance, the survey revealed that the mine has supported the construction of residential building for health workers, which is still under construction, as indicated in the picture below. In the education sector, the mine was said to have donated 275 desks to Mwadui DDC Primary School. It is worth noting that the school was built by the mine in 1945.⁴¹⁷



Picture 56: A residential building for health workers under construction with the support of Williamson Diamond Mine



Picture 57: Desks donated by Williamson Diamond Mine to Mwadui DDC primary School

⁴¹⁷ LHRC Human Rights and Business Survey 2019, Shinyanga Field Report.



In Kahama District in Shinyanga Region, Acacia Buzwagi Gold Mine was found to play its part in CSR by supporting the health sector. The mine supported construction of the Mwendakulima Health Centre in Mwendakulima Ward, which has helped to boost access to health services in the area.⁴¹⁸



Picture 58: A health centre constructed with the support of Acacia Buzwagi Gold Mine in Kahama-Shinyanga

In April 2019, Acacia Mining Company was reported to support primary and secondary schools in different parts of the country with building materials worth Tshs. 700 million.⁴¹⁹ Additionally, the company was reported seeking to support water projects for farmers in order to improve the livelihoods of communities surrounding its mines.⁴²⁰ Farm field schools will also be made available for community members around the Buzwagi Mine.⁴²¹

In Songwe, Shanta Gold Mine, also known as Luika Gold Mine, was lauded by most respondents who were interviewed for its CSR activities in the sectors of health, water, education and employment.⁴²² Another company, MCCCCO Ltd, claimed to have given back to the society through provision of employment, supply of clean and safe water and contribution of iron steel to Tazara Primary School, Itete Primary School and Nambala Dispensary.⁴²³

418 Ibid.

419 "Acacia kusambazia shule vifaa vya mil. 700/-" HABARILEO Newspaper, 26 April 2019.

420 Ibid.

421 Ibid.

422 LHRC Human Rights and Business Survey 2019, Songwe Field Report.

423 Ibid.



5.3.2. Issues of Concern Regarding CSR Activities

As indicated above, 44.5% of the participants of quantitative survey were not satisfied with CSR activities. Interviews with some of the respondents in surveyed regions also revealed a dissatisfaction with the status and extent of giving back in the community in their respective regions. For instance, in Dodoma, a local government leader expressed disappointment with Nyanza Road Works Construction Ltd, which refused to construction of classrooms.⁴²⁴

In Geita, it was found that, discretion on the part of employers regarding their CSR activities presents a challenge in terms of addressing challenges in priority areas, as there is usually a tussle between companies and local government authorities. But it is worth mentioning that this does not apply to companies in the extractives sector, since CSR is now regulated under the Mining Act in 2010, as amended in 2017. An official in Geita remarked that “...CSR activities have their own challenges because they (companies) have their own priorities and we have our own, identified by ward councillors – who represent the citizens.”⁴²⁵ Similar remarks were made by the District Planning Officer in the region.⁴²⁶

On the other hand, some of the corporate management officials expressed their dissatisfaction towards some of the local government officials for demanding funds set aside for CSR activities for their personal benefits. For instance, one official in Iringa had this to say:

“There are some leaders who make up problems so that we contribute for them and when we refuse they create some issues with us...I personal do not like to give them cash...I prefer to buy desks or cement and take them to where they are needed, rather than giving them the money..”

⁴²⁵ Ibid.
⁴²⁶ Ibid.



Another issue of concern observed from the survey on CSR is the sustainability of CSR projects. Most companies do not put in place measures of ensuring sustainability of their CSR projects. For instance, in Kilimanjaro, China Paper Co. Ltd have constructed water taps to provide water service to the community members around the company area. However, the survey team did not find water from the water taps.



Picture 60: Water taps constructed by China Paper Co. Ltd in Kilimanjaro



A recent survey conducted by IPIS in 32 villages around mines in northwest of Tanzania also, shows several concerns regarding CSR activities. These include: complaints about the CSR contributions not being sufficient taking into consideration the size of the company and profits it is making; complaints about unequal distribution of resources, whereby some communities or villages feel their neighbours benefit more than they do or they favoured strategically; CSR being used as a leverage to demand something from communities, and in case such demand is not met then CSR contribution may be cancelled; and companies not honouring their commitments or preferring quick fixes instead of providing more permanent or sustainable solutions.⁴²⁷ Another key issue of concern raised by IPIS is the culture of dependency, which if not properly managed, may lead to constant unrealistic demands by community members and compromise expectation and accountability of local government in terms of delivery of social services.⁴²⁸ These concerns were raised by villagers with regard to CSR performed by mines located in northwest of Tanzania, namely: North Mara Gold Mine, Nyamahuma Gold Mine, Nyanza Salt Mine, Geita Gold Mine, Buzwagi Gold Mine and Williamson Diamond Mine.

⁴²⁷ See IPIS, Dissecting the social license to operate: Local community perceptions of industrial mining in northwest Tanzania, August 2019 at <http://ipisresearch.be/publication/dissecting-social-license-operate-local-community-perceptions-industrial-mining-northwest-tanzania/>, accessed 20th September 2019.

⁴²⁸ Ibid.



CSR Issue	Performance Indicators	
	2017	2018/2019
Satisfaction with CSR	32% of community members indicating they are satisfied with CSR, while 49% are not satisfied and 19% are not sure	50.5% of community members indicating they are satisfied with CSR, while 44.5% said they are not satisfied with economic and social benefits of CSR
Regulation of CSR	Law regulating CSR exists, but only covering companies in the extractives sector.	Situation still the same. No comprehensive law on CSR.
Engagement in CSR activities	<p>Majority of companies (over 50%) indicated they engage in CSR, but most of them do not give back much to the community.</p> <p>Most CSR activities directed towards education, health and water sectors.</p>	<p>Only a few companies continue to give back much to the community.</p> <p>Most CSR activities also directed towards education, health and water sectors.</p>



5.4. Environmental Responsibility

5.4.1. Environmental Impact Assessment and Social Impact Assessment

Environment impact assessment (EIA) and social impact assessment (SIA) are essential for ensuring the sustainable development of the environment. EIA is also essential for realization of the right to clean, safe and healthy environment for every person living in Tanzania.⁴²⁹ Ensuring EIA is conducted is key in curbing industrial pollution. In Tanzania, the National Environmental Management Council (NEMC) is mandated with overseeing these impact assessments and conducting environmental inspection to check compliance.

During the survey, when responding on their participation in social impact assessment before the operations of a company in their areas; 77.1% stated that they had not been engaged to participate in SIA; 20.5% indicated that they were not sure or not aware of the process; and only 2.3% said they had participated in the process. These indicate little involvement or participation of community members in SIA.

Did you participate in social impact assessment before investor began operations?

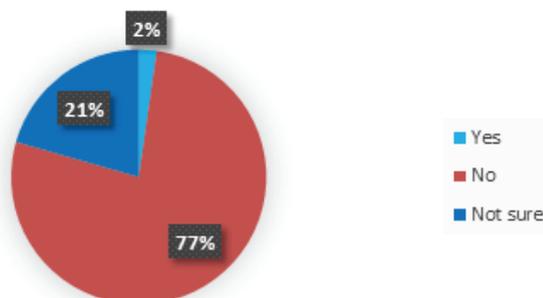


Figure 27: %Responses on participation in social impact assessment (N=619)
Source: Field data, 2019

⁴²⁹ See Section 4(l) of the Environmental Management Act 2004.



In general, the survey found that most companies either do not have in place effective environmental strategies or they do not implement them.⁴³⁰ Generally the survey indicates little participation of community members in environmental impact assessment. As Tanzania continues to make strides in industrialization, EIA and SIA should not be disregarded in favour of increasing investment.

5.4.2. Status and reported of incidents of environmental pollution caused by companies/industries

During the survey on human rights and business, corporate management officials were asked whether they have in place a policy or strategy on sustainable use of the environment, as part of their corporate environmental responsibility.

Do you have in place a policy or strategy on sustainable use of the environment?

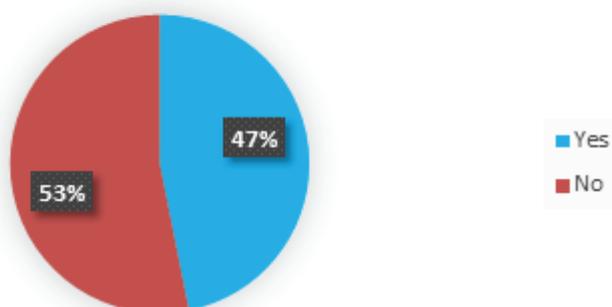


Figure 28: % Responses on existence of policy or strategy on sustainable use of the environment (N=151)
Source: Field data, 2019

430 LHRC Human Rights and Business Survey 2019, Dodoma Field Report.



During the survey, incidents of different of pollution were reported in 11 out of the 15 regions that were surveyed. These regions are: Arusha; Dar es Salaam; Dodoma; Geita; Iringa; Mara; Mwanza; Njombe; Pwani; Shinyanga; and Songwe. Most of the reported incidents were in the form of water pollution and air pollution. It should be noted, however, that these were claims or allegations made by the respondents and further research, particularly a scientific research, is needed to ascertain these claims. A recent report on environmental pollution in Tanzania by the World Bank indicates that industries in Dar es Salaam, where there is a high concentration of industries, are responsible for about 88% of all industrial pollution produced in the country.⁴³¹ According to the report, “dirtiest” sectors in Tanzania are: basic iron and steel; plastics products; basic chemicals; vegetable and animal oils and fats; and cement, lime and plaster.⁴³² In Arusha, concerns over industrial pollution were expressed by some of the community members residing near A - Z Textile Mills Ltd – in terms of water waste containing chemicals and bad smell.⁴³³

In Dodoma, residents of Kizota Mbuyuni interviewed during the survey in the region complained about air pollution caused by Nyanza Road Works Ltd operations. Majority of community members also lamented lack of grievance mechanisms to enable them to seek redress for environment pollution caused by operations of companies and industries.⁴³⁴

In Geita, the survey found noise pollution and water pollution to be among the major concerns by community members in mining areas. For instance, some of the interviewed community members in Mgusu in Geita complained about noise pollution and possible water pollution by the Mgusu Mining Plant, which is close to residential areas and water source.⁴³⁵ In Mponvu Village, which is near the Geita Gold Mine, there were complaints about air pollution in the form of sand dust and fume and smoke particles emitted during gold extraction.⁴³⁶

431 World Bank. 2019. Tanzania : Country Environmental Analysis – Environmental Trends and Threats, and Pathways to Improved Sustainability (English). Washington, D.C. : World Bank Group.
<http://documents.worldbank.org/curated/en/356211556727592882/Tanzania-Country-Environmental-Analysis-Environmental-Trends-and-Threats-and-Pathways-to-Improved-Sustainability>, accessed 20th September 2019.

432 Ibid.

433 LHRC Human Rights and Business Survey 2019, Arusha Field Report.

434 Ibid.

435 LHRC Human Rights and Business Survey 2019, Geita Field Report.

436 Ibid.





Picture 61: Mgusu Mining Plant (left) which was found to be close to a water source (right) in Geita

Regarding environmental impact assessment (EIA) in Geita, the survey found that not all investment companies comply with the EIA requirement and Geita District Council is not fully involved in the process. According an official at the Council, EIA reports are usually not shared with the district council; and when asked whether they have any such reports he said there were none. Similar views were shared by the natural resources officer in the district, who indicated that investors usually consult private consultants to conduct EIA and then NEMC verifies the assessments before granting clearance, but no reports are shared with them.⁴³⁸

In Iringa, most of the surveyed companies/industries had in place environmental strategies and polices. However, most of them struggle with implementation of such strategies and polices. Companies such as ASAS and Chai Bora Ltd were found to fare better than others in terms of implementing environmental strategies.⁴³⁹ At IFB Limited, the survey found that the company had taken measures to address and prevent water pollution by constructing a place for recycling water.⁴⁴⁰ However, the company has not fared well in terms of addressing air pollution, which has led to a dispute with a nearby primary school, Kibwabwa Primary School.

⁴³⁷ LHRC Human Rights and Business Survey 2019, Geita Field Report.

⁴³⁸ Ibid.

⁴³⁹ LHRC Human Rights and Business Survey 2019, Iringa Field Report.

⁴⁴⁰ Ibid.





Picture 62: A place for recycling water constructed by IFB Limited in Iringa

In Iringa, it was also observed that oil spills from gas stations flowing together with water leading to rivers may cause water pollution. The oil spills were observed at two gas stations in Iringa.



Picture 63: Gas stations in Iringa where oil spills were found flowing towards the river



Air Pollution Dispute: Kibwabwa Primary School vs. IFB Limited

The administration at Kibwabwa Primary School complained about air pollution caused by operations of IFB Limited. The smoke released at a production site near the school was said to affect and irritate pupils and teachers at the school as well as other community members residing around the area. According to the deputy headteacher at the school, the school was built long before the industry, even the current map shows the area to be an industrial area.

When the survey team reached out to the company, the director acknowledged that there have been complaints about the smoke, although they claimed it only occurs for less than 1 minute for about 4 times a day. However, he added that they have held many meetings with the school administration regarding the issue and has even offered to relocate the school by constructing a new one away from the industrial area. The company wrote to the Iringa Municipal Council to make a formal request for such area, but it is yet to be provided with an area to construct another school. The survey team saw and obtain a copy of the letter.

It has been two years since such request was made and when asked about the matter, the land planning officer at Iringa Municipal Council indicated that he had not received any instructions regarding the matter and if he does then he will definitely allocate another area to facilitate the relocation. He warned, however, that pupils would be forced to walk slightly longer distance to reach school.





Picture 64: Smoke coming out of IFB industry (right) heading towards Kibwabwa Primary School (right) in Iringa

In Mara, major forms of industrial pollution were found to be air pollution and water pollution. Most complaints relating to environmental pollution caused by companies were leveled against Acacia's North Mara Gold Mine – particularly with regard to water pollution. Such complaints have been well documented by LHRC in its previous reports on human rights and business as well as fact-finding missions. In May 2019, the mining company as reportedly fined Tshs. 5.6 billion for leaving toxic chemical components into residential areas and water sources, hence putting people's health and lives at risk.⁴⁴¹ This action, according to the regional director of NEMC in Mara, Dr. Samuel Gwamaka, followed an investigation conducted jointly by NEMC and the University of Dar es Salaam.⁴⁴² The mining company was also given 3 weeks to correct weaknesses identified in its sewerage infrastructure.⁴⁴³ Previously, in January 2019, the North Mara Gold Mine had been fined Tshs. 300,000,000 over allegations of breaching environmental regulations⁴⁴⁴. On its website, Acacia posted a statement on the matter confirming the fine and indicating that it had not received any supporting reports findings or testing data was

⁴⁴¹ See Peter Saramba "Acacia fined Sh5.6bn for leaking toxic water" The Citizen Newspaper, 17 May 2019, at <https://www.thecitizen.co.tz/news/Acacia-fined-Sh5-6bn-for-leaking-toxic-water/1840340-5119270-siuuu4z/index.html>, accessed 20th September 2019.

⁴⁴² Ibid.

⁴⁴³ Ibid.

⁴⁴⁴ See "ACACIA FINED 300M/- FOR ENVIRONMENTAL BREACHES" DAILY NEWS Newspaper, 11 January 2019, at <https://dailynews.co.tz/news/2019-01-115c383600a913b.aspx>, accessed 20th September 2019



assessing the technical basis of such allegations of non-compliance.⁴⁴⁵ It added that the media had reported that the Government had issued a directive to the Mine to construct new Tailings Storage Facility, but no written notice had been received. Moreover, the company also commented of allegations of discharging hazardous substance at the mine, claiming not to be aware of such discharge and indicating that the allegations relate to longstanding seepage issues at the tailings facility, which is well known to NEMC and the Government.

Open-pit mining, also known as open cast or strip mining, is a type of mining conducted at the surface of the mining site, as opposed to underground mining. Worldwide, about 40% of mining is said to be conducted on the surface and this type of mining has been found to be a relatively safer and more efficient method.⁴⁴⁶ However, it comes with a huge impact on the environment, usually leading to destruction of biologic life at the surface and big abandoned mining pits which could pose risk to safety.⁴⁴⁷ Other effects of this type of mining include land degradation, dust, water pollution and noise pollution. In Mara, large mining pits were observed at North Mara Gold Mine, caused by open-pit mining operations.

⁴⁴⁵ See ACACIA "Statement on North Mara" 10 Jan 2019, at <https://www.acaciaminging.com/media/press-releases/2019/2019-01-10.aspx>, accessed 20th September 2019

⁴⁴⁶ See Max Roman Dilthey "Open Pit Mining Pros & Cons" at <https://sciencing.com/open-pit-mining-pros-cons-12083240.html>, accessed 20th September 2019.

⁴⁴⁷ Ibid.





Picture 66: Large pits observed at a site of Acacia's North Mara Gold Mine

In Mwanza, companies such as Serengeti Breweries, Price Pharmaceuticals, Nyanza Bottling, Vitanda Manufacturing, Falcon Packaging and Nyanza Bottling Company were found to be more environmentally responsible compared to other companies/industries such as Nyakato Steel Mills and Mwatex and U-Fresh.⁴⁴⁸ Air pollution was observed as a major concern with regard to Nyakato Steel Mills, while local government complained about poor waste management on the part of Mwatex.⁴⁴⁹ At U-Fresh Food Ltd, the survey team observed use of firewood as source of energy,⁴⁵⁰ which has more negative than positive environmental impacts. Interviews with corporate managements at most of the surveyed industries revealed regular environmental inspection by NEMC to ensure they are environmentally responsible.⁴⁵¹

448 LHRC Human Rights and Business Survey 2019, Mwanza Field Report.

449 Ibid.

450 Ibid.

451 Ibid.





Picture 67: Heavy smoke observed at Nyakato Steel Mills (left) and firewood gathered at U-Fresh Food Ltd to be used as source of energy

In Njombe, there were few complaints about industrial pollution. Major form pollution that concerned most community members who were interviewed is air pollution. For instance, this type of pollution was said to be caused by operations of TANWAT Co. Ltd and Njombe Milk Factory.⁴⁵² Bad smell/odour was said to come from industrial wastes at the companies, leading to odour/air pollution.



Picture 68: Wastes plant at TANWATT left open

⁴⁵² LHRC Human Rights and Business Survey 2019, Njombe Field Report.



In Pwani, there were also not many complaints about environmental pollution. Complaints about environmental pollution caused by industrial operations were made by some of the interviewed community members against KEDS Tanzania Co. Ltd and Kisarawe Cement Co. Ltd, due to air, water and noise pollutions.⁴⁵³



Picture 69: Wastewater from KEDs Tanzania Ltd observed during the survey

In Shinyanga, forms of industrial pollution that community members mainly complained about were odour pollution (bad smell), air pollution and water pollution. For instance, community members around FANG HUA Investment Co. Ltd lamented bad smells coming out at the industry, which slaughters donkeys and processes donkey meat.⁴⁵⁴



Picture 70: FANG HUA Investment Co. Ltd located in Ibadakuli industrial area in Shinyanga

453 LHRC Human Rights and Business Survey 2019, Pwani Field Report.

454 LHRC Human Rights and Business Survey 2019, Shinyanga Field Report.



At Jambo Industry, the survey team was met with complaints about water pollution caused by the industry's operations. Wastewater from the industry was said to contaminate water of Mumba River, which is used by community members, and pose risk to water pipes.⁴⁵⁵



Picture 71: Wastewater from Jambo Industry observed during the survey in Shinyanga

In Songwe, some of the community members who were interviewed lamented air pollution caused by dust emitted from lime producing companies.⁴⁵⁶ For instance, respondents in Mlowo and Nanyala areas complained about air and noise pollution caused by GDM Co. Ltd and Twiga Lime Production Co. Ltd. The survey team in the region also observed large holes created by artisanal and small-scale miners, who employ open-pit mining method.⁴⁵⁷



Picture 72: Large holes on the ground created through open-pit mining by artisanal and small-scale miners in Songwe

⁴⁵⁵ Ibid.

⁴⁵⁶ LHRC Human Rights and Business Survey 2019, Songwe Field Report.

⁴⁵⁷ Ibid.



5.5. Corporate Respect for Human Rights

5.5.1. Overview: Corporate responsibility to respect human rights

Corporate responsibility to respect human rights stems from the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the ILO Declaration on Fundamental Principles and Rights at Work.⁴⁵⁸ This responsibility is contained in the UN Guiding Principles on Business and Human Rights, and the following five foundational principles:

11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.

13. The responsibility to respect human rights requires that business enterprises:
(a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
(b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts.

⁴⁵⁸ Principle 12 of the UN Guiding Principles on Business and Human Rights.



15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

In short, when businesses/companies fail to comply with the relevant national, regional and international labour and human rights standards, they cause labour and human rights violations. These happen in several ways including: when a business activities pose threat to health of workers, may lead to violations of rights to life and health; a company or industry selling substandard or counterfeit product may lead to violations of rights to life and health; or where an employer disregards occupational health and safety, may lead to violation of the rights and favourable working conditions. To prevent all these scenarios of labour and human rights violations, businesses must therefore abide by these standards and avoid causing or contributing to adverse human rights impacts related to business operations, products made and services provided. But where they have failed in this regard or are complicit in human rights abuses, they should ensure the victims have access to remedy.

This sub-chapter highlights the status of corporate respect for human rights and reported incidents of human rights abuses by companies and other businesses for the year 2018/2019.

5.5.2. Reported human rights abuses and concerns: survey findings

During the survey on business and human rights in Tanzania Mainland, community members that were engaged were asked about common human rights abuses by businesses/companies. 35.5% indicated that they did not know, 19.5% mentioned environmental pollution, which adversely impacts on the right to clean and healthy environment and well as right to health. Also, 11.1% indicated that, they were not being allowed to conduct business in areas surrounding companies; 7.7% unfair acquisition of land; 5.1% torture by security guards/police officers; 4.9% child labour and 2.7% killings by security guards/police officers, as indicated in the figure below.





Figure 29: % Responses on common human rights abuses/concerns by companies (N=550)
Source: Field data, 2019

With regards to employees, common human rights abuses observed during this survey were denial of the right to freedom of association, violation of workers' freedom of expression, right to just and favourable working conditions, right to social security and right to work. All these rights were abused as a result of violating labour rights and standards as discussed in detail under Chapter Two above.

As discussed under sub-chapter 5.4 above, on environmental responsibility, companies were also implicated in industrial pollution, especially in 11 out of the 15 surveyed regions. This implies violation of rights to clean and healthy environment, right to health and right to life. Other human rights abuses by businesses found during the survey include: industrial pollution in the forms of water, air, odour and noise pollution; unfair land acquisition, due to lack of or unfair compensation; and property damage due to drilling and blasting. Most of these abuses were reported around mining areas in Shinyanga, Geita and Mara; as well as in regions such as Njombe, Mwanza, Iringa, Dar es Salaam, Arusha and Songwe.



Complaints about unfair compensation were especially made around mining areas. For instance, such complaints were made some of the villagers in Geita against Geita Gold Mine. The survey conducted in the region included interviews with former villagers of Mine Mpya, who had been relocated to Buharara area as part of their compensation, by the Geita Gold Mine.⁴⁵⁹ The villagers expressed their content on the condition of the houses but, lamented lack of fair compensation, noting that at Mine Mpya, they not only had houses but also livestock and farms. But since they were relocated to the new houses, they have not been provided with any areas to farm or at least some capital to start a business in order to sustain themselves and their families. They also explained their difficulties in accessing basic social services such as clean water - because they are far from their residential area, and they are yet to be provided with title deeds.



*Picture 73: Houses built by GGM in Buharara area in Geita for 18 households relocated from Mine Mpya as part of their compensation
Source: Field data, 2019*

In Geita, LHRC interviewed Mr. Abdul Aziz Adamu from Nyamalambo area in Geita, who lamented about property damage caused by operations of Geita Gold Mine and unfair compensation. According to him, since the year 2000 he has been complaining about the company's operations

⁴⁵⁹ LHRC Human Rights and Business Survey 2019, Geita Field Report.



causing cracks in houses and seeking proper redress. He noted that he made several trips to Dar es Salaam to over the matter, seeking intervention of relevant ministries and continued doing so when the ministries shifted to Dodoma.⁴⁶⁰ Eventually, he noted, the minister responsible for minerals intervened and formed a committee to probe into the matter. The Committee found the complaints to be valid and suggested compensation. However, according to Mr. Adamu, the compensation was unfair and not sufficient for the house repair, and some of the villagers received as little as Tshs. 150,000. He called upon the mine and the Government to consider relocation.⁴⁶¹



Picture 74: Cracks at the house of one of the villagers of Nyamalambo reportedly caused by GGM mining operations

Another property damage complaint was made by Mr. Juma Matiko Mahuchani, who complained about his house located in Matongo Village in Mara Region being severely damaged by a bulldozer owned and operated by Acacia's North Mara Gold Mine in December 2015.⁴⁶² He claimed that he reported the matter to the police, but he was told to first report to the mine management – which in turn instructed him to report to local government authorities. However, the local government authorities sent him back to the mine management. He added that since then he has made several efforts to seek justice, including filing formal complaint against the mine through its internal grievance mechanism and writing to the Tarime District Commissioner, but he is yet to be compensated.⁴⁶³

460 Ibid.

461 Ibid.

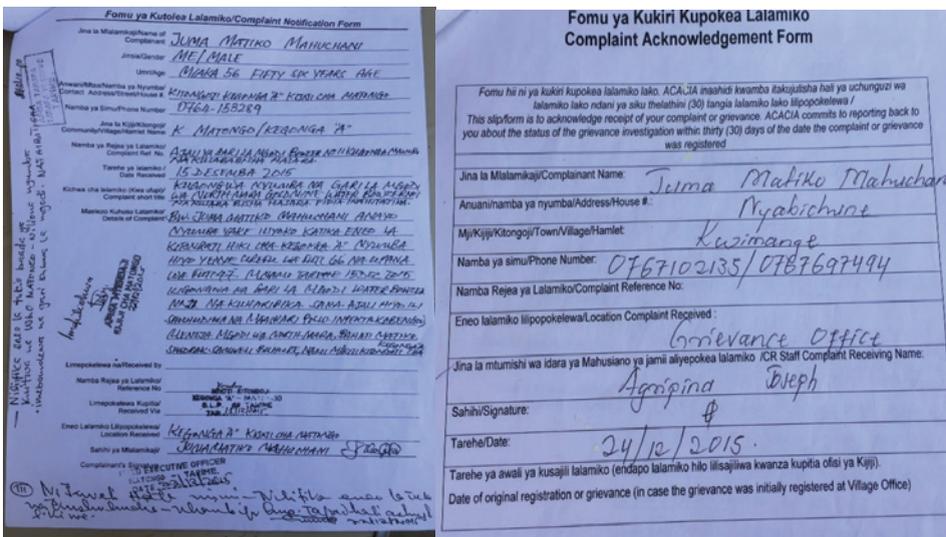
462 LHRC Human Rights and Business Survey 2019, Mara Field Report.

463 Ibid.





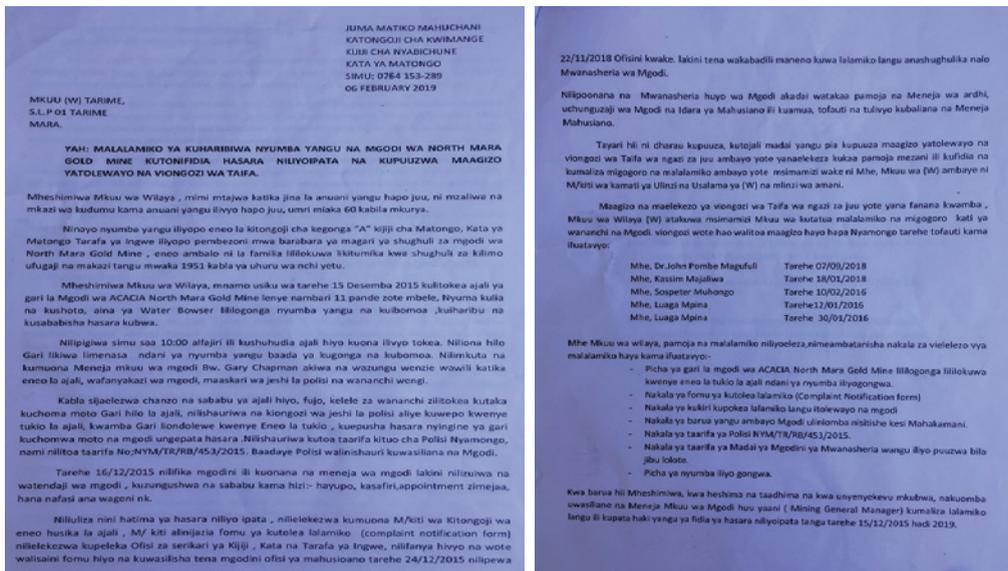
Picture 75: The damaged house and police RB form obtained by Mr. Juma Matiko Mahuchani in Tarime District



Picture 76: Complaints form filed by Mr. Juma Matiko (left) and acknowledgement form filled in by Acacia's North Mara Gold Mine

- 460 Ibid.
- 461 Ibid.
- 462 LHRC Human Rights and Business Survey 2019, Mara Field Report.
- 463 Ibid.





Picture 77: Extracts from the letter written by the complainant to the Tarime District Commissioner

A recent study conducted in 32 villages around the mines in northwest of Tanzania by IPIS, has also revealed complaints of lack of or insufficient compensation. The survey findings show that five villages nearby Geita Gold Mine, Buzwagi Gold Mine and the North Mara Gold Mine lamented lack of or insufficient compensation for harms caused by mining operations, including relocation, property damage, harm to livelihoods and pollution.⁴⁶⁴ They further showed some of the houses in four villages around North Mara Gold Mine which had cracks or collapse of houses due to vibrations caused by drilling and blasting.⁴⁶⁵ The survey also revealed complaints about pollution caused by mining operations. For instance, four villages around North Mara Gold Mine complained about toxic leakages from the mine's tailings; and three villages around Nyamahuna Gold Mine, complained about leakage which affected their farms but it was later reported to be compensated after death of several cows.⁴⁶⁶ The

464 See IPIS, Dissecting the social license to operate: Local community perceptions of industrial mining in northwest Tanzania, August 2019 at <http://ipisresearch.be/publication/dissecting-social-license-operate-local-community-perceptions-industrial-mining-northwest-tanzania/>, accessed 20th September 2019.

465 Ibid.

466 Ibid.



survey added that, property damage caused by drilling, blasting or truck traffic is among grievances reported to be common around North Mara Gold Mine and less common around Buzwagi Gold Mine and Williamson Diamond Mine.⁴⁶⁷

In March 2019, reports of complaints for insufficient compensation by North Mara Gold Mine emerged from four villages around the mining namely; Nyakunguru, Nyabichune, Mjini Kati and Nyangoto.⁴⁶⁸ Villagers expressed their dissatisfaction with the valuation for compensation thus refused to take the amount offered as compensation. They also complained about the leakage of toxic chemicals into water sources including River Tigite. Following these concerns, the minister responsible for minerals, Hon. Dotto Biteko, ordered the mine to fairly compensate the villagers within seven days and address environmental pollution claims caused by its sewerage system.⁴⁶⁹

In Mara, Dodoma and Geita, the issue of child labour emerged. This is a human right concern exposing children to hazardous work and acts of violence as well as preventing them from accessing education. In Mara, Acacia's North Mara Gold Mine was implicated in torturing and killings of people who trespassed on its road. Security guards were accused of torturing and sometimes killing the trespassers.⁴⁷⁰ The survey team observed a warning on the wall of the mine area prohibiting passing on the road from 6:00pm to 5:00am. One of the residents of Nyabichune Village, located near the mine, said:

"The security guards tend to severely beat people who use the road beyond 12:00pm. Incidents of people killed by the guards have been reported on two occasions. There is nothing we can do and we tired of reporting them because no action is taken against them."

467 Ibid.

468 See Samson Chacha "BITEKO ACHACHAMAA, AIPA ACACIA NORTH MARA SIKU 7" HABARILEO Newspaper (online), 7 March 2019 at <https://habarileo.co.tz/habari/2019-03-075c80bb68845c2.aspx>, accessed 20th September 2019.

469 Ibid.

470 LHRC Human Rights and Business Survey 2019, Mara Field Report.



In August 2019, International Peace Information Service (IPIS)⁴⁷¹ released its report on perceptions of local community on industrial mining in northwest Tanzania.⁴⁷² The report presents some similar findings about the situation of trespassers around North Mara Gold Mine. Four most prevalent grievance categories are identified in the report, namely: repression of trespassers, pollution, land use and relocation, and property damage, following a survey conducted in 32 villages around 6 selected industrial mines in northwest Tanzania, including North Mara Gold Mine.⁴⁷³ According to this report, the biggest human rights concern, reported by respondents in more than half of the surveyed villages, is repression by police or private security officers – implicated in serious human rights violations such as beatings, shootings and sexual violence, especially around North Mara Gold Mine in Mara and Williamson Diamond Mine in Shinyanga.⁴⁷⁴ The report further indicates that there have been repeated reports from communities around these mines of the officers “repressing trespassers with beatings, teargas, sexual violence or shootings, allegedly with live ammunition, causing serious injuries, disabilities and death.” Repression of trespassers, searching for minerals or seeking to sustain their livelihoods, was said to be among the main grievances in seven out of eight villages surveyed around the North Mara Gold Mine.⁴⁷⁵ This is also the case in Shinyanga, with respect to the Williamson Diamond Mine, where private security guards were reported to be most brutal.⁴⁷⁶

471 An independent research institute providing tailored information, analysis and capacity enhancement to support those actors who want to realize a vision of durable peace, sustainable development and the fulfilment of human rights.

472 See IPIS, *Dissecting the social license to operate: Local community perceptions of industrial mining in northwest Tanzania*, August 2019 at <http://ipisresearch.be/publication/dissecting-social-license-operate-local-community-perceptions-industrial-mining-northwest-tanzania/>, accessed 20th September 2019.

473 Others are Buzwagi Gold Mine (BGM), Nyamahuna Gold Mine (Nyamahuna), Nyanza Salt Mine (Nyanza), Geita Gold Mine (GGM) and Williamson Diamond Mine (WDM).

474 Ibid.

475 Ibid.

476 Ibid.





Picture 78: The private road belonging to North Mara Gold Mine (right) and the warning against trespassers (left)

In Geita, LHRC was able to interview one of the victims of repression of trespassers by Geita Gold Mine. The victim acknowledged that some of the local small-scale miners and individuals intrude/trespass into the mine sites to seek for remains of minerals; and most of the youth engage in the practice because they do not have any other way to earn a living for themselves as life is hard around the mining areas.⁴⁷⁷ He urged the mine to allow the locals to use part of their mining sites that are not in use, like it did once in the past with respect to Bugarama area. Narrating his most recent trespassing affair, he indicated that in May 2019 he and his four colleagues successfully entered GGM site at an area called Nyakanga Pit, but when they were coming out security guards started hurling stones at them and attacked them with rubber bullets, forcing them to retreat back into the pit. When they came out six hours later the security guards were still there and continued attacking them with rubber bullets even when they decided to surrender, until they passed out. When they woke up they found themselves at a nearby hospital, six hours later, with injuries on the head and hands. After treatment they were taken to a police station and fined Tshs. 220,000.

⁴⁷⁷ LHRC Human Rights and Business Survey 2019, Geita Field Report.





Picture 79: Injuries sustained by the victim of excessive use of force by GGM's private security officers

LHRC implores mining companies to refrain from excessive use of force when dealing with trespassers at their mine sites. The trespassers should be arrested and dealt with in accordance with laws, instead of being tortured and sometimes even killed because of trespassing.

In 2018, Acacia Mining Company's North Mara Gold Mine was implicated in some serious corruption charges involving the mine and government officials to influence the valuation process. Among those reportedly arraigned before the Resident Magistrate's Court in Tarime District on corruption charges in October 2018 were two North Mara Mining in Tanzania (NMML) officials, Marteen Van Der and Johanness Jansen. It was revealed during court proceedings that in May 2013, the two officials bribed Adam Yusuph, who was the Principal Government Valuer, Tshs. 93,869,000 in order to ensure the mining company is favoured during the valuation process to expand the mining areas.⁴⁷⁸ They also allegedly gave Tshs. 30,000,000 to Peter Elias Mrema, who was also a principal government valuer to favour the company in valuation process to guarantee expansion. Consequently, Peter Elias Mrema was also charged with receiving the bribe, in contravention of the Prevention and Combating of Corruption Act (PCCA) of 2007.⁴⁷⁹

⁴⁷⁸ "TAKUKURU yakunjua makucha North Mara" Majira Newspaper, 12th October 2018; Seven in court over 11 billion/- gold mine bribery allegations" The Guardian Newspaper, 12th October 2018.

⁴⁷⁹ Ibid.



Other government officials who were charged with corruption are Joseph Thomas Kleruu, who allegedly corruptly obtained land valuation consultancy in order to help the North Mara Gold Mine acquire an area for expansion (USD 681,572) and received USD 243,650 to favour the mine in valuation process; and Abel Mnyakibari, former Chairperson of Nyakunguru Village, who in January 2013 and December 2017 reportedly received Tshs. 966,687,343 from the company to 'deal' with villagers, whom he also refused to pay their compensation dues.⁴⁸⁰ Bogomba Chichake, who was Ward Councilor of Kamambo Ward, and Tanzania O'Mtima, who was Managing Director and Shareholder of Mara Kaskazini Enterprises, were charged with corruptly obtaining tenders worth Tshs 7,709,575,914.19/= and Tshs.1,102, 880, 903 respectively from North Mara Gold Mine between January 2006 and My 2018 in order to prevent Nyabigena Primary School from being transferred from Mrwambe area to Mgema area. Tanzania O'Mtima, while being Chairperson of Kewanja Village, also reportedly corruptly obtained Tshs. 90,251,475 so that he would no longer make follow up on compensation dues of more than 800 villagers in the village and influence village government decisions in the mine's favour.⁴⁸¹

5.5.3. Limited access to remedy and dissatisfaction with grievance mechanisms

The survey in 15 regions of Tanzania Mainland has generally revealed that the majority of community members are not happy with the grievance mechanisms, which makes it difficult for them to access effective remedy. During the survey, two categories of respondents were asked about the grievance mechanisms, namely representatives/officials from the companies that were surveyed and community members.

Asked whether they have an internal grievance mechanism to address community complaints related to your company's operations, majority of companies (63%) indicated that they do not have in place such a mechanism, while only 37 stated they do have such mechanisms.

⁴⁸⁰ Ibid.
⁴⁸¹ Ibid.



Do you have an internal grievance mechanism to address community complaints related to you company's operations?

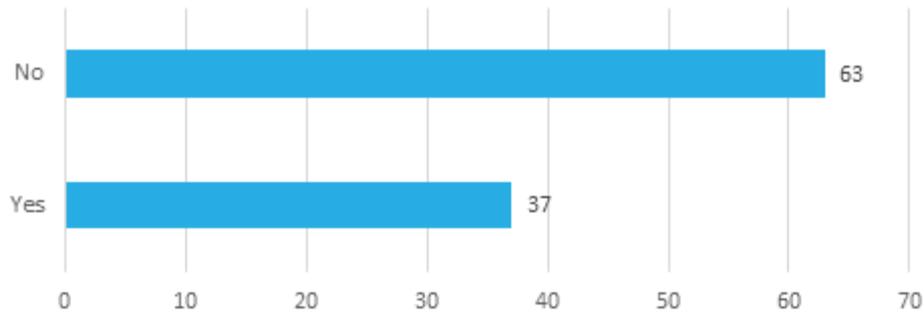


Figure 30: %Companies' responses on existence of internal grievance mechanism to address community complaints (N=139)
Source: Field data, 2019

Community members were also asked whether grievance mechanisms to address their complaints against operations of companies in their areas exist. Majority of them (72.3%), indicated that there are no such mechanisms, while 27.7% said there are such mechanism within their areas, and 1% indicated they are not sure, as shown in the figure below.

Are there any mechanisms for settlement of disputes between companies and community members?

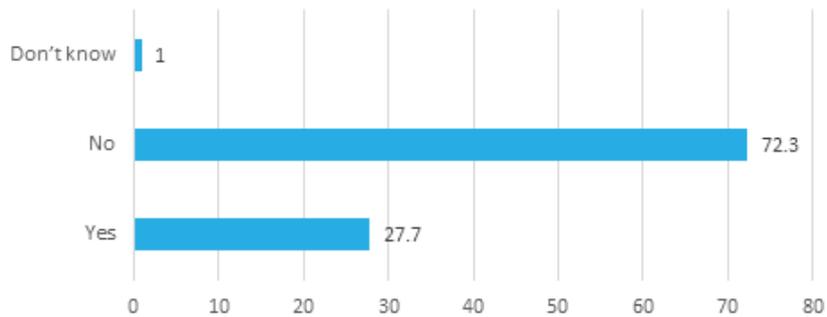


Figure 31: %Community members' responses on existence of mechanisms to settle dispute between them and companies (N=585)
Source: Field data, 2019



Community members were also asked whether they are satisfied with the available dispute settlement mechanisms. 8.2% stated that they were not satisfied, followed by 29.1% who said they were somewhat satisfied, while only 12.8% said they are satisfied with the performance of the existing dispute settlement mechanisms.⁴⁸² Reasons given for dissatisfaction with the dispute settlement mechanisms, both internal and external, include corruption (31.7%), lack of efficiency (21.8%), delays (25.7%) and other reasons (20.8%).⁴⁸³ Survey conducted by IPIS in the villages around mines in northwest of the country also indicates that satisfaction with internal grievance mechanisms is generally low, due to reasons such as complicated procedures and low compensation.⁴⁸⁴

482 N=337.

483 N=303.

484 See IPIS, Dissecting the social license to operate: Local community perceptions of industrial mining in northwest Tanzania, August 2019 at <http://ipisresearch.be/publication/dissecting-social-license-operate-local-community-perceptions-industrial-mining-northwest-tanzania/>, accessed 20th September 2019.



CHAPTER SIX:
**GENDER AND OTHER
FORMS OF
DISCRIMINATION IN
THE BUSINESS
SECTOR**

6.1. Introduction: Gender issues in the business sector

The ILO Declaration on Fundamental Principles and Rights at work⁴⁸⁵ urges member states to respect and promote elimination of discrimination in respect of employment and occupation.⁴⁸⁶ It emphasizes on gender equity and discourages discrimination at workplace based on race, colour, sex, religion, political opinion, national extraction or social origin as these affect equality of opportunity or treatment in employment or occupation.⁴⁸⁷

The Government of Tanzania as a member to the UN and other regional bodies, has ratified and domesticated different conventions aimed at discouraging gender discrimination in all spheres of life. The Constitution of the United Republic of Tanzania of 1977 (as amended), formulation of National Strategy for Gender Development of 2008, Women in Development Policy 1992, National Policy for HIV/AIDS 2003, and its (Prevention and Control) Act 2008, Youth Development Policy 2009, National Employment Policy 2008 and Employment and Labour Relation Act 2004 explicitly provides for the principles discouraging and prohibiting all forms of gender discrimination and champions the respect of gender equality

Several interventions have been made to support women in the business sector to guarantee their economic growth by both the Government and private sector. Adoption of the SADC Protocol on Gender and Development which calls for 50/50 representation of men and women in all decision-making organs. Adoption of the GBV Policy and Management Guidelines in September 2011 and in November 2011 set up a stakeholder owned instrument to guide a multi-sectoral prevention and response to VAWC, with a plan and National Multi-Sectoral Committee to end Violence against Women and Girls (NPA-VAWC 2017/18 - 2021/22). The Tanzania Commission for AIDS (TACAIDS) has also launched a Gender Operational Plan for HIV and AIDS Response in Mainland Tanzania.

Despite those initiatives and intervention by the Government, discrimination at workplace is still an issue. It is evidently observed that there is unequal number of male and female employees in many employment levels. Females in Tanzania form a larger share of the

⁴⁸⁵ Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998 (Annex revised 15 June 2010)

⁴⁸⁶ Article 2 of the ILO Declaration on Fundamental Principles and Rights at work, 1998

⁴⁸⁷ Article 1 of the ILO Convention No. 111 - Discrimination (Employment and Occupation) Convention, 1958



working age population, but a smaller share of the economically active population. Women comprise 2.1 million out of the 3.4 million people not in the labour force. While the reason for being economically inactive cited was schooling, and household chores/responsibilities. Unemployment rates among females are higher than those of males in all areas particularly, in Dar es Salaam region. Unpaid family work such as in agriculture accounts for the largest share of employment in Tanzania. Males are more likely than females to be employed in formal and informal sectors. Women also face various forms of discrimination in the labour market, in terms of; wages, promotions, legal protections and face harassment in the workplace.⁴⁸⁸ The survey revealed that 8% of women at work place experience sexual harassment as one of the common forms of GBV at their workplaces as indicated in the figure below:

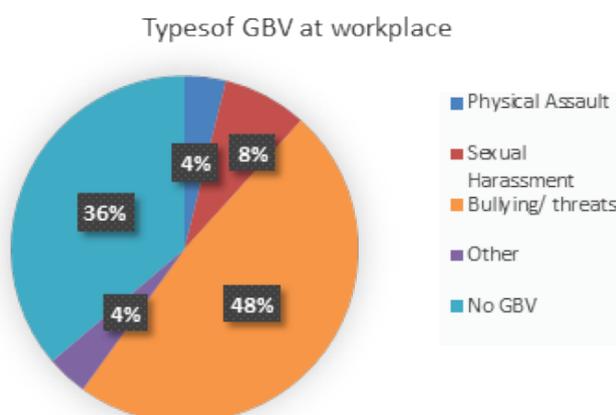


Figure 32: %Responses on common forms of GBV at workplaces (N=522)
Source: Field data, 2019

6.2. The Situation of women engagement in the business sector

Conventions, laws and policies protecting women are already in place to enhance the engagement of women in the economy. It is established that the overall poverty rate which bearers on the status of women is on the decline at 34.4 per cent. This was reported to base on food poverty for the year 2007.

488 Iffat, I. (2018): Mapping Women's Economic Exclusion In Tanzania, GSDRC, University of Birmingham.





Picture 80: A woman found working as an accountant at Y.K Security Co. Ltd (left). A woman found working at Afrisian Ginning Co. Ltd (middle). Female employees operating machines at Kom Group of Companies.

It is reported that the rate has decreased from 34.4 in 2007 to 26.8 in 2016. Food poverty rate for female-headed households had declined from 13.4 per cent to 10.4 per cent. The agriculture sector is mentioned to have developed at a very slower rate meanwhile being mostly occupied by women.⁴⁸⁹



Picture 81: Female employees found working at Njombe Milk Factor in Njombe (left), TANWAT Company LTD in Mbeya (middle), and Bakhresa Food Production Company in Pwani

489 Ministry Of Health, Community Development, Gender, Elderly And Children, (2016) Tanzania Country Gender Profile, Dar es Salaam



Women in the corporate sector continue to face discrimination as few business companies accord women the right to employment. During interviews community members and workers in some of the surveyed regions such as Geita, Shinyanga and Mtwara, respondents stated that there is a negative perception towards women, who are often considered; weak, unreliable, too fragile to handle hard work, incapable and requiring frequent leaves to take care of family.⁴⁹⁰ Here are some of the challenges facing women in the business sector:

False beliefs on the capacity and ability of women working in the business sector

Most companies do not hire women claiming that they have no capacities to work in factories and Industries. Working in factories and Industries is regarded as a masculine job that requires men for operation. The study conducted by LHRC has revealed that in some of the companies such as Nyanza road construction work co. Ltd located at Kizota and Cetawico have employed women as cleaners claiming that they cannot sustain other industrial work.⁴⁹¹ The survey in Geita found that women and persons with disabilities are discriminated in terms of employment opportunities. Many employers and investors prefer to employ male believing them to be energetic and productive as opposed to women.⁴⁹²

This was observed in region such as Iringa, Mara and Mbeya. In Iringa it was discovered that, women are few in the employment sector because they are not being given chances to be employed in the companies. Most companies regard men as able and capable of holding different positions even those who would have been done by women.

⁴⁹⁰ LHRC Human Rights and Business Survey 2019, Geita, Shinyanga and Mtwara Field Reports.

⁴⁹¹ LHRC Human Rights and Business Survey 2019, Mtwara Field Report.

⁴⁹² LHRC Human Rights and Business Survey 2019, Geita Field Report.





Picture 80: Employees of Herocean ENT(T) Ltd in Mbeya City, one of the companies reported to have no female employees

Discrimination of women in the mining sector

Due to the nature of work, most companies do not regard women as productive and reliable in company activities. This accelerates less benefit for women in mining activities. Even in artisanal works in the mining sector, women are involved in the initial trivial activities such as, crushing and panning.⁴⁹³ Women discrimination has also extended the gender pay gap as women are paid less than men for the same work done. During the interview with one NGO (known as NELICO), one of the women working in the mining sector explained women situation in the sector as follows:⁴⁹⁴

493 Panning , in mining , simple method of separating particles of greater specific gravity (especially gold) from soil or gravels by washing in a pan with water from <https://www.britannica.com/technology/panning> accessed on 15 August, 2019

494 LHRC Human Rights and Business Survey 2019, Geita Field Report.



“The problem is in the pay. You find women and men doing the same work and putting in the same efforts but men are paid more. Women who are crushing crush stones for a living, do so without having protective gears like masks contrary to male workers who are provided with the gears. In Geita, women are not allowed to go to some of the mining sites due to the myth that, their presence might bring bad luck and cause the gold to disappear. In general, women do not enjoy the same opportunities in gold-mining areas, hence discouraging other women from engaging in mining activities.”– NELICO GBV expert

The belief that mining jobs are for men, cultural myths, lack of flexibility especially when having young kids, low skills, limited financial resources, lack of start-up capital and gender based violence especially sexual violence were mentioned in Geita Region as encumbrances jeopardizing women’s right to work in the mining sector.

It is further established that, most women are prevented from working in the mining sector due to economic factors which emanates from women’s inability to own land.

“Traditional norms exist prohibiting women from access to, use of, or control over land and other productive resources (United Nations, 2013). These norms are mostly based on the belief that women are not physically and intellectually strong enough to be able to manage and use resources productively. In many cases, such as that observed in Tanzania, ownership of concessions does not necessarily give women the control over earnings. Women are prohibited from pit areas, they are kept in the dark about the extent of actual minerals mined. The lack of women’s participation in the critical stages of mining gives men the leverage to exercise control over financial matters. Unable to see any financial flow, women end up gaining little from their work. Also at times in cases where women participate in pit areas and do the actual work, they still lose control over any financial or other business-related matters to men.”⁴⁹⁵

The inability by women to access finances has contributed a lot to less

⁴⁹⁵ Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF). (2018). Women in Artisanal and Small-Scale Mining: Challenges and opportunities for greater participation. Winnipeg: IISD.



investment on mining equipment and technology necessary for a successful business. Also due to the traditionally influenced legal constraints to owning or inheriting land and mineral rights, many women end up operating unregistered business, unable to access finances and at a lower order in policy decision making on matters that affect them. This increases their vulnerability in the current global efforts to promote business and formalization.⁴⁹⁶



Picture 82: Women found crushing stones at one of the smelting industries in Mwakitolyo, Shinyanga Rural DC

“Women have no access to proper equipment to enable them to successfully engage in gold mining. The ‘big shots’ – who provide capital - are the ones who really benefit at the end of the day as they are the ones who set the price and take the gold to the market.” - GEWOMA Chairperson, Geita Region

⁴⁹⁵ Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF). (2018). Women in Artisanal and Small-Scale Mining: Challenges and opportunities for greater participation. Winnipeg: IISD



Multiple Roles of Women (family and social relations)

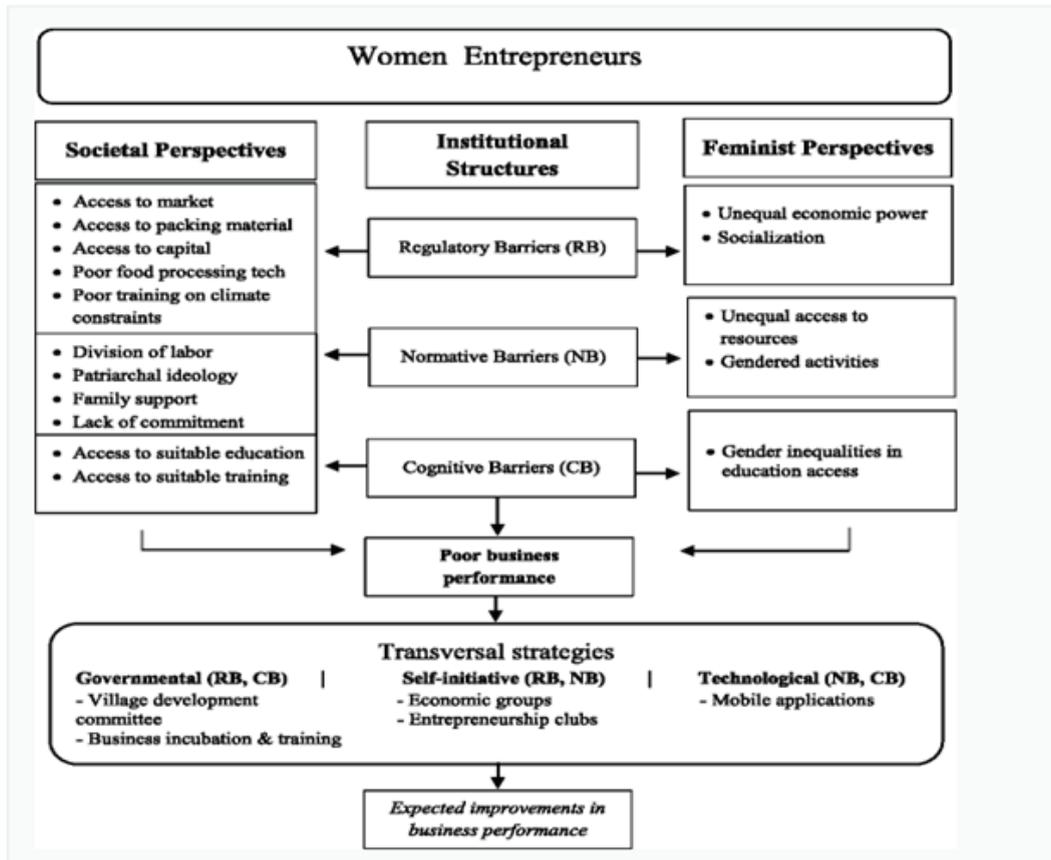
Women's inaccessibility to own land denies them chances for self-employment and independence. Also family conflict and the role as a caretaker of children forces most women to seek employment while caring for their children. This threatens children's rights and denied women's enjoyment of their right to work. Family responsibilities were mentioned by some company owners as one of the challenges of employing women.

In Geita region, some women with young children were found to be working in the artisanal and mining sites. This violates children rights and health and has been mentioned to be among challenges affecting women's success in the mining sector. According to the Geita Women Miners Association (GEWOMA) Chairperson, most of them claim that they cannot leave their children at home alone, as their husbands have deserted them and they have no one to take care of the children.



Picture 83: A woman carrying her child during work at Jambo Company in Songwe (left). Women accompanied by their children at the stone crushing site in Geita (right)





Picture 84: Cultural challenges and transversal strategies of women entrepreneurs in Iringa region, Tanzania.

Source: Journal of Global Entrepreneurship Research⁴⁹⁷

⁴⁹⁷ Kapinga, F. Et al (2017): Exploring the socio-cultural challenges of food processing women entrepreneurs in IRINGA, TANZANIA and strategies used to tackle them, Journal of Global Entrepreneurship Research





Picture 85: Women trading in food items, one of the economic activities commonly done by women in the informal business sector

Further also discrimination against women is deeply rooted in business companies like the mining sector, it extends to pregnant women who are discouraged from working.⁴⁹⁸ Also survey reported that Security and Construction companies immediately, terminate pregnant workers. The reason for termination is not stated as pregnancy. 24% of the respondents stated that, they never receive maternity leave.⁴⁹⁹ This could be one of the reasons pregnant workers are terminated to save the company from payment of the leave.

6.3. Discrimination based on race and tribe

Freedom from discrimination at work, include discrimination on the grounds of colour and race. This is one of the fundamental principles and rights at work.⁵⁰⁰ Racial discrimination is universally prohibited at work.⁵⁰¹ ILO Declaration on Fundamental Principles and Rights at Work expresses commitment upon member states to uphold basic human values at the workplace. Direct and indirect discrimination is strictly prohibited at work by the laws of Tanzania.⁵⁰² Work place diversity should be encouraged by

⁴⁹⁸ LHRC Human Rights and Business Survey 2019, Shinyanga Field Report

⁴⁹⁹ LHRC Human Rights and Business Survey 2019, Mtwara Field Report

⁵⁰⁰ Adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998

⁵⁰¹ Article 1 of the Convention on Discrimination (Employment and Occupation), (No. 111) of 1958

⁵⁰² Section 7 (4) of the Employment and labour Relations Act, 2004



every institution or organization in order to discourage discrimination. A diverse and inclusive culture is to be cultivated for equal treatment among all employees despite their positions and other preferences.⁵⁰³ Racial discrimination at workplace was not common known in Tanzania. However, it is currently observed and reported especially, in companies owned by foreign investors from China and India. The following are the survey responses from respondents at workplaces on common forms of discrimination:

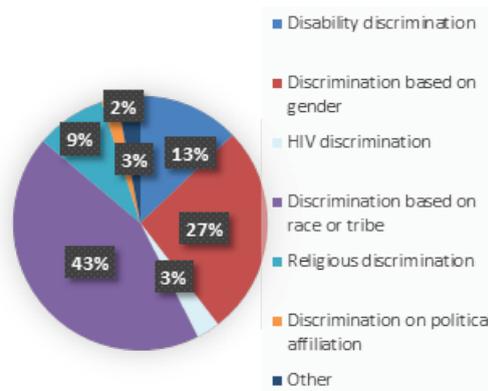


Figure 33: %Responses on common forms of discrimination at workplace

⁵⁰³ Workplace diversity refers to the variety of differences between individuals in an organization. Diversity not only includes how individuals identify themselves but also how others perceive them. Diversity within a workplace encompasses race, gender, ethnic groups, age, religion, sexual orientation, citizenship status, military service and mental and physical conditions, as well as other distinct differences between people.



As indicated in the figure above, the most common form of discrimination at workplaces is racial discrimination. Interviews conducted at the workplaces regarding the issue of discrimination, revealed that most complaints of discrimination based on race were levelled against workers and owners of Chinese and Indian origin. 43% of the 773 employees who participated in the survey mentioned racial discrimination as the common form of discrimination at their workplaces.⁵⁰⁴

Discriminatory and unfair treatment of workers

During the survey, complaints on discrimination were levelled against some of the companies especially, those owned by investors with Chinese and Indian origin. Complaints of racial discrimination were made at companies such as: UCC (DANGOTE); JIANGX; BCEG; DOTT and YALIN. For instance, a worker at one of the construction companies (the company name withheld) revealed that “we do not have a human resource officer, rather an illusion of human resource officer. They do not help us at all, as if we do not share the same blood and colour. When you complain to them about the boss, instead of helping, they sometimes go and tell the boss that you have complained.” Another worker made similar remarks regarding their human resource officer, noting that:

“Our human resource officer is like a chameleon. When we complain to him, he pretends to be on our side, but when he goes to the boss, he turns against us. He also tries to tell the boss to agree with the boss’ decision, even if it is unfair.”

Recently, media reports showed that, in construction of SGR railway, a Chinese company by the name China Road and Bridge Corporation (CRBC), has been discriminating its workers who are Tanzanians. They are treated harshly and are verbally abused. Some of the workers at the company complained about the lack of personal protective equipment and threatened when they demand conducive working environment and fair wages.⁵⁰⁵

⁵⁰⁴ LHRC Human Rights and Business Survey 2019

⁵⁰⁵ See Ubaguzi wa rangi katika Kampuni ya Uchina inayosimamia reli ya SGR available at <https://aftruth.com/swa/2018/07/11/ubaguzi-wa-rangi-katika-kampuni-ya-uchina-inayosimamia-reli-ya-sgr/>, accessed on 15th September 2019.



Physical abuse and discrimination on the ground of race

The Minister for works, Transport and Communications Hon. Isack Kamwelwe indicated that Government has expelled some Chinese investors from China Railway Beaural Group Corporation Ltd, who were responsible for the construction of the Makongorosi -Chunya road after being accused of committing acts of violence against Tanzanian workers. The Chinese nationals were accused of beating workers at work and denying them basic labour rights.⁵⁰⁶ One of the citizens once interviewed stated that they harass them by pretending that they have incurred losses and if they happen to argue they start beating them (KUNG FU) and threatening to kill them.⁵⁰⁷

Another incident also happened in Vikindu, Mkuranga, Pwani region whereby a worker at Zhong Fu International Limited, known as Juma Abiud, a machine operator, faced an inhumane treatment after being thrown into a dog's cage by his employer simply because he complained about the working conditions at the workplace and wanted to be relocated to another department. He was cruelly bitten by the dogs and despite crying for help, nobody came to his rescue. He added that he was taken to the police station to get police form number 3 (PF3) and then taken to Muhimbili Hospital in Dar es Salaam, but he was transferred to another hospital because his Chinese bosses said the costs are too much.⁵⁰⁸



Picture 87: Juma Abiud, a victim of abuse by a Chinese investor, who let dogs attach him

⁵⁰⁶ IPP: Serikali Ichunguze Zaidi Unyanyasaji wa NamnaNmna hii available at <https://www.ippmedia.com/sw/maoni-ya-mhariri/serikali-ichunguze-kwa-undani-zaidi-unyanyasaji-wa-namna-hii> , accessed on 15th September 2019

⁵⁰⁷ See IPP: Raia wa China watimuliwa kwa kuwapiga Makonde watanania available at <https://www.ippmedia.com/sw/habari/raia-wa-china-watimuliwa-kwa-kuwapiga-makonde-watanania> accessed on 15th September 2019

⁵⁰⁸ The incident happened in May 2017 and was reported by the Global publishers available at <https://www.youtube.com/watch?v=PprFUZXnupM> , accessed on 15th September 2019



6.4. Persons with Disabilities (PWDs) and Employment

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, where positive additional efforts are to be taken to facilitate their interaction and address various barriers that may hinder their full and effective participation in society on an equal basis with others.⁵⁰⁹

Tanzania's Persons with Disability Act of 2010 defines person with disability to mean a person with a physical, intellectual, sensory or mental impairment and whose functional capacity is limited by encountering attitudinal, environmental and institutional barriers.⁵¹⁰ The Rights of Persons with Disabilities (PWDs) are globally recognized like the rights of other human beings, their rights are well articulated and explicitly provided. They should not be subjected under any form of discrimination in all spheres of life. The Convention on the Rights of Persons with Disabilities (CRPD) provides for rights of PWDs, calling for States to recognize that all persons are equal before and under the law and are entitled without any discrimination to equal protection and benefit of the law.⁵¹¹ It also provides for the right of PWDs to work on an equal basis with others, including the right of opportunities for gainful employment to work, freedom of work choices or acceptance in the labour market and work environment that is open, inclusive and accessible to PWDs.⁵¹²

It is indicated that there are 4.2 million Tanzanians living with disabilities.⁵¹³ Persons with disabilities are normally considered the poorest and most marginalized in the society, despite the presence of laws and international declarations. Disability has a significant impact on health, employment and education. More than half of children with disabilities do not attend schools due to poverty, lack of awareness on PWDs rights, poor infrastructure, poor health or activity limitations. Illiteracy among PWDs in Tanzania is 48%, compared to 25% among persons without disabilities. Illiteracy has contributed a lot in hindering PWDs social and economic development.

⁵⁰⁹ Access for All: CCBRT available at <http://www.ccbtr.or.tz/programmes/disability/disability-in-tanzania/>

⁵¹⁰ Dindin Reyes: Rights every working PWD should know about available at

⁵¹¹ <https://www.kalibr.com/advice/2015/09/rights-every-working-pwd-should-know-about> , accessed on 15th September 2019.

⁵¹² Tanzania: The Rights of PWD Should Be Given Priority available at <https://allafrica.com/stories/201901300573.html>

⁵¹³ See World Bank Group Commitments on Disability-Inclusive Development available at <https://www.worldbank.org/en/topic/socialdevelopment/brief/world-bank-group-commitments-on-disability-inclusion-development> , accessed on 18th September 2019.



- ◆ 4.2 million Tanzanian living with disability
- ◆ 3.1% receiving Income from paid employment
- ◆ 2/3 of all people with disabilities live in a low-income countries
- ◆ 13.2% of Tanzanian homes have at least 1 member with disability

The exclusion of person with disabilities from the workplace either through discrimination or inaccessible work environment, was reported to cost Tanzania \$480 million every year. PWDs often live in extreme poverty due to lack of education and skills which hinder them from securing a steady income amid widespread exclusion. Only 3.1% of PWDs get income from paid employment, it is indicated that, households headed by persons with disabilities experience greater levels of poverty.⁵¹⁴

It was also observed that "pessimism and lack of self-esteem" prevents PWDs from participating in "mainstream employment."⁵¹⁵

Some of the challenges facing PWDs that hinder or affect their right to employment include:

- ◆ Abuse
- ◆ Lack of education
- ◆ Illiteracy
- ◆ Low implementation of the laws governing PWDs.⁵¹⁶

World Bank Group Commitments on Disability-Inclusive Development⁵¹⁷

- ◆ Under sustainable development Goal No. 4 (SDG 4), the World Bank has undertaken to ensure there is; inclusive and equitable quality education as well as promote lifelong learning opportunities, inclusive employment for all by ensuring all the World Bank financed projects/programs in education are disability inclusive by 2025.

⁵¹⁴ Access for All: CCBRT available at <http://www.ccbtr.or.tz/programmes/disability/disability-in-tanzania/>

⁵¹⁵ Dindin Reyes: Rights every working PWD should know about available at <https://www.kalibr.com/advice/2015/09/rights-every-working-pwd-should-know-about> , accessed on 15th September 2019.

⁵¹⁶ Tanzania: The Rights of PWD Should Be Given Priority available at <https://allafrica.com/stories/201901300573.html>

⁵¹⁷ See World Bank Group Commitments on Disability-Inclusive Development available at <https://www.worldbank.org/en/topic/socialdevelopment/brief/world-bank-group-commitments-on-disability-inclusion-development> , accessed on 18th September 2019.



- ◆ Under the Sustainable Development goal No. 9, the World Bank is committed to enhance technology and innovation so as to boost Information and Communication Technology (ICT) for all. Services and resources are often major elements of development projects including; initiatives to promote access to banking, education, and income generation.
- ◆ The World Bank is committed to exploring opportunities, focusing more deliberately on the economic empowerment of women and girls with disabilities.
- ◆ Enhancing due diligence on private sector projects by considering ways of enhancing its due diligence regarding disability inclusion including, encouraging clients to adopt Good International Industry Practice (GIIP) related to disability inclusion and access.



Picture 88: A PWD working as weighbridge operator at TANWAT Company (left). An employee working at Apple craft Company in Njombe



Situation of PWDs at workplaces

It was found during this study that, most of the companies are afraid of employing person with disability believing that, they are unable to work and may somehow delay the production. Others go further and unfairly terminate the employment of employees who unfortunately get disability in workplace. This was alleged by employees of Sunshine Industry (Chinese Company) that an employee lost his finger and ended up being terminated from his work.⁵¹⁸



Picture 89: An employee who suffered an accident at NARCO in Dodoma and lost his arm but was retained

⁵¹⁸ LHRC Human Rights and Business Survey 2019, Dodoma Field Report.



A milestone in the protection of rights of Persons with Disabilities in Tanzania was reached in 2010, when the Parliament enacted the Persons with Disabilities Act.⁵¹⁹ Under Section 31(1) of the Persons with Disabilities Act,⁵²⁰ provides that:- “Every employer public or private shall provide where there is a vacant post fit for a person with disability and a person applies for a vacant, give the employment to the person with disabilities to meet the minimum qualification for such employment”.

Despite the legal requirement, the findings revealed that in all 12 companies visited during the study in Geita Region no employee with disability found to be employed in the companies.⁵²¹ Only two companies amongst those visited were found to have employed PWDs. Some of the surveyed companies claimed that they do not employ PWDs due the nature of business, which is not suitable for them. Also, most of corporate management officials who participated in the survey acknowledged that they have policies addressing PWDs rights at workplaces, but regrettably failed to provide a copy of those policies.⁵²²

It also prohibits discrimination of PWDs in employment, not treating them differently in relation to issues such as; advertisement of employment, recruitment for employment, remuneration, training and employment benefits.⁵²³



Picture 90: Mr. Christine Justine Mtallo a PWD employee of Tazara Kongolo Quarry

519 (Act No. 9 of 2010)

520 (Act No. 9 of 2010)

521 LHRC Human Rights and Business Survey 2019, Geita Field Report

522 LHRC Human Rights and Business Survey 2019: Songwe Field Report

523 Ibid, Section 33.



In Njombe, it was revealed that PWDs, do not have much access to employment. Most of them are unemployed and unable to easily access employment due to discrimination. Most employers are still reluctant to employ PWDs' due to their disbelief in their capacity to work efficiently and effectively.

Buildings to accommodate PWDs at workplace

The Persons with Disabilities Act of 2010 provides for various rights of PWDs, including the right to access to public buildings⁵²⁴ and right to employment. In terms of accessibility, PWDs face a challenge of working environment not being friendly to them, making it more difficult for them to perform their duties successfully and timely.

All working barriers such as; lack of lifts and ramps in office buildings, equipment, and reliable transport to and from the office to be removed. Also, companies should be sensitized to have disability policies and legislations at workplaces. These will oversee the employment of PWDs and penalize for those who do not comply.⁵²⁵



Picture 91: A toilet at GIPCO Construction Ltd

⁵²⁴ Section 35 of the Persons with Disabilities Act 2010.

⁵²⁵ Tanzania: The Rights of PWD Should Be Given Priority available at <https://allafrica.com/stories/201901300573.html>



6.5. HIV/AIDS

Persons Living with HIV (PLHIVs) need special attention, care and protection. Their status does not make them less capable of contributing to the economy like other people who are HIV free. Discrimination and Stigma basing on the status of HIV/AIDS only demoralizes them and bring about a sense of exclusion in the society.

HIV/AIDS is a workplace issue and should be treated like any other serious illness/ condition in the workplace. This is necessary not only because it affects the workforce, but also because the workplace, being part of the local community, has a role to play in the wider struggles to limit the spread and effects of the epidemic.⁵²⁶ Tanzanian workforce includes PLHIVs, both men and women. The Government, being responsible for protection of the public, has emphasized on the protection of dignity and rights of PLHIVs. There are laws in force that protect PLHIVs and provides for their rights, including the right to work and right to non-discrimination. Discrimination based on the status of HIV is strongly prohibited under the HIV and AIDS (Prevention and Control) Act.⁵²⁷ The law calls upon every employer in consultation with the Ministry of Health and Social Welfare to establish and coordinate a workplace programme on HIV/AIDS for employees.⁵²⁸

The Act emphasizes on equal treatment of PLHIVs in accessing employment and at workplaces. There should be no stigmatization or discrimination of any kind, including HIV status.⁵²⁹

⁵²⁶ Para. 4.1 of the ILO Code of Practice on HIV/AIDS and the World of Work.

⁵²⁷ Section 30 of the HIV and AIDS (Prevention and Control) Act No. 28 of 2008.

⁵²⁸ Ibid Section 9

⁵²⁹ Ibid Section 31



RIGHTS OF AN EMPLOYEE WITH HIV/AIDS

- ◆ A right to remain in the workforce to the fullest extent possible
- ◆ A right to equal employment opportunities.
- ◆ Freedom from discrimination

In case of HIV status disclosure by an employee to his employer, then the employer should be keen to protect him from discrimination and stigmatization. Addressing stigma, which can disrupt workplace productivity and possibly lead to discrimination. Thus the following should be conducted to enhance safety of PLHIV and their protection at the workplace :⁵³⁰

- ◆ Establishing a workplace environment that is productive and supportive for workers living with HIV and other illnesses.
- ◆ Educate yourself and your employees about HIV and AIDS. learning about employment laws related to HIV and AIDS, such as medical confidentiality, disability, and reasonable accommodation
- ◆ Knowledge on workplace's policies, including HIV and AIDS policy and education program if they exists.
- ◆ Organisations should have the right procedures in place to manage complaints about harassment or mistreatment in the workplace (which can also help avoid costly and complex tribunal cases).⁵³¹

In 2018 reported 1.6 million people living with HIV in Tanzania compared to 2016 data which indicated that only 1.4 million people were living with HIV. This equates to an estimated HIV prevalence of 4.6%. In the same year, 72,000 people were newly infected with HIV, and 24,000 people died from an AIDS-related illness. In 2016, there was 55000 new infections and the death rate among PLHIV has declined for 9000 deaths from 33000 in 2016 up to 24000 AIDS-related deaths in 2018.

Several studies have indicated that despite the numbers, Tanzania has done well to control the HIV epidemic over the last decade. Scaling-up access to antiretroviral treatment which has helped Tanzania in minimizing the impact of the epidemic. As a result, between 2010 and 2015, the number of new infections declined by more than 20% and the

⁵³⁰ Business Responds to AIDS: HIV AND AIDS AND THE WORKPLACE— WHAT YOU SHOULD KNOW Employees, Coworkers, and Supervisors available at <https://www.cdc.gov/hiv/pdf/workplace/cdc-hiv-and-aids-and-the-workplace.pdf> , accessed on 15th September 2019

⁵³¹ Fit for Work: HIV and discrimination in the workplace available at <https://fitforwork.org/blog/hiv-and-discrimination-in-the-workplace/> , accessed on 15th September 2019



number of people dying from AIDS-related illness halved.

Discrimination in the workplace take various forms so, the employers should be well informed and prepared on the knowledge about HIV/AIDS in the workplace for protection of PLHIV at the organizations. Some of the forms of discrimination likely to happen in the workplace include the following:⁵³²

- ◆ Direct discrimination (e.g. when an employer treats an HIV-positive employee less favourably than others).
- ◆ Indirect discrimination (e.g. when conditions or rules in the workplace disadvantage HIV-positive employees).
- ◆ Associative discrimination (e.g. when a person suffers discrimination because of their association with a person who has been diagnosed with HIV).
- ◆ Harassment (e.g. offensive or intimidating behaviour intended to make a person's existence in the workplace difficult or untenable).
- ◆ Victimization (e.g. unfair treatment of an HIV-positive employee who has made a complaint about harassment in the workplace).

⁵³² Fit for Work: HIV and discrimination in the workplace available at <https://fitforwork.org/blog/hiv-and-discrimination-in-the-workplace/>, accessed on 15th September 2019



CHAPTER SEVEN:
**PERFORMANCE AND
EFFECTIVENESS OF
REGULATORY
AUTHORITIES**

7.1. Introduction

Regulatory authorities are Government agencies accountable for exercising autonomous mandate in a regulatory or supervisory activity. They govern and set standards in the respective field to enhance proper conduct of business and adherence with national laws and regulations.⁵³³ In Tanzania, several regulatory authorities have been established under different laws and regulations to regulate the business sector. These have regulatory mandates of business operations in terms of inspection, supervision and monitoring compliance with relevant laws and regulations in the business/investment sector. These authorities include: the Occupational Health and Safety Authority (OSHA), the Tanzania Revenue Authority (TRA), the National Environmental Management Council (NEMC), Tanzania Medicine and Medical Devices Authority (TMDA), Tanzania Bureau of Standards (TBS), Tanzania Fair Competition Commission (FCC), Social Security Regulatory Authority (SSRA), Tanzania Communications Regulatory Authority (TCRA), Business Registration and Licensing Agency (BRELA), Land Transport Regulatory Authority (LATRA). The table 16 below highlights the key regulatory authorities in the business/investment sector, their mandates and laws governing them.

7.2. State duty to protect human rights: the role of regulatory authorities

The duty to protect human rights by the regulatory bodies is provided from the United Nations guideline. States are duty bound to protect individuals from violations caused by business operations. A supervisory and regulatory role is imposed upon them to enhance welfare of their citizens. Hence states are indebted to take appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication mechanisms.⁵³⁴

Other mandates by the states on protection of individuals from human rights violation of companies' operation include:

- ◆ General State regulatory and policy functions;
- ◆ Enforcement of laws aimed at or have the effect of requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws as well as addressing any gap;

⁵³³ See "Regulatory body" available at <https://www.civildaily.com/regulatory-bodies-establishment-functions-examples/>, accessed on 19th September 2019

⁵³⁴ Principle 1 of the UN Guiding Principles on Business and Human Rights



- ◆ Ensure that other laws and policies governing the creation and on going operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- ◆ Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
- ◆ Encourage and where appropriate require, business enterprises to communicate on how they address human rights impacts of their operations.



Table 15: Some of the key regulatory authorities in the business sector, their functions and governing laws

Regulatory Authority	Mandate/Functions	Governing Law(s)
Occupational Health and Safety Authority (OSHA)	Labour Inspection: Ensure working environment is free from occupational hazards. Registration of workplaces.	Employment and Labour Relations Act 2004 Occupational Health and Safety Act 2003
National Environmental Management Council (NEMC)	<i>Object:</i> Undertake enforcement, compliance, review and monitoring of environmental impact assessment, including; facilitating public participation in environmental decision making, exercise general supervision and coordination over all matters relating to the environment assigned to the council, under the Act or any other written law. <i>Key function:</i> Enforce and ensure compliance of the national environmental quality standards.	Environmental Management Act 2004
Tanzania Revenue Authority (TRA)	<i>Key functions:</i> Assess, collect and account for all revenue; Monitor and ensure the collection of fees, levies, charges or any other tax collected by any Ministry, Department or Division of the Government as revenue for the Government; Promote voluntary tax compliance to the highest degree possible.	Tanzania Revenue Authority Act, 1995
Tanzania Food and Drugs Authority (TFDA)	<i>Key functions:</i> Regulate all matters relating to quality, and safety of food, drugs, herbal drugs, medical devices, poisons and cosmetics; regulate the importation, manufacture, labeling, marking or identification, storages promotion, sell and distribution of food, drugs, cosmetics, herbal drugs and medical devices or any materials or substances used in the manufacture of products; Approve and register products manufactured within or imported into, and intended for use in Tanzania; examine, grant, issue, suspend, cancel and revoke certificates and licenses or permits issued; Appoint inspectors and order inspection of any premises; Provide the public with unbiased information on products; Prescribe standards of quality in respect of products regulated under the Act; Attend to and, where possible, take legal measures on complaints made by consumers against manufacturers of products regulated under the Act	Tanzania Food, Drugs and Cosmetics Act, 2003



Regulatory Authority	Mandate/Functions	Governing Law(s)
Tanzania Bureau of Standards (TBS)	<i>Key functions:</i> Undertake measures for quality control of commodities, services and environment of all descriptions and to promote standardization in industry and trade; Approve, register and control the use of standard marks in accordance with the Act; Grant, renew, suspend, vary or cancel any license issued for the use of any standards mark; assist industries in setting up and enforcing quality assurance and environmental management systems procedures.	Standards Act, 2009
Land Transport Regulatory Authority (LATRA)	<i>Key functions:</i> Issues, renew and cancel permits or licenses; establish standards for regulated goods and services; establish standards for the terms and conditions of supply of the regulated goods and services; regulate rates and charges; coordinate land transport safety activities; monitor the performance of the regulated sectors, including levels of investment, availability of safe, quality and standards of services, cost of services, efficiency of production and distribution of services and other matters relevant to the authority; facilitate resolution of complaints and disputes; disseminate information about matters relevant to the functions of the authority; and consult with other regulatory authorities discharging similar functions.	Land Transport Regulatory Authority Act No. 3 of 2019
Tanzania Fair Competition Commission (TFCC)	<i>Key functions:</i> Develop and promote policies for enhancing competition and consumer welfare; Promote and enforce compliance with the Act; investigate impediments to competition, including entry into and exit from markets, in the economy as a whole or in particular sectors and publicize the results of such investigations.	Tanzania Fair Competition Act, 2003
Social Security Regulatory Authority (SSRA)	<i>Key functions:</i> Protect and safeguard the interests of members; Monitor and review regularly the performance of the social security sector; Facilitate extension of social security coverage to non-covered areas including informal groups; Regulate and supervise the performance of all managers, custodians and social security schemes.	Social Security Regulatory Authority Act 2008



Regulatory Authority	Mandate/Functions	Governing Law(s)
Tanzania Communications Regulatory Authority (TCRA)	<i>Key functions:</i> Protecting the interest of consumers; Protecting financial viability of efficient suppliers; Promoting the availability of regulated services to all consumers; Promoting effective competition and economic efficiency.	Tanzania Communications Regulatory Authority Act 2003
Business Registration and Licensing Agency (BRELA)	<i>Key functions:</i> ensure businesses operates in accordance with the regulations and sound commercial principles; Regulate business by administering business and industrial licensing laws; Protect the development of creativity, literary works, and expression of folklore by protecting such work in conjunction with rights owners; Administer intellectual property laws.	Government Executive Agencies Act No. 30 of 1997,

7.3. Performance and Effectiveness of Regulatory Authorities: Survey Findings

Performance and effectiveness of regulatory authorities in Tanzania can be measured by looking at the scope and their coverage; financial capacity; staff capacity and legal framework. Although efforts were made to reach out to more regulatory authorities, only two participated in the survey by the time this report was written, namely: Tanzania Fair Competition Commission (FCC), Tanzania Revenue Authority (TRA) and Land Transport Regulatory Authority (LATRA). Discussion with regulatory authority officials centred around the challenges they face in performing their regulatory functions.

In March 2019, the Prime Minister, Hon. Kassim Majaliwa, announced merger of the Tanzania Bureau of Standards (TBS) and Tanzania Food and Drugs Authority (TFDA). He noted that the decision to merge the two regulatory authorities was reached following complaints from the business community about multiple levies charged by the two entities. He expressed that the merger will also help to increase efficiency and reduce bureaucracy and inconvenience to the businesspersons.⁵³⁵ LHRC commends this move by the Government, as one of the factors that has been mentioned in its Blueprint on Regulatory Reforms to Improve the Business Environment is overlapping of functions of regulatory

⁵³⁵ See "Majaliwa orders TFDA, TBS merger" The Guardian Newspaper, 2 March 2019 at <https://ippmedia.com/en/news/majaliwa-orders-tfda-tbs-merger>, accessed 10th August 2019.



authorities, such as TBS and TFDA. LHRC has also identified this as an issue in its previous reports on human rights and business, which – among other things, leads to prolonged business registration procedure.

7.3.1. Scope and coverage of regulatory authorities

Previous LHRC reports have indicated coverage of most regulatory authorities as a major issue of concern. Most of the regulatory authorities, including OSHA, NEMC and TFDA, rely mainly on zonal offices, which are usually serving more than three regions. This becomes a challenge if there are concerns of shortage of staff and financial capacity to be in a position to exercise effective their mandates in all regions. On its part, TRA enjoys a much wider coverage as it has regional offices across Tanzania Mainland. It is therefore easier for the authority to fulfil its mandate due to its closeness to community members and businesses.

Awareness of regulatory authority

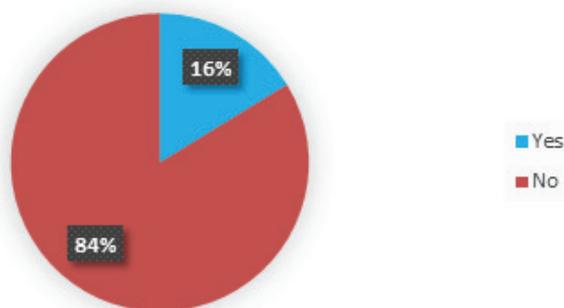


Figure 34: %Responses on awareness about regulatory authorities amongst community members (N=622)

Source: Field data, 2019

536 See The United Republic of Tanzania, Blueprint for Regulatory Reforms to Improve the Business Environment, Prime Minister's Office, Ministry of Industry, Trade and Investment, April 2018 at <http://hat-tz.org/hattzorg/wp-content/uploads/2018/10/Blueprint-for-Business-Environment-Regulatory-Reforms-FINAL-Cabinet-Comments-yet-to-be-included-May-2018.pdf>, accessed 10th August 2019.

537 See for example, LHRC (2016) Human Rights and Business Report 2015, p. 257.

538 N=613

539 N= 615 and 618 respectively.



To determine the scope and coverage of regulatory authorities, community members were asked about awareness of regulatory authorities. 84% of them said they are not – which suggests most authorities are not close to community members and hence not known by them. 85% of the respondents also indicated they were not aware of the major functions of the regulatory authorities. Majority of them responded that they had neither engaged (95%) nor been engaged (90%) by the authorities regulating the business sector.

Workers at the surveyed workplaces were asked whether they are aware of any regulatory authority in the business sector. Only 28% of the respondents indicated that they were aware of such authority, while 72% were not aware.⁵⁴⁰ Consequently, majority of them were not aware of major functions of the regulatory authorities and amongst those who claimed to be aware of the authorities, 68% of them could only mention one, which was mostly OSHA; while less than 20% acknowledged to have engaged or being engaged by a regulating authority.

7.3.2. Financial capacity of regulatory authorities

According to the ILO, some countries have labour inspection systems that are underfunded and understaffed, affecting their ability to perform or effectively perform their functions.⁵⁴¹ During this year's survey, regulatory officials engaged as respondents were asked about the capacity of the regulatory authorities to fulfil their mandates. Whether their regulatory authority has sufficient capacity to execute their functions in line with existing laws and regulations, 54% of respondents said they do, while 46% said they do not.⁵⁴² When asked about existing capacity gaps, majority of them (38%) mentioned lack of sufficient skilled officers, followed by lack of sufficient financial resources, equipments and facilities (15%).⁵⁴³

7.3.3. Staff capacity and legal framework

As indicated above, staff capacity was identified as the biggest capacity gap by officials of the regulatory authorities engaged during the survey. Complaints about inadequate labour inspection attest to staff shortages

540 N=803

541 See ILO, "International Labour Standards on Labour Inspection" at <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/labour-inspection/lang--en/index.htm>, accessed on 12th May 2018.

542 N=26

543 Field data, 2019.



on the part of regulatory authorities thus leaving workers and community members at a disadvantage. Shortage of human and financial resources within regulatory authorities means inadequate monitoring and inspection of businesses in order to ensure compliance with relevant laws and standards.

The officials from these authorities were asked, how they monitor companies to assess compliance with relevant standards. Majority of them (67.9%) indicated that the common method they employ is conducting physical visitations at workplaces/business site, followed by requesting or reviewing reports of companies (17.9%) and reviewing companies reports prepared by a third party.⁵⁴⁴ Majority of them (88%) also indicated during the survey that they conduct visitations very often, while 12% acknowledged that they do not visit very often.⁵⁴⁵ However, as indicated above, most respondents who were interviewed do not share this view of regular inspection of workplaces.

Regarding the legal framework, majority of the regulatory authority officials (76%) indicated that the current legal framework is adequate enough to address current business issues falling under their respective mandates. Only 16% were dissatisfied with the current legal framework; 44% felt that the legal mandate vested in their regulatory authority is very sufficient, while 12% said it somewhat sufficient.

7.3.4. Common challenges faced by regulatory authorities

Major challenges faced by regulatory authorities are weak or relatively weak institutional and financial capacity. LHRC report on business and human rights of 2015 provided a lengthy discussion around these challenges; and not much has changed since then, as the same challenges were highlighted during interviews with regulatory authority officials in surveyed regions. These challenges are:

- ◆ Inadequate budget: This makes it difficult for the regulatory authorities to effectively monitor and conduct relevant inspections.

⁵⁴⁴ Ibid.

⁵⁴⁵ Ibid.



- ◆ Shortage of human resources/skilled staff: This was also highlighted during the survey as a general challenge, which has implications in terms of monitoring and inspection functions of the regulatory authorities. The survey sought to determine the required number of staff and the exact number of staff members for selected regulatory authorities in order to assess the capacity gap, unfortunately the most recent information was not available.
- ◆ Corruption: Corruption is still a major hindrance to the effective performance of these regulatory authorities. Several regulatory authority officials have been arraigned in courts of law on charges of corruption in recent years. For instance, in June 2019, it was reported that, three TRA officers appeared before Kisutu Resident Magistrate's Court in Dar es Salaam, charged with soliciting a bribe of Tshs. 2 million from a businessman from Kariakoo area.⁵⁴⁶ In the same month, during his meeting with prominent businesspersons in Dar es Salaam, Hon. President John P. Magufuli remarked that he was aware of that some government officials at TRA, Tanzania Ports Authority (TPA) and other authorities demand and receive bribes from traders.⁵⁴⁷ In September 2019, the Minister of State in the Prime Minister's Office (Policy, Parliamentary Affairs, Labour, Employment, Youth and People with Disability), Hon. Jenista Mhagama, pointed out that some OSHA employees were accused of engaging in corrupt practices while discharging their duties.⁵⁴⁸
- ◆ Political interference: Though they did not provide specific examples, some of the interviewed regulatory authority officials mentioned political interference as another challenge that affects the functioning and performance of regulatory authorities. This point was also raised by some of the community members that were engaged during the survey.
- ◆ Lack of knowledge about regulatory authorities and their functions: As indicated above, not many people possess accurate information or knowledge about regulatory authorities and their functions. Very few

⁵⁴⁶ "TRA, POLICE OFFICIALS IN COURT FOR BRIBE ALLEGATIONS" DAILY NEWS Newspaper, 11 June 2019 at <https://www.dailynews.co.tz/news/2019-06-115cff4f1352669.aspx>, accessed 20th September 2019; "Tanzania probes 7 gov't officials over corruption claims" Xinhua, 11 June 2019 at http://www.xinhuanet.com/english/2019-06/11/c_138131846.htm, accessed 20th September 2019.

⁵⁴⁷ See "Tanzanian president vows to address challenges disrupting business environment" Xinhua, 7 June 2019 at http://www.xinhuanet.com/english/2019-06/07/c_138125065.htm, accessed 20th September 2019.

⁵⁴⁸ See Nelly Mtema "GOVERNMENT SCRAPS FEES ASSOCIATED WITH OSHA" DAILY NEWS Newspaper, 21 September 2019, accessed 20th September 2019.



people have indicated to have interacted with these authorities to seek help or intervention. This affects effectiveness of the regulatory authorities.

- ◆ **Accessibility:** As highlighted above, most regulatory authorities have zonal offices, which makes it difficult for accessibility at regional levels. Community engagement, which is key, is not done much – which might explain why a majority of respondents were found not to be much aware of the existence of such authorities as well as their functions.

7.3.5. Positive developments by regulatory authorities

In a bid to address the challenge of shortages of human resources and boost its monitoring and inspection functions, in June 2019, NEMC announced that it had a plan to recruit temporary employees at all zones countrywide in order to boost its capacity to inspect new projects and industries. The NEMC Director General, Dr. Samuel Gwamaka, noted that there is an increase in factories and projects in different parts of the country, some of which are not known by NEMC, hence it was a high time to conduct a thorough inspection to ensure compliance with environmental laws and standards, including registrations, annual charges and environmental impact assessment (EIA).⁵⁴⁹

⁵⁴⁹ "NEMC TO INSPECT ALL PROJECTS AND INDUSTRIES COUNTRYWIDE" DAILY NEWS Newspaper, 19 July 2019, at <https://www.dailynews.co.tz/news/2019-07-195d31813de601a.aspx>, accessed 20th September 2019.



CHAPTER EIGHT:
**BUSINESS
ENVIRONMENT AND
CONSUMER
PROTECTION IN
TANZANIA**

8.1. Business Environment

8.1.1. Introduction

Business environment in Tanzania is regulated by domestic, regional and international instruments. At international level, there is the World Trade Organization (WTO), which provides the global rules of trade between nations to ensure, trade flows as smoothly, predictably and freely as possible. There is the General Agreement on Tariffs and Trade (GATT) which is a legal agreement between many countries which seeks to promote international trade by reducing or eliminating trade barriers such as tariffs or quotas. Moreover, there are OECD Guidelines for Multinational Enterprises,⁵⁵⁰ bilateral and multilateral agreements on trade that Tanzania is part. Additionally, various instruments relating to the conduct of businesses include: the International Covenant on Economic, Social and Cultural Rights (ICESCR); Guiding Principles on Business and Human Rights; UN Global Compact's Ten Principles; and the ILO instruments such as, ILO Declaration on Fundamental Principles and Rights at Work and ILO Tripartite Declaration on principles concerning multinational enterprises and social policy.

At regional level, business/trade environment in Tanzania is governed by various instruments relating to trade and investment adopted under; the East Africa Community (EAC), for example the EAC Common Market Protocol, EAC Customs Union Protocol and the EAC Monetary Union Protocol; and Southern African Development Community (SADC), for example the SADC Protocol on Trade.

At domestic level, there are laws and regulations that government businesses. These include the Constitution of the United Republic of Tanzania of 1977; Tanzania Investment Act, 1997 (No. 26 of 1997); Financial Laws (Miscellaneous Amendments) Act, 1997 (Act No. 27 of 1997); Capital Markets and Securities Act, 1994 (No. 5 of 1994); Mining Act of 2010; BOT Act 2006; the Land Act, 1999 (No. 4 of 1999); the Village Land Act, 1999 (No. 5 of 1999); Banking and Financial Institutions Act, 2006; Value Added Tax Act, 2014; Immigration Act, CAP 54 (RE 2016); Business Licensing Act, CAP 208; Employment and Labour Relations Act, 2004; and Workmen's Compensation Act, 2008. There are also laws that establish various

⁵⁵⁰ Organisation for Economic Co-operation and Development - an intergovernmental economic organisation with 36 member countries, founded in 1961 to stimulate economic progress and world trade.



authorities that regulate the business sector, including Tanzania Investment Centre(TIC), Business Registration and Licensing Authority (BRELA), Tanzania Revenue Authority (TRA), Occupational Safety and Health Authority (OSHA) and National Environment Management Council (NEMC).

8.1.2. Business Environment

Since 2003, the World Bank (WB) has been publishing reports on; doing business, measuring businesses regulations and enforcements in over 190 economies in the world. In its recent report of 2019, it revealed that, Tanzania had dropped down 7 positions in the Ease of Doing Business Ranking.⁵⁵¹ In terms of Starting a Business, Tanzania ranks 163th and is affected by long procedures dealing with construction permits (150th) and registering property (146th).⁵⁵² Overall, the Ease of Doing Business Score for Tanzania in 2019 is 53.63%, dropping in terms of ranking from 137th in 2018 to 144th in 2019.⁵⁵³ The Government under the former Minister of Industry, Trade and Investment, Hon. Charles Mwijage (MP), commented the reasons for the dropping to be the result of various procedural checks instituted to reduce malpractices in the business sector and stated that the business climate would improve. Tanzania has also scored poorly on issues of tax payments, protection of minority investors, cross-border trade and resolving insolvency.⁵⁵⁴ This is indicated in the figure 35 below. The Government provided its plans to address some of these challenges including; reducing fees, taxes and delays in business transactions.⁵⁵⁵

551 See Tanzania InvestTanzaniaInvest "Tanzania Down 7 Positions in WB Ease of Doing Business Ranking" at <https://www.tanzaniainvest.com/economy/wb-ease-doing-business-2019>, accessed 20th September 2019.

552 Ibid.

553 See Mnaku Mbani "Tanzanian government explains lower ranking in ease of doing business report" The Citizen Newspaper, 2 November 2019 at <https://www.thecitizen.co.tz/news/Tanzanian-government--explains-lower-ranking-in-ease-of/1840340-4834052-9s9byv/index.html>, accessed 20th September 2019.

554 Ibid.

555 Ibid.



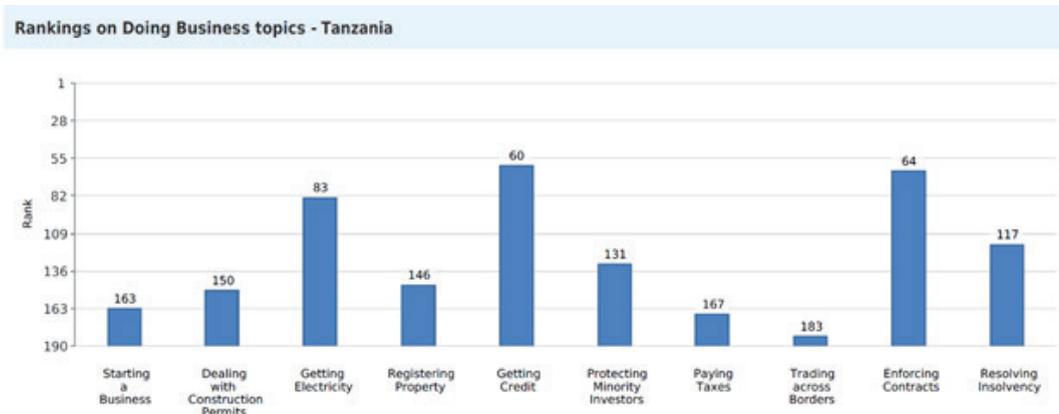


Figure 35: Tanzania's rankings on doing business topics
 Source: World Bank's Ease of Doing Business Report 2019

In 2019, the Government's roadmap to improving the business environment (Blueprint on Regulatory Reforms to Improve the Business Environment) identifies overlapping of functions of regulatory authorities, such as Tanzania Bureau of Standards (TBS) and Tanzania Food and Drug

Authority (TFDA), as one of the factors affecting business environment in Tanzania.⁵⁵⁶ LHRC has also identified this as an issue in its previous reports on human rights and business, which – among other things, leads to prolonged business registration procedure.⁵⁵⁷ The blueprint also mentions the issue of duplication of registration requirements involving the Social Security Regulatory Authority (SSRA), Business Registration and Licensing Authority (BRELA) and Tanzania Employment Services Agency (TAESA).⁵⁵⁸

In June 2019, President of Tanzania, Hon. John P. Magufuli, during his meeting with prominent business person in Dar es Salaam reportedly identified complicated administrative procedures and corruption amongst regulatory authority officials among factors affecting business

556 See Tanzania Invest Tanzania Invest "Tanzania Down 7 Positions in WB Ease of Doing Business Ranking" at <https://www.tanzaniainvest.com/economy/wb-ease-of-doing-business-2019>, accessed 20th September 2019.

557 Ibid.

558 See Mnakw Mbani "Tanzanian government explains lower ranking in ease of doing business report" The Citizen Newspaper, 2 November 2019 at <https://www.thecitizen.co.tz/news/Tanzanian-government--explains-lower-ranking-in-ease-of/1840340-4834052-9s9byv/index.html>, accessed 20th September 2019.



climate in Tanzania.⁵⁵⁹ He also mentioned tax burden (particularly in the tourism sector) and tendency of some local government officials of introducing new taxes without prior consultations with the central government.⁵⁶⁰ Existence of too many regulatory authorities as some of them performing similar functions; too many taxes and levies due to charges/ fees from each authority; corruption; and lack of effective strategies to empower small and medium-scale entrepreneurs.

The survey on human rights and business also reached out to market traders in Dar e Salaam Region. The market traders were asked on major challenges they face in their business dealings. Majority of them (43.2%) mentioned reduced demand for their products, followed by 21.6% who mentioned tax burden; other (10.8%) mentioned high costs of doing business and (10.8%) lack of access to low-interest loans.⁵⁶¹

The 2019 human rights and business survey also revealed unfair treatment and harassment of business persons by political figures. In Arusha, one hotel businessman stated his concerns on unfair treatment and harassment from the District Commissioner of Hai, Hon. Lengai Ole Sabaya. The businessman, Cathbert Swai, was quoted by the media during a tourism sector stakeholders' meeting in July 2019. He explained how the Hai DC harassed and solicited Tshs. 5 million from him, which he was forced to give him in instalments.⁵⁶² He accused the DC of abusing his office to harass businessmen and called for intervention from higher authorities. Responding to the allegations, the DC denied and explained that, the source was a land dispute between the investor and an elderly woman.⁵⁶³ In other surveyed regions, some of the business owners also stated interference by political and local government authorities, thus affected their business operations including conducting CSR activities.

559 See "Tanzanian president vows to address challenges disrupting business environment" Xinhua, 7 June 2019 at http://www.xinhuanet.com/english/2019-06/07/c_138125065.htm, accessed 20th September 2019.

560 Ibid.

561 Field data, 2019.

562 "DC atuhumiwa kuomba rushwa ya Mil 5" EAVT, 25 July 2019 at

<https://www.eatv.tv/news/current-affairs/dc-atuhumiwa-kuomba-rushwa-yamil-5>, accessed 20th September 2019.

563 Ibid.



LHRC urges the Government to ensure businesspersons conduct their business operations freely, without arbitrary interference by Government officials and leaders. Unfair treatment and harassment of business owners affects businesses and ultimately employees, because it may lead to low productivity, redundancies, nonpayment or deduction of salaries on the part of employees.

Some of the challenges affecting business environment in Tanzania have been pointed out in the report by the U.S Department of Commerce in its 2018 Tanzania report.⁵⁶⁴ These challenges include: bureaucratic “red tape” and corruption; difficulties enforcing contracts through the courts; poor infrastructure, including unreliable power; limited availability of skilled labour; difficulties in accessing land, registering and protecting property rights; lack of credit, volatile regulatory/policy environment; and proliferation of taxes.⁵⁶⁵

8.1.3. Business Environment: Positive Developments

In June 2019, the Minister of State in the Prime Minister’s Office (Investment), Hon. Angellah Kairuki, informed the Parliament that, the Government was doing everything possible to boost Tanzania’s WB standing in Ease of Doing Business reports.⁵⁶⁶ She noted that experts, from the World Bank, have been invited to come to Tanzania and train focal persons on what they can do to improve business environment.⁵⁶⁷ During the same parliamentary session, the Deputy Minister for Education, Science and Technology, Hon. William Ole Nasha reported several steps taken by the Government to improve the business climate, including scrapping 114 fees /charges payable to operators in the agriculture and livestock sectors.⁵⁶⁸

In September 2018, it was reported that the Government has scrapped some fees and levies paid to OSHA as part of its efforts to improve the

⁵⁶⁴ See U.S Department of Commerce, U.S Country Commercial Guides: Tanzania 2018, at https://tz.usembassy.gov/wp-content/uploads/sites/258/Tanzania_CCG_2018.pdf, accessed 20th September 2019.

⁵⁶⁵ Ibid.

⁵⁶⁶ “Tanzania hopeful of improving in WB’s Ease of Doing Business reports” The Citizen Newspaper, 21 June 2019 at <https://www.thecitizen.co.tz/news/Tanzania-hopeful-of-improving-in-WB-s-Ease-of-Doing-Business/1840340-5165980-a3mc9iz/index.html>, accessed 20th September 2019.

⁵⁶⁷ Ibid.

⁵⁶⁸ Ibid.



business environment.⁵⁶⁹ The fees had been a concern of the business community in Tanzania. The fees include; registration form, fee for workplace registration (between Tshs. 50,000 and 1,800,000), fees for compliance with occupational health and safety (Tshs. 200,000 per year); fees for professional counselling on health and safety (Tshs. 450,000).⁵⁷⁰ In August 2019, OSHA mentioned having recorded a five-time workplace registration increase, following the scrapping of the fees/charges a year before upon amendment of the Occupational Health and Safety Act of 2003.⁵⁷¹ It noted the increase, from registered workplaces from 3,354 in the financial year 2017/18 to 16,457 in the financial 2018/19.⁵⁷² Through public notice, OSHA also claimed that the number of inspections has also increased and the authority has been able to reach out more workplaces.⁵⁷³

Another positive development that has occurred in Tanzania to improve the business environment is embracing ICT. This move has been acknowledged in the World Bank 2019 doing business report indicating that, online company registration has made starting business easier.⁵⁷⁴

8.2. Consumer Protection

8.2.2. Existence and impact of counterfeit and substandard products

In the financial year 2018/19, human and consumer rights in Tanzania, continued to be affected due to the flooding of counterfeit and substandard products in domestic market.⁵⁷⁵ These products usually originate from China, India, the United Arab Emirates (Dubai), Indonesia, Taiwan, Singapore, Pakistan, Hong Kong, South Korea, Bahrain, Malaysia, Burma and Thailand.⁵⁷⁶ Their presence has resulted in the loss of revenue due to: tax evasion; loss of employment; ill-health; loss of consumer trust; loss of market share; and safety risks. They also threaten right to life, right

569 See Nelly Mtema "GOVERNMENT SCRAPS FEES ASSOCIATED WITH OSHA" DAILY NEWS Newspaper, 21 September 2018 at <https://www.dailynews.co.tz/news/2018-09-215ba498fcd08c4.aspx>, accessed 20th September 2019.

570 Ibid.

571 "OSHA WORKPLACES REGISTRATIONS RAISES FIVE TIMES" DAILY NEWS Newspaper, 29 August 2019 at <https://www.dailynews.co.tz/news/2019-08-295d678cb7b7db2.aspx>, accessed 20th September 2019.

572 "OSHA WORKPLACES REGISTRATION RISES FIVE TIMES" DAILY NEWS Newspaper, 29 August 2019 at <https://www.dailynews.co.tz/news/2019-08-295d678cb7b7db2.aspx>, accessed 20th September 2019.

573 Ibid.

574 See Tanzania InvestTanzaniaInvest "Tanzania Down 7 Positions in WB Ease of Doing Business Ranking" at <https://www.tanzaniainvest.com/economy/wb-ease-doing-business-2019>, accessed 20th September 2019.

575 See Sosthenes Mwitwa "Tanzania: Fake Goods Cause Huge Economic Losses" Daily NewsDailyNews Newspaper, 26 June 2018 at <https://allafrica.com/stories/201806260688.html>, accessed 14th November 2018.

576 Ibid.



to health, and right to work as well as the right to development. Counterfeit products contribute to revenue loss of USD 4 million annually.⁵⁷⁷

A 2017 report on state of counterfeit goods in Tanzania by the Confederation of Tanzania Industries (CTI) indicates that in East Africa, Tanzania and Kenya suffer the most due to their geographical location and that counterfeiting is a big problem in Tanzania⁵⁷⁸. The products originate from both within Tanzania and from imports; and the hotspots for such products are Dar es Salaam, Arusha, Mwanza and Mbeya. Most of these goods (80%) enter Tanzania through the Port of Dar es Salaam and to a lesser extent through Tanga and Mbeya, while entry via Zanzibar is also widespread.⁵⁷⁹

The CTI report further indicates that majority of consumers purchase counterfeit goods due to ignorance and the affordable price of the products. Most of them do not report to relevant authority when they encountered fake products, while others do not know which authority is responsible. Companies operating in Tanzania have also complained that counterfeit products have: led to loss of market share (10-30%); loss of annual turnover; tarnished their brand; and loss of consumer trust.⁵⁸⁰ Moreover, the CTI study findings show that 80% of the people interviewed reported that the fake products affected the health and safety of Tanzanians as consumers. The situation has also contributed to companies not being able to expand and create more employment. Reasons for existence of counterfeits in domestic market include: inadequate budget allocation for relevant authorities for effective enforcement of laws; corruption; lack of coordination and inability to monitor some of the borders with neighbouring countries, which are highly porous.⁵⁸¹ Report by the Controller and Auditor General (CAG) on audit of public authorities and other bodies for the financial year

⁵⁷⁷ Confederation of Tanzania Industries, The State of Counterfeit Goods in Tanzania: Research Report, October 2017

⁵⁷⁸ See Confederation of Tanzania Industries, The State of Counterfeit Goods in Tanzania: Research Report, October 2017 at <http://www.best-dialogue.org/wp-content/uploads/2018/01/CTI-Counterfeit-report-Oct-2017.pdf?x82837>, accessed 18 November 2018.

⁵⁷⁹ Ibid.

⁵⁸⁰ See Confederation of Tanzania Industries, The State of Counterfeit Goods in Tanzania: Research Report, October 2017 at <http://www.best-dialogue.org/wp-content/uploads/2018/01/CTI-Counterfeit-report-Oct-2017.pdf?x82837>, accessed 18 November 2018.

⁵⁸¹ Ibid.



2016/2017 indicates that, there were no officers from the Tanzania Bureau of Standards (TBS) at several boarder entries to ensure compliance of imported goods with set standards.⁵⁸² These entries are: Borega, Kogaja, Kilongwe and Gorogonja in Mara Region; Bukoba and Kemondo ports in Kagera region; Kisese, Kitobo and Chumvini in Kilimanjaro region and Kigombe, Kipumbwi, Mkwaja, Kwale – Jasini, Chongoleani, Sahare, Mwambani, Dumi and Mnyanjani in Tanga Region.⁵⁸³ The CAG remarked that the absence of TBS officers at these entries poses a risk of importation of substandard goods in to Tanzania.⁵⁸⁴

During the survey on human rights and business in 15 regions of Tanzania Mainland, respondents were asked about counterfeit and substandard products. Among the question asked was whether they usually inspect products before buying to check if they are genuine. 55.3% responded yes, while 30.7% said no and 14.1% said they were not sure or did not remember.⁵⁸⁵ The community members engaged during the survey were also asked, whether they had come across or bought a counterfeit or substandard product. 50% said they had not, while 30% said they had and 20% responded that they were not sure or did not remember, as indicated in the figure below.

Have you ever come across or bought counterfeit or substandard product?

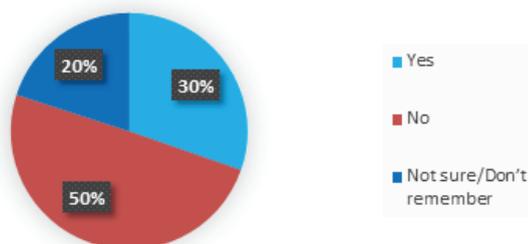


Figure 36: %Responses on coming across or buying counterfeit or substandard product (N=620)
Source: Field data, 2019

582 See THE ANNUAL GENERAL REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE AUDIT OF PUBLIC AUTHORITIES AND OTHER BODIES FOR THE FINANCIAL YEAR 2016/2017 at http://www.nao.go.tz/?wpfb_dl=253, accessed 18th November 2018.

583 Ibid.

584 Ibid.

585 N=626



The survey found that most people have a tendency of not reporting incidents of counterfeit or substandard products. As indicated above, 30% of the respondents said they had come across counterfeit or substandard products, but then asked what they did afterwards, only 5% said they reported the matter to relevant authorities, while 44% - which is nearly 50% - said they did not do anything and 51% said they complained to the business owner/seller. 10% of the respondents who had consumed counterfeit or substandard product also claimed to have suffered harm as a result.⁵⁸⁶

In July 2018, Western Zone TFDA Office announced that it had destroyed fake imported foods and cosmetics worth Tshs. 15 million during its operations conducted in various parts of Katavi Region.⁵⁸⁷ Among the products seized were expired human drugs worth Tshs. 3.3million. In August 2018, TBS identified some electrical appliances during an inspection conducted in city centre Dar es Salaam and noted that upon completion of the inspection all such appliance found to be counterfeit and substandard would be destroyed.⁵⁸⁸ A month later, TFDA announced that it had seized and destroyed different types of counterfeit products worth Tshs. 32 million in Tabora Region.⁵⁸⁹ In April 2019, Tanzania Bureau of Standards (TBS) announced that it had seized four tonnes of used underwear, following an operation conducted in the Northern Zone; and noted that the substandard goods were set to be burnt.⁵⁹⁰

8.2.3. Consumer Protection in the Transportation Sector: The Case of Dar es Salaam

A mini survey on consumer protection in the transportation sector was conducted in Dar es Salaam Region as part of the human rights and business survey. A total of 87 respondents participated in this survey; and over 90% of them acknowledge to have used a transport service in the past month, namely bus service to other regions, local bus service, rapid

⁵⁸⁶ Field data, 2019.

⁵⁸⁷ "TFDA destroys fake imported foods, cosmetics worth 15m/-" The Guardian Newspaper, 2 July 2018 at <https://www.ippmedia.com/en/news/tfda-destroys-fake-imported-foods-cosmetics-worth-15m>, accessed 20th September 2019.

⁵⁸⁸ See "TBS yakamata vifaa feki vya umeme" EATV, 24 August 2018 at <https://www.eatv.tv/news/current-affairs/tbsyakamata-vifaafeki-za-umeme>

⁵⁸⁹ See Robert Kakwesi "TFDA yateketeza bidhaa feki Tabora" Mwananchi Newspaper, 22 September 2018 at <https://www.mwananchi.co.tz/habari/TFDA-yateketeza-bidhaa-feki-Tabora/1597578-4772464-format-xhtml-38blirz/index.html#>, accessed 20th September 2019.

⁵⁹⁰ See George Sembony "Tanzania: TBS impounds four tonnes of used underwear in Tanga" The Citizen Newspaper, 27 April 2019 at <https://www.thecitizen.co.tz/news/Tanzania--TBS-impounds-four-tonnes-of-used-underwear-in-Tanga/1840340-5090768-5r2oir/index.html>, accessed 20th September 2019.



transport bus service and Uber transport service. 63.5% of them indicated that they had used 2 or more of these transport services in the past month. They were also asked to comment on the state of transport services and majority of them generally expressed satisfaction with the state of the transport services. However, they expressed several concerns with the transport services, namely: high costs; change of routes (especially for local bus transport service); issuance of single ticket to two passengers (particularly for inter region bus service); congestion in transportation vehicles, especially for the case of rapid transport service; and shortage of transport vehicles, especially buses. Major factors that were said to contribute to challenges in the transportation service were: poor administration/regulation of the sector/sub-sector; corruption; lack of capacity to deliver the service and loopholes in laws and regulations.

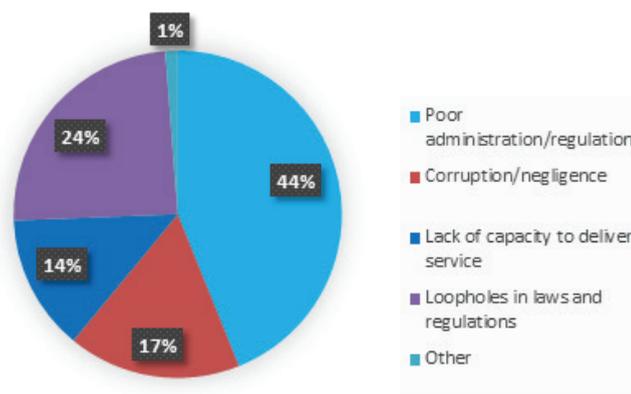


Figure 4: %Responses on factors contributing to challenges faced in the transportation sector

Source: Field data, 2019



The mini survey also found that most people tend to take no action when they are not satisfied with transport service. When asked what they do when they are aggrieved by transport service provided, 61.7% said they do nothing, while only 7.4% said they reported to the relevant government authority. Awareness about authorities regulating the transportation sector was also found to be high, with 69% of the respondents indicated they are aware of one or more authorities, while 31 % said they do not know such authorities. When asked about effectiveness of the regulatory authorities, majority of them (52.7%) said they are somewhat effective, followed by 33.8%, who said they are effective. 12.2% of the respondents said they regulatory authorities were not effective.

Overcrowding in buses was particularly raised as a major concern for the case of Bus Rapid Transport (BRT) service, leading to physical and psychological harm. The survey also found that crowding in public transport also contributes to acts of sexual harassment and assault of women in buses, including unwarranted touching and rubbing against women's body parts. Respondents who identified themselves as regular passengers of the BRT public transport system also lamented delay in receiving the service, forcing them to sometimes wait for long periods of time to get the service, and particularly putting persons with disabilities, women and children at risk. This was especially raised as a major issue of concern during the rain seasons.



CHAPTER NINE: **GENERAL CONCLUSION AND RECOMMENDATIONS**



9.1 Conclusion

The situation of human rights and business in Tanzania for the financial year 2018/19 appears to have slightly improved compared to the year 2017. This is particularly, the case in compliance with: labour laws and standards especially; on issues of employment contracts, corporate social responsibility, gender and other forms of discrimination. Common challenge include: poor awareness and knowledge on relevant laws and rights in the business sector especially, among workers and community members; threatening workers with termination when they demand their work-related rights; tax avoidance and evasion by companies especially, in the mining sector; businesses failing to comply with their environmental responsibility; and violations of human rights by businesses, especially in the mining sector. These challenges affect promotion and protection of human rights in the business sector. Deliberate measures need to be taken to improve the situation of human rights in this sector. LHRC makes the following recommendations:

9.2 Recommendations

9.2.1 Compliance with labour laws and standards

- ◆ The Government, through the Ministry of Labour, Employment and Youth Development, to ensure effective enforcement of labour laws for businesses to comply with relevant labour and human rights laws and standards.
- ◆ Civil society organizations and the Commission for Human Rights and Good Governance (CHRAGG) to reach out to workers and employers, sensitize them about labour and human rights of both parties in a bid to promote human rights in the business sector.
- ◆ The Government and the Judiciary to improve access to remedy for victims of labour and human rights violation by businesses, including strengthening key institutions such as the CMA.
- ◆ Ensure labour rights are included in the new constitution, should the constitution-making process continue.
- ◆ The Government should regularly review the Wage Order to safeguard the right to work and fair remuneration.
- ◆ Community members and employees should report practices that lead to abuse of human rights in the business sector to relevant regulatory authorities.



9.2.2 Land acquisition for investment

- ◆ The Government, through the Ministry of Lands, Housing and Human Settlements to ensure that community members effectively, participate in the process of land acquisition for investment including, imparting them with the relevant legal knowledge and fully informed about the impact of proposed investment(s) for them to make free prior informed consent.
- ◆ The Prevention and Combating of Corruption Bureau to address corruption in the land sector which is one of the major obstacles in realization of land rights.
- ◆ Community members and local authorities should refrain from corrupt practices that hinder land-related rights.
- ◆ The Government should facilitate amendment of land laws, to limit the size of land that can be acquired by investors in order to cure the problem of unutilized investment land and community members not having enough land for economic activities.
- ◆ The Ministry of Lands, Housing and Human Settlements to collaborate with the Ministry of Constitutional and Legal Affairs and the Judiciary to, effectively address land-related conflicts between community members and investors to guarantee realization of property rights (land).
- ◆ The Ministry of Lands, Housing and Human Settlements to ensure, fair land acquisition process and affected community members are fairly remedied, including fair and timely compensation.

9.2.3 Business Compliance with tax obligations

- ◆ The Government to continue closely monitoring of companies to ensure their tax obligation compliance, especially those in the mining sector – which have been mainly implicated in tax evasion and avoidance.
- ◆ The Government should reduce tax exemptions and other tax incentives discussed in this report in order to increase revenue collection.
- ◆ Government to review its tax systems to address double taxation so as to ensure tax fairness and increase voluntary tax compliance.
- ◆ TRA need to increase awareness and sensitization on tax law and compliance education to the public and the business sector.



9.2.4 Corporate social responsibility, Environmental responsibility and Corporate Respect for Human Rights

- ◆ The Government, through the Ministry of Constitutional and Legal Affairs should enact a comprehensive law on corporate social responsibility (CSR) to compliment the changes in the mining law, which makes CSR a legal requirement for mining companies. This will ensue all businesses, not just mining companies, comply with CSR.

- ◆ Environmental impact assessment (EIA) and social impact assessment (SIA) are very important for ensuring environmental responsibility and protecting the interests and welfare of community members before investment is made. The Government, through the ministries responsible for investment, land and environment, should ensure compliance with these requirements in line with the laws, including the Environmental Management Act.

- ◆ Companies should refrain from causing adverse human rights impact or participate in human rights abuses; and when they are implicated in human rights abuses they should provide effective remedy.

- ◆ The Government to take action against businesses that violate human rights as part of its duty to protect human rights and ensure the victims have access to effective remedy.

9.2.5 Gender discrimination and other forms of discrimination

- ◆ The Government should ensure companies adopt affirmative measures to protect PWDs, women and PLHIVs from any form of discrimination at workplace, including access to employment.

- ◆ Community development officers and other stakeholders should ensure that rights relating to gender and non-discrimination are mainstreamed in all plans and activities of companies.

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9.2.6 Regulatory authorities

- ◆ The Government, through the Prime Minister's Office of Labour, Youth, Employment and People with Disability to strengthen key business regulatory authorities through institutional capacity support to enable regular inspection and monitoring on business compliance with relevant laws and regulations. Allocation of adequate budget is key in this regard.
- ◆ Regulatory authorities should increase efforts of raising community awareness about their mandates and functions in order to increase accessibility.
- ◆ CSOs should work at raising community awareness about the mandates and functions of regulatory authorities.



REFERENCES



Books, Reports, Articles & Papers

Afonso, M. Fonseca, J. F. Pires, Impact of working hours on sleep and mental health, *Occupational Medicine*, Volume 67, Issue 5, July 2017, Pages 377–382, <https://doi.org/10.1093/occmed/kqx054>

Avert “HIV and AIDS in Tanzania” available at <https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/tanzania>, accessed on 15th September 2019.

Benjamin O. Alli (2008), *Fundamental Principles of Occupational Health and Safety*, International Labour Office-General: ILO, Second Edition, available at http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_093550.pdf, accessed 20th August 2019.

Cecilia Jamasmie “Tanzania anti-corruption body charges Acacia subsidiaries with tax evasion, money laundering” at <https://www.mining.com/tanzania-anti-corruption-body-arrests-acacia-mining-employees/>, accessed 20th September 2019.

Celine S, *An Assessment of Community Participation in Land Acquisitions in Mozambique and Tanzania*, USAID.

Centre for Economic and Social Rights “Adequate Standard of Living”, available at <http://www.cesr.org/adequate-standard-living>, accessed on 13th September 2019.

Chris Maina Peter, “Independence of the Judiciary in Tanzania: Many Rivers to Cross” in Frederick Juuko, [e.d.] *The Independence of Judiciary and Rule of Law: Strengthening Constitutional Activism in East Africa* (Kampala: Kituo cha Katiba, 2005).

Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/24&Lang=en, accessed 19th April 2018.



Delloite (2015), Tanzania Budget Insight 2015: Diving Deep, available at http://www2.deloitte.com/content/dam/Deloitte/tz/Documents/tax/Tax_Budget%20Insight%202015_TZ.pdf, accessed on 15th December 2015.

Dembe AE, Erickson JB, Delbos RG, et al The impact of overtime and long work hours on occupational injuries and illnesses: new evidence from the United States Occupational and Environmental Medicine 2005;62:588-597, at <https://oem.bmj.com/content/oemed/62/9/588.-full.pdf>, accessed 14th September 2019.

Dindin Reyes: Rights every working PWD should know about available at <https://www.kalibrr.com/advice/2015/09/rights-every-working-pwd-should-know-about> , accessed on 15th September 2019

Dr. Tenga,R. Et Al. (2015) Land Governance Assessment Framework, World Bank Tanzania.

FAO “Child Labour in Agriculture” at <http://www.fao.org/childlabouragriculture/en/>, accessed 17th September 2019.

FAO “Child Labour in Agriculture” at <http://www.fao.org/childlabouragriculture/en/>, accessed 17th September 2019.

FASSET, Corporate Social Responsibility:Course Handbook at http://www.fasset.org.za/downloads/CSR_Handbook_Review.pdf, accessed on 12th June 2018.

Fit for Work “HIV and discrimination in the workplace” available at <https://fitforwork.org/blog/hiv-and-discrimination-in-the-workplace/> , accessed on 15th September 2019.

Fulgence S.E. (2016) Corporate Social Responsibility in Tanzania. In: Vertigans S., Idowu S., Schmidpeter R. (eds) Corporate Social Responsibility in Sub-Saharan Africa. CSR, Sustainability, Ethics & Governance. Springer, Cham, at <https://www.springer.com/gp/book/9783319266671>, accessed 12th June 2018.



German Federal Ministry of Economics and Technology (2009), Target Market Analysis: Tanzania's Wind Energy Market, available at <http://docslide.us/documents/gtz2010-en-target-market-analysis-wind-tanzania.html>, accessed on 1st December 2015.

Hans Merket, Et al, International Peace Information Services. (2019) Dissecting the social license to operate: Local community perceptions of industrial mining in northwest Tanzania, Antwerp/Mwanza.

Iffat, I. (2018): Mapping Women's Economic Exclusion In Tanzania, GSDRC, University Of Birmingham.

ILO "Right to Strike upheld at ILO" at <http://www.industryall-union.org/right-to-strike-upheld-at-ilo>, accessed 20th May 2018.

ILO, International Labour Standards on Child labour at <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/child-labour/lang--en/index.htm>, accessed 21st May 2018.

ILO, International Labour Standards on Employment security at <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/employment-security/lang--en/index.htm>, accessed 21st May 2018.

ILO, International Labour Standards on Occupational Safety and Health, at <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm>, accessed 20th August 2019.

ILO, International Labour Standards on Social security at <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang--en/index.htm>, accessed 21st May 2018.

ILO, Q&As on business and working time, at http://www.ilo.org/empent/areas/business-helpdesk/faqs/W-CMS_DOC_ENT_HLP_TIM_FAQ_EN/lang--en/index.htm, accessed 20th



August 2019.

ILO, Right to collective bargaining at http://www.ilo.org/empent/areas/business-helpdesk/W-CMS_DOC_ENT_HLP_CB_EN/lang--en/index.htm, accessed 20th May 2018.

Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF). (2018). Women in Artisanal and Small-Scale Mining: Challenges and opportunities for greater participation. Winnipeg: IISD.

International Commission on Occupational Health (ICOH), International Code of Ethics for Occupational Health Professionals, available at http://www.icohweb.org/site_new/multimedia/core_documents/pdf/code_ethics_eng_2012.pdf, accessed 20th May 2018.

International Institute for Sustainable Development “Corporate Social Responsibility” at <https://www.iisd.org/business/issues/sr.aspx>, accessed 19th September 2019.

IPIS, Dissecting the social license to operate: Local community perceptions of industrial mining in northwest Tanzania, August 2019 at <http://ipisresearch.be/publication/dissecting-social-license-operate-local-community-perceptions-industrial-mining-northwest-tanzania/>, accessed 20th September 2019.

ISO, ISO 26000 - Social responsibility at <https://www.iso.org/iso-26000-social-responsibility.html>, accessed on 12th June 2018.

Karin Mader, Corporate Social Responsibility in Tanzania: An Overview, Dar es Salaam, June 2012 at <https://csroverviewtanzania.files.wordpress.com/2012/08/csr-overview-tanzania3.pdf>, accessed 12th June 2018.

Land Tenure and Property Rights in Tanzania : USAID available at https://www.land-links.org/wp-content/uploads/2016/09/USAID_Tanzania_Country_Profile.pdf , accessed on 13th September 2019.

Law Reform Commission of Tanzania, Report on Labour Law, presented to the Minister of Justice and Constitutional Affairs, Ministry of Justice



and Constitutional Affairs, 2001.

LHRC & ZLSC (2013), Tanzania Human Rights Report 2012.

LHRC (2016) Human Rights and Business Report 2015.

LHRC (2016), Human Rights and Business Report 2015, at www.human-rights.or.tz.

LHRC (2017) Human Rights and business Report 2016.

LHRC (2018) Human Rights and Business Report 2017.

LHRC Human Rights and Business Survey 2019, Arusha Field Report.

LHRC Human Rights and Business Survey 2019, Dodoma Field Report

LHRC Human Rights and Business Survey 2019, Dodoma Field Report.

LHRC Human Rights and Business Survey 2019, Geita Field Report.

LHRC Human Rights and Business Survey 2019, Kilimanjaro Field Report.

LHRC Human Rights and Business Survey 2019, Mara Field Report.

LHRC Human Rights and Business Survey 2019, Mbeya Field Report.

LHRC Human Rights and Business Survey 2019, Mtwara Field Report.

LHRC Human Rights and Business Survey 2019, Mwanza Field Report.

LHRC Human Rights and Business Survey 2019, Njombe Field Report.

LHRC Human Rights and Business Survey 2019, Pwani Field Report.

LHRC Human Rights and Business Survey 2019, Shinyanga Field Report.

LHRC Human Rights and Business Survey 2019, Songwe Field Report.



Marc Fadel, MD et al, Association Between Reported Long Working Hours and History of Stroke in the CONSTANCES Cohort, *Aha Journals*, July 2019 Vol 50, Issue 7 at <https://www.ahajournals.org/doi/pdf/10.1161/STROKEAHA.119.025454>, accessed 14th September 2019.

Martje Theuws & Mariette van Huijstee (2013), Corporate Responsibility Instruments: A Comparison of the OECD Guidelines, ISO 26000 & the UN Global Compact, SOMO, at <https://www.somo.nl/wp-content/uploads/2013/12/Corporate-Responsibility-Instruments.pdf>, accessed on 12th June 2018.

Mauricio Lazala "Tax avoidance: the missing link in business & human rights?" at <https://www.business-humanrights.org/en/tax-avoidance-the-missing-link-in-business-human-rights>, accessed 20th September 2019.

Mazurkiewicz, Piotr. 2004. Corporate environmental responsibility : Is a common CSR framework possible? (English). Washington, DC: World Bank. <http://documents.worldbank.org/curated/en/577051468339093024/-/Corporate-environmental-responsibility-Is-a-common-CSR-framework-possible>

National Bureau of Statistics (NBS), Sub-Divisional Population Projection for Year 2016 and 2017 based on 2012 Population and Housing Census, available at http://www.nbs.go.tz/nbs/takwimu/census2012/Tanzania_Total_Population_by_District-Regions-2016_2017r.pdf, accessed 18th December 2018.

National Bureau of Statistics, Tax Statistics Report 2017/18 Tanzania Mainland, June 2019, available at https://www.nbs.go.tz/nbs/takwimu/Tax/TAX_STATISTICS_REPORT_2017-18.pdf, accessed 20th September 2019.

Nuru Ngaillo, Tax avoidance and the extractive Industries, HakiRasilimali, at <https://www.hakirasilimali.or.tz/transfer-pricing-in-the-extractive-sector-in-tanzania/>, accessed 12th June 2018.



Richard Holme & Phil Watts, Corporate social responsibility: making good business sense, World Business Council for Sustainable Development, January 2000, at <http://www.ceads.org.ar/downloads/Making%20good%20business%20sense.pdf>, accessed on 12th June 2018.

Sebastián López Nieto & Beretta Godoy, Taxation as a human rights issue at <https://www.ibanet.org/Article/Detail.aspx?ArticleUid=4d8668cb-473a-44ea-b8be-1327d6d9d977>, accessed 19th April 2018.

Stephanie von Wogau (2010), Corruption in Tanzania, p. 8, available at http://www.againstcorruption.eu/uploads/norad/Wogau_Corruption-in-Tanzania.pdf, accessed 28th July, 2017.

Tanzania national child labour survey 2014: Analytical Report / International Labour Office; Fundamental Principles and Rights at Work (FUNDAMENTALS); Tanzania National Bureau of Statistics. - Geneva: ILO, 2016.

TRA “What is Corporation Tax?” at <https://www.tra.go.tz/index.php/corporation-tax/108-what-is-a-corporation-tax>, accessed 19th April 2018.

Tulia Ackson, Regulating working conditions in the Globalising World: Recent Trends in Tanzania, Faculty of Law, University of Dar es Salaam, Tanzania, at <https://www.ilo.org/legacy/english/protection/travail/pdf/rdw-paper14b.pdf>, accessed 14th September 2019.

Twaweza, Tanzania’s Tax Exemptions: Are they too high and making us too dependent on foreign aid?, Policy brief TZ.12/2010E, at <https://twaweza.org/uploads/files/Tax%20Exemptions.PDF>, accessed 12th Jun 2018.

United Nations (2013), United Nations Practical Manual on Transfer Pricing for Developing Countries, Department of Economic and Social Affairs.

United Nations Human Rights Office of the High Commissioner, UN rights expert: “Fundamental right to strike must be preserved” at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21328&LangID=E>, accessed 20th May 2018.



URT 2012, the National Population and Housing Census.

World Bank. 2019. Tanzania : Country Environmental Analysis – Environmental Trends and Threats, and Pathways to Improved Sustainability (English). Washington, D.C. : World Bank Group. <http://documents.worldbank.org/curated/en/356211556727592882/-Tanzania-Country-Environmental-Analysis-Environmental-Trends-and-Threats-and-Pathways-to-Improved-Sustainability>, accessed 20th September 2019.

Media Sources

“ACACIA FINED 300M/- FOR ENVIRONMENTAL BREACHES” DAILY NEWS Newspaper, 11 January 2019, at <https://dailynews.co.tz/news/2019-01-115c383600a913b.aspx>, accessed 20th September 2019.

“Acacia kusambazia shule vifaa vya mil. 700/-” HABARILEO Newspaper, 26 April 2019.

“Raia wa China watimuliwa kwa kuwapiga Makonde watanzania” IPP Media available at <https://www.ippmedia.com/sw/habari/raia-wa-china-watimuliwa-kwa-kuwapiga-makonde-watanzania> accessed on 15th September 2019.

“Serikali Ichunguze Zaidi Unyanyasaji wa namna hii” IPP Media, available at <https://www.ippmedia.com/sw/maoni-ya-mhariri/serikali-ichunguze-kwa-undani-zaidi-unyanyasaji-wa-namna-hii> , accessed on 15th September 2019.

“Seven in court over 11 billion/- gold mine bribery allegations” The Guardian Newspaper, 12th October 2018.

“TAKUKURU yakunjua makucha North Mara” Majira Newspaper, 12th October 2018.

“Tanzania: The Rights of PWD Should Be Given Priority” DailyNews Newspaper, 30 January 2019, available at <https://allafrica.com/sto->



ries/201901300573.html.

Andrew Msechu & Nora Damian “JPM AFICHUA MAKAMPUNI YANA-VYOKWEPA KODI” Mtanzania Newspaper (online), 24 July 2019 at <https://mtanzania.co.tz/jpm-afichua-makampuni-yanavyokwepa-kodi/>, accessed on 20th September 2019.

EATV “Rais Magufuli atoa siku 30 kwa wafanyabiashara” 7 June 2019 at <https://www.eatv.tv/news/current-affairs/rais-magufuli-atoa-siku-30-kwawafanyabiashara>, accessed 20th September 2019.

George Sembony “TBS impounds four tonnes of used underwear in Tanga” The Citizen Newspaper, 27 April 2019, available at <https://www.thecitizen.co.tz/news/Tanzania--TBS-impounds-four-tonnes-of-used-underwear-in-Tanga/1840340-5090768-5r2oir/index.html> , accessed on 20th September 2019.

Hadija Jumanne & Fortune Francis “Kenyan arraigned for a-Sh8.1-billion tax evasion in Tanzania” The Citizen Newspaper, 23 May 2019 at <https://www.thecitizen.co.tz/news/Kenyan-arraigned-for-a-Sh8-1-billion-tax-evasion-in-Tanzania/1840340-5128356-154u3gs/index.html>, accessed 20th September 2019.

IPIS, Dissecting the social license to operate: Local community perceptions of industrial mining in northwest Tanzania, August 2019 at <http://ipisresearch.be/publication/dissecting-social-license-operate-local-community-perceptions-industrial-mining-northwest-tanzania/>, accessed 20th September 2019.

Peter Saramba “Acacia fined Sh5.6bn for leaking toxic water” The Citizen Newspaper, 17 May 2019, at <https://www.thecitizen.co.tz/news/Acacia-fined-Sh5-6bn-for-leaking-toxic-water/1840340-5119270-siuuu4z/index.html>, accessed 20th September 2019.

Samson Chacha “BITEKO ACHACHAMAA, AIPA ACACIA NORTH MARA SIKU 7” HABARILEO Newspaper (online), 7 March 2019 at <https://habarileo.co.tz/habari/2019-03-075c80bb68845c2.aspx>, accessed 20th September 2019.



National Laws, Policies & Regulations
Constitution of the Revolutionary Government of Zanzibar 1984.

Constitution of the United Republic of Tanzania 1977.

Court (Land Disputes Settlements) Act, 2002.

Economic and Organized Crimes Act.

Employment and Labour Relations (General) Regulations, GN. 47 of 2017.

Employment and Labour Relations Act 2004.

Environmental Management Act 2004.

HIV (Prevention and Control) Act of 2008.

HIV and AIDS (Prevention and Control) Act No. 28 of 2008.

Labour Institutions (General) Regulations 2017 (GN 45 2017).

Labour Institutions (Regulation of Wages and Terms of Employment) Order 2007 (GN 223 of 2007).

Labour Institutions (Regulation of Wages and Terms of Employment) Order 2013 (GN 196 of 2013).

Labour Institutions Act 2004.

Land Acquisition Act of 1967.

Land Act No. 4, Cap 113 of 1999.

Law of Contract Act, CAP 345, R.E 2002.

National Defence Act, Cap. 192, [R.E. 2002].



Occupational Health and Safety Act, 2003.

Persons with Disabilities Act 2010.

Prevention and Combating of Corruption Act 2007.

Tax Revenue Appeals Act, Cap 408 of [R.E 2006]

United Republic of Tanzania, The National Natural Gas Policy of Tanzania 2013.

Village land Act Cap 114 of 1999.

Workers' Compensation Act.

International Instruments

African Charter on Human and Peoples' Rights (ACHPR) of 1981.

Convention on Discrimination (Employment and Occupation), (No. 111) of 1958.

Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) of 1979.

Convention on the Rights of Persons with Disabilities 2006.

Forced Labour Convention, 1930 (No. 29).

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30); Forty-Hour Week Convention, 1935 (No. 47).

Hours of Work (Industry) Convention, 1919 (No. 1).

ILO Code of Practice on HIV/AIDS and the World of Work.

ILO Convention No. 111 - Discrimination (Employment and Occupation) Convention, 1958.



ILO Declaration on Fundamental Principles and Rights at work, 1998.

International Covenant on Economic, Social and Cultural Rights (ECSCR) of 1966.

International Covenant on Economic, social and Cultural Rights, 1966.

Minimum Age Convention, 1973 (No. 138).

Night Work Convention, 1990 (No. 171).

Occupational Health Services Convention, 1985(No. 161).

Occupational Safety and Health Recommendation, 2006 (No. 197).

Reduction of Hours of Work Recommendation, 1962 (No. 116).

Safety and Health in Construction Convention, 1988 (No. 167); Safety and Health in Mines Convention, 1995 (No. 176).

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo protocol) of 2003.

UN Guiding Principles on Business and Human Rights, 2011.

Universal Declaration of Human Rights (UDHR) of 1948.

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106).

Weekly Rest (Industry) Convention, 1921 (No. 14).

Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148).

Other sources

ACACIA "Statement on North Mara" 10 Jan 2019, at <https://www.acacia-mining.com/media/press-releases/2019/2019-01-10.aspx>, accessed 20th September 2019.



Business Responds to AIDS: HIV AND AIDS AND THE WORKPLACE—WHAT YOU SHOULD KNOW Employees, Coworkers, and Supervisors available at <https://www.cdc.gov/hiv/pdf/workplace/c-dc-hiv-and-aids-and-the-workplace.pdf> , accessed on 15th September 2019.

CCBRT “Access for All” available at <http://www.ccbirt.or.tz/programmes/-disability/disability-in-tanzania/>
<http://af.reuters.com/article/investingNews/idAFKBN1360KP>, accessed on 11th November, 2019.

<http://malafyaleleo.blogspot.com/2012/09/wafanya-kazi-wa-kampuni-ya-wa-wachina.html>

<http://www.dangotecement.com/operations/tanzania/> accessed on December 2018.

<http://www.pmoralg.go.tz/quick-menu/brn/>.

<http://www.tanzaniainvest.com/transport/central-corridor-railway-construction>, accessed on 20th January, 2017.

<http://www.tanzaniatourism.com/en/destination/kitulo-national-park/P10>, accessed on 20th December, 2018.

<http://www.zamampya.com/tanzania/mwigulu-akutana-na-kijana-aliyeteswa-geita-watuhumiwa-watiwa-nguvuni/>

<https://www.ippmedia.com/sw/habari/raia-wa-china-watimuliwa-kwa-kuwapiga-makonde-watanzania>

https://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf

<https://www.youtube.com/watch?v=PprFUZXnupM>

Human Rights Council, Resolution 23/9. The negative impact of corruption on the enjoyment of human rights, available at <http://www.achr.net>



pal.org/about/resolution-239-the-negative-impact-of-corruption-on-the-enjoyment-of-human-rights/, accessed 10th October, 2017.

ILO website at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:11200:0::NO::P11200_COUNTRY_ID:103476, accessed 19th June 2018.
Max Roman Dilthey “Open Pit Mining Pros & Cons” at <https://sciencing.com/open-pit-mining-pros-cons-12083240.html>, accessed 20th September 2019.

Ministry of Health, Community Development, Gender, Elderly and Children (2016) Tanzania Country Gender Profile, Dar es Salaam.

Speech by Hon. Dr. Jakaya Mrisho Kikwete, President of the United Republic of Tanzania when bidding farewell and dissolving the 10th Parliament of the United Republic of Tanzania, Parliament House, Dodoma on 9th July, 2015.

TUCTA website at <https://www.tucta.or.tz/post/About-TUCTA>, accessed 17th September 2019.

Villagers invade Acacia’s North Mara mine in Tanzania available at <https://www.mining.com/villagers-invade-acacias-north-mara-mine-tanzania/>, accessed on 21st September 2019.

World Bank Group Commitments on Disability-Inclusive Development available at <https://www.worldbank.org/en/topic/socialdevelopment/brief/world-bank-group-commitments-on-disability-inclusion-development>, accessed on 18th September 2019.

www.meteo.go.tz, accessed on 10th December, 2018.

www.pesatimes.com/news/energy-mining/kinyerezi-power-plant-to-add-150-megawatts, accessed on 10th December 2017.





Shiriki kulinda na kudumisha haki za binadamu

Changia Haki



Changia kwa Airtel Money

- Hatua ya 1: Ingiza kwenye Menyu ya Airtel Money (*150*60#)
- Hatua ya 2: Chagua (5) Lipia Bili
- Hatua ya 3: Chagua (4) Ingiza Namba ya Kampuni
- Hatua ya 4: Ingiza Namba ya Kampuni (275454)
- Hatua ya 5: Weka Kiasi Unachotaka Kuchangia
- Hatua ya 6: Ingiza Namba ya Kumbukumbu (1234)
- Hatua ya 7: Weka Namba ya Siri Kuthibitisha Muamala



Changia kwa TigoPesa

- Hatua ya 1: Ingiza kwenye Menyu ya Tigo Pesa (*150*01#)
- Hatua ya 2: Chagua (4) Lipia Bili
- Hatua ya 3: Chagua (3) Ingiza Namba ya Kampuni
- Hatua ya 4: Ingiza Namba ya Kampuni (275454)
- Hatua ya 5: Weka Kumbukumbu Namba (1234)
- Hatua ya 6: Weka Kiasi Unachotaka Kuchangia
- Hatua ya 7: Ingiza Namba ya Siri Kuthibitisha Muamala



Changia M-Pesa

- Hatua ya 1: Ingiza kwenye Menyu ya M-Pesa (*150*00#)
- Hatua ya 2: Chagua (4) Lipia kwa Mpesa
- Hatua ya 3: Chagua (4) Namba ya Kampuni
- Hatua ya 4: Weka Namba ya Kampuni (275454)
- Hatua ya 5: Weka Namba ya Kumbukumbu ya Malipo (1234)
- Hatua ya 6: Weka Kiasi
- Hatua ya 7: Weka Namba ya Siri
- Hatua ya 8: Bonyeza I Kuthibitisha Muamala





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Rialtas na hÉireann
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Ministry for Foreign
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