



LEGAL AND HUMAN RIGHTS CENTRE

HUMAN RIGHTS AND BUSINESS REPORT 2020/21

Tanzania Mainland

Taking Stock of Labour Rights, Land Rights, Social Responsibility,
Gender and Other Forms of Discrimination, Environmental Rights,
and Human Rights in the Business Sector





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Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
AIDS	Acquired Immunodeficiency 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
OHCHR	Office of the United Nations High Commissioner for Human Rights
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
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. LHRC was established in 1995 and operates mainly in Tanzania Mainland, with specific interventions in Zanzibar. It has four offices, two in Dar-es-Salaam, one in Arusha and another in Dodoma. The Head Office is located at the Justice Lugakingira House in Kijitonyama Area Dar-es-Salaam.

Vision: The LHRC envisages a just and equitable society, where 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 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.

A Word from Executive Director

In December 2018, the Universal Declaration of Human Rights, (UDHR), 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 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.

Amidst the Covid19 pandemic, human rights violations by businesses persisted in 2020/2021, as companies/industries and other businesses were implicated in violations of labour rights, land rights, economic and social rights, environmental rights, collective rights, and civil and political rights. Overall, protection of human rights in the business sector slightly declined during this reporting period, compared to the period of 2018/2019, although there were some notable improvements in some aspects of business and human rights. To improve this situation, all responsible parties, including businesses, the Government, regulatory authorities, CSOs, and community members must collaborate to ensure protection and respect for human rights, in line with domestic laws and international standards on business

and human rights, including the UN Guiding Principles on Business and Human Rights, the international bill of rights, and ILO Conventions.

It is our sincere hope that the readers of this report will become change agents towards attaining just and equitable society.

Ms. Anna Henga (Advocate)
Executive Director - LHRC

Executive Summary

Introduction

LHRC has been preparing an annual report on the situation human rights and business in Tanzania since 2012. This is the eighth report to be produced by the organization, assessing corporate compliance with labour laws and standards, corporate responsibility to respect human rights, state duty to protect human rights, gender, and other forms of discrimination in business environment, and remedy for violation of human rights in the business sector in Tanzania Mainland for the year 2020/21.

This report is an outcome of the Human Rights and Business Survey 2021. The main objective of the survey on human rights and business for the year 2020/2021 was to assess business compliance with human rights standards; laws, policies and practices relating to labour, land, environment, tax, and corporate social responsibility in Tanzania Mainland.

The main objective of this report is to shed light on human rights and business situation in Tanzania in the year 2020/21. The report also provides some comparisons of business compliance with labour and human rights with the previous years to determine if there have been any improvements. The report is meant 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 the concept of business and human rights; and covers report preparation, objectives, and structure. **Chapter Two** looks at businesses and their compliance with labour laws and standards, while **Chapter Three** touches on issues around land acquisition for investment. **Chapter Four** is on business compliance with their tax obligations, looking at taxation as a human rights issue and concern. **Chapter Five** examines corporate social responsibility of businesses, business environmental obligations, and corporate respect for human rights. **Chapter Six** looks at gender and other forms of discrimination in business, while **Chapter Seven** provides an assessment of the performance and effectiveness of regulatory authorities. **Chapter Eight** highlights some key issues around business environment and consumer protection, and lastly, **Chapter Nine** provides general conclusion and recommendations.

Methodology

Both primary and secondary data collection methods were employed during the survey. Primary data was obtained through fieldwork conducted in selected 15 regions of Tanzania Mainland. The Fieldwork involved visiting workplaces of businesses/companies/corporations, community members, regulatory authorities, and local government officials. 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.

A total of 2,600 respondents (1,069 female, 1,531 male) were reached during the Human Rights and Business Survey 2021. These included employees/workers, regulatory authority officials, community members, corporate management officials, bus and truck drivers, and local government officials. A total of 160 businesses/companies that were reached, including small and medium sized industries and businesses.

Key Findings

Business compliance with labour laws and standards

1. Employment Contracts

- Majority of workers who participated in the survey (59%) said they have employment contracts while 41% said they did not. In terms of those with employment contracts, this marks a decline of 25% compared to the previous survey of 2019, whereby workers with employment contracts were 84%.
- Regions where less than 50% of workers had employment contracts are Mbeya (33.75%), Mtwara (42.11%), Pwani (31.58%), and Singida (40%).
- Dar es Salaam Region recorded the highest number of workers with employment contracts at 95.45%, followed by Arusha (90.62%), Tanga (78.48%), Tabora (74.71%), and Kilimanjaro (72.22%).
- Some of the interviewed respondents claimed that their employers threatened and intimidated them when they pushed for employment contract.

- The survey generally found that most employers, especially SMEs, prefer casual workers so that they do not have to treat them as employees.
- In terms of written contracts, 56% of the workers claimed they had written employment contracts, a decrease of 19% compared to the survey conducted in 2019.
- In 10 out of 15 regions that were visited, majority of interviewed workers also complained about denial of copies of their contracts.
- In addition to not being provided with copies of employment contracts, some of the interviewed workers pointed out that they were pushed to quickly sign the contracts without being afforded time to read and clearly understand them.
- Regarding the contracts, over half of the respondents (56%) indicated that they had not been afforded an opportunity to negotiate their contracts. In the previous survey, 44% of the respondents claimed they had not discussed terms of contract with their employers.
- Most of the interviewed workers who had employment contracts lamented on the fact that their contracts are in English Language, a language they do not clearly understand. This situation was more serious for workers with lower levels of education and working in the lower paying jobs, including in hospitality and private security industries.
- The survey also observed employment contracts with unfair or discriminatory terms, including a condition of working 10 hours as normal working hours, which is contrary to labour laws and standards.
- Like with the previous survey on business and human rights, which was conducted in 2019, the 2021 also revealed preference of offering short-term contracts on the part of employers, as opposed to offering long-term contracts. Employers prefer short-term contracts so that they can gain more control over employees, who risk missing out on contract renewal should they be on the forefront in demanding basic labour rights.

- Apart from job security concerns, short-term contract puts workers at a disadvantage in terms of accessing credit, as banks/financial institutions are reluctant to offer loans to workers with short-term contracts.

2. Working Hours

- Lack of employers' compliance with the working hours labour standard continued to be a concern for many workers, particularly in terms of overtime, overtime pay, and rest for workers.
- 85% of the employees who participated in the survey said they are usually free to leave the workplace after normal working hours, while 15% indicated that they are not. In the previous survey, 83% of the employees said they were free to leave workplace after normal working hours, while 17% said they were not. This suggests a slightly improved situation.
- However, while all employees indicated that they had worked overtime at some point, only 38% said they had been paid for the overtime, a decrease of 19% compared to the previous survey, in which 57% of the workers said they received overtime pay.
- In Dodoma, some workers claimed that they worked for up to 16 hours per day, which is above even the maximum daily working hours of 12 hours (9 normal working hours + 3 maximum overtime hours). This was especially found to be true for bus and truck drivers, construction workers, and employees of private security firms.
- In terms of percentage of employees getting paid for overtime work, only five regions recorded 50% and above, namely: Arusha, Dar es Salaam, Geita, Kilimanjaro, and Tanga.
- In Mbeya, 87% of the employees said they are not given overtime pay, which is the highest percentage.
- While labour standards require an agreement for overtime work, most workers feel compelled when their employers ask them to work extra hours, fearing losing their jobs or denial of contract renewal.
- Workers in the transportation, hospitality, and private security industries were found to be among workers who usually work the longest hours, deprived of much needed rest.



- Inadequate rest for workers contributes to sleep deprivation, increases stress, contributes to workplace injuries, and negatively affects family life.

3. Remuneration

- Complaints about inadequate wages, as workers lamented their wages being inadequate and not proportionate to the current costs of living. The Wage Order has not been reviewed since 2013, despite the law requiring review after every three years.
- In Manyara, Mtwara, and Mara Regions the survey found that some workers were paid below the minimum wages stipulated in the Wage Order of 2013. In Mara, this was observed to be the case mostly with industrial and hotel workers.
- Some of the interviewed workers in all surveyed regions also complained about delays in payment of wages. For instance, in Dar es Salaam, some of the interviewed workers lamented constant changing dates for payment of wages, which is contrary to labour standards.
- Covid19 impact on businesses aggravated the situation of delays in payment of wages and non-payment of wages, especially for workers in the hospitality industry.
- Some of the interviewed workers, especially hotel workers and bus and truck drivers, complained that their employers tend to unjustifiably deduct their wages.

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

- When asked whether they have in place a policy on workplace health and safety, only 59% of management officials of the businesses that were visited said they do. Even then, less of a third produced copies of such document.
- In terms of overall working environment, half of the respondents said they find the overall working environment to be good, while 20% said their overall working environment is very good. The remaining 30% found their overall working environment to be poor or very poor.
- A significant percentage of respondents (42%) indicated that their workplaces are not disability friendly.
- On site observation revealed a particular concern regarding the state of toilets and other sanitary conveniences. Despite majority of respondents (78%) claiming that they were happy with the state of toilets, on site observation of workplaces revealed that most toilets are not in good/clean condition, which presents a threat to occupational health and safety. Most of them also did not have a means for disposing sanitary dressing and lacked important hygienic means of cleaning such as toilet papers and soaps, especially in Tabora, Manyara, Tanga, and Shinyanga Regions.
- Female workers are disproportionately affected by dirty/filthy or unclean toilets, leaving them more vulnerable to infections.
- Most employers do not comply with the requirement of providing adequate and suitable separate change rooms for males and females, instead relying on makeshift change rooms.
- Occupational health and safety continue to be a key concern for workers. Nearly half of the respondents (43%) said they had not received training on occupational health and safety. In the previous survey, over half of the respondents (52%) said they had not undergone such training.

- Interviewed workers generally indicated that they were not happy with labour inspection, claiming that the inspectors do not regularly visit workplaces and when they do, they do nothing or little to address their grievances.
- Regarding personal protective equipment (PPE), despite more than a third of workers (39%) claiming they have sufficient PPE, on-site observations painted a slightly different picture as most of the workers who were observed at workplaces have PPE that is damaged or worn out. The survey also found that workers have a limited knowledge about PPE and importance of wearing them.
- 18% of the workers said they did have PPE but insufficient, while another 18% said they did not have PPE.
- One of the aspects of PPE that workers were found to have little knowledge of is PPE in the cookery. For instance, in Tabora workers at a bakery company were found working with basic PPE in the cookery, such as gloves, footwear, and apron, claiming that their employer had been reluctant to provide them with suitable PPE.
- Complaints about PPE were also widely reported in mining areas, especially in Shinyanga and Geita Regions.
- Some of the employers provide PPE but are reluctant to provide new ones when they are worn out, leaving them vulnerable to injuries and occupational diseases.
- Some employers revealed during the survey that some workers are given PPE but then opt not to use them. However, this is not an excuse for employers to let the workers work without PPE as they have a duty to ensure workplace safety and health and labour laws and regulations clearly provide that PPE should be worn.

5. Violence and Harassment in the Workplace

- Almost a third of workers (29%) acknowledged that incidents of violence and harassment exist in their workplaces, with the majority (71%), claiming there were no such incidents.

- Despite majority of workers (71%) claiming that there were no incidents of violence and harassment, the survey found that this may be down to their low awareness about violence and harassment. This is because some of the claims they made, including threats and intimidation, constitute violence.
- Out of the 29% of workers who acknowledged existence of various forms of violence and harassment at their workplaces, majority of them (73%) mentioned intimidation, threats, and bullying as the most common form of violence and harassment at their workplaces, followed by sexual violence (15%).

6. Compensation for injury sustained at workplace

- Less than a third of the respondents (22%) claimed that workers get compensation in case of workplace injury, while 46% said there is no such arrangement. The remaining 32% said they were not sure whether workers get compensated in case of injury sustained at workplace. In the previous survey, 37% of the respondents acknowledged that workers at their workplaces get compensated in case of workplace injury.
- Interviewed works complained about non-payment of compensation and inadequacy of the compensation. These complaints were especially made in Manyara, Mwanza, Tabora, Mtwara, Shinyanga, Geita, and Arusha Regions.
- The survey also found low awareness about compensation laws among workers. The results showed that only 15% of the workers claimed they were aware of such laws.

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

- Most 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 a third of the surveyed workplaces. In the previous survey, respondents at half of the workplaces claimed such branches exist.

- In Mara, the survey found that only 7% of the employers of surveyed workplaces allowed their workers to register with TUICO, a trade union for industrial and commercial workers.
- In Singida, TUICO regional chairperson stated during an interview that some employees in the region are afraid of joining trade unions, and this is because the employers do not like trade unions.
- In Tanga, some of the workers suggested that some of them had faced punishment or mistreatment for joining trade unions.
- In terms of effectiveness of trade unions, over two-thirds of the survey respondents (63%) said their trade unions are not effective at all, while 6% said they are not effective. In the previous survey, nearly half of the respondents felt trade unions are not effective and not effective at all in promoting and protecting labour rights
- Most of the interviewed workers felt the trade union is 'toothless' in promotion and protection of their labour rights and more interested in their monthly contributions rather than protecting their interests as workers and members.
- In terms of collective bargaining, survey generally found that most employers are not in favour of collective bargaining, which is why they also do not want to allow trade union branches at their workplaces.
- Regarding right to strike, nearly half of the workers claimed that they know they have a right to strike. However, most of them said that they would not dare to strike because that would signal the end of their jobs.

8. Child and forced labour

- Only 36% of businesses confirmed that they have in place policies or regulations that prohibit child labour or stipulate minimum age of employment, and nearly all of them showed such documents.
- While all businesses reported that they do not employ child labour, the survey found that child labour continues to persist in different parts of Tanzania, especially in mining and agriculture sectors. Child labour incidents were mostly reported in Manyara, Tabora, Singida, Mbeya, Geita, Shinyanga, and Dodoma.

- In Manyara, child labour was found to be prevalent around mining areas and in sugarcane plantations, while in Tabora, child labour was found to be common in tobacco plantations.
- While stone crushing in quarry is listed as a hazardous work for children, it was found to be a key child labour concern in Geita and Dodoma Regions.
- In Mbeya, the survey found that children are employed in rice plantations, including chasing away birds. It was also reported that most farmers prefer to employ children to tend their rice plants because they do a better job in sowing seeds than adults. According to ILO, agriculture is one of the three most dangerous sectors in terms of work-related fatalities, non-fatal accidents, and occupational diseases.
- Local government officials who participated in the survey indicated that poverty is a key driver of child labour and labour standards are not observed by those who employ children, who are exploited for cheap labour, miss school, and put at risk of harm and abuse.
- Regarding forced labour, the survey found that most employers have not created a favourable environment for preventing forced labour. Only a third of businesses that were visited claimed to have in place a policy or guidelines which prohibits forced labour in its various forms.
- Some of the interviewed workers revealed that there is no agreement between them and their employers to work beyond normal working hours and usually they just continue working until they are told they can leave for fear of losing their jobs. In Mbeya and Geita, interviewed workers at two of the surveyed companies said they are forced to work even on weekends and holidays.

9. Leaves and social security

- Nearly half of the workers (48%) said they are granted annual leave, a 14% decline compared to the previous survey. Like in the previous survey, nearly half of the respondents claimed they had not taken leave in the past year.

- Complaints about annual leave were aired by workers during interviews in regions such as Manyara, Pwani, Mtwara, Geita Mwanza, Arusha, Dar es Salaam, Dodoma, and Shinyanga. While most of them claimed that they are not granted such leave, others claimed that even when such leave is granted it is usually not a paid leave.
- Workers in the hospitality and private security industries constituted the majority of interviewed workers who lamented denial of annual leave.
- Some of the interviewed workers in Geita revealed that they are sometimes threatened with losing their jobs when they push for annual leave.
- When asked whether female workers are allowed to take maternity leave, half of the female respondents (workers) said they do. In this marks a 12% decline compared to the previous survey.
- The survey also found maternity discrimination to be an issue at workplaces. Across all surveyed regions, female workers expressed concern regarding granting of maternity leave, noting that most employers prefer to replace them rather than allowing them time to get back to work after the maternity leave.
- Interviewed female workers were of the view that most the employers do not like it when female workers miss work because of issues such as pregnancy, breastfeeding, and menstrual cycle.
- Some of the interviewed workers in Shinyanga and Mara noted that pregnancy usually leads to loss of job, as the likelihood of the employer replacing a pregnant worker who needs maternity leave is high. In Mara, a worker at a private security firm was reportedly fired from her job for going back home to breastfeed her baby.
- In terms of paternity leave, the survey found that awareness about this type of leave is low. Over half of the interviewed male workers were found to be unaware of paternity leave.
- Majority of male workers who did not know about their right to parental leave were found to be working in the hospitality, private security services, and transportation industries, especially in Manyara, Geita, and Tanga Regions.

- Less than a third (21%) of male workers at the surveyed workplaces/ businesses claimed that they take paternity leave. In the previous survey, 41% said they are granted such leave.
- Regarding sick leave, 61% of the workers acknowledged that they are granted sick leave when they fall sick or in case of workplace injury. In the previous survey, 68% said they are granted such leave, hence a 7% decline.
- Some of the interviewed workers also complained that their wages are usually deducted for missing work, even due to illness.
- Regarding social security, some of the interviewed workers complained about non-remittance of social security contributions by their employers. Most of these complaints were made during interviews with workers in Dar es Salaam and Geita Regions.

10. Employment termination

- During the survey, interviewed workers in all surveyed regions, including Kilimanjaro, Manyara, Mara Mbeya, Dar es Salaam, Geita, and Shinyanga, indicated that cases of unfair termination have become a common occurrence at workplaces.
- The survey found that reasons for termination included demanding labour rights, including employment contracts or copies of such contracts; inquiring about salary deduction; accident; pregnancy; Covid19; airing grievances to local authorities; and breastfeeding.
- in Mara, a female secretary at a bus transportation company complained that she was fired from her job because she had asked why her salary had been deducted for two consecutive months. Another female worker in the region claimed that she was fired because she left work to breastfeed her baby.
- The survey generally found that laid down procedures for fair termination of employment are usually disregarded.
- The survey also found several incidents of Covid19-related unfair dismissals as employers were forced to resort to retrenchment because of the pandemic. The survey generally observed that some employers who terminated employment based on operational requirements did not follow all the required procedures, including meaningful and effective consultation with the workers.

11. Labour Disputes and Mechanisms for Resolution

- Lack of company-level worker grievance mechanisms is a concern for workers. Only over a half of companies that were surveyed (53%) reported having in place such a mechanism.
- Common reasons for labour disputes in the past year included denial of leave, non-payment for overtime work, non-remittance of social security contributions, delay in payment of wages, delays on non-payment of travel allowances (especially for bus and truck drivers), breach of contract, reduction of wages, working beyond maximum working hours, and unpaid leave.
- Labour disputes registered at the Commission for Mediation and Arbitration (CMA) increased from 14,777 in 2018/2019 to 16,269 in 2019/2020.
- The Covid19 pandemic contributed to increasing labour disputes as employers took drastic measures to cope with the decline in production, profits, and demand for goods and services.
- Majority of labour disputes registered by CMA in 2018/2019 and 2019/2020 involved workers in the transportation, private security, and hospitality industries.
- Majority of labour disputes that came before the CMA in both 2018/2019 and 2019/2020 relate to end or termination of employment, at 38.5% and 39.5% respectively.

12. Awareness of labour laws, rights and duties

- Like in the previous survey, 7 out of 10 workers (73%) were found to be unaware of relevant labour laws and regulations. Only 12% of the workers said they were aware of relevant labour laws and could mention at least two such laws, including the Employment and Labour Relations Act, [CAP. 366 R.E. 2019].
- Tabora Region was found to have the highest percentage of workers who were not aware of the relevant labour laws, at 92%. Other regions which recorded high percentages of workers without sufficient knowledge of labour laws (70% and above) included Mbeya (83%), Shinyanga (82%), Mara (81%), Tanga (78%), Dodoma (76%), Singida (73%), Mtwara (72%), and Manyara (71%).
- Regarding understanding of basic labour rights, majority of workers (52%) claimed to be aware of their rights as workers, while 39% said they were not aware. The remaining 9% of the workers indicated that they were somewhat aware. In the previous survey, 58% of workers who participated in the survey claimed to be aware of their labour rights, hence a 6% decline in the current survey.
- Among the workers who claimed to be aware of their labour rights (52%), only 15% could mention at least three such rights correctly, 2% more compared to those who could mention them in the previous survey, and over half of them (58%) could mention two labour rights correctly.
- While employers are required to place a policy statement on human rights at a place within the workplace where all workers are able to see it, only 16% of them said they have in place such statements.
- In terms of awareness about the UN Guiding Principles on Business and Human Rights, only 11% of the business management officials said they are aware, a slight improvement compared to the situation during the previous survey whereby only 6% said they were aware of the Guiding Principles.

13. Labour rights of bus and truck drivers

- Bus and truck drivers in different parts of the world are faced with various labour-related challenges, common among them being overworked, underpaid, with no employment contracts, and no travel allowances.
- During the survey, bus truck drivers were asked about different aspects of their labour rights, including employment contracts, working hours, overtime, and travel allowances. Generally, the survey found that the drivers are overworked and underpaid; are usually not provided with travel allowance or adequate travel allowance; are usually denied overtime pay; most of them do not have written contracts or are denied copies of such contracts; and most of them are not members of trade unions and usually discouraged from joining by their employers.
- Majority of the respondents (67%) claimed that they work for more than 12 hours, while 21% said they work for 9 to 12 hours. During interviews, bus, and truck drivers in Tabora, Dodoma and Dar es Salaam claimed that they are made to work for up to 16 hours a day, hence not afforded adequate rest.
- Regarding overtime work, majority of the respondents (84%) claimed they are not paid for working overtime.
- In terms of remuneration, most of the respondents were of the view that the wages they are paid are inadequate and not in line with current living costs. less than half of them (43%) claimed to be paid Tshs. 200,000 and above. One of the drivers claimed that although his employment contract indicates he is entitled to a monthly pay of Tshs. 200,000, he is actually paid Tshs. 150,000.
- In Arusha, truck drivers from different transportation companies, complained about lack of adequate and/or delays in getting travel allowance to enable them to sustain themselves while transporting cargos.
- Regarding employment contracts, only over a third of the respondents (36%) said they do have, while the remaining respondents (64%) claimed they do not have written contracts. Interviewed bus and

truck drivers also complained about their employers not giving them copies of their contracts.

- In terms of freedom of association, only a quarter of the respondents (25%) claimed trade union branches exist at their workplaces, while 56% said there are no such branches.
- When asked about effectiveness of trade unions, 85% of the bus and truck drivers perceived the trade unions to be ineffective in addressing their problems.
- The survey also found that most of the drivers have not been trained on occupational health and safety, as only 24% of the workers said they had received such training.
- Regarding the right to take leave, only 24% of the respondents said they are granted annual leave, and only a quarter said they had taken such leave in the past year. Over half of them (53%) also said they get sick leave, but less than 10% indicated they get maternity and paternity leaves.
- In exercising their right to strike, truck drivers working for the Dangote Cement Factory in Mtwara went on strike in protest of violations of their labour rights. They accused the company subcontractors of not fairly and timely paying them their allowances, unfair salary deductions, not granting them employment contracts, and not getting salary increments.
- Majority of bus and truck drivers were also found to be unaware of labour laws and regulations (78%) and labour rights (55%). Moreover, only half of the respondents who claimed to know their rights could clearly mention them.
- Common labour rights violations include; non-payment of salaries; delay in wage payment; unfair termination; delay of allowance payment; inadequate pay; verbal threats; verbal abuse; denial of leave; long working hours (overworked); and denial of overtime pay.

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

- Human rights that were found to be violated as a result of failure of businesses to comply with relevant labour laws and standards were: right to form and join trade union/freedom of association; right to fair remuneration; freedom of expression; freedom from violence; right to the enjoyment of just and favourable conditions of work; right to family life; right to adequate standard of living; right to health; right to life; right to education; right to safety and security; right to equality before the law; and right to non-discrimination.

Land Acquisition for Investment

- Land acquisition for investment must go hand in hand with fair and timely compensation. When asked about fair and timely compensation, only 5% of community members engaged during the survey said the compensation granted is fair and timely, dropping from 9% in the previous survey.
- Lack of meaningful participation of community members in land acquisition process continues to be a concern, as only 22% were of the opinion that the investors engaged the community members in the process of land acquisition, like in the previous survey.
- In terms of access to unutilized land acquired for investment, less than a quarter of the businesses/investors (15%) acknowledged that they allow community members to access and use unutilized, 3% more compared to the previous survey.

Business Compliance with Tax Obligations

- Trends for the past seven years indicate increased revenue collection by the Tanzania Revenue Authority (TRA) - including corporate taxes - and significant improvement in reaching the targets. For instance, in December 2020, TRA announced that it had collected Tshs. 2.088 trillion, breaking the record revenue collection set in December 2019.
- Despite the good work done by TRA in increasing revenue collection in the past seven years, including corporate taxes, Tanzania continues to suffer revenue loss due to various factors, including tax avoidance and evasion, as well as transfer pricing and tax exemptions.

- According to *The State of Tax Justice 2020 Report*, Tanzania is currently losing USD299,485,211 worth of tax annually, of which USD279,081,381 (93%) is the annual tax loss due to corporate tax abuse and USD20,403,830 is the annual tax loss due to offshore tax evasion. The report also indicates that Tanzania's total annual tax revenue loss, which is mainly contributed by corporate tax abuse, could pay salaries of 135,577 nurses annually.
- A more recent report on tax justice report by Tax Justice Network Africa (TJNA), Corporate Tax Haven Index (CTHI 2021), indicates that Tanzania is among 70 countries in the world which allow multinational corporations to underpay corporate income tax, ranked 65th in terms of how much scope for corporate tax abuse its tax and financial systems allow, with the heaven score of 48/100.
- When asked about fairness/affordability of taxes, less than half of the respondents (43%) said the taxes are fair, while in the previous survey over half of them (53%) said the taxes were fair/affordable.
- Among the respondents who claimed that the taxes were not fair, their major concern was different types of taxes they must pay, imposed by different regulatory or tax collection authorities, including TRA and council officials. This concern was especially aired almost all small and medium-sized businesses/enterprises (SMEs) that were surveyed, who claimed that multiplicity of taxes was making it difficult for them to do business and pay taxes.

Corporate Social Responsibility

- Most businesses do not engage in CSR practices.
- Most of the CSR activities that were observed during the survey were to support the education sector. These activities were mostly reported in Mara, Singida, Mtwara, Dar es Salaam, Shinyanga, Manyara, Mbeya, and Dodoma. Other sectors in which most CSR activities are focused on are water and health.
- Over half of the community members (54%) who participated in the survey claimed they benefit from CSR activities, 3.5% more compared to those who participated in the previous survey (2019).

- 43% of the community members expressed dissatisfaction with the CSR activities performed by businesses in their areas of residence, a decrease of 7% compared to the previous survey.
- Most businesses are not doing well in other aspects of CSR, including environmental responsibility and respect for labour rights.

Environmental Responsibility

- 89% of community members said they had never participated in social impact assessment before an investor began operations, increasing from 77% in the previous survey.
- Only over a third of managements of businesses said they have in place a policy or strategy on sustainable utilization of environmental and natural resources where they operate their businesses.
- Only 26% of the businesses that were surveyed said they have in place a company-level community grievance mechanism to address community complaints related to their business operations.
- In terms of environmental impacts caused by operations of companies/industries, the survey found that industrial pollution was reported in 10 out of 15 surveyed regions, especially water pollution, air pollution, and noise pollution.
- Incidents of water pollution caused by business/industrial operations were mainly reported in Dar es Salaam, Shinyanga, Dodoma, Geita, and Mara Regions.
- Air pollution concerns were raised by community members who participated in the survey in Dar es Salaam, Tanga, Geita, Mtwara, Mbeya, and Pwani Region.
- Noise pollution was mainly reported in Mara and Mbeya Regions.

Corporate Respect for Human Rights

- Environmental pollution was mentioned the most as a common corporate human rights abuse (31%), followed by land rights violations in terms of unfair acquisition/eviction from land (16%). In the previous survey, environmental pollution was also mentioned as the biggest human rights concern.

- Like in the previous survey, access to remedy was also found to be a key human rights concern. Over half of the community members who participated in the survey (51%) said they were not satisfied and not satisfied at all with the existing mechanisms put in place by businesses/companies to address their complaints/settle disputes.
- When asked about reasons for dissatisfaction with the grievance mechanisms, majority of the respondents (31%) mentioned corruption as the biggest factor, followed by delays (24%), and inefficiency (19%). Corruption was also identified as the biggest factor in the previous survey.
- During this reporting period, there were also reports of various human rights violations by Williamson Diamond Mine in Shinyanga, including shootings, beatings, torture, and arbitrary detentions, as documented by RAID - a human rights NGO based in UK. Following these allegations, legal action was taken against Petra Diamonds and the Mine, which culminated into the former agreeing to settle the claims of 71 Tanzanian nationals who suffered human rights abuses at the Williamson Mine, following successful representation by Leigh Day, a UK-based law firm.

Gender and Other Forms of Discrimination in the Business Sector

- Few female employees were observed at most companies that were visited. Only 36% of employees engaged in the study were female.
- Women and PWDs are the major victims of discrimination in employment.
- Sexual harassment at workplaces is a key concern for female workers.
- Lack of disability-friendly sanitary conveniences at workplaces is a key concern for PWDs.
- Female workers also face discrimination based on pregnancy and maternity.
- Female workers in hospitality industry are more vulnerable to sexual harassment and abuse.
- Businesses environment for women in the informal sector is not satisfactory.

- Lack of meaningful involvement or consultation of women during land acquisition process is a key concern for them.

Performance and Effectiveness of Regulatory Authorities

- Most regulatory authorities operate at zonal level, which makes it difficult for them to reach as many people as possible. This could explain why most respondents were not aware of them and the key functions they perform.
- Awareness about regulatory authorities among community members and workers is generally low, like in the previous survey only over a quarter of the respondents (16%) indicated they are aware of the regulatory authorities. TRA was the most mentioned regulatory authority, followed by OSHA, LATRA, NEMC, and TMDA.
- Key challenges affecting the performance and effectiveness of regulatory authorities include: inequitable allocation of resources; inadequate budget; shortage of human resources/manpower, including qualified personnel; corruption; lack of adequate monitoring and evaluation; and overlapping mandates/functions.
- Recent CAG audit report on the management of quality of processed food in Tanzania, released in March 2021, revealed inequitable allocation of resources as a key issue for the Tanzania Bureau of Standards (TBS). The CAG also found that some of the officials assigned by the regulatory authority to conduct food inspection did not have relevant qualifications.
- In Mtwara, an interviewed NECM officials cited shortage of technical staff as a key challenge.
- Recent CAG report has identified lack of adequate monitoring evaluation to track performance of regulatory authorities as a key issue.

Business environment and Consumer Protection

- Challenges affecting the business environment in Tanzania include: corruption, including among regulatory authority officials; tax burden; and introduction with new taxes by LGAs without prior and proper consultation with the central government.
- For SMEs, competition with foreign companies for local market is a

big challenge and most of them feel they are not accorded as much protection and cooperation as foreign competitors and lament high costs of doing business.

- In May 2021, it was reported that the Government was planning to review 22 laws that govern trade and investment sectors in a bid to boost trade and investment and improve business climate in Tanzania.
- The Covid19 pandemic had a big impact on business environment during this reporting period. Survey by the Confederation of Tanzania Industries (CTI) revealed that 97.9% of the CTI members confirmed that their businesses had been affected by Covid19, with more than 4 out of 6 subsectors indicating more than 50% loss in sales revenue. In terms of loss in employment, 91% of the respondents in the survey anticipated cutting down on employment.
- An assessment of Covid19 socio-economic impact in Tanzania showed that Covid19 impacted various sectors and industries such as tourism and hospitality, agriculture, trade, and finance.
- During the survey on business and human rights, nearly all respondents (95%) acknowledged that Covid19 had affected production, marketing, and sales, resulting into cutting down on employment, non-payment of wages, and reduction of wages. Employers and workers in the tourism and hospitality industries were affected the most in terms of loss in production, loss in sales revenue, and loss in employment.
- The survey also looked at working environment at food markets, especially on issues around food safety and hygienic practices.
- Based on the CAG audit report on the hygienic practices in food markets in Tanzania, released in March 2021, there are inadequate controls in supporting hygiene; market infrastructure and sanitation system; enforcement of hygienic controls and standards is inadequate; efforts of PO-RALG to enhance hygiene in food markets are inadequate; and monitoring and evaluation in managing hygiene practices in food markets is also inadequate.
- LGAs do not set aside adequate funds (15% of total revenue generated from market sources) for infrastructure development, maintenance, and sanitation at marketplaces.

- Survey findings also found visited marketplaces in Dodoma, Geita, Kilimanjaro, and Dar es Salaam Regions to fall short of hygienic practices. Key issues observed include” inadequate sanitation facilities; inadequate management of solid waste; inadequate or absence of drainage structures; deteriorated drainage structures; absence of zoning; placing of food items on the floor; and filthy/dirty working environment. This environment puts the market traders and food consumers at risk of diarrheal diseases.
- Consumer protection, counterfeit and substandard products continue to flood domestic market. Among other things, CAG audit report on management of quality of processed food in Tanzania, released in March 2021, revealed: presence of processed food with unsatisfactory quality in the market; inadequate implementation of plans and strategies for managing quality of processed food; and inefficient utilization of available resources to manage the quality of processed food.
- Regarding resources to manage the quality of processed food, the CAG found that some TBS Zonal Offices had higher workload compared to others due to inequitable allocation of resources.
- Regarding counterfeit and substandard products, field findings showed that most people do not inspect products/goods before buying them. Like in the previous survey, over half of the respondents (54%) said they do not inspect products/goods before purchasing them. 37% of them said they had come across such products, while in the previous survey community members who claimed to have come across them were 50%.
- Among the community members who said they had come across counterfeit or substandard products, half of them did not take any action, while only 4% reported the matter to relevant authorities. In the previous survey, nearly half of the respondents who had come across or bought counterfeit or substandard products also said they did not take any action.
- 31% of the respondents confirmed suffering harm because of consumption of counterfeit or substandard product, mostly diarrhoea and skin infections.

- The survey also found that illiteracy also presents a challenge in terms of identify and reporting counterfeit and substandard products. This is because some of the consumers do not know how to read and/or write.

Key Recommendations

Compliance with labour laws and standards

- The Government, through the Ministry of Labour, Employment and Youth Development, to ensure effective enforcement of labour laws to ensure businesses 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 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 in the business sector, including strengthening key institutions such as the CMA.
- The New Constitution process if revived, the issue of labour rights must be included.
- The Government should regularly review the Wage Order to safeguard the right to fair remuneration and right to 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 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 to cure the problem of unutilized land and community members not having enough land to conduct their 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 in order to guarantee realization of land-related rights.
- The Ministry of Lands, Housing and Human Settlements to ensure land acquisition process is fair and the affected community members are 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 discussed in this report to increase revenue collection.
- 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 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 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, comply with their CSR.
- Environmental impact assessment (EIA) and social impact assessment (SIA) are particularly important for ensuring environmental responsibility and protecting the interests and



welfare of community members before investment is made. As such, 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.

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.
- 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 to check compliance with relevant laws and regulations.
- Regulatory authorities should increase efforts of raising community awareness about their mandates and functions 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 assist regulatory authorities in checking compliance by businesses with relevant laws and standards.



CHAPTER ONE:

INTRODUCTION

1.1. Overview of Tanzania

Tanzania is in Eastern part of Africa between longitudes 29° and 41° East, and Latitude 1° and 12° South.² 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). Tanzania has a tropical climatic condition with the highland temperatures ranging between 10°C to 20°C during the cold and hot seasons, respectively.

Rainfall distribution is divided into unimodal and bimodal areas.³ The unimodal areas experience rainfall once per year whereas the bimodal areas experience rainfall two times a year.⁴ The bi-modal 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.⁵ 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 abundantly. Large reserves of natural gas have been discovered in southern regions of Mtwara and Lindi. It is estimated that there is a reserve of 1 trillion Cubic metres of natural gas in coastal regions.⁶ 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.⁷ 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

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

³ See www.meteo.go.tz, accessed on 10th December, 2018.

⁴ 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).

⁵ Ibid.

⁶ United Republic of Tanzania, *The National Natural Gas Policy of Tanzania 2013*, p. 2.

⁷ See <http://www.dangotecement.com/operations/tanzania/> accessed on December 2018.



consumption. The discovered natural gas is aiming at generating power, with a major project of the Kinyerezi Power Plant.⁸

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 Southwest 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 (Mbegan 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 goods.⁹ In 2016, Tanzania entered into agreement with Uganda to construct an oil pipeline which will run from Uganda to the Tanga Port.¹⁰ Tanzania is also constructing a standard gauge railway line which will connect the landlocked neighbouring countries of Uganda, Rwanda, Burundi and the Democratic Republic of Congo.¹¹ The project is being implemented in 5 phases: 202km Phase 1 (Dar es Salaam–Morogoro) Section, 348km Phase 2 (Morogoro–Makutopora) Section, 294km Phase 3 (Makutopora–Tabora) Section; 130km Phase 4 (Tabora–Isaka) Section, and 341km Phase 5 (Isaka–Mwanza) Section.¹² In November, 2020, the Prime Minister of Tanzania, Hon. Kassim Majaliwa, announced that phase 1 of the SGR from Dar es Salaam–Morogoro was 90% complete; and in January 2021, the government spokesperson Dr. Hassan Abbas, announced that construction of the first phase from Dar es Salaam to Morogoro was expected to be completed and operational this year.¹³

8 See [www.pesatimes.com/news/energy-mining/kinyerezi-power-plant-to-add-150 megawatts](http://www.pesatimes.com/news/energy-mining/kinyerezi-power-plant-to-add-150-megawatts), accessed on 10th December 2017.

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

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

11 See "Tanzania SGR project timeline and all you need to know" Construction Review Online, 4 April 2021, at <https://constructionreviewonline.com/project-timelines/tanzania-sgr-project-timeline-and-all-you-need-to-know/#:~:text=The%20Tanzania%20Standard%20Gauge%20Railway,Democratic%20Republic%20of%20the%20Congo,> accessed 16 May 2021.

12 Ibid.

13 Ibid.



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%.¹⁴ In 2016 the population projection was at a total of 50,144,175, with 24,412,889 males and 25,731,286 females.¹⁵ 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 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.¹⁶ 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 421,456.¹⁷

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.

14 URT 2012, the National Population and Housing Census.

15 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.

16 Ibid.

17 Ibid.



Economic Situation

In the last decade, the country's economic growth rate has mainly been driven by transport, communication, manufacturing, construction, and agriculture sectors, which accounts for 70% of the Gross Domestic Product (GDP).¹⁸ This has contributed to reducing donor dependency from 42% in 2005 to 15% in 2015.¹⁹

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 (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.²⁰ In 2020, Tanzania achieved a lower-middle income as a result of sustained economic growth.²¹ However, the emergence of the Covid19 pandemic significantly slowed the economic growth and consequently adversely affected living standards and conditions.

Tanzania's Industrialization Drive

Currently Tanzania is implementing a Five-Year Development Plan 2016/17 - 2020/21 *"Nurturing Industrialization for Economic Transformation and Human Development"* under the government led by H.E. President Samia Suluhu Hassan. The Government has adopted industrialization as its focus for economic growth, under the popular theme *"Tanzania ya Viwanda."*²² 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.

18 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.

19 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.

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

21 See World Bank, *Maintaining Tanzania's Lower-Middle Income Status Post-COVID-19 Will Depend on Strengthening Resilience*, Press Release, 3 March 2021, at <https://www.worldbank.org/en/news/press-release/2021/03/03/maintaining-tanzanias-lower-middle-income-status-post-covid-19-will-depend-on-strengthening-resilience#:~:text=DAR%20ES%20SALAAM%2C%20March%203,%2Dmiddle%2Dincome%20country%20status,> accessed 16 May 2021.

22 This literally translates to "Industrialized Tanzania."



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. However, caution must be taken to ensure labour and human rights are adhered to 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.

1.2. Overview of Human Rights and Business: International Standards

According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), one of the great challenges faced today is harmonizing economic growth with the protection of human rights.²³ Concerns over human rights protection in the business sector in the past decade prompted the international community, through the United Nations (UN), to introduce international standards on business and human rights, including the UN Guiding Principles on Business and Human Rights, which were proposed by the UN Special Representative on Business and Human Rights, John Ruggie, and endorsed by the UN Human Rights Council in June 2011.²⁴

According to OHCHR, which leads the business and human rights agenda within the UN system,²⁵ the concept of human rights and business is informed by various international standards on business and human rights. The main international standards on business and human rights are:

- Universal Declaration of Human Rights (UDHR)1948
- International Covenant on Civil and Political Rights (ICCPR); 1966
- International Covenant on Economic, Social and Cultural Rights (ICESCR);1966
- ILO Declaration on Fundamental Principles and Rights at Work;1998
- ILO Tripartite Declaration of principles concerning multinational enterprises and social policy;1977

23 See OHCHR, *Business and Human Rights: A Progress Report*, at <https://www.ohchr.org/documents/publications/businessshren.pdf>, accessed 16 May 2021.

24 See Business & Human Rights Resource Centre "UN Guiding Principles on Business and Human Rights" at <https://www.business-humanrights.org/en/big-issues/un-guiding-principles-on-business-human-rights/>, accessed 16 May 2021.

25 See OHCHR "OHCHR and business and human rights" at <https://www.ohchr.org/en/issues/business/pages/businessindex.aspx#:~:text=About%20business%20and%20human%20rights&text=Even%20if%20States%20do%20not,with%20which%20they%20are%20involved.>, accessed 16 May 2021.

- Geneva Conventions (international humanitarian law);
- OECD Guidelines for Multinational Enterprises.1976(Updated Four times)
- “Protect, Respect and Remedy: a Framework for Business and Human Rights”;
- UN Global Compact’s Ten Principles; 2004
- Guiding Principles on Business and Human Rights; 2011 and
- The Corporate Responsibility to Respect Human Rights: An Interpretive Guide, 2013.

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 1998. 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. More recently, in 2019, ILO has introduced the ILO Violence and Harassment Convention,²⁶ that will enter into force in June 2021.²⁷

The UN 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).

26 C190 - Violence and Harassment Convention, 2019 (No. 190) at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX_PUB:12100:0::NO::P12100_ILO_CODE:C190.

27 See ILO “Violence and harassment Convention” at https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_749148/lang-en/index.htm, accessed 16 May 2021.

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

- 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.



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 fulfils 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 has 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 labour 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/health. 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 the year 2020 and the first quarter of 2021.

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, conducted by LHRC in 15 regions of Tanzania Mainland. Fieldwork involved visiting workplaces of businesses/companies/corporations, community members, regulatory authorities, and local government officials. Primary data obtained during fieldwork in those regions is contained in regional field reports, which are the main references in this report. Human rights monitoring and fact-findings on issues around business and human rights also provided an important source of data used in preparation of this report, especially in labour rights.

Secondary data was obtained through desktop research, media survey, and review of various reports, laws, policies, regulations and other documents on labour laws, rights and standards produced by domestic and international actors. Different sources of data.

1.4.2. Research Study Objectives, Areas and Sampling

The main objective of the survey on human rights and business for the year 2020/2021 was to assess business compliance with human rights standards; laws, policies and practices relating to labour, land, environment, tax, and corporate social responsibility in Tanzania Mainland. The focus was on the following key issues in the business sector:



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

Specific objectives of the survey are:

- i. To determine the extent businesses observed labour/employment and human rights standards in the year 2020/2021 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 2020/2021;
- iv. To assess awareness of labour and human rights laws among workers /employees and community members; and
- v. 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.

Focus of the survey on businesses on the private sector, to check their compliance with the national laws and the UN Guidelines on Business and Human Rights.

The survey on business and human rights was conducted in 15 regions of Tanzania Mainland, namely: Dar es Salaam; Mwanza; Geita; Shinyanga; Pwani; Tanga; Mbeya; Singida; Kilimanjaro; Dodoma; Mtwara; Manyara; Mara; Tabora; and Arusha. A minimum of three districts in each of these regions were earmarked for the survey, but overall a total of 49 districts were reached, which are three more than the target (46 districts²⁸). The districts

28 Ilala, Temeke, Ubungo, and Kinondoni in Dar es Salaam; Nyamagana, Ilemela, and Misungwi in Mwanza; Geita MC, Geita DC, and Nyang'wale in Geita; Kishapu, Shinyanga MC, and Kahama in Shinyanga; Kibaha, Bagamoyo, and Kisarawe in Pwani; Tanga CC, Tanga MC, and Korongwe in Tanga; Mbeya CC, Chunya, and Mbarali in Mbeya; Singida MC, Singida DC, and Manyoni in Singida; Moshi DC, Moshi MC, and Hai

were purposively identified based on presence of investments/businesses, but the wards were randomly selected.

A total of 2,600 respondents (1,069 female, 1,531 male) were reached during the Human Rights and Business Survey 2021. These included employees/workers, regulatory authority officials, community members, corporate management officials, bus and truck drivers, and local government officials. While other respondents were randomly selected to participate in the survey, LGA officials were purposively sampled, targeting officials who work on issues around business and human rights, such as trade officers and community development officers.

Employees/workers and community members constituted the majority of the respondents, at 43.3% and 42.7% respectively. Bus and truck drivers constituted 5.6% of the respondents and were specifically targeted to tap labour rights issues affecting them. Table 1 below indicates the number of respondents reached in the 15 regions that were surveyed by sex.

Table 1: Number of respondents of human rights and business survey 2021 by sex

Respondents	Female	Male	Total	%
Community members	513	597	1,110	42.7
Corporate management officials	127	34	161	6
Employees/workers	407	713	1,120	43.3
Regulatory authority officials	5	14	19	0.7
Bus and truck drivers	5	141	146	5.6
Local government officials	12	32	44	1.7
TOTAL	1,069	1,531	2,600	100

Source: Field data, 2021

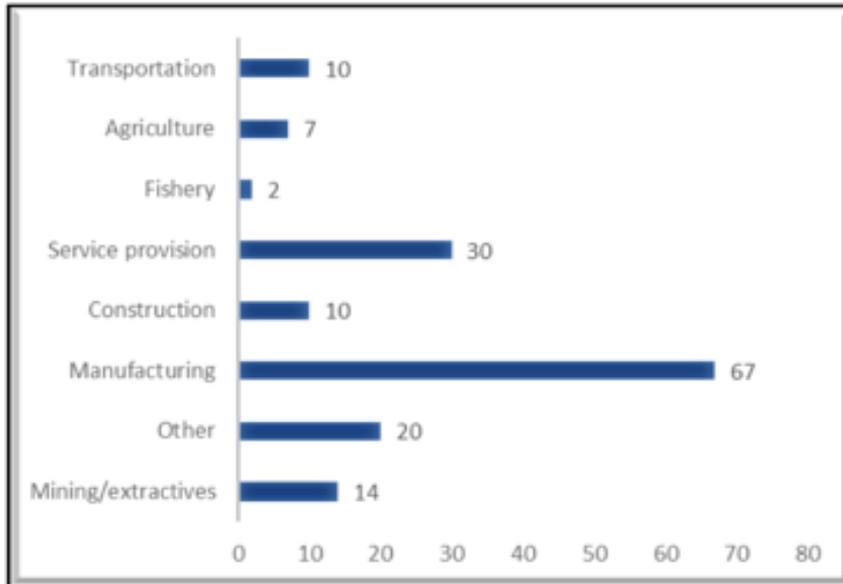
The 1,120 employees/workers who were reached by the survey were from a total of 160 businesses/companies that were visited, which included small and medium sized industries and businesses. Both purposive and random sampling techniques were used to select the businesses. Majority of the businesses that were surveyed engage in manufacturing (42%), followed by

in Kilimanjaro; Dodoma CC, Kongwa, and Mpwapwa in Dodoma; Mtwara DC, Mtwara MC, and Masasi in Mtwara; Babati, Hanang, and Simanjiro in Manyara; Tarime, Serengeti, and Musoma in Mara; Tabora MC, Igunga, and Nzega in Tabora; and Arusha CC, Meru, and Karatu in Arusha.



service provision (19%), other (13%), mining/extractives (9%), transportation (6%), construction (6%), agriculture (4%), and fishery (1%). Figure 1 below shows the number of businesses reached by nature of business.

Figure 1: # businesses reached by nature of business



Source: Field data, 2021

1.4.3. Approach and Methodology

The survey on business and human rights employed both qualitative and quantitative approaches, seeking to gain in-depth information through the former, and the latter to obtain numerical data and quantify key issues around business and human rights. Sources of data were both primary and secondary. Primary data were obtained through fieldwork, while secondary data were 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.

To obtain primary and secondary data, various data collection techniques were employed, particularly questionnaire, interviews, observation, and document review. Interviews included key informant interviews and group interviews. The observation method was mainly used to observe working environment at the workplaces that were visited and generate evidence of corporate social responsibility. Document review was also used to obtain secondary data to supplement and triangulate the primary data. The table 2 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 [Semi-structured Questionnaires]	2,556	<ul style="list-style-type: none"> • Employees/workers • Corporate management officials • Community members • Regulatory authority officials • Bus and truck drivers
Interviews [Interview Guide/ KII Guide]	44	<ul style="list-style-type: none"> • Community members • Local government officials • Bus and truck drivers
Observation [Observation Checklist]	-	Workplaces

Source: Field data, 2021



Picture 1: Interviews with respondents in Mara (left) and Singida (right) Regions

Table 3: Number of respondents of questionnaire by sex

Respondent Group	#Respondents		Total
	Female	Male	
Employees	407 (36%)	713 (64%)	1,120
Corporate management officials	127 (79%)	34 (21%)	161
Community members	513 (46%)	597 (54%)	1,110
Regulatory authority officials	5 (26%)	14 (74%)	19
Bus and truck drivers	5 (3.4%)	141 (96.6%)	146

Source: Field data, 2021

1.4.4. Socio-demographic Characteristics of Respondents

a) Employees/workers

In terms of age, majority of the respondents (52%) fell in the age category of 26 – 35, followed by those who fell in the age category of 36-60 (28%). 19% of employees/workers engaged during the survey were aged between 18 and 25 years old, while only 1% were above 61 years old.

Table 4: Distribution of respondents (employees) by age group

Age Group	#Respondents	%Respondents
18-25	214	19
26-35	580	52
36-60	311	28
61+	15	1
TOTAL	1,120	100

Source: Field data, 2021

Assessment of the education level of employees/workers who participated in the survey on business and human rights revealed that majority of them (44%) had attained primary level education, followed by ordinary level of secondary education (32%). Only 18.3% of the respondents were graduates of higher education.

Table 5: Distribution of respondents (employees) by level of education

Education Level	#Respondents	%Respondents
Informal education	53	4.7
Standard 7	495	44
Form I – 4	355	32
Form 5 – 6	12	1
Higher education	205	18.3
TOTAL	1,120	100

Source: Field data, 2021

In terms of disability, only 12 out of 1,120 employees/workers (1%) engaged as respondents of the survey indicated that they have a disability. Types of disability included hearing impairment and locomotor disability.

Table 6: Distribution of respondents (employees) by level of experience

Level of experience	#Respondents	%Respondents
Below 1 year	220	19.6%
1 year	204	18.2%
2 – 5 years	408	36.4%
5 – 10 years	172	15.4%
10+ years	116	10.4%
TOTAL	1,120	100

Source: Field data, 2021

b) Corporate Management Officials

Among the 161 corporate management officials who were reached during the survey, only 4 (2.5%) indicated that they had a form of disability.

c) Community Members

Among the 1,110 community members reached, 41 (3.7%) were persons with disability (PWDs). In terms of age, majority of the community members (41%) were in the age category of 26-35, followed by those who fell in the age category of 36-60 (32.8%). A young population of 18 to 25 years constituted 18.6% of the community members who participated in the survey, while only 7.4% of persons aged 61 and above (older persons) were reached.

Table 7: Distribution of respondents (community members) by age group

Age Group	#Respondents	%Respondents
18-25	206	18.6
26-35	458	41
36-60	364	32.8
61+	82	7.4
TOTAL	1,110	100

Source: Field data, 2021

The survey on business and human rights also sought information on the level of education of the respondents. Among the community members, majority of the respondents (38.2%) had attained the primary level education, followed by 27%, who had reached ordinary level of secondary education. 10% and 14.8% of the respondents had attained advanced level of secondary education and higher education respectively, as indicated in table 8 below.

Table 8: Distribution of respondents (community members) by level of education

Education Level	#Respondents	%Respondents
Informal education	113	10
Standard 7	425	38.2
Form 1 – 4	296	27
Form 5 – 6	112	10
Higher education	164	14.8
TOTAL	1,110	100

Source: Field data, 2021

Another key socio-demographic characteristic of community members which was looked at was the level of education. 33% of the respondents indicated businesses as their occupation, while 26.5% were farmers. Other occupations included student (3%), employees (14.6%) and fisherperson (1.4%), while 11.5% of the respondents did not have any occupation.

Table 9: Distribution of respondents (community members) by occupation

Occupation	#Respondents	%Respondents
Businessperson	365	33
Fisherperson	15	1.4
Farmer	294	26.5
Student	32	3
Employee	162	14.6
Other	114	10
None	128	11.5
TOTAL	1,110	100

Source: Field data, 2021

1.4.5. Data Quality and Ethical Considerations

To ensure data quality, LHRC took several measures, including careful selection of research assistants who were engaged to conduct the survey; conducting training on human rights and business, research methodology, and data collection to research assistants; pre-testing of data collection tools; supervision of research assistants; and gender considerations. A total of 30 research assistants, of whom 50% had prior experience of conducting a survey on business and human rights, were carefully selected to undertake the survey and received a three-day training, which covered topics such as human rights, human rights and business, research methodology, and data collection. The research assistants were also trained on research guidelines

and ethical principles in conducting research and participated in pre-testing of the tools. This was essential in enabling them to collect accurate and reliable data. Some of the tools were translated into Swahili and interviews were mainly conducted in Swahili, especially with community members and employees/workers.

Supervision of research assistants included supervisory visits conducted by LHRC in all surveyed areas and daily briefings through *WhatsApp* group created specifically for research assistants to provide feedback daily. Supervisors ensured the research assistants were in the fieldwork areas and the data collection exercise was going on smoothly. Additionally, LHRC research coordinators were in contact with the research assistants throughout the data collection survey process.

In terms of ethical considerations, the principles of gender sensitivity was adhered to such that 50% of the data collectors were male and the remaining 50% were female. This was essential in facilitating smooth collection of data from both sets of respondents, males, and females. Other key ethical principles, such as informed consent, confidentiality, privacy, and anonymity were also adhered to.

1.4.6. Data Management and Analysis

LHRC team which oversaw the survey ensure proper cleaning, entry, and analysis of data. Quantitative data collected during fieldwork was analysed using LHRC's Research Management System (RMS) and the Statistical Package for Social Scientists (SPSS) analysis software, establishing frequencies and key variables. These data were further analysed and transformed into tables and figures by using Microsoft Excel and Microsoft Word. Qualitative data were grouped and analysed by the report writers based on the various themes developed. Comparative analysis was used to examine findings and cross tabulating the data collected.

1.4.7. Limitations

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

- *Reluctance to share information from some of the branches of regulatory authorities and trade unions:* Some of the branches of regulatory authorities 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 others were only allowed to do so under strict supervision. This was observed at some of the workplaces that were visited in all the surveyed regions. This might have affected the responses given by some of the respondents, especially employees/workers.
- *Fear of participating in the survey:* Some of the respondents, especially employees/workers, indicated that they could not take part in the survey due to fear of losing their jobs should their employers find out about their participation.
- *Poor cooperation by some businesses/companies/industries approached during the study:* Some businesses/companies/industries gave no or little cooperation to the research assistants, refusing to disclose information required or prohibiting their workers to participate in the survey. Most of the corporate management officials also 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.

1.4.8. Report Objectives

The main objective of this report is to shed light on human rights in business sector in the period of 2020 and the first quarter of 2021. 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.

1.4.9. 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, the starting point for protection of labour rights are the the Universal Declaration of Human Rights (UDHR) of 1948, and International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. However, labour rights and standards have been expanded in the conventions and other instruments of the International Labour Organization (ILO). Tanzania has been a member of ILO since 1962, working with the organization in different programmes, including labour law compliance, and has ratified 37 ILO conventions relating to labour rights and standards, including all 8 fundamental conventions.²⁹ The eight ratified conventions are; 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).³⁰ 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**,

29 See ILO website at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103476, accessed 17th May 2021.

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

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 Convention on the Elimination of all forms of Discrimination Against Women of 1979 (CEDAW),³¹ which also provide for the right to freedom of association,³² right to non-discrimination,³³ right to fair remuneration,³⁴ right to just and favourable working conditions,³⁵ right to equal pay for equal work³⁶ and right to strike.³⁷ Key regional conventions ratified by Tanzania, such as the African Charter on Human and Peoples' Rights of 1981, (ACHPR) and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003 (Maputo Protocol), also provide for these labour and human rights.³⁸

In 1998, 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 **Ten Principles of the UN Global Compact**.

Core labour standards

- ✓ 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

At national level, labour and employment relations are governed by the Employment and Labour Relations Act [CAP. 366 R.E. 2019] (ELRA), which provides for fundamental labour rights and standards, in line with international labour standards. The law applies to all employees

31 UDHR, Article 23(1); ICESCR, Article 6(1); CEDAW, Article 11(1)(a).
 32 UDHR, Article 23(4); ICESCR, Article 8(1)(a).
 33 UDHR, Article 23(2); CEDAW, Article 11(2).
 34 UDHR, Article 23(3); ICESCR, Article 7(a).
 35 UDHR, Article 23(1); ICESCR, Article 7(b); CEDAW, Article 11(1)(f).
 36 UDHR, Article 23(2); CEDAW, Article 11(1)(d).
 37 ICESCR, Article 8(1)(d).
 38 See ACHPR, Articles 10 & 15; Maputo Protocol, Articles 2 & 13.

in Tanzania Mainland, except to members of the Tanzania People's Defence Forces, the Police Force, Prisons Service and the National Service.³⁹ 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.⁴⁰ 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.⁴¹

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, working hours, remuneration, working conditions, compensation for injury sustained at work, employment termination, leaves and social security in the year 2020 and the first quarter of 2021. It also looks at adherence to 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.

39 Section 2(1) of ELRA.

40 Ibid, Section 3.

41 Other domestic laws governing relations between employees/workers and employers in Tanzania include: Constitution of the United Republic of Tanzania of 1977; Law of Contract Act, CAP 345 ; Labour Institutions Act, [CAP. 300 R.E. 2019]; Workers' Compensation Act, CAP 263, R.E. 2015; Non-Citizen (Employment Regulations) Act, 2014; and Occupational Health and Safety Act, 2003.

2.2. Employment Contracts

The Law of Contract Act [CAP. 345 R.E. 2019] (LCA) defines a contract as an agreement made by free consent of parties competent to contract, for a lawful consideration and with a lawful object.⁴² Employment contracts are legally-binding agreements between employers and employees, creating rights and duties for both parties. The Employment and Labour Relations Act [CAP. 366 R.E. 2019] provides for three types of contracts with an employee, namely:

- Contract for an unspecified period of time;
- Contract for a specified period 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.⁴³

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.⁴⁴ If employer fails to produce a written contract or written particulars in case of labour dispute, such dispute may be decided against them.⁴⁵ 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 monthly, or any other period agreed between employer and employee, but an employee must be provided with a written statement of particulars supporting remuneration paid.⁴⁶ 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 salary.⁴⁷

42 Ibid, Section 10.

43 According to Section 15(1) & (2), Written Statement of Particulars must contain: name, age, permanent address, and sex of employee; place of recruitment; job description; date of commencement; form and duration of the contract; place of work; hours of work; remuneration; and any other prescribed matter.

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

45 Ibid, Section 15(6).

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

47 Ibid, Regulation 13(3).

2.2.1. Workers with employment contracts

The survey on business and human rights looked into the situation of employment contracts among workers. Workers who participated in the survey were asked whether they have employment contract. Majority of them (59%) indicated that they do have employment contracts, while the remaining 41% claimed that they do not have employment contracts.

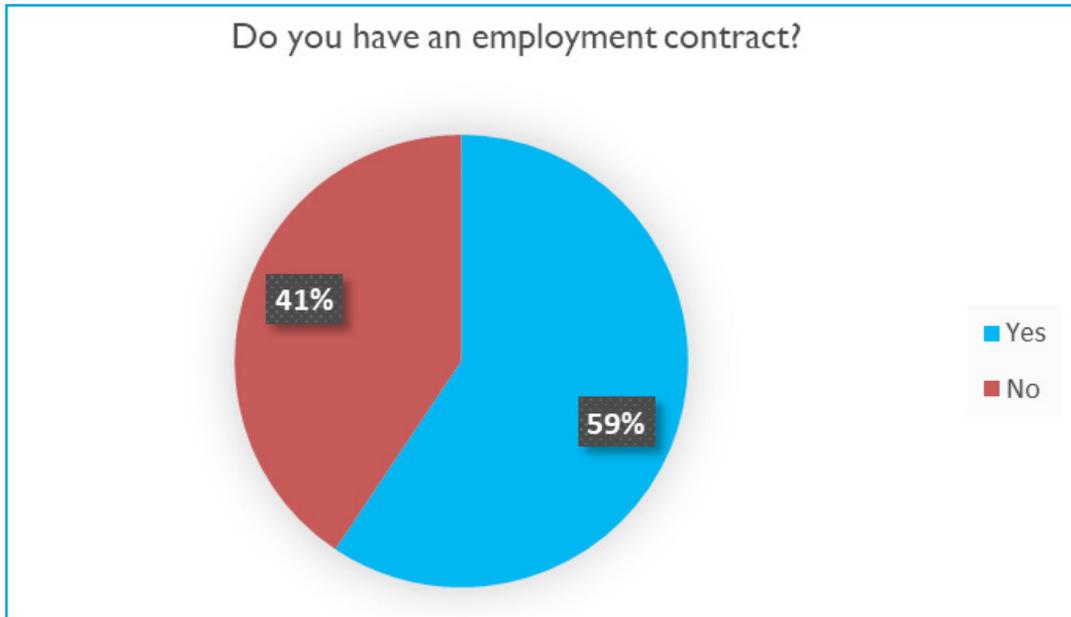


Figure 2: Workers with and without employment contracts (N=1,108)

Source: Field data, 2021

Compared to the 2019 survey, the number of workers with employment contracts has dropped by 25%. During the previous survey, the percentage of workers who claimed to have employment contracts stood at 84%, as indicated in figure 3 below. Various factors might be attributed to the decline in the percentage of workers with employment contracts. One factor could be retrenchment measures taken by employers following the eruption of the Covid19 pandemic, which resulted into loss of employment, especially in hospitality and manufacturing industries. Another reason could be preference of casual labour and short-term contracts among some employers, especially SMEs. Additionally, it could also be the case that majority of randomly selected respondents in the previous survey had employment contracts.

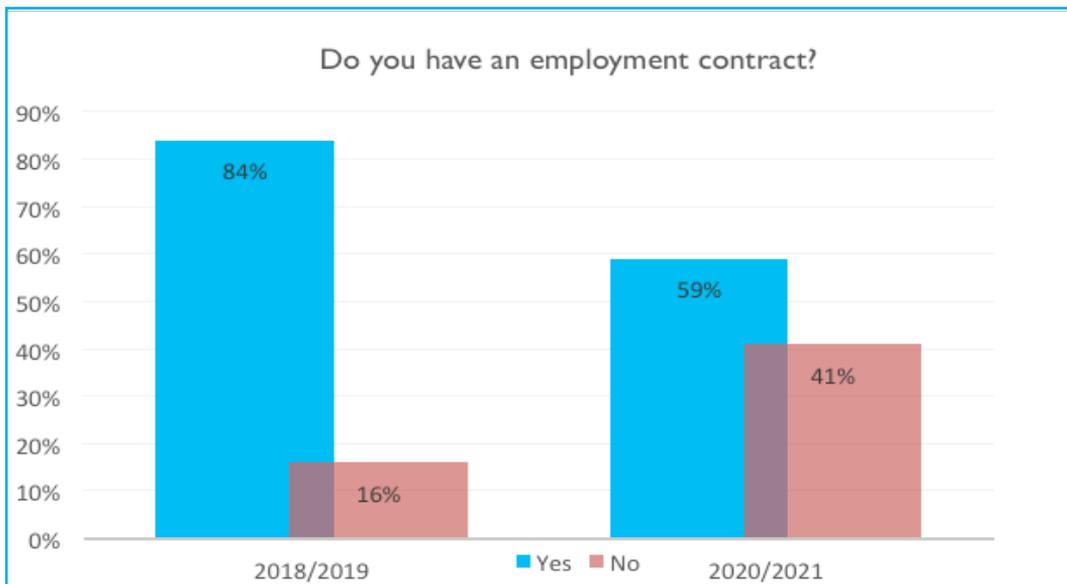


Figure 3: Status of employment contracts amongst workers in 2018/2019 and 2020/2021

Source: Field data, 2019 & 2021

Regions where less than 50% of workers had employment contracts were Mbeya (33.75%), Mtwara (42.11%), Pwani (31.58%), and Singida (40%). On the other hand, the region which recorded the highest number of workers with employment contracts was Dar es Salaam (95.45%), followed by Arusha (90.62%), Tanga (78.48%), Tabora (74.71%), and Kilimanjaro (72.22%). Figure 4 below presents data on percentage of workers who claimed to have employment contracts in each of the surveyed regions. Easier access to information, including about labour rights, in Regions such as Dar es Salaam and Arusha, might explain why most workers have employment contracts.

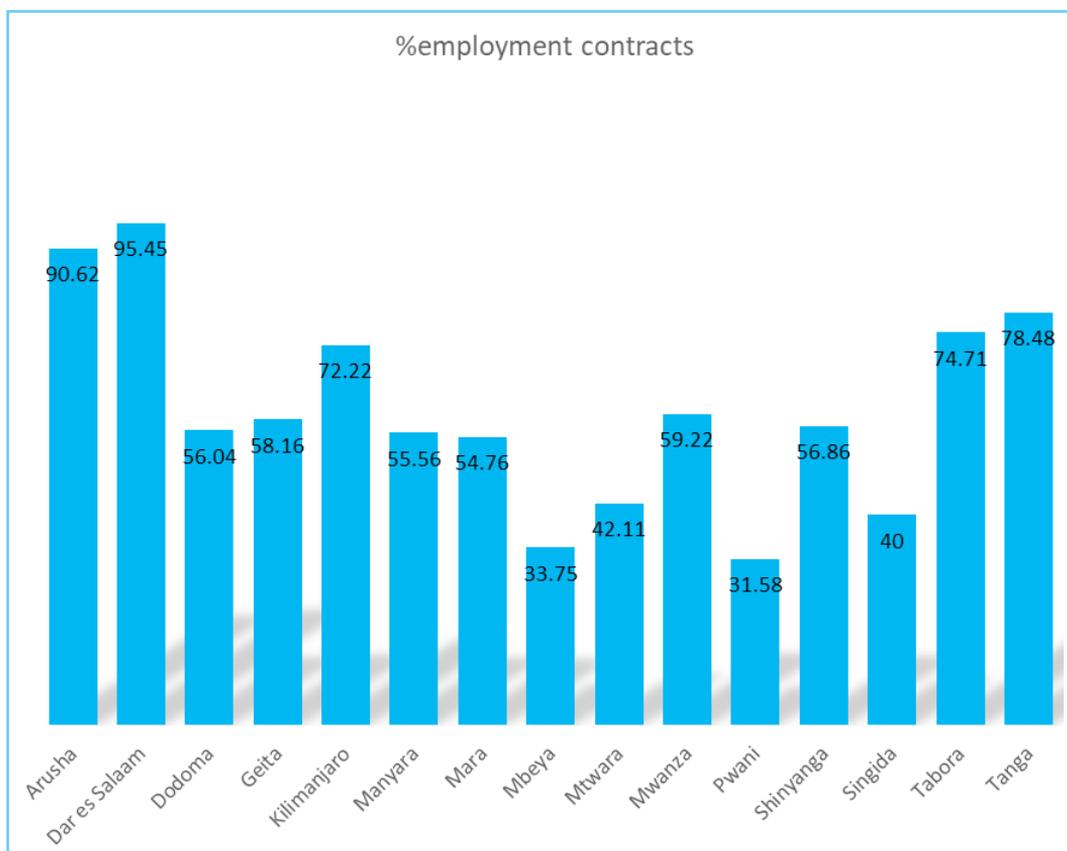


Figure 4: %Workers with employment contracts by region

Source: Field data, 2021

Lack of employment contracts leaves most workers at great risks in the hands of unscrupulous employers, who deny their workers contracts to deprive them of adequate pay and protections. In some areas, workers were found to work without employment contracts for over four years. For instance, in Manyara, a worker at a wheat farm claimed that he had not been offered a contract despite working for over four years.

“Sisi wala hatuna mikataba tunafanza kazi kwa matumaini kwamba kesho yetu itakua na ahueni ni miezi sita sasa hatujawahi lipwa mishahara”

We do not have any contracts, we just do our job and hope for a better tomorrow, and we have not received our wages for six months now.

A worker in Arusha Region

“.....nimekuwa kazini huu sasa ni mwaka wanne na sina mkataba wa kazi, na apa wote unavyotuona hakuna mwenye mkataba.....”

“...this is my fourth year here at the farm, but I am yet to receive a contract, none of us here has one.”

A worker in Manyara Region

In Mwanza Region, a university graduate working at a food processing company as an accountant also lamented not being given an employment contract. He said:

“Mimi ni graduate kabisa na ni accountant wa hii kampuni, nimefanya kazi na hii kampuni kwa zaidi ya miaka mitatu lakini hawataki kunipatia mkataba wa ajira.”

“I am a university graduate and an accountant at the company, but despite having worked at the company for more than three years, they still don't want to give me an employment contract.”

An accountant at a food processing company in Mwanza

In some areas respondents claimed that their employers do not want to hear anything about contracts, and they fear that pushing too much for contracts will get them fired. This was revealed during interviews with workers in regions such as Manyara, Mara, and Dar es Salaam.

“..... Tajiri wetu hataki kabisa habari za mikataba na nimejaribu kumshauri mara nyingi lakini kila ikitokea ukaguzi wa ghafla ananiimiza nifanye namna kupata mikataba tuzuge nayo ili ukaguzi upite.....”

“...Our boss doesn't want to hear anything about contracts, and I have tried to advise him on the importance of granting contracts several times. When the inspectors come, he tells me to prepare and present fake contracts until the inspection is over.”

A worker in Manyara Region

In Dar es Salaam workers at a security firm took measures to ensure their employer grants them employment contracts.⁴⁸ They sought the intervention of a local women lawyer’s organization (TAWLA) to help them take their matter to the Commission for Mediation and Arbitration (CMA) for resolution. The matter was resolved in their favour, and they were finally granted employment contracts.⁴⁹

Workers who have lower paying and low-skilled jobs, including those in the hotel and security guard company businesses, were found to be more likely to have no contracts compared to their counterparts with skilled jobs. For instance, a hotel worker in Serengeti District, Mara Region claimed that previous hotel manager was fired when he tried to persuade the hotel owner to provide them with employment contracts to enhance protection of their labour rights, and added:

“Mwajiri anakuuliza, unataka kazi ama makaratasi? Kama unataka kazi ipo kama unataka makaratasi, kachane madaftari yako nyumbani.”

“The employer would ask, do you want the job or the papers? If you want the job then you get it but if you want papers go and get them from your writing pads at home.”

A hotel worker – Serengeti District, Mara Region

In Shinyanga, an employee of a security firm also complained about lack of employment contracts. He said:

“Hapa hupewi mkataba wa aina yoyote. Mnafanya kazi na kile kinachopatikana ndio mnalipwa. Kwahiyo kila mwezi mna malipo tofauti kutokana na kile kilichopatikana.”

“They don’t give you any kind of contract here. You are only paid depending on what the company makes. We are therefore paid different amounts each month, depending on what the company’s earnings.”

An employee of a security firm in Geita

Some of the employers revealed that given the size of their industries (small and medium-sized businesses), they cannot afford to hire employees, instead use casual workers. For instance, a supervisor at a SME⁵⁰ in Mtwara Region had this to say regarding employment contracts:

48 Dar es Salaam HRB Survey Field Report 2021.

49 Ibid.

50 AKROS Limited.

“Unajua hivi viwanda vyetu sisi ni vidogo hatuwezi kuajiri wafanyakazi, wafanyakazi wetu asilimia tisini ni vibarua hatuwezi kuwapa mikataba kwasababu sio permanent, mtu anaweza kuja leo kazini kesho asije akawa amepata kazi kiwanda kingine.”

“We are only a small-scale business; hence we cannot afford to hire employees. 90% of our workers are casual labourers, whom we cannot grant employment contracts because they are not permanent workers, today they are here tomorrow they get a job somewhere else.”

A supervisor at SME in Mtwara Region

Preference of casual workers was also observed in Tanga Region. The survey conducted in the region found that most employers prefer use of casual workers because they do not have to accord them labour rights such as leave, freedom of association, and social security, and are much cheaper than having permanent employees.⁵¹ A similar claim was made by a trader officer during a key informant interview in Geita TC, who had this to say regarding casual workers and permanent employees:

“Kwenye plant huwa hawapendi kuajiri wakulipwa kwa mwezi wanakwepa mambo ya mikataba Pamoja na haki nyingine anazotakiwa mfanyakazi kupata. Makampuni yanaona hata kama mtu atakuwa anafanyakazi hapo kwa mda mrefu lakini makubaliano nikufanya kazi kama kibarua.”

“Most employers don’t like hiring employees who have to be paid at the end of each month as they want to avoid granting employment contracts. Even if a worker wants to stay at a company for a long term, they still prefer to have them as casual workers.”

A trade officer – Geita TC

In Dodoma, interviews with a small security firm and a manufacturing company also revealed reasons for employers to prefer casual workers. A management member of the security firm indicated that they cannot afford to grant employment contracts because they are not a big security firm like K.K Security, and any case the workers can decide to quit their jobs at any time.⁵² At the manufacturing industry, the manager claimed that when they grant employment contracts the workers tend to ‘forget’ their duties and responsibility, hence casual worker arrangement works best for them, as they only pay someone when they have showed up at work and they do not have to worry much about supervision.⁵³

51 Tanga HRB Survey Field Report 2021.

52 Dodoma HRB Survey Field Report 2021.

53 Ibid.

2.2.2. **Written contracts and copies of contracts**

In the period of 2020/2021, 56% of workers indicated that they possessed written employment contracts, a decrease of 19% compared to the survey conducted in 2019.

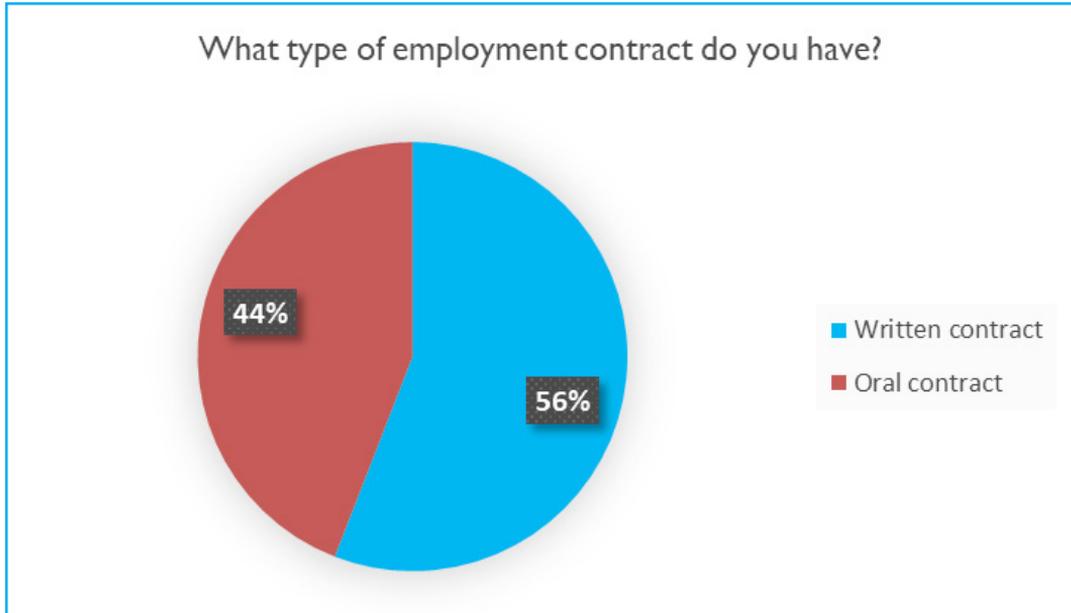


Figure 5: %Type of employment contract (N=1,009)

Source: Field data, 2021

In some regions interviewed workers complained about their employers not giving them copies of their contracts. This was reported in 10 out of the 15 regions that were visited. For instance, in Kilimanjaro, a worker had this to say regarding copies of employment contracts:

“Hawa jamaa walikuwa wanatupa copy za mikataba, ikawa mkataba wako ukiisha unaweza kwenda na copy kwa bosu kumuonyesha kuwa unahitaji mkataba mwingine. Wakaona tutawazidia akili. Sasa hivi hawatupi copy, unasaini, mkataba unabaki kwa bosu.”

“Our bosses used to give us copies of our contracts, such that we could go and demand a new contract when the current one was about to end. But then they became suspicious that we might try to be clever, so now they do not give us copies, you just sign the contract and then it remains with the boss.:

A worker in Kilimanjaro Region.

In Mwanza, an employee of a Chinese-owned company also lamented denial of copies of employment contracts. The employee said:

“...tunapewa mikataba ya kuandika lakini tukimaliza kusaini tu, mikataba yote inakusanywa inawekwa ofisini”

“We are given written employment contracts, but immediately after signing them they are collected and kept in the office.”

An employee of A Chinese-owned company in Mwanza

In Tanga, an employee at one of the companies that were visited also claimed that he had not been provided with an employment contract by his employer. He said:

“Mkataba ninao lakini unakaa kwa mwajiri wangu, walinipa nikausoma tu halafu nikaurudisha”

“I do have an employment contract, but it stays with my employer. They gave me the contract to read and then I returned it to them.”

An employee at a manufacturing company in Tanga Region

A similar claim was made by interviewed employees in Geita Region, who claimed that most of the workers at the company they were working at, did not have employment contracts. One of the employees had this to say regarding employment contracts:

“Asilimia kubwa tunaofanyakazi hapa hatuna mikataba,wale ambao hata walifanikiwa kupewa kusaini mkataba hawana nakala wala hawajui kilichoandikwa.Kunawakaguzi walikuja ndio mwajiri akachapisha mikataba na kutusainisha haraka haraka bila hata kujua kilichoandikwa.:

“Most of us who work here do not have contracts, and even those who succeeded to obtain contracts were not given copies and are not even aware of what is written in them. There was a scheduled labour inspection which prompted our employer to hastily prepare contracts and made us sign them quickly without reading them.”

An employee at a company in Geita Region

In addition to not being provided with copies of employment contracts, some of the interviewed workers pointed out that they were pushed to quickly sign the contracts without being afforded time to read and clearly understand them. For instance, in Dodoma an employee of a road construction company

claimed that he was called into the Human Resources Office and told to sign the contract in front of the officer without reading it first and was also not provided with a copy of the contract.⁵⁴ Human resources officers put them under close supervision so that they do not get a chance to photocopy contracts or use their smartphones to take a photo.⁵⁵ Another employee of a security firm in Mpwapwa District in the region said:

“Nilipewa mkataba nikasimamiwa huku bosi anasema saini haraka unanichelewesha, hivyo ikabidi nisaini haraka haraka na sikuweza kuelewa chochote kwani ulikuwa umeandikwa kwa kiingereza na baada ya kusaini akauchukua na sijapewa nakala hadi leo”

“I was given a contract, but my boss stood in front of me and told me to sign it quickly because he does not have time to waste, so I had to do it albeit without understanding what was written in the contract, considering it was also in English Language. After signing it I am yet to receive my copy to date.”

A security firm employee – Mpwapwa, Dodoma

In Dodoma, workers with employment contracts were most found at companies such as Alko Vintages Co. Ltd, Modern Mattress Manufacturing Ltd., Sao Hill Industries Ltd, and ALAF Manufacturing Company.

LHRC's View: It is for a good reason that good labour practices demand workers to be provided with written employment contracts. Lack of such contracts means workers are at a risk of their employment being terminated at any time without notice. It also puts them at a risk of not receiving compensation in case they sustain an injury at workplace. Casual labourers are at a greater risk of their rights being violated and being exploited.

2.2.3. Ready-made contracts and room for collective bargaining

One of the issues that emerged during the survey on business and human rights concerned contracts being ready-made by employers, which leave no room for bargaining. The employer has already prepared a contract, which is not subject to any negotiation. This issue was especially raised in Arusha, Tabora, Geita, and Shinyanga Regions.

54 Dodoma HRB Survey Field Report 2021.

55 Ibid.

For instance, in Shinyanga Region, only a few of the interviewed workers acknowledged that they had discussed terms of employment with their employers, with the majority forced to sign contracts without any negotiations.⁵⁶

In Geita, an employee at a petrol station revealed that their employer does not provide potential employees with any room for negotiations.⁵⁷ They are only told what they will earn and their job description. Another employee in one of the hotels that were visited in the region, said:

Overall, 56% of the respondents indicated that they had not been afforded an opportunity to negotiate their contracts. This marks a slight improvement compared to the situation in 2018/2019, whereby 44% of the respondents claimed they had not discussed terms of contract with their employers.



Figure 6: % Responses on negotiating or discussing contract terms with employer (N=1,018)

Source: Field data, 2021

56 Shinyanga HRB Survey Field Report 2021.
57 Geita HRB Survey Field Report 2021.

2.2.4. Language of employment contracts

Like in the previous survey on business and human rights, conducted in 2019, language of employment contracts continued to be a challenge for the majority of workers who were reached. As indicated in subchapter 1.4.4 above, most of the workers had only attained primary and secondary education, hence not very conversant with the English language, but contracts continue to be prepared in English Language. During the survey, interviewed employees in all surveyed regions identified as a challenge the fact that, their contracts were in English Language, which they do not clearly understand.

The survey also found that there is a tendency of workers not reading thoroughly their contracts before signing them. This situation is aggravated by the contracts being written in English Language. This situation was more serious for workers with lower levels of education and working in the lower paying jobs, including security firms. For instance, in Dodoma, a security firm employee in Mpwapa District complained that he was forced to sign a contract prepared in English Language, a language he did not understand.⁵⁸ Another employee of a security firm in Dodoma City also had this to say about language of employment contracts:

2.2.5. Contracts with unfair or discriminatory terms

The survey on business and human rights also sought to examine samples of employment contracts to check unfair or discriminatory terms. As it was the case in the previous survey, most employers were reluctant to provide contract samples for examination. However, the survey team was able to obtain a few samples and managed to interview some workers regarding the fairness of the terms of their contracts.

One of the things that was obvious during the assessment of contract samples is the working hours in some of the contracts, which were set above the 9-hour legal limit. For instance, in Dodoma, a copy of employment contract from a private security firm indicated that the workers were required to work for 12 hours as normal working hours.⁵⁹ However, this is contrary to the labour laws, which stipulate that normal working hours are 9 hours, while 12 working hours are maximum working hours, which include 3 hours of overtime work.⁶⁰ Another contract of an investment company in

58 Dodoma HRB Survey Report 2021.

59 Dodoma HRB Survey Field Report 2021.

60 Ibid.

the region contained a term that stipulated that employees are to work 10 normal working hours a day (see *extract below*).

6.0.MASAA YA KAZI

6.1.Utafanya kazi Masaa kumi (10) kwa siku kulingana na muda utakaopangiwa na uongozi.

6.2.Muda wa kazi utakuwa:-

Saa 12:15 asubuhi hadi saa 9:30 Jioni.

6.3.Utafanya kazi kwa siku sita (6) kwa wiki na utapumzika siku moja kwa kila wiki

Picture 2: *An extract of an employment contract at an investment company in Dodoma, which stipulates that normal working hours in a day are 10*

2.2.6. Employers failing to honour terms of the individual contract

The survey on business and human rights in 15 regions of Tanzania Mainland also found that incidence of employers failing to honour terms of employment contracts continues to be among the challenges facing employees. For instance, employees at one of the companies that were visited in Shinyanga Region pointed out that some of them are not paid the salary that was initially agreed in the contract.⁶¹ This constitutes a breach of employment contracts, and by extension breach of laws and regulations governing employment and labour relations in Tanzania.

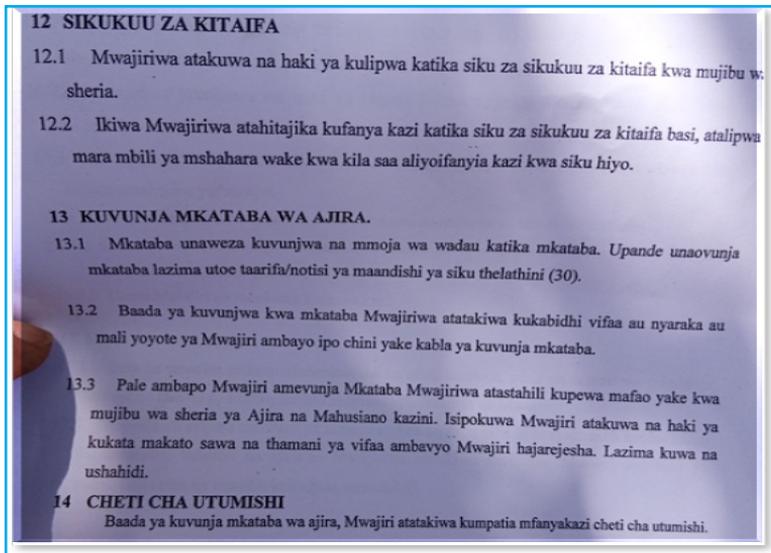
Some of the interviewed employees in Shinyanga also revealed that they are prone to unfair termination caused by disregard of contractual terms by their employers. For instance, one of them stated that they are usually fired whenever their boss feels like it, without a proper notice, such that they can come to work in the morning and find their names posted at the gate that their employment has been terminated.⁶² The survey team in the region met with employees whose employments had been terminated contrary to the terms of their contracts at one of the companies in February 2021. They indicated that they had filed a case at the Commission for Mediation and Arbitration (CMA) and were awaiting the award of the quasi-judicial body.⁶³ According to the employees, their contracts state that if a party to the contract wants to terminate an employment contract, they **must** give a

61 Shinyanga HRB Survey Field Report 2021.

62 Ibid.

63 Ibid.

30-day notice, but this contractual term was disregarded by their employer. They shared a copy of their contract (below), which also indicates that they should be entitled to benefits, which they claimed they also did not receive.



Picture 3: A section of employment contract of one of the companies that were visited in Shinyanga Region, indicating a 30-day notice for contract termination

2.2.7. Unfair labour practices, including workplace discrimination

Some of the interviewed workers lamented unfair labour practices of their employers, such as deducting their salaries when they do not show up for work during public holidays. This complaint was made by some of the workers in Tabora Region.

“..tuna mikataba ya kazi lakini sasa changamoto kubwa ni kwamba siku za sikukuu za kitaifa mwajiri anatumia kwenye mshahara kwa sababu hatuzalishi siku hiyo, huu ni unyanyasaji kwani hizi siku sisi ndio tumezianzisha”

“...we do have employment contracts, but one of our main challenge is that our salaries are deducted when we don't come to work during public holidays, because our boss says we do not produce anything during those days. This is unfair, because we are not the ones who declared such days public holidays.”

A worker in Tabora Region

Interviewed workers at a security firm in Dar es Salaam pointed out that their employer treats them differently when it comes to employment contracts. They noted that the employer usually grants employment contracts to workers who appear to be conversant with their labour rights, leaving those with lower awareness at a disadvantage.

“Kuna ubaguzi katika utoaji wa mikataba ya kazi. Mikataba inatolewa tu kwa wafanyakazi ambao wanaona wanajua kupigania haki zao. Kwa wafanyakazi ambao wapo kimya, wala hawahangaiki nao.”

“There is unfair/differential treatment in our workplace when it comes to granting employment contract. Contracts are offered to employees who know how to fight for their labour rights. They don't bother with employees who do not speak to protect their right.”

An employee of a security firm in Dar es Salaam

In Geita, interviewed workers complained about being threatened by employers when they demand time to read and understand employment contracts before signing them. An employee at one of the companies that were surveyed said:

“Nilikataa kusaini mkataba nakuomba kusoma kwanza lakini kiongozi akanitishia kufukuzwa kazi nikamwambia sawa nifukuze lakini sitasaini kitu ambacho hatasijajua kilichoandikwa.

“My boss threatened to fire me when I demanded to read the contract first before signing it. I told him that he can proceed and fire me, but I cannot sign something I do not understand.”

A company employee - Geita

The survey also found that there is tendency of employers not providing job descriptions, which leaves employees vulnerable to extra work and exploitation. 70% of the copies of employment contracts that were reviewed during the survey were not accompanied by job descriptions. During an interview with a hotel worker in Dodoma, she revealed that she was not given a job description, so she just follows instructions given by the manager.

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

Concern of not pushing too much for employment contract for fear of losing one's job was raised during interviews with workers in 13 out of the 15 regions that were surveyed. The interviewed workers revealed that they were afraid of 'pushing their employers to the edge' by constantly demanding contracts. They were overly concerned with losing their jobs, given the high unemployment rate and difficulty in finding a job. Knowing the high demand for jobs, albeit accompanied by low wages, the employers take advantage of the situation to exploit workers and deny them their labour rights.

In Geita an employee of a manufacturing company revealed that when workers demand employment contracts, they are usually asked whether they want the job or the contract.⁶⁴ They then decide to remain silent so that they can keep their jobs, given their economic hardships.⁶⁵ Another employee, a hotel worker, remarked:

"Tuliuliza kuhusu mkataba tukaambiwa tutapewa ikawa tunarushwa tarehe kila siku,mwisho wasiku mtu unaamua kuacha .Hakuna pakwenda kushitaki yeye kakuajiri muda wowote akiamua anakutoa.Ukiongea sana unafukuzwa kazi."

"When we inquired about our contracts, they said they would give them to us, but this promise is yet to be fulfilled, so at the end of the day you just give up and continue working. There is no where for us to go and complain because they have hired you and they can remove you at any time. If you demand too much you risk losing your job."

A hotel worker - Geita

2.2.9. Long term contracts versus short-term contracts

Like it was in the previous survey on business and human rights conducted in 2019, the 2021 also revealed preference of offering short-term contracts on the part of employers, as opposed to offering long-term contracts. Employers prefer short-term contracts so that they can gain more control over employees, who risk missing out on contract renewal should they be on the forefront in demanding basic labour rights. Short-term contracts were said to be common among workers in regions such as Geita, Manyara, Singida, Pwani, Shinyanga, Dodoma, and Mara, especially in the small-scale businesses/SMEs, where most of the low-paying jobs are found. During the survey, workers/employees were also asked about the strategy used by their

⁶⁴ Geita HRB Survey Field Report 2021.

⁶⁵ Ibid.

employers to ensure staff-retention. Only 20.7% of the respondents indicated that their employers employ the long-term contracts strategy for purposes of staff-retention.⁶⁶

In Dodoma, the survey also found that short-term contracts put workers at a disadvantage in terms of securing loans. This was revealed during an interview with an official from the Conservation, Hotels, Domestic, Social Services and Consultancy Workers Union (CHODAWU), who revealed that banks are reluctant to offer loans to workers with short-term contracts, especially below one year.⁶⁷ Such contracts affect job satisfaction and impact job security.⁶⁸

“Ukiwa na wa mwaka mmoja au chini ya hapo hakuna benki itakayotaka kuwakopesha na ndio utaona matatizo ya mikataba mifupi.”

“No bank will give you a loan if you have a one-year or less employment contract, and that is where you start to see the problems associated with short-term contracts.”

CHODAWU official - Dodoma

In most cases, when the workers receive new contracts (contract renewals), they are usually characterized by lower pay. This was revealed during an interview with a trade union official from National Union of Mine and Energy Workers of Tanzania (NUMET). This is another negative aspect of short-term contracts.

LHRC's View: Employment contracts, particularly written employment contracts, are important in safeguarding labour rights. They give workers a sense of security, enables them to clearly understand their duties and employers' expectations, and is beneficial to both employer and employee. For an employer, it can also guarantee protection of confidential information, hence safeguarding confidentiality.

It is a good labour practice for employment contracts to always be in a written form for purposes of clarity and evidence of rights and duties for both parties. They are also important in case of labour disputes. To this end, it also important for employees/workers to have copies of their employment contract.

66 Quantitative data of the HRB Survey 2021.

67 Dodoma HRB Survey Field Report 2021.

68 Ibid.

LHRC's Call: Employers to provide written employment contracts to their workers, as well as granting them copies of contracts.

2.3. Working Hours

Working hours or working time has been an issue of concern across the world since the 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.⁶⁹ The international standard is now 8 hours per day.⁷⁰ 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.⁷¹ ELRA also prohibits an employer to require or allow an employee to work for more than 12 hours in a day.⁷² Overtime work is allowed under the law, but should not exceed 50 hours in any four week cycle⁷³ and is subject to an agreement between employer and employee⁷⁴ as well as additional pay (overtime pay).⁷⁵ However, a written agreement may be entered between employer and employee to work for up to 12 hours in a day without overtime pay.⁷⁶ 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.⁷⁷

2.3.1. Compliance with working hours limit

Analysis of quantitative data on workplace compliance with working hours limit, as stipulated under laws and regulations governing labour in Tanzania, showed that majority of workers who participated in the survey (95%) were aware of the working hours limit stipulated under the Employment and Labour Relations Act [CAP. 366 R.E. 2019], which is a maximum of 9 hours a day. These workers were then asked whether they are free to leave work after 9 hours of working, and 85% said they are free to do so. The remaining 15%

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

70 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.

71 Section 19(2) of the Employment and Labour Relations Act [CAP. 366 R.E. 2019].

72 Ibid, Section 19(1).

73 Ibid, Section 19(3) (b).

74 Ibid, Section 19(3) (a).

75 Ibid, Section 19(5).

76 Ibid, Section 21.

77 Ibid, Sections 23 and 25 respectively.

acknowledged that they were not free to leave work after stipulated working hours, hinting at violation of the labour standard relating to working hours. During the previous survey, which was conducted in 2019, percentage of workers who claimed to be free to leave work after working hours stood at 83%, while 17% said they were not free to leave until their bosses allowed them to.⁷⁸



Figure 7: % Responses on freedom to leave workplace after working hours (N= 1,083)

Qualitative interview findings show that non-adherence to the labour standard of working hours by employers was reported in all surveyed regions. For instance, in Manyara, interviewed employees complained about being forced to work some extra hours without extra pay. One of the workers in the region said:

“.....Muda wa kuingia kazini unajulikana lakini muda wa kutoka inategemeana na majukumu ya siku hiyo uliyopangiwa yakoje na mpaka uruhusiwe na boshi.....”

“.... The time for arriving at work is known, but the time to leave depends on your responsibilities on the day and permission by the boss...”

An employee - Manyara

78 See LHRC (2019), Human Rights and Business Report 2018/2019 at www.humanright.or.tz.

In Manyara, employees at beverage and sugar companies that were surveyed complained about being forced to work even during public holidays. They noted that they are told to report for work or face wage reduction. One of the workers had this to say:

“ Kila siku apa ni siku ya kazi hakuna cha sikukuuu ya kitaifa wala nini, ata kipindi Magufuli amefariki zile siku za maombolezo ya kitaifa ambaye hakuja alikatwa mshahara...”

“For us, everyday is a working day, regardless of public holidays. Even when Magufuli had passed away were not allowed to stay at home and mourn, and whoever did not show up for work had their wages deducted.”

An employee - Manyara

In Mwanza, majority of employees indicated that they are free to leave work after the working hours.⁷⁹ However, some of the interviewed workers, particularly at clothing and beverage companies complained about not having the freedom to leave until their supervisors say so.⁸⁰

In Dodoma, some workers claimed that they work for up to 16 hours per day,⁸¹ which is above even the maximum daily working hours (12 hours). This is especially true for bus and truck drivers, construction workers, and employees of private security firms.⁸² For instance, a worker at a construction company claimed that they are made to work for up to 11 hours a day.⁸³ A bus driver told the interview team that he works for up to 16 hours driving a bus, while a private security firm employee indicated that they are required to work for 12 hours as normal working hours (see *contract extract below*).⁸⁴ At another company, an employment contract showed that workers are required to work for 10 hours as normal working hours. This is clearly contrary to the labour laws, which have set 9 hours as normal working hours a day and 12 hours as maximum working hours a day (inclusive of a 3-hour overtime).

d) Working Hours:

You are employed on a shift basis and normal working of twelve hours. Your normal hours of work start at 0600hrs for day shift and 1800hrs for night shift.

Picture 4: Extract of a contract at a security firm in Dodoma, which indicates 12 hours as normal working hours

79 Mwanza HRB Survey Field Report 2021.

80 Ibid.

81 Dodoma HRB Survey Field Report 2021.

82 Ibid.

83 Ibid.

84 Ibid.

Assessment of field reports of the 15 regions that were surveyed showed that casual workers were more vulnerable to labour rights violations. These workers were much more likely to face working hours beyond the limit stipulated in labour laws, but they are forced to accept more working hours because the more they work the more they earn. They were also mostly affected by the impact of Covid19 in terms of pay as businesses faced losses.

LHRC's View: Studies have indicated that working long hours without getting adequate rest adversely affects workers' health and wellbeing.⁸⁵ Health-related impact of long working hours and inadequate rest for workers includes putting them at increased risk of fatigue, stress, depression, sleep deprivation, and hypertension.⁸⁶ It has also been established that workers who work long hours are at increased risk of work injuries and illnesses and compromise their family life. Having workers who are depressed and have mental issues is also consequential for a company or factory in terms of productivity.

LHRC's Call: 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.

2.3.2. Payment for overtime work

Labour laws and regulations require employers to pay employees extra amount of money when they work beyond the stipulated working hours. During the survey, all respondents indicated that they have worked overtime at some point. When asked whether they get paid for overtime work, only 38% of them acknowledged that they get paid, while 62% said they are not paid. Major victims were found to be bus and truck drivers, hotel workers, security guards, and petrol station attendants. In the previous survey, 57% of employees indicated that they were paid for overtime work, while 43% said they were not paid.⁸⁷ This means that the situation has slightly worsened in this reporting period, as the number of workers receiving pay for overtime work has declined by 19%.

85 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.

86 Ibid.

87 See LHRC (2019), Human Rights and Business Report 2018/2019 at www.humanrights.or.tz.

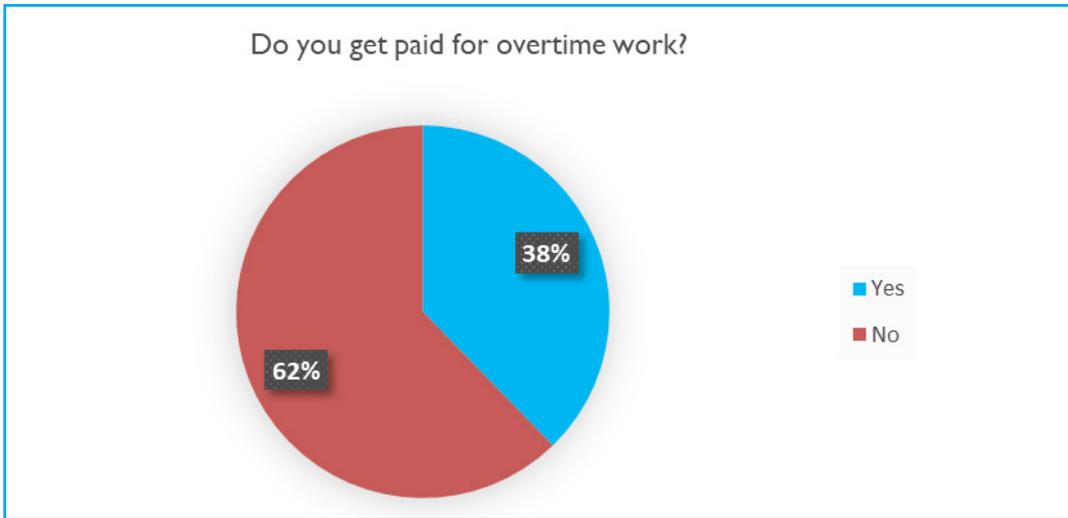


Figure 8: %Response on whether employees get paid for overtime work (N=962)

Payment and non-payment for overtime work varied at regional level. In terms of percentage of employees getting paid for overtime work, only five regions recorded 50% and above, namely: Arusha, Dar es Salaam, Geita, Kilimanjaro, and Tanga. The highest percentage of employees who claimed to receive pay for overtime was in Arusha (62%), followed by Dar es Salaam (59%), Geita (53%), Tanga (51%), and Kilimanjaro (50%).⁸⁸ Regions in which non-payment for overtime work was found to be highest were: Mbeya (87%), Dodoma (81%), Singida (80%), and Mtwara (78%).⁸⁹

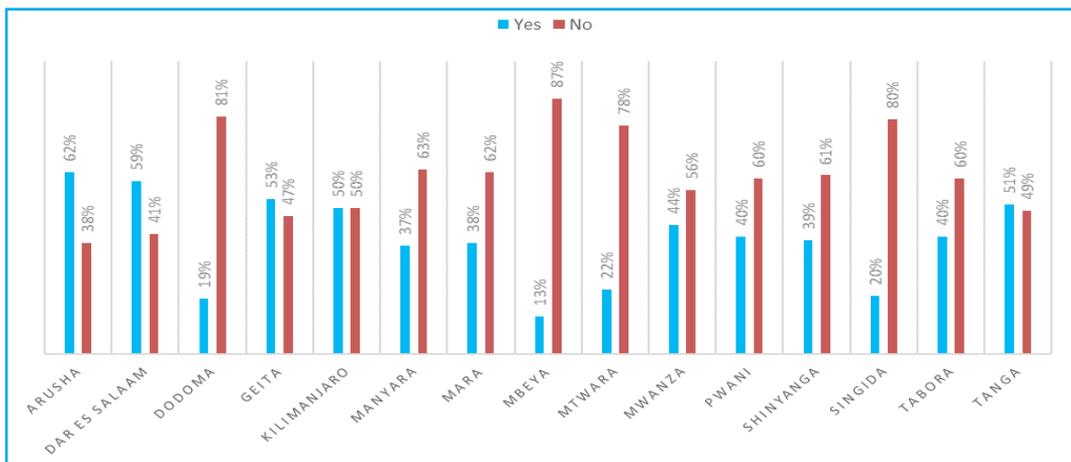


Figure 9: %Regional responses on overtime pay (N= 961)

Source: Field data, 2021

88 HRB Survey 2021 Quantitative Field Data.

89 Ibid.

The survey also found that in some cases employees/workers were made to work for up to 15 hours, which is contrary to the employment and labour relations laws and regulations, particularly the 12-hour cap, which includes overtime hours.

Complaints about non-payment for overtime work or inadequate pay were made during interviews with workers in regions such as Tabora, Kilimanjaro, Singida, Mtwara, Tanga, Dar es Salaam, Geita, and Shinyanga. In Tabora, an employee of a transportation company revealed that they are made to work well beyond the working hours limit and yet they are not paid overtime.⁹⁰ In Moshi – Kilimanjaro, one of the employees indicated that they are paid for overtime work, but it is a fixed amount, regardless of how much extra work has been done and the time taken to complete the task.

“Hili swali la over time sijui nilijibu vipi, kwenye mshahara kuna overtime tunalipwa kila mwezi, kiwango ni kile kile hajalishi ulizidisha masaa mangapi.”

“I don’t even know what to say about overtime work. It is like this, the pay for overtime work is the same (fixed), regardless of how many more hours you have worked, and is given at the end of the month.”

An employee – Moshi, Kilimanjaro

“Tunaandikishwa overtime lakini ukifika mwisho wa mwezi hatulipwi nakudai overtime inamwisho wa muda huwezi dai malimbikizo ya malipo ya overtime utaambiwa tushafunga mahesabu ya overtime ya kipindi hicho.niujanja ujanja tu tunafanyiwa.”

“We write down the amount we are entitled to be paid for overtime work, but at the end of the month when we claim the amount, we are told that they have already performed the monthly accounting closing process. They are just playing with us.”

A company employee - Geita

In Geita, some workers also indicated that they do not receive the overtime pay in full and when they question this, they are told that there is a limit to the amount they can be paid for overtime work.⁹¹ At some of the workplaces in the region, some employees were observed to be unaware about their right to overtime pay, especially those working in the hospitality and transportation industries.⁹²

90 Tabora HRB Survey Field Report 2021.

91 Geita HRB Survey Field Report 2021.

92 Ibid.

In Shinyanga workers of mining companies also complained about not being paid for overtime work. They stated that their employers usually promise to pay them Tshs. 5,000 to 10,000 for overtime work, which would be added in their monthly wages.⁹³ However, at the end of the day they receive the usual wages without any extra pay, and sometimes they are only bought coffee as a substitute for the extra pay.⁹⁴

“Unafanyishwa kazi za ziada na wanakuahidi watakulipa labda elfu 10 ambayo watakuongezea kwenye mshahara lakini mwisho wa mwezi unapokea mshahara ule ule wa kawaida. Ukiulizia unatishiwa kufukuzwa kazi”

“They make you work beyond the working hours and promise you Tshs. 10,000, which shall be added in your salary, but at the end of the month you receive the same salary. When you ask about the extra pay, they threaten to fire you.”

Mining company employee - Shinyanga

2.3.3. Right to rest for workers

International labour standards set by the International Labour Organization (ILO) have set maximum weekly working hours. The maximum weekly working hours include the normal working hours and the overtime hours. The cap on working hours has been introduced purposely to ensure that workers get **daily workplace rest breaks, daily rest, weekly rest, and annual leave.**⁹⁵ ILO Member States, including Tanzania, have introduced legislations to regulate both normal weekly working hours and maximum weekly working hours. In Tanzania, the Employment and Labour Relations Act [CAP. 366 R.E. 2019] 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.”⁹⁶ 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.⁹⁷ 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

93 Shinyanga HRB Survey Field Report 2021.

94 Ibid.

95 See Ghosheh, Naj (2016), Remembering rest periods in law: Another tool to limit excessive working hours, Conditions of Work and Employment Series No. 78, International Labour Office, Geneva, Switzerland at http://ilo.ch/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_516123.pdf, accessed 19 May 2021.

96 See Section 19(1) of the Employment and Labour Relations Act [CAP. 366 R.E. 2019].

97 Ibid, Section 24(1)(a).

lives on the premises of the workplace.⁹⁸ The law further guarantees a 1 hour break for any employee who works continuously for more than 5 hours.⁹⁹ 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.

There is a good reason why international and domestic labour standards demand rest for workers in the form of **daily workplace rest breaks, daily rest, weekly rest, and annual leave**. The biggest reason is protection of the health of workers, which is why right to rest is recognized under the International Covenant on Economic, Social, and Cultural Rights (ICESCR) of 1966 as a component of the right to the enjoyment of just and favourable conditions of work.¹⁰⁰ Studies have shown that breaks and rests are essential for the individual wellbeing of workers and help to address fatigue, especially for work that is physically or mentally demanding.¹⁰¹ Researchers have also established a link between rest breaks and injuries in the workplace, finding that sufficient rest for workers helps in reducing workplace injuries. Weekly rests also help workers recuperate and can negatively impact workplace safety if disregarded.

Inadequate rest for workers may contribute not only to sleep deprivation, but also increase stress and affect the balance between work and life, more specifically family life. Studies have shown that shift work is more problematic in terms of creating fatigue and sleep problems, including insomnia, among shift workers.¹⁰² It is therefore important to ensure workers get adequate rest, to protect their health, their family life, the environment, and a safer

98 Ibid, Section 24(2).

99 Ibid, Section 23(1).

100 See Article 7(d) of the International Covenant on Economic, Social, and Cultural Rights of 1966.

101 See Ghosheh, Naj (2016), Remembering rest periods in law: Another tool to limit excessive working hours, Conditions of Work and Employment Series No. 78, International Labour Office, Geneva, Switzerland at http://ilo.ch/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_516123.pdf, accessed 19 May 2021; Tucker, P.; Bejerdot, E.; Kecklund, G.; Aronsson, G.; Akerstedt, T. 2013. Doctors' work hours in Sweden: Their impact on sleep, health, work-family balance, patient care, and thoughts about work, Stressforskningsrapport nr 235, Stockholm University. http://www.stressforskning.su.se/polopoly_fs/1.233341.1429526778!/menu/standard/file/sfr325.pdf; Lombardi, D.; Kezhi, J.; Courtney, T.; Arlinghaus, A.; Folkard, S.; Liang, Y.; Perry, M. 2014. "The effects of rest breaks, work shift start time, and sleep on the onset of severe injury among workers in the People's Republic of China," *Scandinavian Journal of Environmental Health*, 40(2), pp. 146-155; Arlinghaus, A.; Lombardi, D.; Courtney, T.; Christiani, D.; Folkhard, S.; Perry, M. 2012. "The Effects of rest breaks on time to injury – a study on work-related ladder-fall injuries in the United States," *Scandinavian Journal of Work, Environment & Health*, 38(6), pp. 550-567.

102 See Ghosheh, Naj (2016), Remembering rest periods in law: Another tool to limit excessive working hours, Conditions of Work and Employment Series No. 78, International Labour Office, Geneva, Switzerland at http://ilo.ch/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_516123.pdf, accessed 19 May 2021; Sallinen, M.; Kecklund, G. 2010. "Shift work, sleep, and sleepiness – differences between shift schedules and systems," *Scandinavian Journal of Work and Environmental Health*, 36, pp. 121-133; Eldvik, M.; Flo, E.; Moen, B.; Pallesen, S. 2013. "Insomnia, Excessive Sleepiness, Excessive Fatigue, Anxiety, Depression, and Shift Work Disorder in Nurses Having Less Than 11 Hours in-Between Shifts," *PLOS One*, 8(8), pp. 1-9.



workplace. Meal breaks have also been found to be especially important for the health and wellbeing of workers.

During the survey on business and human rights, workers in the hospitality, private security services, and transportation industries were found to be the major victims of inadequate rest. This is because of being overworked, usually beyond the maximum daily working hours.

In Shinyanga Region, where mining is a dominant economic activity, some of the interviewed workers working for mining companies complained about being required to work without being accorded weekly rest.¹⁰³ One of them, claimed that they are required to go to work for all 7 days of the week, without a single day of resting. Other interviewed workers who work at two Chinese-owned companies stated that they used to work beyond the legal limits until the District Commissioner intervened and consequently, they are currently only working for 8 hours-a-day and in shifts.¹⁰⁴

“Kwa kweli hapa tunafanya kazi siku zote mpaka Jumapili. Haturuhusiwi kwenda kula wala kwenda kujisaidia mpaka tumalize masaa 8 ya kazi. Ukionekana unapumzika unarushiwa jiwe au unapigwa teke.”

“To tell you the truth we work from Monday to Sunday. We are not given meal or any breaks until we have worked for at least 8 hours. If they see you resting, they throw a stone at you or hit you.”

A mine worker - Shinyanga

LHRC's View: One of the biggest factors that was found to contribute to inadequate rest for workers during the survey is overtime work. On the one hand, due to low wages, workers find themselves with no choice but to accept overtime work so that they can get an extra income to support themselves and their families. On the other hand, even assuming wages are out of the question, in most cases it appears they do not quite have a choice when their employers ask them to work overtime and therefore must agree for fear of losing their jobs.

LHRC's Call: Employers should ensure workers get adequate rest in line with domestic and international labour standards, especially daily breaks, daily rest, and weekly rest, to protect the individual health and wellbeing of workers. The Government, through its labour inspectorate division, should ensure the important labour standard of working hours is adhered to by all employers. This is also essential in safeguarding workers' right to rest under the International Covenant on Economic, Social, and Cultural Rights (ICESCR) of 1966.

¹⁰³ Shinyanga HRB Survey Field Report 2021.

¹⁰⁴ 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,'¹⁰⁵ 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 Charter on Human and Peoples' Rights

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 [CAP. 300 R.E. 2019], 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.¹⁰⁶ 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. The Wage Order was last reviewed in 2013. As a result, the minimum wages do not reflect the current actual costs of living. Table 10 below outlines minimum wage for some of the key areas in the private sector.

¹⁰⁵ Section 4 of the ELRA.

¹⁰⁶ Regulation 8 of the Labour Institutions (General) Regulations 2017 (GN 45 2017).

Table 10: Current minimum wage rates in some of the key areas

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	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

Source: Wage Order of 2013

During the survey, workers who participated in the survey were asked about the wages they are paid and a total of 1,108 responded to this question. Only 39% of them indicated that they earn above Tshs. 210,000, as the majority of

them (61%) claimed their monthly wages range from Tshs. 40,000 to Tshs. 200,000.¹⁰⁷

Findings from interviews with workers, indicate their general dissatisfaction with their wages. They lamented their wages being inadequate and not proportionate to the current costs of living. At some workplaces interviewed workers also mentioned that when they ask for a pay raise, their requests are usually met with threats.

“Kusema la ukweli mishahara ni midogo na hiyo midogo yenyewe tulikatwa tukaambiwa hali sio nzuri na huo ulikatwa nao hatulipwi. Tunaomba tu mtusaidie!”

“To tell you the truth, the wages we are paid are low and are still reduced when production is low and even the reduced on is not paid. We need you to help us!”

An employee - Arusha

“Malalamiko yangu ni kuhusu kima cha chini cha mshahara wa shilingi laki moja (100,000). Nashindwa kukidhi hali ya maisha. Matumizi ninayotumia kwa siku kuja kazini ni makubwa kuliko pesa tunayolipwa kwa siku.”

“My major concern is the minimum wage of Tshs. One Hundred Thousand (100,000) that we are paid. It is not adequate considering the current living costs. My daily expenses exceed the daily pay.”

A security firm employee – Dar es Salaam

In Manyara, Mtwara, and Mara Regions some of the survey found that some workers were paid below the minimum wages stipulated in the Wage Order of 2013. In Mara, this was observed to be the case mostly with industrial and hotel workers.¹⁰⁸ For instance, an interview with a security guard working for a private security firm in Mara revealed that she was paid Tshs. 100,000,¹⁰⁹ which is Tshs. 20,000 lower than the minimum wage set under the Wage Order of 2013 for private security services industry (small companies).¹¹⁰ Similar claims were made by security firm employees in Dar es Salaam, who claimed they were all paid Tshs. 100,000, which is also below the minimum wage of Tshs. 120,000 set in the Wage Order.

¹⁰⁷ HRB Survey 2021 Quantitative Data.

¹⁰⁸ Mara HRB Survey Field Report 2021.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

“Mimi, niliambiwa na mwenzangu kuwa mishahara yetu ni 100,000 kwa mwezi, ambapo mie ninalinda kuanzia saa 12:30 asubuhi hadi saa 1:00 jioni. Hiyo hela inifae mimi, mwanangu na mamangu ambae ni mgonjwa na bado nikikutwa nimesinzia kazini nakatwa 30,000, inakuwa hainitoshi. Ili kupata hela zaidi, ninafanya shifti mbili, nalinda 12:30 asubuhi hadi kesho yake saa 12:30 asubuhi tena ndo natoka.”

“I was told by my fellow workers that our salary is Tshs. 100,000, and I am supposed to work from 06:30am to 07:00pm. I depend on the salary to sustain myself, my children, and my sick mother, and at the same time if I am found falling asleep at work Tshs. 30,000 is deducted from my salary, which is already inadequate. In order to get extra income, I have to work two shifts, from 6:30am to 6:30am the next day.”

A security guard at a private security firm – Mara

2.4.2. Timely payment of salaries/wages

During this reporting period, delays in payment of wages was raised as a key issue by workers in all surveyed regions. Some of the workers claimed that they had not been paid their wages for over two months. For instance, in Tabora, employees at a textile company and a printing company claimed that they had not been paid their three-month wages.¹¹¹ In contrast, the situation of workers in Kilimanjaro Region was somewhat better as most workers indicated they are paid their wages on time.¹¹²

“Nina miezi mitatu sasa hivi sijalipwa mshahara na mkataba sina sijui hatma yangu ni nini maana tangu bosi wangu anilete hapa sijawahi kumuona tena.”

“I have not been paid my salary for three months now and I don’t have a contract. I don’t know what is going to happen to me because I have not seen my boss again since he brought me here.”

An employee - Mbeya

In Dar es Salaam, some of the interviewed workers lamented constant changing dates for payment of wages. They claimed that there is no specific date for payment of wages, as sometimes they are paid up to 10 days from the date they were last paid. One of them said:

¹¹¹ Tabora HRB Survey Field Report 2021.

¹¹² Kilimanjaro HRB Survey Field Report 2021.

“Kuna changamoto ya kupata mshahara kwa wakati. Mshahara unachelewa sana na mara nyingine unapata tarehe kumi (10) ya mwezi mwingine. Nashindwa hata kutoa ahadi kwa watu wanaonidai kuwa nitakulipa tarehe fulani kwa sababu tarehe ya mshahara haijulikani. Ukimwuliza mwajiri kuhusiana na haki ya mshahara, anasema una mdomo sana.”

“There is a challenge of non-payment of salaries on time. The salaries are delayed, and sometimes we are forced to wait up to 10th of the following month to be paid. I cannot even make a concrete promise to people I owe because of uncertainty over the salary date. If you ask the employer about your right to salary, he tells you ‘You talk too much.’”

Security firm employee – Dar es Salaam

Workers in the hospitality industry were among those hit the hardest with the Covid19 pandemic, as hotel business across Tanzania suffered unprecedented losses. For instance, in Tanga, a director at *Tanga Beach Resort*, which is one of the biggest hotels in Tanga City, failed to pay workers’ wages for 2 to 3 months because of unprecedented decline in hotel bookings.¹¹³

“Tuna vyumba 118 hapa lakini unakuta tunalaza watu 9, kodi ziko pale pale na gharama za uendeshaji ni zile zile nafikiri tunakoelekea mmiliki ataifunga moja kwa moja”

“We have 118 rooms at our hotel, but at times we would only get 9 customers a day, the taxes we pay are the same, and the running costs are too high. If the situation does not improve, we might have to close business.”

Director – *Tanga Beach Resort*

In April 2021, the Deputy Minister of Prime Minister’s Office - Labour, Youth, Employment and Persons with Disability, spoke against employers who deny their workers their fundamental labour rights. He urged employers to adhere to labour standards and pay their workers’ salaries on time, noting that it is important for every employer to ensure that workers are paid their salaries/wages on the specified date.

2.4.3. Employers deducting workers’ wages

The survey on business and human rights also found that some employers have a tendency of deducting wages of their employees/workers for various reasons, which are not justified under the domestic and international labour standards. In most cases the deductions are not even stipulated in their employment contracts. For instance, in Geita, hotel workers complained

¹¹³ Tanga HRB Survey Field Report 2021.

about their employers deducting their wages if their customers are dissatisfied with their services and complain.

“Saa nyingine tunakatwa mshahara bila hata makosa,Unakuta Samaki amekaa mda mrefu kwenye fridge amekosa radha ,mteja anakuja anataka umpikie Samaki ukipika mteja akilalamika Samaki hana radha bill ya yule mteja nakuja kukatwa mimi kwenye Mshahara.”

“Sometimes they deduct our salaries even when it is not our fault. For instance, a customer may complain about a fish they have been served being tasteless, which might be because the fish has been in the fridge for a long time, but then their bill is deducted from your salary.”

A hotel worker - Geita

In Dodoma, bus drivers from one of the transportation companies that were visited lamented unfair deduction of their wages by their employer for reasons such as tyre burst and damage of bus springs.¹¹⁴ The drivers were given a notice in February that if they cause such damage to the busses then their salaries will be deducted to cover the expenses.

LHRC's View: The Wage Order of 2013 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. Low wages prompt workers to work overtime, working beyond their physical ability to do so, just so they can get extra income to support themselves and their families. Increasing wages is therefore important in safeguarding workers' right to rest and their overall health and well-being. It is also important for workers to be paid their wages on time and on dates specified in their contracts.

LHRC's Call: The Wage Order to be reviewed to reflect the current situation and costs of living. The Government should also move to ensure enforcement of the Wage Order so that employers do not pay wages which are below the minimum wages.

Additionally, employers should ensure timely payment of wages to enable their employees to sustain themselves and their families. Labour officers should ensure this fundamental labour right is safeguarded. Employers should also refrain from unfairly deducting wages.

¹¹⁴ Dodoma HRB Survey Field Report 2021.

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.¹¹⁵

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.'¹¹⁶

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 300 million people suffer from work-related diseases and another 300 plus million people experience fatal and non-fatal accidents.¹¹⁷ 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.¹¹⁸ 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.¹¹⁹

115 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.

116 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; 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.

117 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.

118 Ibid.

119 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).

To promote the prevention of occupational accidents and diseases globally, the international community, through ILO, also introduced the World Day for Safety and Health at Work in 2003.¹²⁰ This day is celebrated annually on 28 April, seeking to raise awareness and focus international attention on the magnitude of the problem and on how promoting and creating a safety and health culture can help reduce the number of work-related deaths and injuries.¹²¹

According to the ILO, it is estimated that the global cost of work-related injuries and deaths totals almost \$3 trillion.¹²² In September 2017, the ILO Director-General Guy Ryder stated that “economic impact of failing to invest in worker safety and health is nearly equal to the combined gross domestic product of the 130 poorest countries in the world.”¹²³

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 [CAP. 366 R.E. 2019]. 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.¹²⁴ 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.¹²⁵ 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.¹²⁶ 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 SDG KNOWLEDGE HUB “World Day for Safety and Health at Work 2021” at <https://sdg.iisd.org/events/world-day-for-safety-and-health-at-work-2021/#:~:text=The%20World%20Day%20for%20Safety,occupational%20accidents%20and%20diseases%20globally,> accessed 20th May 2021.

121 Ibid.

122 See “ILO: Global cost of work-related injuries and deaths totals almost \$3 trillion” Safety and Health Magazine, at [https://www.safetyandhealthmagazine.com/articles/16112-ilo-global-cost-of-work-related-injuries-and-deaths-totals-almost-3-trillion,](https://www.safetyandhealthmagazine.com/articles/16112-ilo-global-cost-of-work-related-injuries-and-deaths-totals-almost-3-trillion) accessed 20th May 2021.

123 Ibid.

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

125 Ibid, Section 6(1).

126 Section 98(1) of the Employment and Labour Relations Act, [CAP. 366 R.E. 2019].

The Occupational Health and Safety Act, 2003 and the Employment and Labour Relations Act [CAP. 366 R.E. 2019] are supplemented by various laws and policies that also govern occupational health and safety in Tanzania. These include the Occupational Health and Safety (First aid And Welfare Facilities) Rules, 2015; Occupational Health and Safety (First aid And Welfare Facilities) Rules, 2015; Occupational Health and Safety (Notification of Occupational Diseases, Injuries and Dangerous Occurrence) Rules, 2016; Occupational Safety and Health (General Administrative) (Amendments) Rules, 2018; The Occupational Safety and Health (Building and Construction Industry) Rules, 2015; and the National Occupational Safety and Health Policy 2010.

According to ILO, key principles related to occupation health and safety are:¹²⁷

- 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)

¹²⁷ 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.

2.5.1. Policies of workplace health and safety

Workplace health safety policies are particularly important in creating a workplace environment that adheres to workplace health and safety standards. It is also a legal requirement to have in place such policies, in line with domestic and international labour standards. During the survey, corporate management officials at the companies that were visited were asked whether they have in place workplace health and safety policies.

When asked whether they have in place workplace health and safety policies, 59% of the management officials of the surveyed companies said they do, while 33% said they do not have such policies, as indicated in figure 10 below. The remaining 8% were not sure whether such policies exist or not, which points to the issue of lack of awareness regarding labour laws and standards.

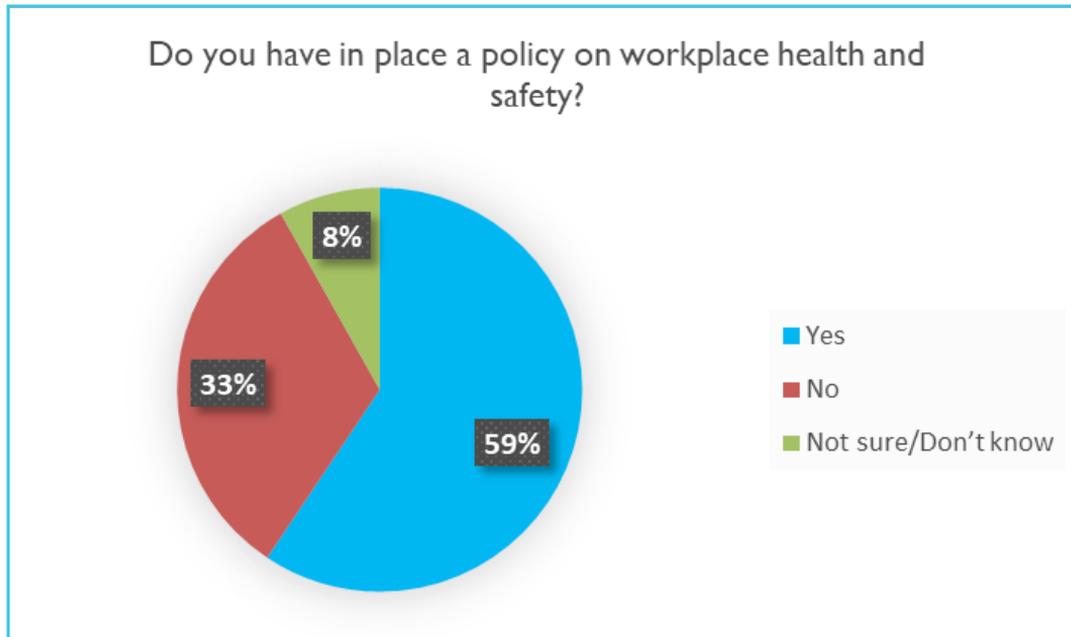
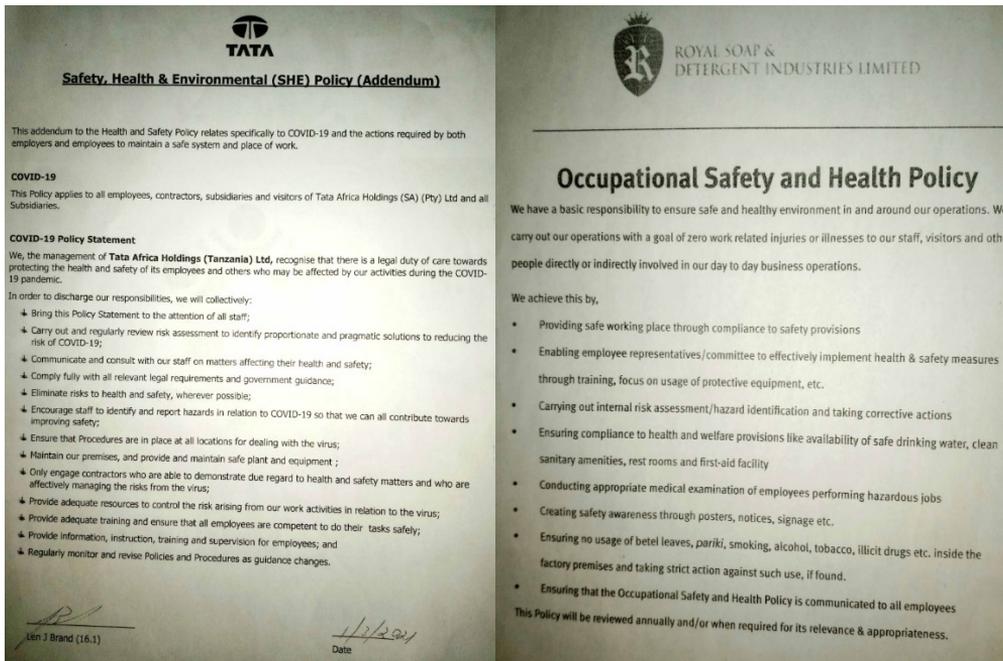


Figure 10: %Reponses on whether companies have workplace health and safety policy (N=160)

Source: Field data, 2021

While it was somewhat comforting for the survey to find that over 50% of the employers had in place workplace health and safety policy, less than a third of them could produce copies of the policies for purposes of evidence. Their claims were therefore not backed by concrete evidence of existence of such policies. Additionally, 33% of employers not having in place relevant policies to safeguard workplace health and safety is significant percentage and a

worrying sign for protection of individual wellbeing and health of workers. The survey also observed that most policies are written in English Language, which means they might not be easily understood by some workers.



Picture 5: Extracts of copies of workplace health and safety policies of two companies in Dar es Salaam

2.5.2. 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. About 50% of respondents indicated that they find the overall working environment to be good, while 20% said their overall working environment is very. The remaining 30% found their overall working environment to be poor or very poor. Table 11 below provides percentages of responses of the respondents for specific 10 aspects of working environment.

Table 11: % Responses on overall working environment at surveyed companies and factories

	Very Poor	Poor	Good	Very Good	N
Equipment	15%	21%	48%	16%	1,099
Air	8%	11%	57%	24%	1,101
Light	5%	10%	62%	23%	1,010
Water	5%	12%	56%	27%	1,104
Toilets	8%	14%	55%	23%	1,104
Fire equipment	12%	15%	51%	22%	1,094
Disability friendliness	14%	28%	45%	13%	1,097
First aid	14%	20%	56%	10%	1,099
Women-friendliness	10%	16%	56%	18%	1,104
State of buildings	4%	12%	58%	26%	1,104

Source: Field data, 2021

In terms of air and light at workplaces, majority of workers (81%) expressed general satisfaction by stating that this aspect of working environment is either good or very good. Majority of them also indicated that they were happy with the aspects of water (83%), toilets (78%), fire equipment (73%), women-friendliness (74%), and state of buildings (84%). However, a significant percentage of respondents (42%) indicated that their workplaces are not disability-friendly, 34% were not happy with the first aid equipment, and 36% were not satisfied with the work equipment.

On-site observation also provided important data on the working environment at workplaces and helped shed light on occupational health and safety. Of particular concern was the state of toilets and other sanitary conveniences.

State of toilets

The ILO Hygiene (Commerce and Offices) Recommendation of 1964 provides that sufficient and suitable sanitary conveniences¹²⁸ should be provided for use of workers and be properly maintained.¹²⁹ The sanitary conveniences “should be partitioned as to ensure sufficient privacy” and as far as possible “supplied with flushing systems and traps and with toilet paper or some other hygienic means of cleaning.”¹³⁰ Additionally, there should be accessible washstands near the sanitary facilities¹³¹ and there should be sanitary conveniences for men and women.¹³²

Regarding the number of sanitary facilities, the ILO Hygiene (Commerce and Offices) Recommendation provides that a competent authority should fix the number of such facilities,¹³³ which in Tanzania’s case is the

Sanitary conveniences shall be made separately for disabled employees.

Section 55(4) of Occupational Health and Safety Act, 2003

Occupational Safety and Health Authority (OSHA) – established under the Occupational Health and Safety Act of 2003. In line with ILO labour standards, the Act also contains provisions on sanitary conveniences.¹³⁴ Section 55 of the Act requires employers to provide sufficient and suitable sanitary conveniences for persons employed in factory or workplace, which should be maintained and kept clean.¹³⁵ The Act also requires separate sanitary conveniences for male and female persons at workplaces and provision of sanitary conveniences to be one toilet for every 25 persons.¹³⁶ Additionally, sanitary conveniences should be made separately for employees with disability.¹³⁷

The Occupational Safety and Health (First Aid and Welfare Facilities) Rules, 2015 contains similar provisions relating to sanitation at workplaces. They require an employer to provide sanitary facilities at workplace, which are freely and readily accessible,¹³⁸ as well as make available items such as soap or similar cleansing agent, toilet papers, and sanitary towel disposal bins for

128 Facilities such as toilets, urinals, sinks, showers, bathtubs, and bidets which discharge waste water.

129 See Recommendation 37 of the R120 - Hygiene (Commerce and Offices) Recommendation, 1964 (No. 120), at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R120, accessed 20th May 2021.

130 Ibid, Recommendation 38 (1) & (2).

131 Ibid, Recommendations 38(4).

132 Ibid, Recommendations 39.

133 R120 - Hygiene (Commerce and Offices) Recommendation, 1964 (No. 120), Recommendation 40.

134 Include urinals, water closets, earth closets, privies, ash-pits, and any similar conveniences.

135 Section 55(1) of the Occupational Health and Safety Act, 2003.

136 Ibid, Section 55(1) & (2).

137 Ibid, Section 55(4).

138 Rule 7(1) of the Occupational Safety and Health (First Aid and Welfare Facilities) Rules, 2015.

female employees.¹³⁹ They also require sanitary facilities to be marked with relevant sex signs, ensure privacy, and be naturally or artificially ventilated.¹⁴⁰

Despite majority of respondents (78%) claiming that they were happy with the state of toilets, on site observation of workplaces revealed that most toilets were not in good/clean condition, which presents a threat to occupational health and safety.



Picture 6: *A dirty/unclean toilet of one of the workplaces that was visited in Kilimanjaro Region*

In terms of gender perspective, at all workplaces toilet facilities were found to be separated for men and women. However, women workers were found to be disproportionately affected by dirty/filthy or unclean toilets, leaving them more vulnerable to infections, including UTI.

At some workplaces, the number of available toilet facilities was also found to be disproportionate to the number of workers/users. This causes workers to queue for a long time when they need to use the toilet facilities. In some cases, workers prefer to go to other nearby toilet facilities.

Most of the toilets were also found to be not disability-friendly and did not have a means for disposing sanitary dressing. They also lacked important hygienic means of cleaning such as toilet papers and soaps. Such toilets were observed in regions such as Tabora, Manyara, Tanga, and Shinyanga.¹⁴¹

¹³⁹ Ibid, Rule 7(3).

¹⁴⁰ Ibid, Rule 7(5).

¹⁴¹ Tabora, Manyara, Tanga, and Shinyanga HRB Survey Field Reports 2021.



Picture 7: Dilapidated and dirty toilets for workers at a factory in Manyara (left) and a limestone company in Tanga (right), which were found to lack means of cleaning such as soaps and toilet papers, and not women-friendly

In Shinyanga, workers at a mining company claimed that the toilets they use are in a bad condition, while their bosses have reserved for themselves toilets which are clean and in good condition.¹⁴² They also accused their employers of imposing restrictions on toilet breaks.¹⁴³



Picture 8: *A dirty toilet observed at one of the mining companies visited in Shinyanga Region*

¹⁴² Shinyanga HRB Survey Field Report 2021.

¹⁴³ Ibid.

Other sanitary conveniences

Apart from toilets, the Occupational Health and Safety Act of 2003 and the Occupational Safety and Health (First Aid and Welfare Facilities) Rules, 2015 make provisions for other sanitary conveniences such as washrooms, washing facilities, and changing rooms. For instance, the former requires employees to be provided with adequate and suitable washing facilities, which should be kept in a clean and orderly condition,¹⁴⁴ and provision of adequate and suitable accommodation for clothing not worn during working hours, including separate changing rooms for each sex.¹⁴⁵ Under the latter employers are also required to provide separate change rooms for males and females.¹⁴⁶

Regarding changing rooms, the survey found that most workplaces do not have suitable and adequate changing rooms, instead the workers have to make do with some makeshift changing rooms, usually toilets. However, some areas were found to have in place changing rooms, especially at workplaces in Kilimanjaro, Dar es Salaam, and Mwanza Regions. Most of the employers therefore do not comply with the requirement of providing adequate and suitable separate change rooms for males and females.



Picture 9: A changing room at one of the workplaces that was visited in Kilimanjaro Region

144 Section 56 of the Occupational Health and Safety Act, 2003.

145 Ibid, Section 57.

146 Rule 9(1)(b) of the Occupational Safety and Health (First Aid and Welfare Facilities) Rules, 2015.

Bathrooms at most of the workplaces were also found to be below the required labour standards. The bathrooms were found to be unclean and in bad condition, with women workers said to be disproportionately affected since they have particular health and safety concerns relating to their need to get access to appropriate, safe, secure and clean sanitary facilities.



Picture 10: Bathrooms for workers at a limestone company in Tanga (left) and a textile industry in Mwanza (right) found to be in bad/unhygienic condition

LHRC's View: Improving workplace environment, health, and safety is essential for achieving SDG targets and key domestic plans and strategies, such as the Tanzania Vision 2025. Safe and health working environment is essential for achieving SDG 3, which seeks to ensure healthy lives and promote well-being for all at all ages, and SDG 8 “Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.” It is also important in attaining high quality livelihood under the Tanzania Vision 2025.

Just like at home settings, clean toilets are very important at workplaces, and can affect employee morale by making the workplace a conducive environment for working. Access to clean and adequate toilet facilities is a key component of the right of everyone to the enjoyment of just and favourable conditions of work, which is guaranteed under the International Covenant

on Economic, Social, and Cultural Rights (ICESCR) of 1966.¹⁴⁷ Such facilities must therefore be at par with basic standards of quality and safety and be user-friendly for all groups, including women and persons with disabilities.

First aid kits and fire extinguishers

Under the Occupational Safety and Health (First Aid and Welfare Facilities) Rules, 2015, employers are required to have in place first aid kits, and to affix a notice in every workroom, stating the name of the first aid attendant in that section of work.¹⁴⁸ This is in line with international labour standards on occupational health and safety.

Most workplaces were found to have in place first aid kits and fire extinguishers as part of their mandate to safeguard occupational health and safety. However, some of the workplaces were found to lack such equipment, and other were found to have empty first aid kits. In Mbeya, some of the first aid kits were found to contain only one or two items.



Picture 11: A first aid kit with tools at a sunflower industry (left) and a first aid kit contains non-medical tools at a food processing industry in Singida Region

147 See Article 7 of ICESCR.

148 Rule 15(1) of the Occupational Safety and Health (First Aid and Welfare Facilities) Rules, 2015.



Picture 12: A first aid kit a Chinese-owned factory in Mbeya found with only a few items

2.5.3. 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, 43% said they had received such training, while 57% said they had not. In comparison with the previous survey, which was conducted in 2019, the percentage of workers who have received training on occupational health and safety has declined by 5%. Additionally, like it was the case in the previous survey, the percentage of workers who have received such training is still less than 50%.

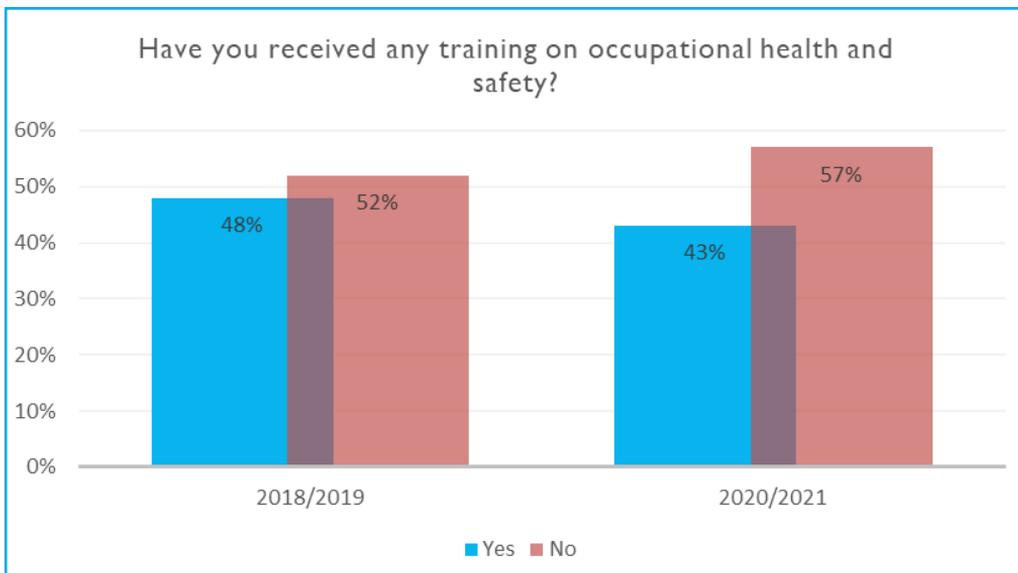


Figure 11: % Responses on receiving training on occupational health and safety (N=997)
Source: Field Data, 2021

Employers were also asked about training on occupational health and safety. They were asked whether they provide any or regular training on workplace health and safety and skills to their employees. 71% claimed that they do provide such trainings,¹⁴⁹ in contrast to claims of the majority of workers, while 23% acknowledged that they do not. The remaining 6% of the respondents (human resource officers) said they were not sure whether such trainings have been provided or not.

LHRC's View: Training on occupational health and safety is particularly 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.

LHRC's Call: Employers in Tanzania make occupational health and safety a priority in order to ensure safety of employees at workplaces, reduce labour disputes and enhance productivity. As a regulatory authority, OSHA should ensure workers are regularly trained on occupational health and safety.

2.5.4. Labour inspection a raised as a concern by 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.

The survey generally found that workers are not happy with labour inspection, claiming that the inspectors do not regularly visit workplaces and when they do, they do nothing or little to address their grievances. This negative perception is an indication that the relevant regulatory authorities, especially OSHA, and trade unions are not doing enough to address challenges faced by workers.

In Kilimanjaro Region, some of the workers who were interviewed blamed the regulatory authority, Occupational Safety and Health Authority (OSHA) for bad working environment at their workplaces.¹⁵⁰ They claimed that OSHA has failed to perform its duties effectively and when they come at workplaces, they usually end up with their bosses in the offices instead of visiting them at their working sites to see the environment they are working in and what is truly going on.

LHRC's View: Poor labour inspection may be attributed to inadequate financial and human resources (labour inspectors). The problem may also be compounded by corrupt labour inspectors, who collude with employers to deny workers their basic labour rights by 'turning a blind eye' to injustices suffered by workers.

LHRC's Call: Prime Minister's Office, Labour, Youth, Employment and Persons with Disability and OSHA to strengthen labour inspection, including through ensuring adequate budget is allocated for labour inspectors.

2.5.5. 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. The equipment are meant to protect workers and visitors at workplaces from injury or infection.

¹⁵⁰ Kilimanjaro HRB Survey Field Report 2021.

According to the Occupational Health and Safety Act of 2003, employers in any factory or workplace must provide workers with effective protective equipment where the workers are employed in any process involving exposure to any injurious or offensive substance or environment.¹⁵¹ In case of any processes specified in the Fifth Schedule to the Act, employers must ensure suitable goggles or effective screens are provided to protect the eyes of persons employed in the process.¹⁵² The processes which require provision of suitable goggles or effective screens include dry grinding of metals or articles of metal, welding or cutting of metals, as well as processes such as cutting out or cutting off of cold rivets or bolts from boilers or other plant or from ships and breaking or dressing of stone concrete or slag.¹⁵³

During the survey, workers were asked whether they have personal protection equipment (PPE) at their workplaces and there was adequate supply of PPE. More than a third (39%) of the workers claimed that PPE is available and sufficient, while 24% said PPE is available but somewhat sufficient and 18% said they are insufficient. 18% of the respondents claimed workers do not have PPE, and 1% said they were not sure.

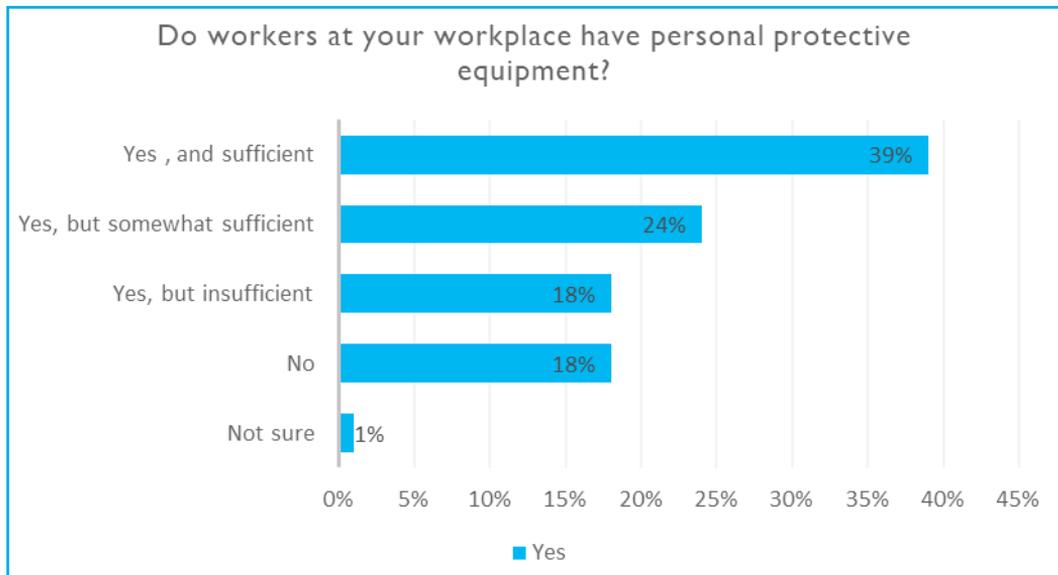


Figure 12: %Responses on availability of personal protective equipment at workplaces (N=1,120)

Source: Field data, 2021

¹⁵¹ See Section 62 of the Occupational Health and Safety Act, 2003.

¹⁵² Ibid, Section 63.

¹⁵³ See the Fifth Schedule to the Occupational Health and Safety Act, 2003.

Despite more than a third of workers (39%) claiming they have sufficient PPE, on site observations painted a slightly different picture. Most of the workers who were observed at workplaces have PPE that is damaged or worn out. The survey also found that workers have limited knowledge about PPE and importance of wearing them.

One of the aspects of PPE that workers were found to have little knowledge about is PPE in the cookery. To reduce risks of injuries at workplace, protective clothing in cookery must always be worn. These PPE include apron, oven gloves, cut resistant gloves, footwear, safety goggles, and rubber gloves.¹⁵⁴ Aprons provide an extra layer on clothing to protect a worker from spillages from hot foods, while oven gloves protect them from hot equipment and food when using the oven.¹⁵⁵ Cut resistant gloves help to protect one from cutting themselves and footwear means special shoes which protect workers from falling or slipping.¹⁵⁶

In Tabora, workers at a bakery company were found working without basic PPE in the cookery, such as gloves, footwear, and apron. They claimed that their employer has been reluctant to provide them with suitable PPE. One the workers said:

“...tunafanya kazi kwenye mazingira magumu sana ya moto, lakini hatupewi vifaa vya kujikinga na moto hata baada ya kazi hatupewi maziwa hii ni hatari sana kwa afya zetu”

“...we are made to work under very difficult conditions characterized by heat, as we are not given suitable equipment to protect ourselves from the heat, and after work we are not even given some milk, which is detrimental to our health.”

An employee at a bakery factory in Tabora

154 See Safety Work Blog “Personal Protective Equipment in the Cookery” 20 Apr 2020 at <https://safetyworkblog.com/blog/ppe/2020/04/20/personal-protective-equipment-in-the-cookery>, accessed 21st May 2021.

155 Ibid.

156 Ibid.





Picture 13: An employee at a bakery in Tabora working without suitable PPE, including footwear and apron

In Kilimanjaro, some of the interviewed workers claimed that when they first report for work they are usually given PPE, but the problems begin when the PPE has worn out and they need new PPE. ¹⁵⁷They noted that a year may pass before an employee gets new PPE, hence they are sometimes forced to work with damaged or worn-out PPE, putting themselves at risk.¹⁵⁸ Similar claims were made by interviewed workers in Mbeya, where one of the workers remarked:

“hatuna vifaa vyovyote vya kujikinga na kulinda afya zetu na tukiumwa tunajitibia sisi wenyewe.”

“We don’t have PPE to protect ourselves and our health, and when we fall sick we have to pay for our medical expenses.”

An employee at a food processing company in Mbeya

157 Kilimanjaro HRB Survey Field Report 2021.

158 Ibid.



Picture 14: *A worker at a mining company in Geita found with a damaged footwear*
Complaints of insufficient PPE were also widely reported in Tanga, some of the workers claimed they were made to buy the PPE. Consequently, some of them decide to work without PPE instead of spending their already low wages on PPE.¹⁵⁹ This was revealed by a supervisor at a sisal production factory in the region.



Picture 15: *A worker at sisal production factory in Tanga operating a machine without PPE such as gloves and footwear on surface that appears slippery*

Complaints about PPE were also widely reported in mining areas, especially in Shinyanga and Geita Regions. Workers working in the mines, especially for small-scale miners, lamented lack of PPE, which makes them vulnerable to injuries and occupational diseases. For instance, in Shinyanga, workers at a mining company complained about having to wear low quality and damaged gloves during work. Consequently, they suffer cuts and bruises.

¹⁵⁹ Tanga HRB Survey Field Report 2021.

They also work around acidic water, which penetrates their damaged or worn-out boots cause the burns and wounds on their bodies.



Picture 16: A worker showing his damaged/worn-out gloves (left) and other two workers showing their injuries suffered due to lack of proper PPE in Shinyanga Region

2.5.6. Some workers opting not to wear personal protective equipment

Like in the previous survey, some employers revealed during the survey that some workers are provided with PPE but then opt not to use them. However, this is not an excuse for employers to let the workers work without PPE as they have a duty to ensure workplace safety and health and the laws are very clear, that PPE should be worn. What employers need to do is enforce the laws and rules. They must require workers to use the PPE.

“Wafanyakazi tunawapa vifaa vya kujilinda kazini lakini wao wenyewe hawavai ukiwauliza hawana sababu za kutoa.”

“We give the workers PPE for their protection and safety, but they do not use them, and when you ask them why they don't use the PPE they have nothing to say.”

A supervisor at a rice processing factory in Mbeya

2.6. Violence and Harassment in the Workplace

In the world of work, ILO has defined “violence and harassment” as “range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.”¹⁶⁰ Gender-based violence and harassment is defined as “violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.”¹⁶¹

According to ILO, violence and harassment in the world of work is a widespread phenomenon across the world in all sectors.¹⁶² It deprives people of their dignity, and is incompatible with decent work, and a threat to equal opportunities and to safe, healthy, and productive working environments.¹⁶³ It is a disruptive behaviour at workplaces, which includes **threatening behaviour, verbal or written threats, verbal abuse, and physical attacks**; and must be addressed to protect workers, clients/customers, and visitors. Examples of such behaviour include intimidation, bullying, pranks, sabotage, pushing, rape, sexual harassment, gestures, and psychological trauma.

2.6.1. ILO Violence and Harassment Convention, 2019

Because of the widespread nature of violence and harassment in the workplace, the international community, through ILO, saw the need for a specific convention on violence and harassment. Consequently, in June 2019, ILO adopted the Violence and Harassment Convention, 2019 (No. 190).¹⁶⁴ It recognizes the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment.

160 See Article 1 of the ILO Violence and Harassment Convention, 2019 at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190.

161 Ibid.

162 See ILO “Violence and harassment in the world of work” at <https://www.ilo.org/global/topics/violence-harassment/lang--en/index.htm>, accessed 21st May 2021.

163 Ibid.

164 See C190 - Violence and Harassment Convention, 2019 (No. 190) at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190.

Structure

The Convention is divided into eight parts, whereby the first part covers definitions of “violence and harassment” and “gender-based violence and harassment.” Part two of the convention provides the scope of the convention, which protects workers and other persons in the world of work;¹⁶⁵ part three stipulates some core principles; part four covers protection and prevention issues; part five is on enforcement and remedies; and part six contains provisions on guidance, training, and awareness-raising. Part seven of the Convention stipulates how the provisions shall be applied, while part eight covers issues of ratification and binding nature of the convention upon ILO members.

Scope

The Convention protects workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer.¹⁶⁶ It applies to all sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas.¹⁶⁷

The Convention applies to violence and harassment in the world of work occurring in the course of, linked with or arising out of work:¹⁶⁸

- ☞ in the workplace, including public and private spaces where they are at place of work;
- ☞ in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities;
- ☞ during work-related trips, travel, training, events or social activities;
- ☞ through work-related communications, including those enabled by information and communication technologies;
- ☞ in employer-provided accommodation; and
- ☞ when commuting to and from work.

165 Ibid, Article 2.

166 Article 2(1) of ILO Violence and Harassment Convention, 2019 (No. 190).

167 Ibid, Article 2(2).

168 Article 3 of ILO C190.

Core Principles

The Convention identified eight core principles that must be adhered to ensure respect, promotion, and realization of the right of everyone to a world of work free from violence and harassment. These principles are:¹⁶⁹

- ☞ prohibiting in law violence and harassment;
- ☞ ensuring that relevant policies address violence and harassment;
- ☞ adopting a comprehensive strategy in order to implement measures to prevent and combat violence and harassment;
- ☞ establishing or strengthening enforcement and monitoring mechanisms;
- ☞ ensuring access to remedies and support for victims;
- ☞ providing for sanctions;
- ☞ developing tools, guidance, education, and training, and raising awareness, in accessible formats as appropriate; and
- ☞ ensuring effective means of inspection and investigation of cases of violence and harassment, including through labour inspectorates or other competent bodies.

The Convention requires States to adopt laws and regulations to define and prohibit violence and harassment in the world of work, including gender-based violence and harassment.¹⁷⁰ They must take appropriate measures to prevent violence and harassment in the world of work, including: recognizing the important role of public authorities in the case of informal economy workers; identifying, in consultation with the employers' and workers' organizations concerned and through other means, the sectors or occupations and work arrangements in which workers and other persons concerned are more exposed to violence and harassment; and taking measures to effectively protect such persons.¹⁷¹

Additionally, the Convention requires members to adopt laws and regulations requiring employers to take appropriate steps commensurate with their degree of control to prevent violence and harassment in the world of work, including gender-based violence and harassment.¹⁷² This includes:

169 Article 4(2) of ILO C190.

170 Article 7 of ILO C190.

171 Ibid, Article 8.

172 Ibid, Article 9.

- ☞ adopt and implement, in consultation with workers and their representatives, a workplace policy on violence and harassment;
- ☞ take into account violence and harassment and associated psychosocial risks in the management of occupational safety and health;
- ☞ identify hazards and assess the risks of violence and harassment, with the participation of workers and their representatives, and take measures to prevent and control them; and
- ☞ provide to workers and other persons concerned information and training, in accessible formats as appropriate, on the identified hazards and risks of violence and harassment and the associated prevention and protection measures, including on the rights and responsibilities of workers and other persons concerned.

Enforcement

Each member is obligated to take appropriate measures to monitoring and enforce laws and regulations on violence and harassment in the world of work and ensure easy access to appropriate and effective remedies and safe, gender-sensitive, fair and effective reporting and dispute resolution mechanisms and procedures in cases of violence and harassment in the world of work.¹⁷³ They should also take measures to protect the privacy and confidentiality, as well as recognize the effects of domestic violence and mitigate its impact in the world of work.¹⁷⁴ Additionally, labour inspectorates and other relevant authorities, as appropriate, should be empowered to deal with violence and harassment in the world of work.¹⁷⁵

Guidance, Training, and Awareness-Raising

Under the Convention, each member, in consultation with representative employers' and workers' organizations, must ensure that violence and harassment in the world of work is addressed in relevant national policies, such as those concerning occupational safety and health, equality and non-discrimination, and migration.¹⁷⁶ States must also ensure that employers and workers and their organizations, and relevant authorities, are provided with guidance, resources, training or other tools, in accessible formats as appropriate, on violence and harassment in the world of work, including on gender-based violence and harassment; and initiatives, including awareness-raising campaigns, are undertaken.

173 Article 10 of ILO C190.
 174 Ibid.
 175 Ibid.
 176 Article 11 of ILO C190.

LHRC's View: Given the situation of violence and harassment in Tanzania,¹⁷⁷ including at workplaces, the Convention is very much relevant to Tanzanian context, and if ratified, shall help to address issues of violence and harassment in the workplaces in Tanzania. The next step is domestication, which means Tanzania enacting a specific law to address harassment and violence at workplace.

LHRC's Call: Tanzania to ratify the ILO Violence and Harassment Convention of 2019 to enhance respect, promotion, and realization of the right of everyone to a world of work free from violence and harassment. The Convention is expected to enter into force on 25th June 2021.

2.6.2. *Reported incidents of workplace violence and harassment*

During the survey, workers at visited workplaces were asked about incidents of violence and harassment in their workplaces. Almost a third of them (29%) acknowledged that such incidents exist in their workplaces, with the majority (71%), claiming there were no such incidents.



Figure 13: % Responses on existence of violence and harassment in workplaces (N=1,108)

Source: Field Data, 2020

Despite majority of workers (71%) claiming that there were no incidents of violence and harassment, the survey found that this may be due to their low awareness about violence and harassment. This is because, as shown above, they made claims of being intimidated and threatened when they demanded employment contracts, copies of employment contracts, or

¹⁷⁷ According to LHRC's Tanzania Human Rights Report 2020, violence against women and children has been on the rise in the past three years. Women and children have been subjected to different forms of violence at various settings, including at workplaces.

overtime pay. Some had also reported been bullied and threatened when they showed that they want to exercise their freedom of association by joining trade unions. All these incidents constitute violence.

Out of the 29% of workers who acknowledged existence of various forms of violence and harassment at their workplaces, majority of them (73%) mentioned intimidation, threats, and bullying as the most common form of violence and harassment at their workplaces, followed by sexual violence (15%).

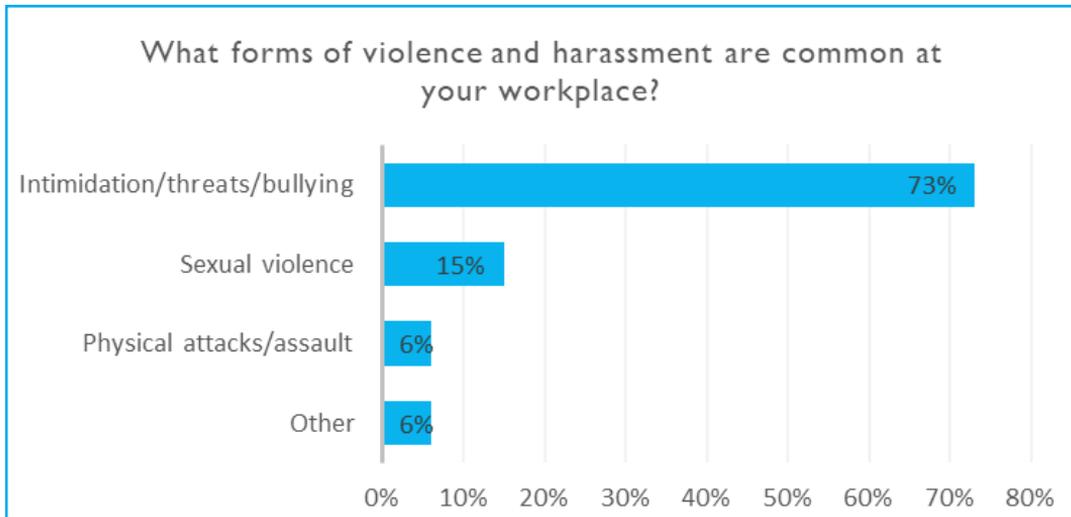


Figure 14: %Responses on most common forms of violence and harassment at workplaces (N=321)

Source: Field Data, 2020

Employers were also asked about the measures they take to protect workers from incidents of physical, verbal, sexual or psychological violence and harassment at workplaces. They mentioned that when workers are implicated in such disruptive behaviour they are taken before disciplinary committees. They also mentioned that they inform the workers about various prohibitions at workplaces, including all forms of violence and harassment. Disciplinary action against perpetrators of violence and harassment in the workplaces include warnings and dismissal, depending on the misconduct.

2.7. 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.¹⁷⁸ 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.

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

Domestically, there is the Workers' Compensation Act,¹⁷⁹ which provides for the right to compensation for occupational injury (resulting in disablement or death)¹⁸⁰ and right to compensation for occupational diseases.¹⁸¹ It also establishes the Workers Compensation Fund¹⁸² and creates an obligation for an employer to contribute to it.

2.7.1. Accidents at work and compensation arrangements

During the survey, workers were asked whether employees at their workplaces get compensation in case of workplace injury. Less than a third (22%), claimed that such an arrangement exists at their workplaces, while 46% said there is no such arrangement. The remaining 32% said they were not sure whether workers get compensated in case of injury sustained at workplace.

178 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."

179 CAP 263, R.E. 2015.

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

181 Ibid, Section 22(1).

182 Ibid, Section 5(1).

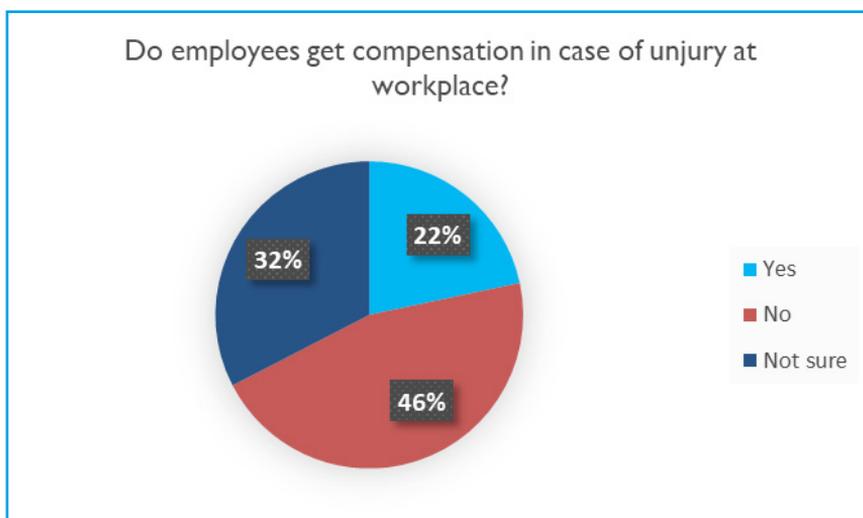


Figure 15: %Responses on compensation arrangement for injury sustained at work
(N=1,108)

Source: Field data, 2021

The workers (N=1,108) were also asked whether they are aware of any of their co-worker who sustained injury while at work and were compensated. Only 5% of the workers said they know a co-worker who was injured and was compensated, while 82% said they had not heard about or came across such a person. 13% of the workers indicated that they were not sure or did not remember.

Inadequacy of compensation

During the survey, some of the interviewed workers in the surveyed regions complained about the inadequacy of compensation provided. For instance, in Manyara, three cases of victims of workplace injury were documented, whereby the compensation paid was allegedly not adequate.¹⁸³ In Mwanza, interviewed workers expressed dissatisfaction with the amount of compensation paid by the Workers' Compensation Fund (WCF), noting that it is not proportionate to the injury suffered and disablement.¹⁸⁴ For instance, an employee at a beverage company in the region lamented that following his workplace injury, which resulted into permanent disability, he was only paid Tshs. 108,000 as compensation.¹⁸⁵

¹⁸³ Manyara HRB Survey Field Report 2021.

¹⁸⁴ Mwanza HRB Survey Field Report 2021.

¹⁸⁵ Ibid.



Picture 17: An employee at a beverage company in Mwanza, who complained that the compensation he was paid for his workplace injury is inadequate

Employers who are members of WCF

The survey found nearly half of employers (48%) had not registered with the Workers' Compensation Fund (WCF), hence not members. This was especially observed in Arusha, Mara, Mwanza, Manyara, and Singida Regions. There is therefore an issue of non-compliance with the law, which requires all employers in Tanzania Mainland to register with the Fund.¹⁸⁶ According to the Workers' Compensation Act, an employer carrying on business in Tanzania must register to the WCF Director-General in a prescribed form and within a prescribed period.¹⁸⁷

Complaints of non-payment of compensation following a workplace injury

Some of the interviewed workers complained about non-payment of compensation after they had sustained injuries at workplaces. This concern was especially raised during interviews with workers in Tabora, Mtwara, Shinyanga, and Arusha Regions. For instance, in Tabora, an employee of a beverage company claimed that at their workplace their medical bills were

186 See WCF website at <https://www.wcf.go.tz/pages/membership>.

187 Section 71(1) of the Workers' Compensation Act.

not covered by their employer when they sustain injury at work.¹⁸⁸ They mentioned that a fellow worker sustained a serious injury when he was fixing a car but the employer did not provide any help, instead they had to make contributions through their self-help group.¹⁸⁹ A similar claim was made by a truck driver in Mtwara Region, who said:

“Mimi nilipata ajali mwaka 2019 mwishoni, ikanilazimu kukatwa mguu wangu huu wa kulia, tofauti na msaada ambao nilipata kutoka kwa chama cha wafanyakazi kwa kufanyiwa mpango wa kupata huu mguu wa bandia, hakuna fidia wala msaada wowote nilioupata, tangu

naanza kujitibu mpaka namaliza kutoka kwa mwajiri wangu. Hapa nimekuja sababu mmeniita.”

“I was severely injured during an accident in late 2019, which resulted into amputation of my right leg, but apart from my trade union assisting me to get a prosthetic leg, I did not get any other help or compensation from my employer. I have just come here because you have called me.”

An employee at a transportation company in Mtwara

In Mtwara, the survey team also came across a family of a man, Hassan Athuman Malesi, who lost his life after sustaining a fatal injury at work. According to the deceased's wife, ever since he died, they have been trying to obtain compensation without any success.¹⁹⁰

“Mume wangu alifariki mwaka jana, lakini tangu kipindi hicho tumekuwa tukifuatilia fidia kwa muajiri wake lakini hakuna kinachofanyika, nina watoto wanne, mmoja kamaliza form six anahitaji kwenda chuo. mwingine mdogo yuko primary huko songea, ndio kama hivi unaniona na hiki kibanda changu cha mama ntilie, ili niweze kuendesha familia nilioachiwa na

marehemu”

“My husband passed away last year, but since then we have been making follow up on compensation with the employer to no avail. I am a mother of four, one of my children has just finished secondary education and needs to go to university, another is in primary school in Songea....but as you can see I am just a food vendor and this is my only means of earning a living to support my remaining family.”

Wife of a worker who died following accident injury at work - Mtwara

188 Tabora HRB Survey Field Report 2021.

189 Ibid.

190 Mtwara HRB Survey Field Report 2021.

In Geita, the survey team met with a man, who claimed to be an ex-employee of a drilling company. He said that he was hired by the company in 2016 and dismissed from work in March 2021 after he had sustained an injury at work and broke his arm.¹⁹¹ He was then given a three-day leave after he reported to work with a P.O.P and told that they can direct him to a traditional healer for further treatment, if needed. However, when he reported for work on the fourth day, he was told that he was fired, even though he had a long-term contract.¹⁹² An employee of a security firm in the region also claimed he was not compensated after sustaining an injury in the course of employment.¹⁹³

Complaints of non-payment of compensation following death resulting from workplace injury were made in Manyara. Interviewed workers at a sugar company claimed that two fellow workers had died following a workplace accident, but their families were not compensated.¹⁹⁴

In Shinyanga, the survey found that while most workers claimed their employers cover their medical bills when they suffer injury in the course of employment, some workers at a Chinese-owned company reported that their employer only cover part of their medical bills, usually on the first day at a hospital facility, it usually takes the intervention of local government for them to pay the bills in full.¹⁹⁵ At two bakery factories and a private security firm, interviewed workers claimed that their employers cover medical bills and then deduct the amount in their wages on pay day.¹⁹⁶

"Mimi nilishawahi kupondwa na jiwe pale mgodini. nikaumia maeneo ya kufua. Nikajitibia mwenyewe nyumbani na madawa ya kienyeji mpaka nikapona kwasababu nilipowaambia Wachina kama naumwa kifua waliniambia nisirudi mpaka nipone."

"I was once badly hurt at my chest when a stone fell on me at the mine. I had to treat myself at home, using herbal and alternative medicine, because my Chinese employers said I should not return until I have fully recovered."

An employee at a food production company - Shinyanga

191 Geita HRB Survey Field Report 2021.

192 Ibid.

193 Ibid.

194 Manyara HRB Survey Field Report 2021.

195 Shinyanga HRB Survey Field Report 2021.

196 Ibid.

“Ukiumia hiyo ni juu yako. Ukienda kumwambia Boss anakwambia hana cha kufanya zaidi atakupa pesa halafu atakukata kwenye mshahara wako.”

“When you suffer injury, it is upon yourself to get treatment. When you tell the boss, he just tells you there is nothing he can do, other than give you some money and then deduct from your salary.”

A private security firm employee - Shinyanga



Picture 18: *One of the workers in Shinyanga who claimed to have sustained an injury at workplace but was not compensated*

In Arusha Region, an employee working at a textile company complained about the WCF compensation process, claiming that it is too long. He claimed that since he notified WCF and opened a file in December 2020, he is yet to receive any compensation.¹⁹⁷

2.7.2. Awareness about compensation laws

The survey also sought to assess the workers' awareness about relevant laws and regulations governing compensation for workplace injury. The workers were therefore asked whether they were aware of any laws and/or regulations governing compensation for workplace injury. The results showed that only 15% of the workers were aware of such laws, while 77% claimed they were not aware, and 8% were not sure.

¹⁹⁷ Arusha HRB Survey Field Report 2021.

Are you aware of any laws and/or regulations governing compensation for workplace injury?

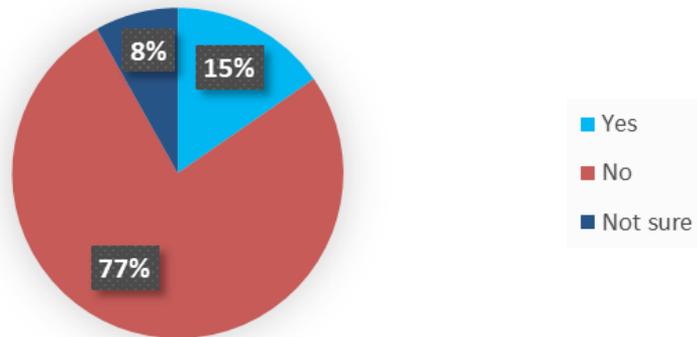


Figure 16: %Responses on awareness about laws and/or regulations governing compensation following injury at work (N=1,108)

Source: Field data, 2021

LHRC's View: Denial of workers' compensation rights and benefits is contributed by lack of or low awareness about compensation laws. However, LHRC has observed that most employers want to avoid their compensation-related responsibilities to their workers as much as possible. In any case, most of the workplace accidents and injuries are preventable should employers take necessary precautions and create a safe working environment.

LHRC's Call: Labour Inspectorate to ensure employers' compliance with domestic and international employment and labour standards by investigating breaches and taking relevant enforcement measures, including the case of compensation claims.

2.8. 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 (ICCPR) and the African Charter on Human and Peoples' Right (ACHPR).¹⁹⁸ 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.¹⁹⁹

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.²⁰⁰ 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 the right to strike, freedom of association, in particular the right to organize activities for the purpose of promoting and protecting workers' interests, cannot be fully realized.'²⁰¹ ELRA also recognizes the right of employees to strike under Section 75.

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

199 Sections 9(1) & 10(1) of ELRA.

200 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.

201 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.industrialunion.org/right-to-strike-upheld-at-ilo>, accessed 20th May 2018.

Regarding freedom of association, collective bargaining, and right to strike, the survey found that these rights were generally restricted by most employers in surveyed regions. Most interviewed workers claimed that their employers discourage them from joining trade unions as part of their freedom of association. Most of them also continued to express dissatisfaction with the work of trade unions, expressing that they are not of much help to them when it matters.

2.8.1. Trade union membership at surveyed workplaces

As part of realization of freedom of association, Tanzania has allowed establishment of various trade unions to accommodate workers from different sectors and industries. These unions are essential for realization of workers' freedom of association at workplaces. Registered trade unions in Tanzania include: the Tanzania Union of Industrial and Commercial Workers Union (TUICO); Tanzania Plantation and Agriculture Workers Union (TPAWU); Communication and Transport Workers Union of Tanzania (COTWUT); Tanzania Media Workers Union (TMWU); Tanzania Mines, Energy, Construction and Allied Workers Union (TAMICO); Tanzania Road Transport Workers Union (TARWOTU); Conservation, Hotels, Domestic, Social Services and Consultancy Workers Union (CHODAWU); National Union of Mine and Energy Workers (NUMET); and Tanzania Union of Private Security Employees (TUPSE).

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 members²⁰² with a total membership of around 650,000.²⁰³ In this report, the discussion centres around trade unions under the business sector.

Workers at surveyed workplaces were asked whether there is a trade union branch at their workplace. Only 31% of the workers said they do have a trade union branch at their workplace, while 44% claimed no such branch exists at their workplace. This represents a 21% decline compared to the previous survey, which was conducted in 2019, in which 51% of workers claimed there was a trade union branch.²⁰⁴ In Mbeya 90% of surveyed workplaces were found to have no trade union branch.²⁰⁵

202 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).

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

204 See LHRC (2019), Human Rights and Business Report 2018/2019, at www.humanrights.or.tz.

205 Mbeya HRB Survey Field Report 2021.

Is there a trade union branch at your workplace?

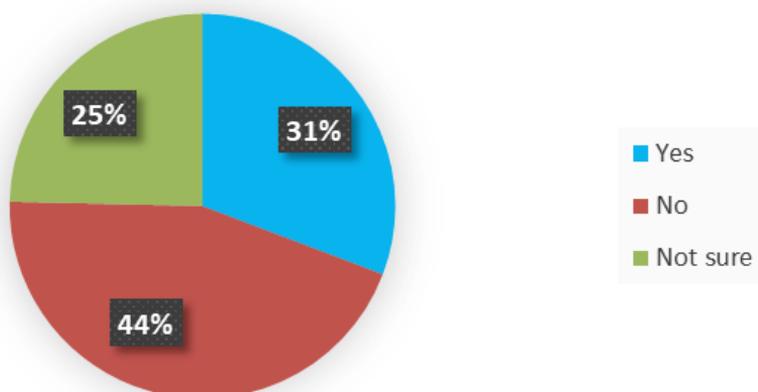


Figure 17: %Responses on existence of trade union branch at surveyed workplaces (N=1,108)

Source: Field data, 2021

In terms of regional responses, existence of trade union branches was found to be the lowest in Mbeya Region, at 9%. Other regions which had low percentages in this regard are Mtwara (17%), Singida (20%), Shinyanga (22%), Tabora (24%), Dodoma (27%), Mara (30%), and Pwani (33%). On the other hand, regions which recorded high percentages in terms of existence of trade union branches included: Arusha (80%), Geita (74%), and Tanga (64%).

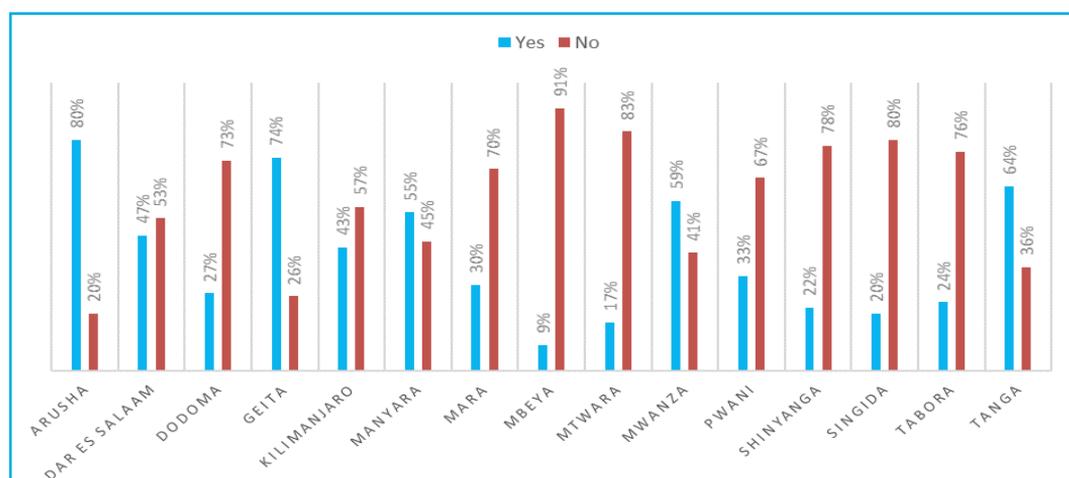


Figure 18: %Responses on existence of trade union branch by region

Source: Field data, 2021

The survey found that lack of or low awareness about trade unions affects membership. For instance, the issue of lack of or low awareness about trade unions and freedom of association in general was raised in regions such as Arusha, Tabora, Mtwara, Mbeya, Geita, and Shinyanga Regions. In Geita and Mara, most hotel workers were found to be unaware of the Conservation, Hotels, Domestic, Social Services and Consultancy Workers Union (**CHODAWU**).

“Mmmh Sijawahi sikia chama chochote cha wafanyakazi”

“Mmmh, I have never heard of any workers’ trade union.”

A hotel employee - Geita

Some workers have been known to avoid joining trade unions because of monthly contributions.²⁰⁶ The survey in Shinyanga found that some workers in the region indeed do not want to join trade unions because they would be asked to make monthly contributions.²⁰⁷ In Manyara, some workers pointed out that they were not interested in joining trade unions because they do not think they will benefit from such membership.

2.8.2. Violation of employees’ freedom to joint trade unions by employers

Right to form or join trade union is a constitutional right²⁰⁸ that is also guaranteed for workers under the Employment and Labour Relations Act [CAP. 366 R.E. 2019]. An employer is prohibited from interfering with this freedom under this law and international labour standards. However, in practice, most employers have been accused of interfering with the workers’ freedom of association.

Most of the interviewed workers claimed that they are not allowed by the employers to join trade unions or participate in trade union activities. These claims were especially made in Arusha, Manyara, Tabora, Mara, Singida, Geita, and Shinyanga Regions. In Manyara, it was revealed that some employers discourage trade union membership because they fear the workers will become more aware and demand their labour rights, which could result in reduced profits.²⁰⁹

206 See LHRC (2019), Human Rights and Business Report 2018/2019, at www.humanrights.or.tz.

207 Shinyanga HRB Survey Field Report 2021.

208 See Article 20 of the Constitution of the United Republic of Tanzania, 1977.

209 Manyara HRB Survey Field Report 2021.



“...tulitaka kujiunga na TUICO, lakini baadae uongozi wakakataa...hivyo hatuna chama cha kutetea wafanyakazi”

“..we wanted to join TUICO, but the management did not allow this to happen.. thus we don't have a branch here.”

An employee at a water making company - Tabora

“Hatuna chama cha wafanyakazi,Mwajiri hataki”

“We don't have a trade union. The employer does not want us to join.”

An employee of fuel company - Geita

In Mara, the survey found that only 7% of the employers of surveyed workplaces allowed their workers to register with TUICO,²¹⁰ a trade union for industrial and commercial workers. The employers were said to discourage workers from joining the union.²¹¹ However, at some companies, including Musoma Fish Processors Ltd, workers said they were allowed to join TUICO and choose their own representatives.²¹²

In Singida, TUICO regional chairperson stated during an interview that some employees in the region are afraid of joining trade unions, and this is because the employers do not like trade unions. In Tanga, some of the workers suggested that some of them had faced punishment or mistreatment for joining trade unions.

“Hapa chama cha wafanyakazi ni marufuku kujiunga, ukijulikana umejiunga basi utapoteza ajira yako”

“Here we are prohibited from joining trade unions. If they found out you have, you may lose your job.”

A worker at a manufacturing company – Tanga

In Geita, the survey found that trade unions are generally seen as a threat by employers. Regional Secretary of the Tanzania Mines, Energy, Construction and Allied Workers Union (TAMICO) claimed that employers usually do not give full cooperation.²¹³ TUICO Secretary in Dodoma was also interviewed and asserted that it is true that some employers in the region do not like trade unions. He said:

²¹⁰ Mara HRB Survey Field Report 2021.

²¹¹ Ibid.

²¹² Ibid.

²¹³ Geita HRB Survey Field Report 2021.

“Changamoto kubwa in kuwa kuna baadhi ya waajiri kutokubali uwepo wa vyama vya wafanyakazi kwenye kampuni/viwanda vyao”

“The main challenge we face in Dodoma is some of the employers aren't ready to allow trade union branches at their companies/industries.”

TUICO Regional Secretary - Dodoma

2.8.3. Effectiveness of trade unions

The survey on business and human rights sought to determine workers' perceptions on effectiveness of their trade unions. Over two-thirds of the survey respondents (63%) said their trade unions are not effective at all, while 6% said they are not effective. This equals to a total of 69% of respondents who perceive trade unions to be ineffective, which 15% more than in the previous survey that was conducted in 2019. So, overall, the survey found that only 31% of workers perceive the trade unions to be effective.

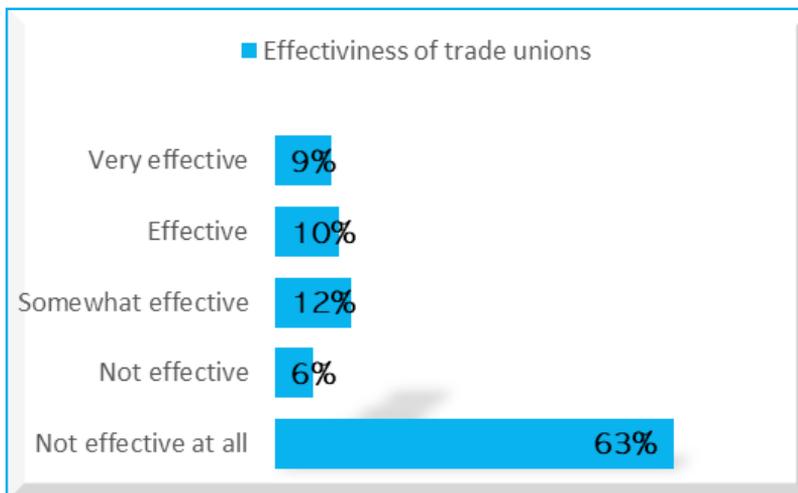


Figure 19: %Responses on workers' perceptions on effectiveness of trade unions (N=949)

Source: Field data, 2021

Complaints against trade unions were mainly directed to the Tanzania Industrial and Commercial Workers Union (TUICO), especially in Manyara, Tabora, and Mtwara Regions. Most of the interviewed workers felt the trade union is 'toothless' in promotion and protection of their labour rights and more interested in their monthly contributions rather than protecting their interests as workers and members. Some of the workers, especially in Mtwara and Mbeya, felt that trade union officials are 'closer' to their

employers than the workers and suggested that they could be corrupt.²¹⁴ In Singida and Geita, interviewed workers claimed that sometimes the trade union representatives are fearful of losing their jobs, hence not always on the forefront to promote or protect labour rights.²¹⁵

“TUICO hawatusaidii chochote maana tulikuwa na ishuru ya kutokulipwa mshahara kwa muda mrefu hadi tukagoma lakini hakuna msaada wowote waliotupatia zaidi ya kula michango yetu tu ...”

“TUICO do not help us in any way, because we had an issue of not being paid our salaries for a long time, which prompted us to strike, but we did not get any help from them other than collecting our contributions.”

An employee of a printing company - Tabora

“Hawa TUICO hatuna imani nao kabisa brother,haya malalamiko yetu sio ya leo,tunahisi wako upande wa waajiri sababu,mnaongea nao vizuri lakini wakija hapa wakiingia humo DANGOTE wanakua kimya tuu,mpaka tunahisi wanapewa kitu kidogo,wanyamaze.”

“We don’t have faith in TUICO my brother...our grievances are not new...we think they take the side of employers because you talk to them and agree on issues, but once they get into DANGOTE company, they become silent...sometimes we think they are given something so that they do not take any action.”

A driver at a Dangote Cement Company - Mtwara

“Tuna matatizo mengi lakini hivi vyama hatuoni umuhimu wake hakuna kinachofanyika”

“We have many problems, but we do not see the importance of these trade unions...nothing is being done.”

A bus driver at a transportation company - Geita

²¹⁴ Mtwara HRB Survey Field Report 2021; Mbeya HRB Survey Field Report 2021.

²¹⁵ Singida HRB Survey Field Report 2021; Geita HRB Survey Field Report 2021.

2.8.4. Collective Bargaining

According to the ILO, the right of workers to bargain freely with employers is an essential element in freedom of association.²¹⁶ It 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. The Employment and Labour Relations Act [CAP. 366 R.E. 2019] allows trade unions to bargain collectively with employers or employers' association. The goal is to protect workers' rights by ensuring the terms and conditions of work are fair.

In practice, realization of workers' rights is largely contributed by lack of collective bargaining, which leaves them vulnerable to mistreatment by employers as they lack the backing of trade unions in negotiating fairer terms and conditions of work. The situation is compounded when employers deny them their right to form and join trade unions, as highlighted above. One of the areas where workers suffer the most in the absence of collective bargaining is in wages. When asked about how their wages were determined, only 40% of workers said they had negotiations with their employers, while only 4% said there was a collective agreement involving their trade unions and their employers.²¹⁷

The survey generally found that most employers are not in favour of collective bargaining, which is why they also do not want to allow trade union branches at their workplaces. This is because they want the workers to remain vulnerable and easy to exploit, taking advantage of their need for jobs and ignorance about their rights. Most of them have ready-made contracts, with no or very little room for negotiations.

In Dodoma, TUICO Secretary revealed that the trade union, has currently no collective bargaining agreement (CBA) with any company in the region. He said:

²¹⁶ 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.

²¹⁷ N=1,108

"Kwa Dodoma kipindi cha nyuma tulikuwa na CBA na Tanzania Meat Company ila kwa sasa hatuna mkataba na kampuni yoyote, ila kwa sasa tuna 'proposal' ya mkataba tumepeleka kiwanda cha magodoro bado kukaa na kujadili"

"Here in Dodoma, we had a CBA with Tanzania Meat Company in the past, but at the moment we don't have CBA with any company. However, we do have a 'proposal' for CBA which has been submitted to a mattress company, to be followed by a meeting and discussion."

TUICO Secretary - Dodoma

2.8.5. Right to strike

Right to strike is essential for protection of freedom of association and promoting and protecting workers' interests.²¹⁸ This right is recognized under Section 75 of the Employment and Labour Relations Act [CAP. 366 R.E. 2019], subject to various conditions, including arbitration, conciliation, 30-day mediation period, and workers providing essential services. Strikers are also prohibited from preventing employers from entering premises or locking them inside, and employers should not hire replacements during a lawful strike.

During the survey, nearly half the workers claimed that they know they have a right to strike. However, most of them said that they would not dare to strike because that would signal the end of their jobs. They noted that striking is strictly prohibited by their employers and organizing people to strike is less likely to succeed because most workers are afraid of losing their jobs.

"Afisa!! Kugoma ni haki au kujitafutia kufukuzwa kazi mwenyewe? Na hata ukigoma si mtu utajikuta umegoma mwenyewe na wengine wanaendelea na kazi?"

"Officer!! Is striking a right or a ticket to losing my job? And even if you go on strike, you will find you are alone while others are continuing with work."

An employee at a factory - Kilimanjaro

"Hakuna ushirikiano kati yetu sisi madereva kwa sababu mkisema mgome tajiri anasema wanaotaka kuendelea na kazi wakae kulia na wasiotaka wakae kushoto, sasa utashangaa wanaokuwa wapo upande wa kuendelea na kazi ni wengi utadhani wao hawapendi maisha mazuri"

"There is lack of unity among drivers because when you agree to go on strike employer asks those who want to continue with work to stand on the right side and those who don't on the left side...surprisingly majority of the drivers will go to the side of continuing with work, as if they do not want a better life."

Employee of a transportation company - Dodoma

²¹⁸ United Nations Office of the High Commissioner for Human Rights, 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.

LHRC's View: Freedom of association is not only an essential labour right but also a fundamental human right that is guaranteed and protected under domestic and international labour and human rights standards. Workers should be free to exercise this fundamental right, including through forming and joining trading unions.

LHRC's Call: Employers to refrain from arbitrarily restricting or denying their workers their rights to freedom of association, collective bargaining, and strike. Ministry responsible for labour and the national human rights institution (CHRAGG) should also ensure enforcement of labour standards to protect these rights.

2.9. 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).

Domestically, labour standards on child and forced labour are provided under the Employment and Labour Relations Act [CAP. 366 R.E. 2019] (ELRA) and the Law of the Child Act [CAP 13, R.E 2019]. These Acts prohibit employment of a child under the age of 14 years, providing an exception of light work for a 14-year-old and above, provided it is not harmful to their health and development or does not hinder school or training attendance.²¹⁹ 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**.²²⁰ Forced labour is prohibited and amounts to an offence under the ELRA.²²¹ It includes bonded labour or any work exacted from a person under the threat of a penalty and to which that person has not consented.²²²

2.9.1. Child Labour

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.²²³ 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."²²⁴ Child labour is said to be exploitative labour as a child is

219 Section 5(1) & (2) of ELRA and Section 12 and Part VIII of the Law of the Child Act [CAP 13, R.E 2019].

220 Ibid, Section 5(3) and Section 82(1,2 &3) of the Law of the Child Act [CAP 13, R.E 2019].

221 Ibid, Sections 6(1) and 80(1).

222 Ibid Sections 6(2) and 80(2).

223 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.

224 See FAO "Child Labour in Agriculture" at <http://www.fao.org/childlabouragriculture/en/>, accessed 17th

used as cheap labour, paid less than the labour provided (unequal payment) and exposed to various hazards.²²⁵ Child labour may lead to impairment of a child's physical, mental, moral, spiritual and social development.²²⁶ 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).²²⁷

The first schedule of the Employment and Labour Relations (General) Regulations of 2017 provides a list of work considered hazardous for children.²²⁸ 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, portering of heavy loads, feeding farm animals, crushing ore, drilling and blasting, cement mixing, painting, brick making, carpentry, welding, stone crushing, water vending, masonry, cleaning toilets, working in places such as bars, hotels and places of entertainment, and electrical repair.

Under the Employment and Labour Relations (General) Regulations, 2017, no person is allowed to employ or cause to be employed a child under the age fourteen;²²⁹ and a child of this age and above can only perform light work as stipulated in the schedule to the Regulations.²³⁰ They also stipulate that a child who is still attending school is only allowed to work in excess of three hours per day.²³¹ Additionally, a child aged 14 years and above can work for not more than 6 hours per day provided he is on leave, has completed his studies, or is not in school for any justifiable reason.²³²

Regarding hours of work and rest, the Regulations stipulate that a child should not work for more than three consecutive hours without at least a one-hour rest.²³³ However, no child is allowed to work overtime and work between 8pm and 6am.²³⁴ Other working conditions include a child of 14 to 16 years not carrying any load weighing more than 15 kilograms and a

September 2019.

225 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.

226 Ibid.

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

228 Employment and Labour Relations (General) Regulations, GN. 47 of 2017 and under section 82(3) of the Law of the Child Act 2009

229 Regulation 3(1) of the Employment and Labour Relations (General) Regulations, 2017.

230 Ibid, Regulation 3(2).

231 Ibid, Regulation 4(1).

232 Regulation 4(2) of the Employment and Labour Relations (General) Regulations, 2017.

233 Ibid, Regulation 5.

234 Ibid, Regulation 6 and section 79(1) of the Law of Child 2009

child above 16 years not being allowed to carry more than 20 kilograms.²³⁵ Nevertheless, employer must keep register and maintain a register in respect of children employed in his work place,²³⁶ pay the child wages,²³⁷ and provide written employment contract and a copy of such contract to the child.²³⁸

Policies on prohibition of child labour

Regarding child labour, the survey sought information about policies on prohibition of child labour. Human resources officers at the surveyed workplaces were asked whether they have any policies or regulations that stipulate minimum age of employment. Only 36% of the respondents said they have such policies or regulations, while 49% said they do not have such policies. The remaining 15% of the respondents said they were not sure if such policies exist at their workplaces.

When asked to produce copies of the policies, 90% of the 36% of employers who claimed to have such policies did not do so. This raises doubt over the existence of such policies at most of the workplaces. Most of them only produced copies of health and safety policies. Nevertheless, all employers at the 160 workplaces that were reached claimed they do not hire persons below the age of 18.

Reported incidents of child labour

While all businesses reported that they do not employ child labour, the survey found that child labour continues to persist in different parts of Tanzania, especially in mining and agriculture sectors. Child labour incidents were mostly reported in Manyara, Tabora, Singida, Mbeya, Geita, Shinyanga, and Dodoma.

In Manyara, child labour is prevalent around mining areas and in sugarcane plantations,²³⁹ while in Tabora, child labour is common in tobacco plantations.²⁴⁰ It was also reported that some of the children employed to work in the plantations are migrants from Burundi.²⁴¹ In Singida, child labour was mostly observed in mining areas and marketplaces.²⁴²

Worldwide 60 percent of all child labourers in the age group 5-17 years work in agriculture, including farming, fishing, aquaculture, forestry, and livestock.
- ILO

235 Regulation 7 of the Employment and Labour Relations (General) Regulations, 2017.

236 Ibid, Regulation 8(1) and under section 85(1) of the Law of the Child Act entitled Registration of a child in Industrial Undertakings

237 Ibid, Regulation 9 and section 81(1,2) of the Law of the Child Act [CAP 13, R.E 2019].

238 Ibid, Regulation 10(1).

239 Manyara HRB Survey Field Report 2021.

240 Tabora HRB Survey Field Report 2021.

241 Ibid.

242 Singida HRB Survey Field Report 2021.

“...kiukweli kabisa kwenye mashamba ya Tumbaku kuna ajira nyingi za watoto na wanashughulika na kuitunza tumbaku kuanzia hatua ya kwanza hadi mavuno na malipo yao hadi tumbaku ikiuzwa...”

“...to tell you the truth, child labour is mostly prevalent in tobacco plantations, where children are involved in maintaining tobacco from the first stage to the harvest stage, and they are not paid until the tobacco has been sold...”

LGA Official – Uyui District, Tabora



Picture 19: Children found working at a tobacco plantation in Tabora

In Mbeya, it was the survey found that children are employed in rice plantations, including to chase birds away. It was also reported that most farmers prefer to employ children to attend their rice farms because they do a better job in sowing seeds than adults. Because of this employment, children tend to miss school, hence denied their right to education.

“..kuna malalamiko mengi yaliletwa na walimu juu ya wanafunzi kutofika shule kutokana na kupewa ajira ya kufukuza ndege kwenye mashamba ya mpunga. Wakulima wengi wa mpunga wanapenda kuwatumia watoto kwa sababu mpunga unahitaji kuinama katika kupanda kwake hivyo watu wazima wanashindwa na hawapandi vizuri ukilinganisha na watoto.”

“..we have received many complaints from teachers regarding truancy because children are employed to chase away birds in rice plantations. Most rice farmers prefer to use children because rice farming requires workers to constantly bend down, which is easier for children compared to adults.”

WEO – Mbarali District, Mbeya

Tasks such as planting, weeding, applying pesticides, preparation of seed beds, pruning, harvesting and sorting, and operating farm machinery are listed as hazardous work for children in the Employment and Labour Relations (General) Regulations of 2017, and this is because of possible hazards such as heavy strenuous physical work, exposure to adverse weather condition, long working hours, use of sharp equipment and tools, and inappropriate working tools and equipment.²⁴³ This puts them at physical and/or psychosocial harm such as cuts and abrasions, dehydration, respiratory illness, pesticide poisoning, and gastrointestinal illness.²⁴⁴ According to ILO, agriculture is one of the three most dangerous sectors in terms of work-related fatalities, non-fatal accidents and occupational diseases.²⁴⁵ Poverty is the main cause of child labour in agriculture.²⁴⁶

In Geita and Shinyanga, the survey found that hard economic conditions largely contribute to child labour. It was reported during interviews with local government officials that where families have failed to provide for their children, the children are forced to resort to child labour, which means less time for school and vulnerability to hazardous work, such as working in mines and quarrying.²⁴⁷ Apart from denying them education, child labour in mining also puts children at risk of harm (both physical and psychological), exploitation, and abuse, because the work they are doing is hazardous.²⁴⁸ These children are made to work both above and underground, which according to ILO, constitutes extremely dangerous work for children.²⁴⁹ Possible hazards for these children include, falling down shaft, breathing air filled with dust, flooding and drowning, tunnel collapsing, and standing for

²⁴³ First Schedule of the Employment and Labour Relations (General) Regulations of 2017.

²⁴⁴ Ibid.

²⁴⁵ See ILO “Child labour in agriculture ILO” at <https://www.ilo.org/ipec/areas/Agriculture/lang--en/index.htm>, accessed 24th May 2021.

²⁴⁶ Ibid.

²⁴⁷ Geita HRB Survey Field Report 2021; Shinyanga HRB Survey Field Report 2021.

²⁴⁸ See First Schedule of the Employment and Labour Relations (General) Regulations, 2017.

²⁴⁹ ILO “Child labour in gold mining” at <https://www.ilo.org/ipec/areas/Miningandquarrying/MoreaboutCLInmining/lang--en/index.htm>, accessed 24th May 2021.

hours.²⁵⁰ Possible physical, mental and psychological harm include injuries, death, permanent disability, fatigue, lung diseases, noise induced hearing loss, skin cancer, and STDs – including HIV/AIDS.²⁵¹



Picture 20: Children found working in small-scale mines in Mwakitolyo – Shinyanga

In Geita, stone quarrying/crushing was also observed as a key child labour issue.²⁵² Stone crushing in quarry is listed as a hazardous work for children, because of possible hazards such as toxic gases, explosives, sexual harassment, vibration, long working hours, harsh supervision, and mercury fumes.²⁵³ Possible physical, mental, or psychological harm associated with this hazardous work includes low self-esteem, physical assault, heat stress, poor physical and mental development, and depression.²⁵⁴ According to ILO, quarrying or crushing stone for construction material to make gravel is a hard and dangerous work for children.²⁵⁵ But, as it was observed in Geita, children from poor families usually find themselves with no choice but to engage in stone crushing, usually together with other family members, to earn a living as part of a household income.²⁵⁶

250 Ibid; First Schedule of the Employment and Labour Relations (General) Regulations, 2017.

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

252 Geita HRB Survey Field Report 2021.

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

254 Ibid.

255 ILO “Child labour in stone quarrying” at <https://www.ilo.org/ipec/areas/Miningandquarrying/MoreaboutCLinmining/lang--en/index.htm>, accessed 24th May 2021.

256 Ibid.



Picture 21: Children found crushing stones with their mothers in Geita

In Shinyanga, child labour was also reportedly used at a cotton processing company. A community member revealed during an interview that it is normal for persons below the age of 18 to be engaged for a few months to provide labour in cotton processing.

“Msimu ukifika, huko mtu yoyote mwenye nguvu anaweza kwenda kuomba kazi. Mimi mwenyewe nilianza kufanya kazi humo nikiwa na miaka 13. Nakua siendi shule siku hiyo ili nikafanye kazi humo kiwandani kwa sababu wanakulipa kwa siku.”

“When the season comes any able person can go there and ask for work. As for me, I started working when I was 13 years. Whenever I went to work, I missed school on that day because they paid us daily.”

A community member - Shinyanga

In Mwakitolyo Ward in Shinyanga Region, the survey also found grazing cattle to be another form of child labour (child labour in the livestock sector). Children who appeared to be below the age of 10 were found grazing cattle during school hours. When interviewed, most of them were afraid to speak, but when asked how much they were paid to graze the cattle, they said they get Tshs. 200 or Tshs. 300, but did not specify whether it is hourly or daily.



Picture 22: Children who were found grazing livestock during school hours in Shinyanga

In Dodoma, the survey found that children are engaged to work in plantations, mines, and quarrying or crushing stones.²⁵⁷ An interview with a social welfare officer in Bahi District revealed that child labour is a big issue in the district, largely contributed by poverty and negative parental attitude towards schooling (education).²⁵⁸ The social welfare officer noted that there is high demand for child labour during the harvest season, especially harvesting of groundnuts.²⁵⁹ An interview with the Regional Secretary of the Conservation, Hotels, Domestic, Social Services and Consultancy Workers Union (CHODAWU) also revealed issues around child labour in the region.

2.9.2. Forced Labour

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.”²⁶⁰ It includes situations where persons are coerced to work through the use of violence or intimidation.²⁶¹

Forced labour is also prohibited by the Employment and Labour Relations Act [CAP. 366 R.E. 2019], but the survey found that there are instances of forced labour. For instance, as discussed in 2.3 above, some workers indicated that they are forced to work beyond the 9 normal working hours and some even beyond the 12 maximum normal working hours, in the absence of consent. Where employees have not consented to working overtime, it amounts to

²⁵⁷ Dodoma HRB Survey Field Report 2021.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ Article 2 of the Forced Labour Convention, 1930 (No. 29).

²⁶¹ See ILO “What is forced labour, modern slavery and human trafficking” at <https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm>, accessed 24th May 2021.

forced labour.²⁶² For such labour not to constitute forced labour, there must therefore be an agreement between the worker and the employer to require them to work beyond ordinary working hours.²⁶³ Some of the interviewed workers stated that because of fear of losing their jobs, they must continue with work beyond normal working hours until they are told they can leave. In Mbeya and Geita, interviewed workers at two of the surveyed companies said they are forced to work even on weekends and holidays.²⁶⁴

“Yaani sisi hatuna Jumamosi wala Jumapili wala siku za sikukuu, huwa tunafanya kazi siku zote tunazoambiwa.”

“We work every day, whenever we are required to. We don’t have rests on weekends or holidays.”

An employee at a company - Mbeya

“‘Public holiday’ tunalazimishwa kuja ofisini tena unapigiwa simu asubuhi unaambiwa gari linakufata nyumbani bila hata makubaliano yeyote kufanya kazi siku ya mapumziko. Dada ni haki kweli kufanya kazi siku ya mapumziko bila makubaliano yoyote. Saa nyingine sisi wafanyakazi ikifika siku za mapumziko tunazima simu makusudi.”

“We are forced to come to work even on public holidays. They call you in the morning and tell you the car will come and pick you up, and there is no agreement in place for you to work on rest days. Is it fair to work on such days in the absence of any agreement? Sometimes we, as workers, resort to even switching off our phones on rest days.”

A company employee - Geita

The survey found that most employers have not created a favourable environment for preventing forced labour. For instance, representatives of corporate managements at the surveyed workplaces were asked whether they have in place a policy or guidelines which prohibits forced labour in its various forms. Only 31% of them claimed to have such a policy or guidelines, with the majority (51%) stating they do not. 18% said they were not sure if such document(s) exist.

262 See Africa pay “Forced Labour” at <https://africapay.org/tanzania/labour-law/fair-treatment/forced-labour>, accessed 25th May 2021.

263 Ibid.

264 Mbeya HRB Survey Field Report 2021.

LHRC's View: Child labour is one of the major factors hindering effective realization of children's rights. Businesses which employ children take advantage of their poverty situation to work for them cheaply, hence not only subjecting them to child labour, but also exploiting them. Knowledge about type and amount of work that children are allowed to do (work that is not hazardous and does not interfere with their education), as well as age and duration of work factors is also low.

LHRC's Call: LHRC calls for increased labour inspection to facilitate eradication of child labour and safeguard children's rights, including right to education. There is also need to increase awareness about child labour and governing laws while enhancing factors to reduce poverty in the community

2.10. 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),²⁶⁵ which has not been ratified by Tanzania.

Domestically, labour standards on leaves are adequately covered under the Employment and Labour Relations Act [CAP. 366 R.E. 2019] (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)**.²⁶⁶

An employee with less than six months of service is not entitled to paid leave.²⁶⁷ 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.²⁶⁸ An employee employed on seasonal basis is also entitled to paid leave.²⁶⁹

Employer has a duty of ensuring that no employee is continuously working in any leave cycle without applying for annual leave.²⁷⁰ 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.²⁷¹

265 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.'

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

267 Ibid, Section 29(1).

268 Ibid, Section 29(b).

269 Ibid, Section 29(a).

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

271 Ibid, Regulation 15.

2.10.1. Annual Leave

During the survey, employees were asked whether they are granted annual leave. Nearly half of the workers (48%) said they are granted such leave, while 46% said they are not. The remaining 6% said they were not sure. 42% of the workers also claimed to have taken annual leave in the past year, totalling 28 days. In the previous survey, 62% of workers said they are granted annual leave at their workplaces, and 51% said they had taken such leave in the previous year.²⁷²

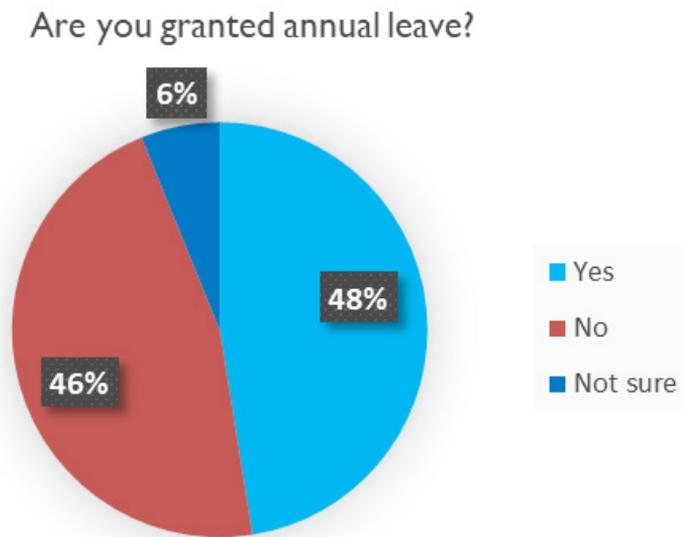


Figure 20: %Responses on getting annual leave (N=1,108)

Source: Field data, 2021

Complaints about annual leave were aired by workers during interviews in regions such as Manyara, Pwani, Mtwara, Geita Mwanza, Arusha, Dar es Salaam, Dodoma, and Shinyanga. While most of them claimed that they are not granted such leave, others claimed that even when such leave is granted it is usually not a paid leave. For instance, in Manyara, interview with truck drivers revealed that they are usually denied any form of rest, including annual leave, throughout the year.²⁷³ Interview with private security firms in the region also revealed that some employers consider leave to be a privilege and not an entitlement.

²⁷² See LHRC (2019), Human Rights and Business Report 2018/19 at www.humanrights.or.tz.
²⁷³ Manyara HRB Survey Field Report 2021.

“Baba kila siku tupo kazini hatuna mapumziko ,hatuna weekend, hatuna likizo ya mwaka kifupi hatupumziki kabisa hapa penyewe nashusha mzigo na tunatakiwa turudi Tanga tukachukue mzigo na turudi tena ndio maisha yetu ya kila siku mwaka mzima”

“We are at work everyday, we don't have rest periods....we don't have weekends, we don't have annual leave...in short, we don't rest at all...as you can see I am unloading the goods now and then I have to get back to Tanga and load more goods and return here...this is our daily routine for the whole year.”

A truck driver - Manyara

In Mtwara, one of the employees at a security firm claimed that when one requests for a leave, they can be allowed to take it or not, and even when the permission is granted it not a paid leave.²⁷⁴ Truck drivers in the region who aired their views on annual leave also claimed that they are not granted annual leave and are forced to work throughout the year.²⁷⁵ The story was different at one of the transportation companies, where bus drivers said they are granted annual leave as well as sick leave.

“Kuhusu likizo hilo ni janga lingine mpaka uombe na ukiomba unaweza pewa au usipewe na ukipewa likizo hakuna pesa ya likizo.”

“Leave is another challenge for us, as it is until your request for it and even then your request may be accepted or not, and when you are granted leave it unpaid.”

A security firm employee - Mtwara

“Sisi kampuni yetu likizo za mwaka unapata kama kawaida na pia kama utaumwa utapata likizo ya kupumzika mpaka pale utakapoona.”

“At our company we are given annual leave and if you get sick, they give you a sick leave until you can get back to work.”

Bus driver - Mtwara

In some instances, employers tend to threaten workers when they demand annual leave. For instance, in Geita the survey found that some employees do not demand annual leave because when they do, they are threatened with losing their jobs.

²⁷⁴ Mtwara HRB Survey Field Report 2021.

²⁷⁵ Ibid.

“Sipewi fursa ya kwenda likizo ya mwaka sababu kwenye kitengo changu nipo mwenyewe. Hivyo naambiwa nikienda likizo basi nijue nikirudi kazi haitakuwepo maana watamwajiri mtu mwingine wa kushika nafasi yangu.”

“I am not given the opportunity of annual leave because I am alone in my department. So, taking leave means an automatic loss of my job, as they will have to replace me with someone else.”

An employee at a construction company - Geita

In Mwanza, workers at a civil engineering construction company claimed during interview that although their right to annual leave is recognized in their employment contracts, they are usually not granted such leave.²⁷⁶ Similar claims were made by employees at a mattress company in Dodoma, who also claimed that their wages are usually deducted for the number of days they have missed work, even in the case of sick leave.²⁷⁷ In Tabora, a worker at a water company complained about not being granted a paid leave.²⁷⁸

“Unakuta likizo imeandikwa kwenye mkataba, ila hupewi”

“You find that right to leave is recognized in your contract, but then you are not granted leave.”

An employee at a construction company - Mwanza

“...juzi tuliingia kwenye mgogoro maana likizo hawalipi japo ipo kwenye mkataba... mfano mimi nimefanya miaka mitatu bila kupata likizo. Pia likizo hatulipwi hela ya likizo”

“...We got into a dispute ‘with my boss’ the other day because they do not grant leave, even though it is recognized in the contract...for instance I have worked for three years without leave. We are also not granted paid leave.”

An employee at a water company - Tabora

²⁷⁶ Mwanza HRB Survey Field Report 2021.

²⁷⁷ Dodoma HRB Survey Field Report 2021.

²⁷⁸ Tabora HRB Survey Field Report 2021.

In Dodoma, the survey also found that most of the workers do not have sufficient information about annual leave, especially those working in the transportation sector. For instance, interviewed bus drivers at one of the transportation companies visited in the region, claimed that they are paid salary in lieu of annual leave.²⁷⁹ What they do not know is that the law, the Employment and Labour Relations Act [CAP. 366 R.E. 2019], provides for entitled paid leave.²⁸⁰

An employer shall not require or permit an employee to work for the employer during any period of annual leave.

Section 31(6) of ELRA 2004

The law also clearly stipulates that an employer must not require or permit an employee to take annual leave in place of any leave to which the employee is entitled under it²⁸¹ and must not require or permit an employee to work for the employer during any period of annual leave²⁸² (no substitution is allowed). Additionally, an employer is prohibited from paying an employee an amount of money in substitution for the annual leave to which that employee is entitled, whether or not the employee agrees to such payment.²⁸³

The law also clearly stipulates that an employer must not require or permit an employee to take annual leave in place of any leave to which the employee is entitled under it²⁸¹ and must not require or permit an employee to work for the employer during any period of annual leave²⁸² (no substitution is allowed). Additionally, an employer is prohibited from paying an employee an amount of money in substitution for the annual leave to which that employee is entitled, whether or not the employee agrees to such payment.²⁸³

“Kuhusu likizo kwenye hii kampuni hakuna wanachokifanya wanakulipa mshahara wa mwezi mmoja ambao ulitakiwa kwenda likizo ili usiende likizo”

“Regarding leave, what this company does is pay you a one-month salary as a substitute for leave.”

A bus driver - Dodoma

2.10.2. Maternity Leave

Female workers granted leave at surveyed workplaces

43.3% of workers who participated in the survey were female. They were asked whether female employees are allowed to take maternity leave. 50% of the workers indicated that female workers are allowed to take leave at their workplaces, while 38% said they are not granted such leave.

279 Ibid.

280 Section 31(4) of the Employment and Labour Relations Act, [CAP. 366 R.E. 2019].

281 Ibid, Section 31(5).

282 Ibid, Section 31(6).

283 Ibid, Section 31(7).

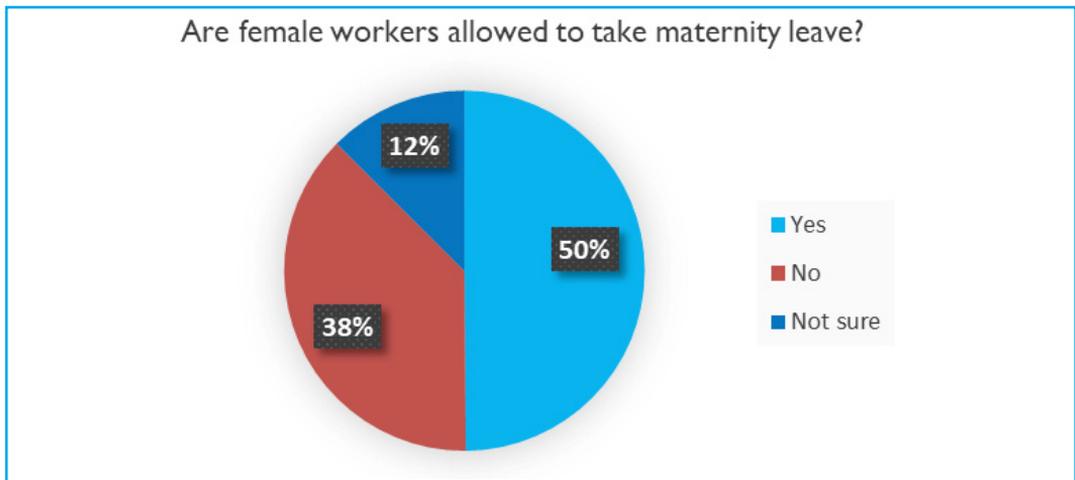


Figure 21: %Responses on getting maternity leave (N=407)

Source: Field data, 2021

Maternity discrimination at workplaces

Maternity discrimination at work is a global phenomenon. Research shows that women in different parts of the world can be fired for being pregnant.²⁸⁴ In the United Kingdom, over 50,000 women are said to lose their jobs for getting pregnant every year, while nearly 400,000 working mothers are subjected to discriminatory treatment at work.²⁸⁵ According to the Women, Business and the Law Report of 2021, 38 of the 190 economies do not have in place laws that prohibit dismissal of pregnant workers.²⁸⁶ But for the case of Sub-Saharan Africa, Tanzania inclusive, 79% of the economies have such legislation,²⁸⁷ there is still lack of adequate protection for pregnant women and limited access to effective remedy. Research has shown that pregnant workers usually face multiple forms of discrimination at work, including denial of promotions, redundancy, and pay and job assignment decrease.²⁸⁸

284 See Olena Mykhalchenkoisabel Santagostino Recavarren "In 38 countries, women can still be fired for being pregnant" World Bank Blogs, May 13, 2021 at <https://blogs.worldbank.org/developmenttalk/38-countries-women-can-still-be-fired-being-pregnant>, accessed 26th May 2021.

285 See Sarah Biddlecombe "Pregnant then fired: women share shocking stories of maternity discrimination at work" at <https://www.stylist.co.uk/long-reads/pregnancy-discrimination-maternity-leave-fired-from-my-job-redundancy-nda/308538>, accessed 26th May 2021.

286 See World Bank. 2021. Women, Business and the Law 2021. Washington, DC: World Bank. doi:10.1596/978-1-4648-1652-9. License: Creative Commons Attribution CC BY 3.0 IGO.

287 Olena Mykhalchenkoisabel Santagostino Recavarren "In 38 countries, women can still be fired for being pregnant" World Bank Blogs, May 13, 2021.

288 Ibid.

Discrimination and dismissal of female workers because of pregnancy is prohibited under key international instruments, including the ILO Conventions on maternity protection²⁸⁹ and termination of employment,²⁹⁰ both of which have not been ratified by Tanzania. However, Tanzania has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, which prohibits dismissal on the grounds of pregnancy or of maternity leave.²⁹¹ Additionally, the Employment and Labour Relations Act [CAP. 366 R.E. 2019] prohibits all forms of discrimination at workplaces, and specifically states that no employer should discriminate, directly or indirectly, against an employee, in any employment policy or practice, on various grounds, including gender and pregnancy.²⁹² It also provides that termination of employment for reasons related to pregnancy is not a fair termination.²⁹³

Across all surveyed regions, female workers expressed concern regarding granting of maternity leave, noting that most employers prefer to replace them rather than allowing them time to get back to work. The replacement usually takes up the position full time.

Interviewed female workers were of the view that most the employers do not like it when female workers miss work because of issues such as pregnancy, breastfeeding, and menstrual cycle.²⁹⁴ This could also explain the small number of women who are employees at workplaces, with most of them employed as casual labourers, who are unfortunately not entitled to such leave.

Some of the interviewed workers in Shinyanga and Mara noted that pregnancy usually leads to loss of job, as the likelihood of the employer replacing a pregnant worker who needs maternity leave is high. For instance, in Mara a worker at a private security firm was reportedly fired from her job for going back home to breastfeed her baby.²⁹⁵

289 See ILO C183 - Maternity Protection Convention, 2000 (No. 183).

290 ILO C158 - Termination of Employment Convention, 1982 (No. 158)

291 Article 11(2)(a) of the Convention on the Elimination of All Forms of Discrimination against Women, 1979.

292 Section 7(4)(h)(i) & (j) of the Employment and Labour Relations Act, [CAP. 366 R.E. 2019].

293 Ibid, Section 37(3)(b)(i).

294 Shinyanga HRB Survey Field Report 2021; Tanga HRB Survey Field Report 2021; & Mara HRB Survey Field Report 2021.

295 Mara HRB Survey Field Report 2021.

“Kuna dada mmoja ambaye alikuwaga kwenye ufungishaji, alienda likizo alivyojifungua, huku nyuma wakaleta mtu mwingine. Yule dada alipokua tayari kurudi kazini, akaja kukuta kuna mtu mwingine ameajiriwa. Akaaza kufuatilia nafasi yake hawakumpa kazi mpaka miaka

miwili ilipopita na alipewa kazi nyingine ya kufanya usafi sio tena ile ya ufungashajii”

“There was a woman who was working in the package section. When she went on maternity leave, she was replaced. . When she was ready to come back to work, she found that another person has been hired in her place. She then started to make follow up on her position for two years after which she was given a new position of cleaning.”

An employee at a bakery factory - Shinyanga

2.10.3. Paternity Leave

Male workers were asked about paternity leave. They were specifically asked whether they take paternity leave at their workplaces. Less than a third (21%) claimed that they take paternity leave, while 43% said they do not. The remaining 36% said they were not sure whether such leave is granted or not. In the previous survey, 41% of male workers acknowledged that paternity leave is granted at their workplaces.

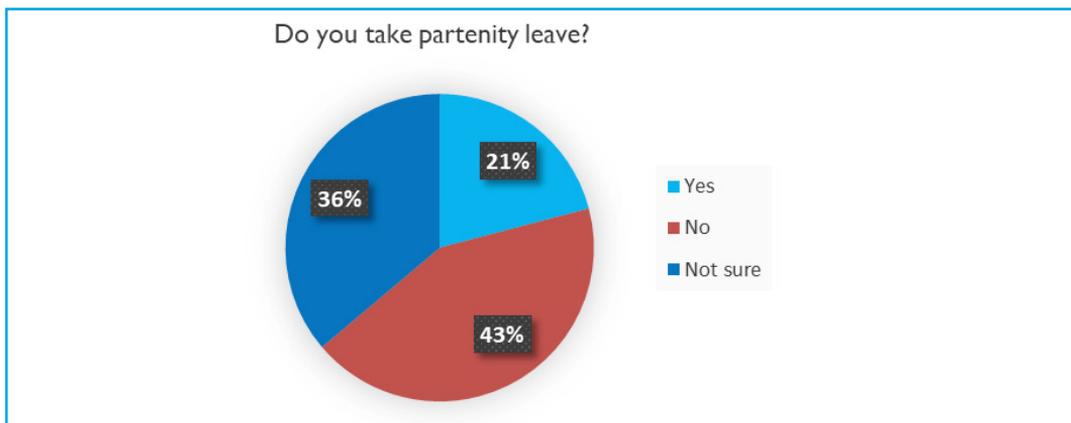


Figure 22: %Responses on getting paternity leave (N=713)

Source: Field data, 2021

Over half of the interview male workers were found to be unaware of paternity leave, as the concept was news to most of them. Majority of male workers who did not know about their right to parental leave were found to be working in the hospitality, private security services, and transportation industries, especially in Manyara, Geita, and Tanga Regions.

“...Hii haki ya mwanaume kupumzika kusaidia mkewe kwa uzazi ni ngeni kwetu hatujawahi

kuisikia”

“...Paternity leave is news to most of us. We have not heard of it...”

An employee - Manyara

2.10.4. Sick Leave

The Employment and Labour Relations Act [CAP. 366 R.E. 2019] recognize sick leave as a labour right.²⁹⁶ An employee is entitled to sick leave of at least 126 days in any leave cycle.²⁹⁷ For the first 63 days the employee is entitled to full wages, while for the remaining 63 days the employer is only required to pay half wages.²⁹⁸

During the survey, workers were asked whether they are granted sick leave. 61% of the workers acknowledged that they are granted sick leave when they fall sick or in case of workplace injury. In the previous survey, 68% said they are granted such leave, hence a 7% decline. [26% of the workers said they are not granted sick leaves at their workplaces, while 13% indicated they are not sure whether such leave is granted.

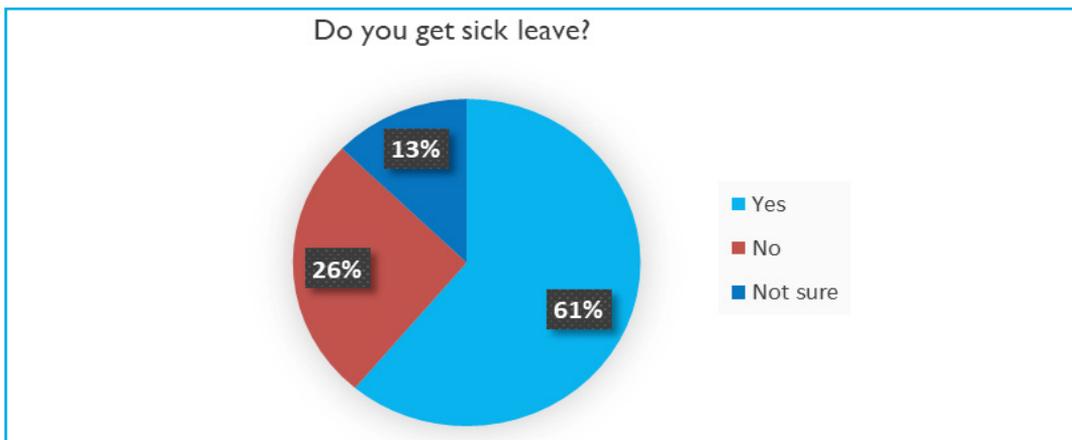


Figure 23: % Response on getting sick leave (N=1,108)

Source: Field data, 2021

As discussed above, some employers tend to punish their workers for missing work for various reasons, even sickness. According to some of the interviewed workers, even when such leave is granted it is usually followed by deduction of wages for the days missed at work. This issue was revealed during interviews with some workers in 12 out of the 15 surveyed regions.

²⁹⁶ See Section 32 of the Employment and Labour Relations Act, [CAP. 366 R.E. 2019].

²⁹⁷ Ibid, Section 32(1).

²⁹⁸ Ibid Section 32(2) (a)&(b).

LHRC's View: Enforcement of leave as a labour standard is not satisfactory in most industries in the business sector, especially in the lower paying jobs and SMEs. Employers take leave to be more of a privilege rather than a right. Most workers are also afraid of pushing for leaves when their employers do not want to grant it because of fear of losing their jobs or not getting their contracts renewed, considering most employers offer short-term contracts. Nevertheless, leaves are very important for workers in terms of getting a much-needed rest and recuperating.

LHRC's Call: Employers need to ensure their employees get adequate rest, including through leaves, in line with domestic and international labour laws and standards. The labour inspectorate division under the ministry responsible for labour should also enhance workplace inspections and reach out to workers regularly to ensure their right to leave is respected and realized.

2.11. Social Security and Workers' Social Security Contributions

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),²⁹⁹ the International Covenant on Economic, Social and Cultural Rights (ICESCR)³⁰⁰ and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).³⁰¹ 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).³⁰² The essence of social security is to address 'insecurities related to making a living through work.'³⁰³

Currently in Tanzania, there are two social security schemes, namely the National Social Security Fund (NSSF) and the Public Service Social Security Fund (PSSSF). NSSF was established under National Social Security Fund Act [Cap. 50 R.E 2018] provide social security services to members from private and informal sectors.³⁰⁴ Employers and employees covered under the Act include employees in the private sector, including companies, NGOs, religious organizations.³⁰⁵ Under this law, 20% of employee's monthly wages

299 Article 22 of UDHR.

300 Article 9 of ICESCR.

301 Article 11(1) (e) of CEDAW.

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

303 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.

304 See NSSF website at <https://www.nssf.or.tz/pages/overview>, accessed 26th May 2021.

305 Section 6 of the National Social Security Fund Act [Cap. 50 R.E 2018].

is contributed to the fund, whereby the employee contributes 10% and the employer contributes the remaining 10%, but the employer may opt to contribute more.³⁰⁶

PSSSF was established under the Public Service Social Security Fund Act, 2018.³⁰⁷ It merged four social security funds which existed before, namely: the Local Government Authority Pension Fund (LAPF), the Public Service Pension Fund (PSPF), the Government Employees Pension Fund (GEPF), and the Parastatal Pension Fund (PPF). This was done through repeal of the Public Service Retirement Benefit Act, the LAPF Pensions Fund Act, the GEPF Retirement Benefits Fund Act and the PPF Pensions Fund in the Public Service Social Security Fund Act, 2018. The scheme covers all employees in the public service, including members of former schemes.³⁰⁸ The PSSSF law requires employer to contribute 20% of employee's monthly salary to the Fund, whereby 5% is to be contributed by employee and 15% by the employer.³⁰⁹ It also provides for the employer to remit additional contributions for delayed remittance of contributions.³¹⁰

The main issue regarding social security for workers that was probed during the survey was submission of social security contributions. Compared to the previous survey, there were fewer complaints of submission of social security contributions. Some of the workers interviewed at different workplaces in the surveyed regions complained about their social security contributions not being submitted to social security funds, especially in Dar es Salaam and Geita. In Geita, non-remittance of social security contributions was especially found to be a major problem at a mining and engineering company called *Fabec Investment Ltd.*³¹¹ An interview with the Tanzania Mines, Energy, Construction and Allied Workers Union (TAMICO) official in the region revealed that TAMICO has intervened by making follow up at the company headquarters to no avail.³¹²

"In nine years of my employment, my employer has managed to submit the contributions of only one year to NSSF."

An employee at a private security firm – Dar es Salaam

306 Ibid, Section 12.

307 See Section 6 of the Public Service Social Security Fund Act, 2018.

308 Ibid, Section 5.

309 Ibid, Section 18(1) & 2).

310 Section 19(1) of the Public Service Social Security Fund Act, 2018.

311 Geita HRB Survey Field Report 2021.

312 Ibid.

“Tunakatwa NSSF kila mwezi lakini tukienda kuulizia NSSF hakuna michango yetu, mwajiri hapeleki michango yetu, Katibu wa TAMICO alijaribu kuufatilia hadi makao makuu ya ofisi Dar es Salaam lakini wakamwambia watafuatilia.”

“Our salaries are deducted for our NSSF (social security contributions) but when we go to NSSF to inquire about it we are told they have not been submitted. Our employer does not remit our contributions. TAMICO (trade union) Secretary followed up on the matter at the NSSF headquarters in Dar es Salaam and was told they are looking into it.”

An employee - Geita

LHRC's View: Non-remittance of social security contributions is increasingly becoming an issue of concern for workers, especially in the private sector. Right to social security is a fundamental human right and should be protected in line with the laws governing social security in Tanzania.

LHRC's Call: Social security schemes, including NSSF, to ensure employers remit the social security contributions on time and take action against those who delay. There should be strict enforcement of the social security laws.

2.12. 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.³¹³ While Tanzania has not ratified this Convention, it provides for clear standards on termination of employment under the Employment and Labour Relations Act [CAP. 366 R.E. 2019] (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.³¹⁴ It states that termination of employment includes:³¹⁵

- a lawful termination of employment under the common law;
- a termination by an employee because the employer made continued employment intolerable for the employee;
- a failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal;
- a failure to allow an employee to resume work after taking maternity leave granted under this Act or any agreed maternity leave; and

³¹³ 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.

³¹⁴ Section 35 of ELRA.

³¹⁵ Ibid, Section 36(a).

- a 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:³¹⁶

- 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 to 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, including a lawful strike.³¹⁷ 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 fair.³¹⁸

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)

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.³¹⁹ It also provides for remedies for unfair termination,³²⁰ notice of termination,³²¹ severance pay,³²² transport to place of recruitment,³²³ payment on termination³²⁴ and certificate of service upon termination.³²⁵

³¹⁶ Ibid, Section 37(1) & (2).

³¹⁷ Ibid, Section 37(3).

³¹⁸ Ibid, Section 39.

³¹⁹ Ibid, Section 38 (1).

³²⁰ Ibid, Section 40(1).

³²¹ 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].

³²² 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.]

³²³ Ibid, Section 43.

³²⁴ Ibid, Section 44(1).

³²⁵ Ibid, Section 44(2).

2.12.1. Complaints of unfair termination

During the survey, interviewed workers in all surveyed regions, including Kilimanjaro, Manyara, Mara Mbeya, Dar es Salaam, Geita, and Shinyanga, indicated that cases of unfair termination have become a common occurrence at workplaces. The survey found that reasons for termination included demanding labour rights, including employment contracts or copies of such contracts; inquiring about salary deduction; accident; pregnancy; Covid19; airing grievances to local authorities; and breastfeeding. For instance, in Mara, a female secretary at a bus transportation company complained that she was fired from her job because she had asked why her salary had been deducted for two consecutive months.³²⁶ Another female worker in the region claimed that she was fired because she left work to breastfeed her baby. She said:

"Jana niliomba 'kudouble shift'i, ilipofika jioni nikiwa kazini, mwenzangu akaniambia kiongozi wetu kasema nisiende kunyonyesha siku ya leo ila niendelee na lindo. Nikamwambia haiwezekani mbona siku zote ninaenda. Nilipokuwa nyumbani nanyonyesha, nikapigiwa simu kuwa nirudishe uniform, nimefukuzwa kazi. Nampigia mwenye ofisi kumuuliza mshahara wangu kwa siku nilizofanya, ananiuliza mshahara upi? Mie nilikuajiri?"

"I was working double shift yesterday, and in the evening my colleague told me that our supervisors had said I should not leave work to go breastfeeding today. I told him that it is not possible, because I always break to go and breastfeed my baby. When I was at home breastfeeding my baby, my supervisor called and asked me to return the uniform because I was fired. I called my employer to ask about my severance pay, he asked, 'Which pay?' 'Did I hire you?'"

Ex-employee at a private security firm - Mara

"Sisi tumeamka siku hiyo tunaenda zetu kazini tunafika pale getini tunaona listi ya majina mlangoni na jina langu likiwepo kwamba tumefukuzwa kazi. Hakukua na onyo lolote na wala sababu haikuelzwa vizuri. Ila mimi najua tumefuzwa kwasababu tuliongea na mkuu wa wilaya wa eneo hili na tukamueleza changamoto zetu. Sisi tukaonekana kama wajuaji sana ndio maana tumefukuzwa. Kesi yetu iko CMA toka mwezi wa pili."

"One day we went to work as usual, but when we reached the gate we saw a list of names of workers who had been fired, including mine. There was no prior warning or notice and no clear reason for termination of employment. But I know we had been dismissed from work because we had spoken to the District Commissioner and told him our challenges. We have been unfairly dismissed by our employer because of demanding our rights. Our case is at the CMA since February 2021."

An employee at a mining company – Shinyanga

In Dar es Salaam, two employees of an electrical products company complained that their employment was terminated unfairly, in disregard of laid down labour procedures, including notice and payment of severance compensation.³²⁷ They claimed that this happened following a workplace injury sustained by one of them. Interviews with local authorities in the region also revealed unfair termination to be an issue of key concern among workers. In another incident, a worker at a steel company claimed that he was fired unfairly following an accident at work which claimed his right leg.³²⁸

The survey also reached out to CMA officials to seek information regarding labour disputes. According to the recent labour dispute statistics, majority of labour disputes filed at the CMA (almost 40%) relate to end and termination of employment.

2.12.2. Covid19 and unfair dismissal

What the law says

It is within the employer's rights to terminate employment based operational requirements, which have been defined as "requirements based on the economic, technological, structural or similar needs of the employer."³²⁹ It is a termination of employment arising from the operational requirements of the business.³³⁰ If termination of employment by employer fails to prove that it was based on the operational requirements of the employer, it amounts to unfair termination.³³¹ Termination based on operational requirements (retrenchment) must comply with certain principles and procedures stipulated in the Employment and Labour Relations Act [CAP. 366 R.E. 2019] and the Employment and Labour Relations (Code of Good Practice) Rules of 2007. For instance, under the former, before termination of employment based on operational requirements (retrenchment), the employer must:³³²

- give notice of any intention to retrench as soon as it is contemplated;
- disclose all relevant information on the intended retrenchment for the purpose of proper consultation;
- consult prior to retrenchment or redundancy on reasons for retrenchment, measures taken to avoid or minimize retrenchment, and method of selection of employees to be retrenched, timing of retrenchments, and severance pay; and
- give the notice, make disclosure, and consult with a trade union, where workers are members of such union, as well as with employees not represented by a trade union.

327 Dar es Salaam HRB Survey Field Report 2021.

328 Ibid.

329 Section 4 of the Employment and Labour Relations Act, [CAP. 366 R.E. 2019].

330 Rule 23(1) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007.

331 Section 37(2)(b)(iii) of the Employment and Labour Relations Act, [CAP. 366 R.E. 2019].

332 Section 38 1 of the Employment and Labour Relations Act, [CAP. 366 R.E. 2019]; See also Rule 23(4) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007.

Therefore, before termination based on operational requirements, whereby Covid19 qualifies as such a requirement, there must be a **notice** to employees, employer must have tried **other measures to prevent or minimize retrenchment**, and there must be **consultation** and ultimately **agreement** with the workers. Consultation must be effective and meaningful, meaning it must commence as soon as employer contemplates reduction of workforce through retrenchment so that possible alternatives can be explored.³³³ Additionally, if no agreement is reached, the employer is prohibited from acting unilaterally, but rather refer the matter for mediation, to the Commission for Mediation and Arbitration (CMA).³³⁴ The employer is not allowed to implement retrenchment within 30 days of the referral to mediation, unless specifically agreed between with employees.³³⁵

When it comes to actual termination based on operational requirements, employer must agree with a trade union or employees on the criteria for selection of employees to be retrenched,³³⁶ but the criteria must not be unfair and infringe rights protected under the Employment and Labour Relations Act, [CAP. 366 R.E. 2019].³³⁷ For instance, selection should not be on the basis of membership or activity, pregnancy or other discriminatory grounds.³³⁸ Acceptable criteria include: length of service, the need to retain key jobs, experience or skills, affirmative action, and qualifications.³³⁹ Retrenched employees must also be given preference in case the employer re-hires employees with comparable qualifications, provided the employee has expressed desire to be re-hired,³⁴⁰ and are entitled to a severance pay.³⁴¹

Reported incidents of Covid19-related unfair dismissals

During this reporting period, Covid19, which had a huge impact on businesses, prompted employers at various workplaces to terminate employment based on operational requirements, which is allowed under labour laws and rules as discussed above. However, there were complaints that such termination was not in accordance with a fair procedure.

333 Rule 23(6) of the

334 Section 38(2) of the Employment and Labour Relations Act, [CAP. 366 R.E. 2019].

335 Rule 23(9) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007.

336 Ibid, Rule 24(1).

337 Ibid, Rule 24(2).

338 Ibid.

339 Rule 24(3) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007.

340 Ibid, Rule 25(1).

341 Ibid, Rule 26(1).

The survey generally observed that some employers who terminated employment based on operational requirements did not follow all the required procedures, including meaningful and effective consultation of the workers. The retrenchment process did not therefore comply with the consultation requirement, which is very important in operational requirements.

2.13. Labour Disputes and Mechanism for Resolution

The Employment and Labour Relations Act [CAP. 366 R.E. 2019] (ELRA) and the Labour Institutions Act [CAP. 300 R.E. 2019] (LIA) provide for mechanism for resolution of labour disputes. LIA establishes the Commission for Mediation and Arbitration (CMA)³⁴² and the Labour Division of the High Court³⁴³ 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.³⁴⁴ It appoints mediators and arbitrators to perform its functions.³⁴⁵ 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, tortious liability, vicarious liability or breach of contract within the pecuniary jurisdiction of the High Court.'³⁴⁶ 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 contract.³⁴⁷ Arbitration is resorted to if mediation fails.³⁴⁸ Unlike mediation, arbitration award is binding on the parties to the dispute.³⁴⁹ Labour Court may refuse to hear a complaint if not referred to mediation and may conduct reviews and revisions of decisions of CMA.³⁵⁰ 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.³⁵¹

³⁴² Section 12 of LIA.

³⁴³ Ibid, Section 50(1).

³⁴⁴ Ibid, Section 14(1)(a) & (b).

³⁴⁵ Ibid, Section 19(1).

³⁴⁶ Ibid, Section 51.

³⁴⁷ Section 88(1) of ELRA.

³⁴⁸ Ibid, Section 88(2).

³⁴⁹ Ibid, Section 89(1).

³⁵⁰ Ibid, Section 94(1) & (2).

³⁵¹ Ibid, Section 95(1) & (2).

2.13.1. Existence of worker grievance mechanisms

A mechanism for addressing workers' concerns is essential at a workplace. Such a mechanism provides workers with a platform to air their grievances or concerns and access internal remedy. A company can form a committee or body that addresses such workplace concerns. However, such mechanism should not be taken as a substitute for existing judicial and non-judicial mechanism.³⁵² The worker grievance mechanism is not in a prescribed form, but rather depends on the type and needs of a specific organization or company, and to be effective it must adhere to the principles of **transparency**, **impartiality**, **confidentiality**, and **accessibility**.³⁵³

Corporate management officials at the surveyed workplaces were asked whether worker grievance mechanism exist at their workplaces. Over half of the officials (53%) said such mechanism exists at their workplace, while 37% said it does not exist. The remaining 10% said they were not sure whether such a mechanism exists.

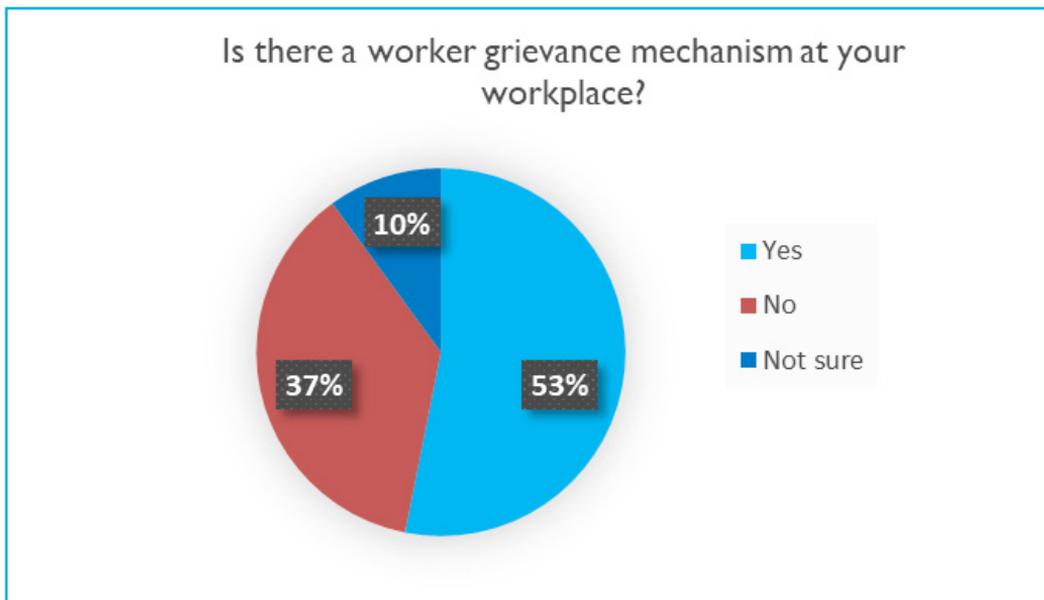


Figure 24: %Responses on existence of worker grievance mechanisms at workplaces (N=160)

Source: Field data, 2021

352 See European Bank for Reconstruction and Development, Employee Grievance Mechanism: Guidance Note, December 2017, at <https://www.ebrd.com/documents/admin/employee-grievance-mechanism.pdf?blobnocache=true#:~:text=A%20grievance%20mechanism%20is%20a,and%20management%20response%20and%20feedback,> accessed 27th May 2021.

353 Ibid.

2.13.2. Grievances at workplace and action taken by workers

During the survey, workers at the surveyed workplaces were asked about their workplace grievances and the action they usually take. Asked whether they had any work-related complaint in the past year, 23% of the workers said they had, while 55% said they had not. 22% of the workers said they were not sure. The workers were also asked what action they usually take in case of a workplace grievance, and 69% said they report to their immediate supervisor (boss), while 14% claimed they do not do anything. 13% of the workers said they report the matter to a trade union, while the remaining workers said they take the matter to judicial grievance mechanisms. Grievances mentioned by workers include: denial of leave, non-payment for overtime work, non-remittance of social security contributions, delay in payment of wages, working beyond maximum working hours, and unpaid leave.

2.14.3. Labour dispute statistics: CMA data

The Commission for Mediation and Arbitration (CMA) was established under the Labour Institutions Act [CAP. 300 R.E. 2019]³⁵⁴ as an independent department of the Government.³⁵⁵ The law provides that CMA is not to be subjected to the direction or control of any person or authority and should be independent of any political party, trade union, employers' association, or federation of trade unions or employers' associations.³⁵⁶ Functions of CMA are to:³⁵⁷

- ☞ mediate any dispute referred to it in terms of any labour law;
- ☞ determine any dispute referred to it by arbitration if: a labour law requires the dispute to be determined by arbitration; the parties to the dispute agree to it being determined by arbitration; and the Labour Court refers the dispute to CMA in line with the Employment and Labour Relations Act [CAP. 366 R.E. 2019];
- ☞ facilitate the establishment of a forum for workers participation, if requested to do so in line with the Employment and Labour Relations Act [CAP. 366 R.E. 2019].

354 Section 12 of the Labour Institutions Act [CAP. 300 R.E. 2019].

355 Ibid, Section 13(1)(a).

356 Sections 13(1) (b) & (c) of the Labour Institutions Act [CAP. 300 R.E. 2019].

357 Ibid, Section 14(1).

Additionally, CMA is empowered to provide advice and training relating to prevention and settlement of disputes upon requests by employees, employers or registered organizations and federations.³⁵⁸ It can also offer to mediate a dispute that has not been referred to it and conduct or scrutinise any election or ballot of a registered trade union or employers' association if required to do so by the Labour Court or at the request of the union or association concerned.³⁵⁹ There are mediators and arbitrators appointed by CMA to perform these functions on part-time or full-time basis.³⁶⁰ CMA offices are scattered across Tanzania Mainland.³⁶¹

One of the institutions which were visited during the survey was the CMA, at its headquarters in Dodoma, where key labour statistics covering the periods of 2018/2019 and 2019/2020 were found. Tables 12, 13, and 14 below provides a summary of these statistics.

Table 12: Labour disputes registered by the CMA mediation department 2018/2019 & 2019/2020

Year	#Registered disputes	Resolved/Settled	%	Ongoing
2018/2019	9,646	8,366	86.73	1,280
2019/2020	10,031	8,112	81	1,919

Source: CMA Headquarters field data, 2021

Table 13: Disputes registered by the CMA arbitration department 2018/2019 & 2019/2020

Year	#Registered disputes	Resolved/Settled	%	Ongoing
2018/2019	5,131	4,195	80.3	936
2019/2020	6,238	4,825	77	1,413

Source: CMA Headquarters field data, 2021

358 Ibid, Section 14(2)(a).

359 Ibid, Section 14(2) (b) & (c).

360 Section 19 of the Labour Institutions Act [CAP. 300 R.E. 2019].

361 Dodoma HRB Survey Field Report 2021.

From tables 12 and 13 above, it can be observed that the number of registered disputes increased in 2019/2020 in comparison to 2018/2019, increasing from 14,777 to 16,269. The increase in number of disputes could be explained by the eruption of the Covid19 pandemic, which disrupted various sectors and industries in terms of decline in production, demand, and profits. Consequently, many labour disputes were bound to arise due to issues such as retrenchment and delays in payment of wages.

Table 14: Sectors leading in labour disputes 2018/2020

Year	Sector/Industry	#Disputes
2018/2019	Transportation	820
	Private security	754
	Education	657
	Industries	610
	Hospitality (hotels)	571
2019/2020	Construction	2,467
	Private security	1,851
	Hospitality (food, drinks & hotel)	1,491
	Trade	1,156
	Transportation	1,011

Source: CMA Headquarters field data, 2021

Looking at table 14 above, it can be observed that transportation, private security, and hospitality were among the top five leading sectors/industries in terms of labour disputes in both 2018/2019 and 2019/2020. This suggests that most labour disputes originate from these industries, and concurs with the field findings, as most of the complaints of labour rights violations in the surveyed areas were made by interviewed workers in these sectors/industries.

CMA labour dispute statistics indicate that reasons for labour disputes include end or termination of employment, salaries/wages, discrimination, suspension from work, and creation of an environment to make an employee quit their job. According to these statistics, majority of labour disputes that came before the CMA in both 2018/2019 and 2019/2020 relate to end or termination of employment, at 38.5% and 39.5% respectively. Other commonly reported disputes relate to breach of contract and salaries/wages.

Table 15: Reasons for labour disputes - 2018/2019 & 2019/2020

Type of dispute	2018/2019		2019/2020	
	#Disputes	%	#Disputes	%
End/termination of employment	5,690	38.5	6,431	39.5
Salaries/wages	2,123	14.4	2,456	15.1
Applications, enforcement and interpretation	517	3.5	754	4.6
Organisational rights	794	5.4	812	5
Discrimination	489	3.3	731	4.5
Suspension from work	343	2.3	624	3.8
Breach of contract	2,590	17.5	2,278	14
Employer creating a hostile/uncomfortable work environment to make employee quit	967	6.5	1,289	8
Loss/harm	780	5.3	568	3.5
Others	484	3.3	326	2
TOTAL	14,777	100	16,269	100

Source: CMA Headquarters field data, 2021

LHRC's View: While labour institutions, especially CMA, are essential in safeguarding the right to access to remedy, existence of strong and effective company-level mechanisms for addressing workers' complaints can reduce the number of labour disputes sent to the institutions and improve working environment.

LHRC's Call: Businesses/companies to invest in company-level workers' grievance mechanism to safeguard labour rights and create a better working environment.

2.14. Awareness of Labour Laws, Rights and Duties

2.14.1. Workers' knowledge of labour laws, regulations, and rights

The survey on business and human rights assessed the level of understanding of labour laws, regulations, and rights among workers. The goal was to determine whether they possess sufficient knowledge about labour laws and about their labour rights, as guaranteed in domestic and international labour laws. To make this determination, the workers were asked to provide examples of labour laws they were aware of.

In terms of knowledge about labour laws, the survey found that most workers are not aware of relevant labour laws and regulations. Only 12% of the workers said they were aware of relevant labour laws and could mention at least two such laws, including the Employment and Labour Relations Act [CAP. 366 R.E. 2019]. Majority of the workers (73%) claimed they were not aware of relevant labour laws and either failed or struggled to mention at least two of them. In the previous survey (conducted in 2019), 22% of workers said they were aware of labour laws and regulations, while 78% said they did not possess sufficient knowledge of the laws.

Are you aware of labour laws and regulations?

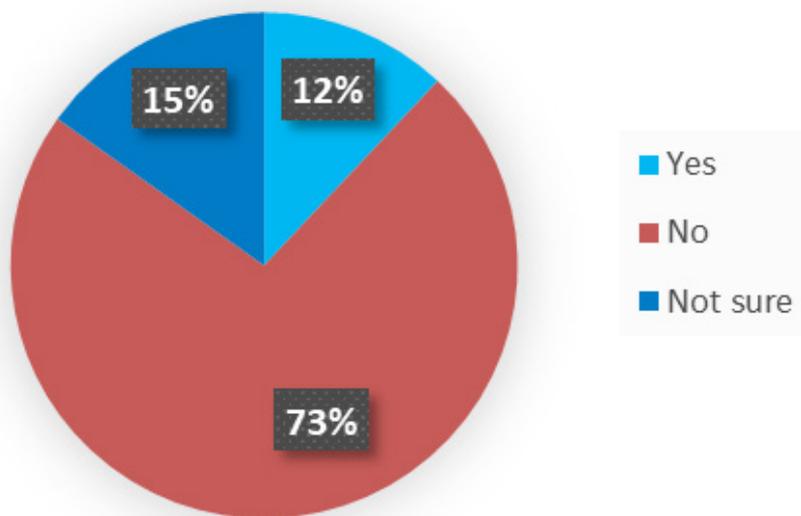


Figure 25: %Responses on knowledge about labour laws and regulations (N=1,108)

Source: Field data, 2021

Analysis of field data illustrated that Tabora Region has the highest percentage of workers who were not aware of the relevant labour laws, at 92%. Other regions which recorded high percentages of workers without sufficient knowledge of labour laws (70% and above) included Mbeya (83%), Shinyanga (82%), Mara (81%), Tanga (78%), Dodoma (76%), Singida (73%), Mtwara (72%), and Manyara (71%).

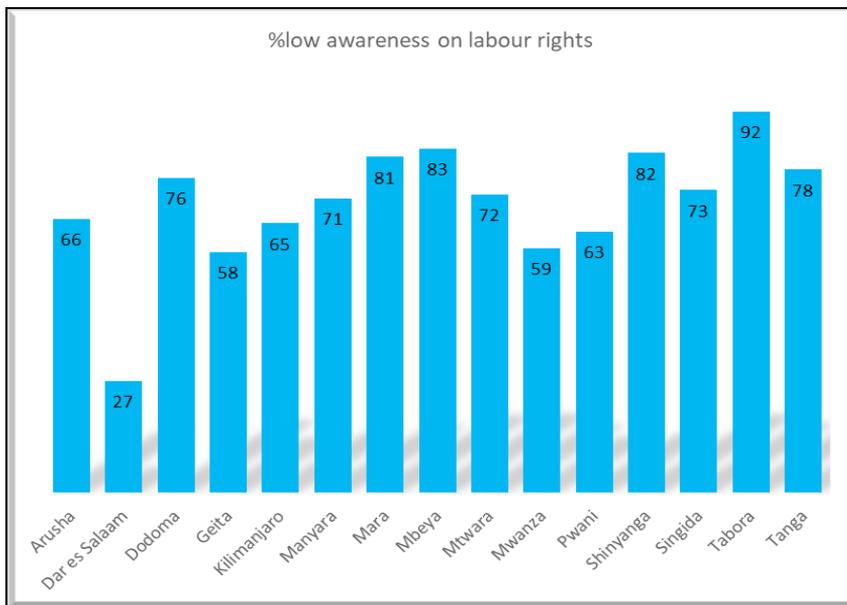


Figure 26: %Workers who claimed they were not aware of relevant labour laws
Source: Field data, 2021

Regarding understanding of basic labour rights, majority of workers (52%) claimed to be aware of their rights as workers, while 39% said they were not aware. The remaining 9% of the workers indicated that they were somewhat aware. In the previous survey, 58% of workers who participated in the survey claimed to be aware of their labour rights, hence a 6% decline in the current survey.

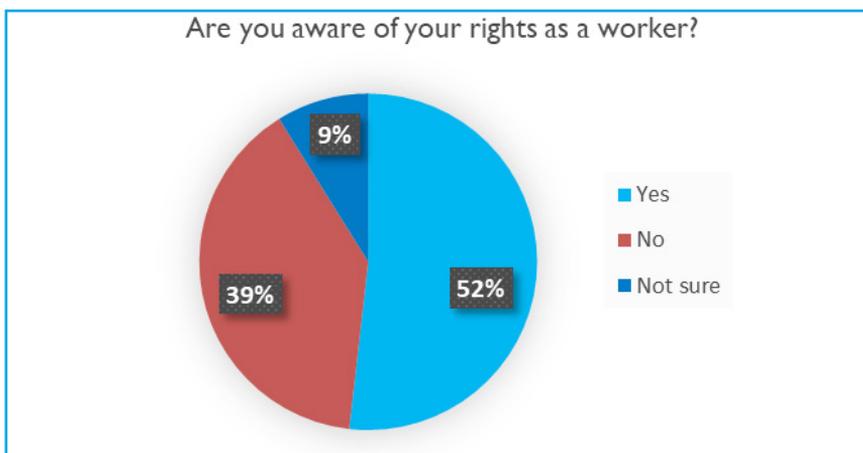


Figure 27: Workers' awareness of their labour rights (N=1,108)
Source: Field data, 2021

To assess their knowledge of labour rights, the workers who claimed to

be aware of such rights (52%) were asked to mention at least three rights. Among them, only 15% could mention them correctly, 2% more compared to those who could mention them in the previous survey, and over half of them (58%) could mention two labour rights correctly. The remaining percentage of workers who said they were aware of their labour rights could not provide correct examples of such rights and others mentioned duties as rights. Majority of the workers provided examples of the right to leave, right to fair remuneration, right to form and join a trade union, and right to a safe workplace. Low awareness on labour rights was found to be the highest in Pwani (68%), Mtwara (66%), and Dodoma (54%).³⁶²

LHRC's View: If employers did not prevent workers from joining trade unions, the level of awareness about labour rights might be higher. This is because the main functions of trade unions is to safeguard labour rights, which starts with raising awareness on these rights.

2.14.2. Workers' duty to promote labour rights

Employers have a duty to ensure their workers are aware of their rights at work. Under the Employment and Labour Relations (General) Regulations of 2017, employers are required to place a policy statement on human rights at a place within the workplace where all workers will be able to see.³⁶³ The survey sought to assess compliance with this mandatory requirement at the surveyed workplaces.

³⁶² HRB Survey Field Findings 2021.

³⁶³ See Regulation 12 & the Second Schedule of the Employment and Labour Relations (General) Regulations, GN. 47 of 2017.

SECOND SCHEDULE

FORMS

LAIF. 9

EMPLOYEES' RIGHTS FORM

(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 dully filled copy of this form, in a conspicuous place at workplace**

Picture 23: A statement of employees' rights that is required to be placed at a conspicuous place at workplaces

When asked whether there exists a policy statement on human rights at their workplaces, only 16% of the workplace management officials said they do. The majority of them (64%) claimed they did not have such statements at workplaces, while the remaining 20% claimed they were not such if such statement in place. In the previous survey, only 25% of the workplaces that were visited had in place a policy statement on human rights.

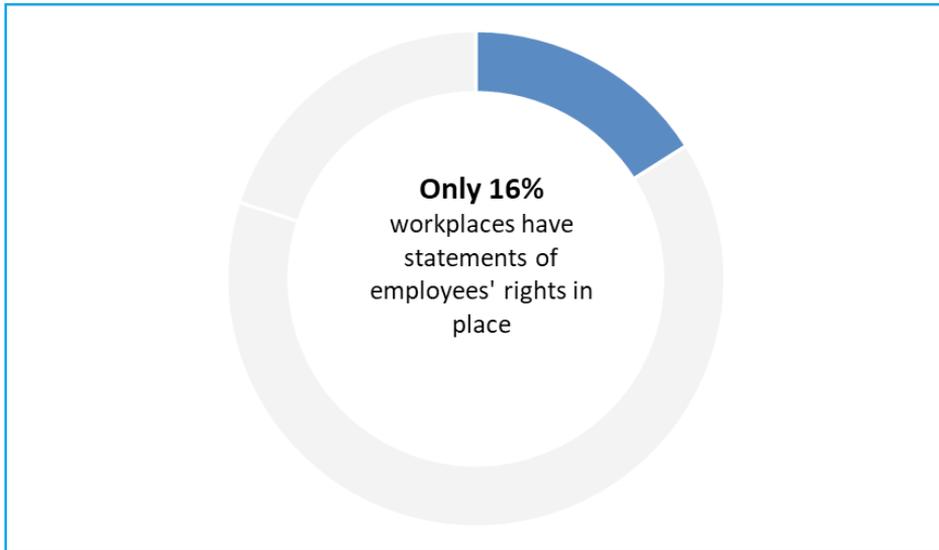
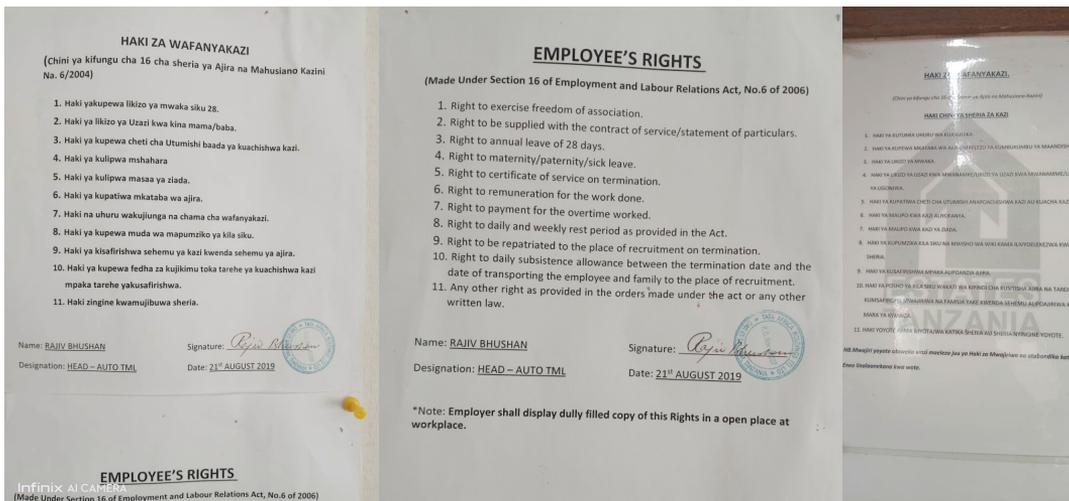


Figure 28: %Workplaces with employee rights statement



Picture 24: Statements of employee' rights observed at some of the surveyed workplaces in Dar es Salaam and Mbeya

2.14.3. Employers' awareness of UN Guiding Principles on Business and Human Rights

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.³⁶⁴ When asked whether they were aware of or had heard about the UN guiding principles, only 11% of the corporate management officials that were interviewed said Yes. This is a slight improvement compared to the 6% awareness level observed in the previous survey. But this tells us that there is still a lot of work that is needed to be done to popularize the guiding principles to enhance awareness on corporate responsibility to respect human rights.

LHRC's View: Most employers have not yet grasped and embraced the business case for respecting human rights. It is for this reason and other reasons that they continue to exploit workers by denying them their fundamental labour rights. Lack of or low awareness of labour rights among workers contributes to this situation.

LHRC's Call: Employers to promote and respect workers' rights in line with domestic and international labour standards. CSOs, trade unions, and other labour stakeholders should enhance awareness-raising on labour rights to both employees and employers to make the business case for human rights known and understood by both groups.

2.15. Human Rights and Business in the Road Transport Sub-Sector: Labour Rights of Bus and Truck Drivers

Overview

Bus and truck drivers in different parts of the world are faced with various labour-related challenges, common among them being overworked, underpaid, not given employment contracts, and not given travel allowances. For instance, a 2010 survey by the U.S. National Institute for Occupational Safety and Health showed that most truck drivers were overtired, overworked, and underpaid, working 50 percent more hours than typical workers.³⁶⁵ In

³⁶⁴ See https://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf

³⁶⁵ See Michael Belzer "Truck drivers are overtired, overworked and underpaid" The Conversation Newsletter, July 25, 2018 at <https://theconversation.com/truck-drivers-are-overtired-overworked-and-underpaid-100218>, accessed 11th May 2021.

Africa, Tanzania inclusive, truck drivers are faced with similar challenges, but their situation is worse because of lesser protection of their labour rights.

In 2013, LHRC conducted a mini-study on human rights compliance in the road-transport sub-sector, targeting bus and truck drivers as primary respondents.³⁶⁶ The study, conducted in eight regions,³⁶⁷ generally found that most of the workers in the road sub-sector, especially bus and truck drivers, did not have employment contracts; were overworked and underpaid; were denied leave; were not paid their wages timely; were prevented/threatened from joining trade unions; and were subjected to various forms of discrimination.³⁶⁸ For instance, the study found that 90% of the workers did not have employment contracts; 83.6% claimed they were not granted leave; 59% said they were made to work for 11 to 16 hours, which is well beyond the 12 maximum working hours (inclusive of 3-hour overtime); and 21.5% said they were made to work for up to 17 hours, and without any overtime pay.³⁶⁹ Eight years later, the most of these challenges persist for bus and truck drivers. For instance, most of them continue to work without written contracts and copies of such contracts; and continue to be overworked and underpaid.

During the Human Rights and Business Survey 2021, bus truck drivers were also engaged and asked about different aspects of their labour rights, including employment contracts, working hours, overtime, and travel allowances. Key findings on these aspects are highlighted and discussed below.

2.15.1. Demographic Characteristics of Respondents

a) Sex & disability

Overwhelming majority of the respondents (96.6%) were male, while the remaining 3.4% were female bus and truck drivers. In terms of disability, 3 out of the 146 respondents (2%) indicated that they had disability. The transportation sector is therefore dominated by males, and this is contributed by community perceptions that bus and truck driving is a job for males.

366 LHRC (2015). Mini-Study on Human Rights Compliance in Transportation Section 2013. Legal and Human Rights Centre.

367 Tanga, Arusha, Shinyanga, Mwanza, Mbeya, Iringa, Dodoma, and Dar es Salaam.

368 LHRC (2015). Mini-Study on Human Rights Compliance in Transportation Section 2013. Legal and Human Rights Centre.

369 Ibid.

Table 17: Distribution of respondents (bus and truck drivers) by sex

Sex	#Respondents	%Respondents
Male	141	96.6
Female	5	3.4
TOTAL	146	100

Source: Field data, 2021

b) Age

In terms of age, majority of bus and truck drivers who participated in the survey (48%) fell in the age category of 36-40 years, followed by those who were aged 26-35 (44%), and lastly those aged 18-25 (8%). None of the respondents were aged above 60 years. This shows that majority of bus and truck drivers are experienced workers.

Table 18: Distribution of respondents (bus and truck drivers) by age

Age Group	#Respondents	%Respondents
18-25	12	8
26-35	64	44
36-60	70	48
61+	0	0
TOTAL	146	100

Source: Field data, 2021

c) Education

Regarding the level of education, half of the respondents (50%) said they finished primary education, followed by 40.2% who had finished ordinary level of secondary education. The remaining respondents had higher education, advance level secondary education, and informal education, as shown in table 19 below.

Table 19: Distribution of respondents (bus and truck drivers) by education

Education Level	#Respondents	%Respondents
Informal education	5	3.4
Standard 7	73	50
Form 1 – 4	59	40.2
Form 5 – 6	2	1.4
Higher education	7	5
TOTAL	146	100

Source: Field data, 2021

d) Experience

In terms of work experience, nearly half of the respondents (46%) claimed to have worked for employers for two to five years, followed by 20% who said they only had a one-year experience, 19% who had an experience of five to ten years, and 10% who had less than one year as drivers for their employers. Only 5% of the respondents claimed they had worked for their employers for over ten years.

Table 20: Distribution of respondents (bus and truck drivers) by work experience

Level of experience	#Respondents	%Respondents
Below 1 year	14	10
1 year	29	20
2 – 5 years	67	46
5 – 10 years	28	19
10+ years	8	5
TOTAL	146	100

Source: Field data, 2021

2.15.2. Key Findings

Bus and Truck Drivers are Overworked and Underpaid

The survey generally found that bus and truck drivers are overworked and underpaid. In terms of working hours, while the labour law says maximum working hours in a day should be 9 hours,³⁷⁰ majority of the respondents (67%) claimed that they work for more than 12 hours. Only 6% of the respondents said they work for 8 to 9 hours, which is in line with the labour standard on working hours, while 21% said they work for 9 to 12 hours.

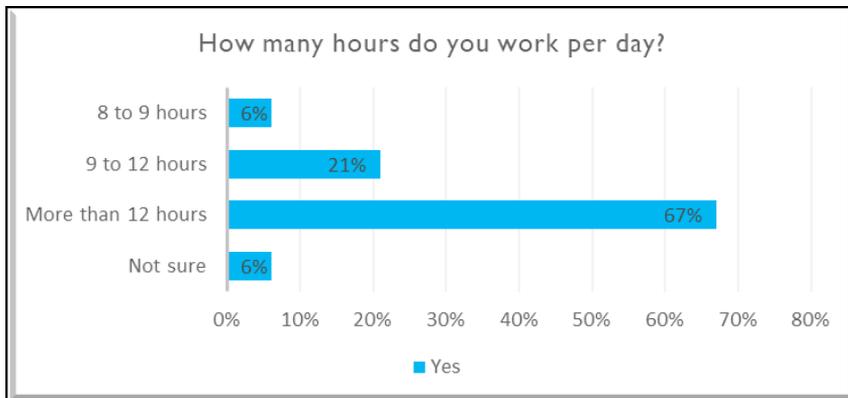


Figure 29: %Responses on number of work hours per day (N=146)

Source: Field data, 2021

³⁷⁰ Section 19(2) of the Employment and Labour Relations Act [CAP. 366 R.E. 2019].

During interviews, bus and truck drivers in Tabora, Dodoma and Dar es Salaam claimed that they are made to work for up to 16 hours a day, hence not afforded adequate rest.³⁷¹ Bus drivers also claimed that most employers do not put two drivers for long routes, as required by law.³⁷² This is contrary to the Employment and Labour Relations Act [CAP. 366 R.E. 2019], which requires employers to give employees working continuously for more than 5 hours a break of at least 60 minutes.³⁷³ One of the interviewed drivers said:

According to labour laws, while the normal working hours are 9, workers can work for up to 12 hours,³⁷⁴ which is the maximum working hours per day.

“Madera wa wengi wanaendesha muda mrefu, matajiri wengi hawaweki madera wawili, mfano kutoka Mwanza kwenda Dar es salaam ni zaidi ya masaa 16, waanchokifanya wanamweka kondakta mwenye lesseni ambaye hana uzoefu ili ikitokea wamekaguliwa na trafiki ionekane wapo madera wawili ila ukweli dereva ni mmoja. Mara nyingi madera wanakosa mapumziko, mfano Dar e es Salaam hadi Mwanza wanaondoka leo na kesho wanageuza hata kama wanakuwa wawili bado ni tatizo”

“Most bus drivers are forced to drive for a long period. The employers don't assign two drivers to a bus as required, for instance for a Mwanza-Dar es Salaam route, which takes more than 16 hours. What they do is assign only one driver plus a conductor who has a licence but lacks experience, in case the traffic police inspect the vehicle to check whether there are two drivers.

But the truth is that there is usually only one driver. In most cases the drivers do not get adequate rest. For instance, they drive from Dar es Salaam to Mwanza and have to return to Dar es Salaam the next day, which is too much even where there are two drivers.”

Bus driver - Dodoma

However, the maximum working hours are inclusive of the 3-hour overtime.³⁷⁵ Overtime is thus allowed under the law but should not exceed 50 hours in any four-weeks cycle³⁷⁶ and is subject to an agreement between employer and employee³⁷⁷ as well as additional pay (overtime pay).³⁷⁸ Additionally, a written agreement may be entered between employer and employee to work for up to 12 hours in a day without overtime pay.³⁷⁹

371 Tabora HRB Survey Field Report 2021; Dodoma HRB Survey Field Report 2021; Dar es Salaam HRB Survey Field Report 2021.

372 Dodoma HRB Survey Field Report 2021.

373 Section 23(1) of the Employment and Labour Relations Act, [CAP. 366 R.E. 2019].

374 Ibid, Section 19(1).

375 Ibid, Section 19(3) (b).

376 Ibid, Section 19(3) (b).

377 Ibid, Section 19(3) (a).

378 Ibid, Section 19(5).

379 Ibid, Section 21.

In this regard, the 21% of bus and truck drivers who claimed to be working for 9 to 12 hours, could be working within the normal and maximum working hours, provided there is an overtime agreement and receive overtime pay. However, this was generally not found to be the case, as majority of the respondents (84%) claimed they are not given overtime pay. Only 7% of the respondents said they are paid for their overtime work.



Figure 30: %Bus and truck drivers who are given overtime pay

Source: Field data, 2021

"...hapa unaponiona mida hii niko hapa (Igunga) nimeshapigiwa simu na boss kuwa kuna mzigo Dar inatakiwa nipakie kesho asubuhi, hatupumziki kabisa na hatulipwi overtime na tunaishi kwa posho tu..."

"...as you can see I am now here (in Igunga), but my boss has already called and told me there are some goods in Dar es Salaam which need to be loaded tomorrow morning. We do not rest at all and are not given overtime pay...we depend on allowances only..."

Truck driver - Tabora

Regarding their remuneration, the bus and truck drivers were asked about the wages they are paid. Specifically, they were asked how much they get paid per month by their employers, less than half of them (43%) claimed to be paid Tshs. 200,000 and above, followed by those who said they are paid between Tshs. 160,000 and 200,000 (32%). 16% of the respondents said they were paid below Tshs. 100,000, as shown in figure 31 below.

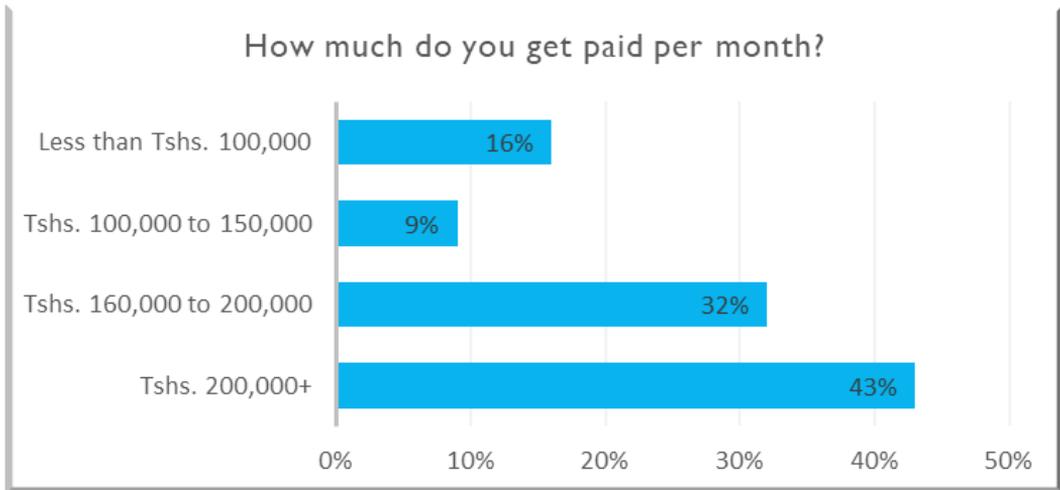


Figure 31: %Responses how much bus and truck drivers are paid per month
 Source: Field data, 2021

When interviewed, most of the respondents were of the view that the wages they are paid are inadequate and not in line with current living costs. One of the drivers claimed that although his employment contract indicates he is entitled to a monthly pay of Tshs. 200,000, he is actually paid Tshs. 150,000. In terms of the wages being inadequate, LHRC agrees with the respondents since the Wage Order that is currently used to determine minimum wage is that of 2013, which has not been reviewed ever since despite the law requiring review every 3 years. The living costs of 2021 are surely not the same as those of 2013. In any case, the Wage Order of 2013 indicates that minimum wages for workers in the inland transport sub-industry should be Tshs. 200,000 per month,³⁸⁰ which means based on the field data, over half of the respondents were found to be underpaid.

³⁸⁰ The Wage Order, 2013.

“Mshahara wangu ni mdogo, ila tatizo kubwa kwenye mshahara huo huo ukifanya kosa kama umetumia mafuta zaidi ya kiasi kilichopangwa au umepigwa faini unakatwa hivyo unaweza ukakuta umeisha karibu wote”

“My salary is inadequate, and yet it is still subjected to deductions, for instance when you have overspent on fuel or been fined by traffic police.”

Bus driver - Dodoma

“Tumekuwa tukipewa mishahara yetu kwa mafungu mafungu, huo huo mshahara wa laki mbili(200000) pamoja ni mdogo lakini mpaka upewe wote ni kazi,umeona hapa,nimetumiwa msg ya mshahara.”

“We have not been paid our salaries in full. As much as the Tshs. 200,000 salary is inadequate, it is still rare for me to receive it in full. As you can this salary msg that I have just received in my phone.”

Truck driver - Mtwara

LHRC's View: In most parts of the world, bus and truck drivers are said to be responsible for most of the road accidents, and this is because they are pushed to work long hours by their employers and given tight deadlines, leaving them to be nearly asleep when driving.³⁸¹ This appears to be the daily routine for most bus and truck drivers in Tanzania, which is detrimental to their health and constitutes violation of their labour rights. The biggest challenge they face is being overworked and underpaid.

LHRC's Call: Bus and truck owners to refrain from overworking and underpaying their workers. The Land Transport Regulatory Authority (LATRA) should also intervene to ensure labour rights of bus and truck drivers are respected by businesses and realized in accordance with the labour laws, regulations, and rules.

Travel Allowance a Key Concern and a Common Grievance amongst Truck Drivers

In Arusha, the survey team met with truck drivers from different transportation companies, who had various grievances against their employers. Chief among their grievances was travel allowance to enable them to sustain themselves while transporting cargos. This concern was also mentioned by almost all interviewed truck drivers in Mtwara.

³⁸¹ See Harihar Singh Rathore “Overworked drivers the main cause behind increasing road accidents” The Kathmandu Post, 25 August 2019 at <https://kathmandupost.com/province-no-3/2019/08/25/overworked-drivers-the-main-cause-behind-increasing-road-accidents>, accessed 29 October 2020; Shota Kincha “State Audit: Tbilisi’s bus drivers “illegally overworked, underpaid”” OC Media, 13 February 2020 at <https://oc-media.org/state-audit-tbilisis-bus-drivers-illegally-overworked-underpaid/>, accessed 29 October 2020; Michael Belzer “Truck drivers are overtired, overworked and underpaid” The Conversation, 25 July 2018 at <https://theconversation.com/truck-drivers-are-overtired-overworked-and-underpaid-100218>, accessed 29 October 2020.

Most Bus and Truck Drivers Do Not Have Written Contracts or Copies of Contracts

When asked whether they have written employment contracts, only over a third of the respondents (36%) said they do, while the remaining respondents (64%) claimed they do not have written contracts. This means most of them are vulnerable to denial of their labour rights, especially in case of a labour dispute. In Arusha, a truck driver mentioned that he was only recently awarded a contract, having worked for a transportation company for five years without one.³⁸² Most truck drivers in the region also complained about their employers not giving them copies of their contracts.³⁸³

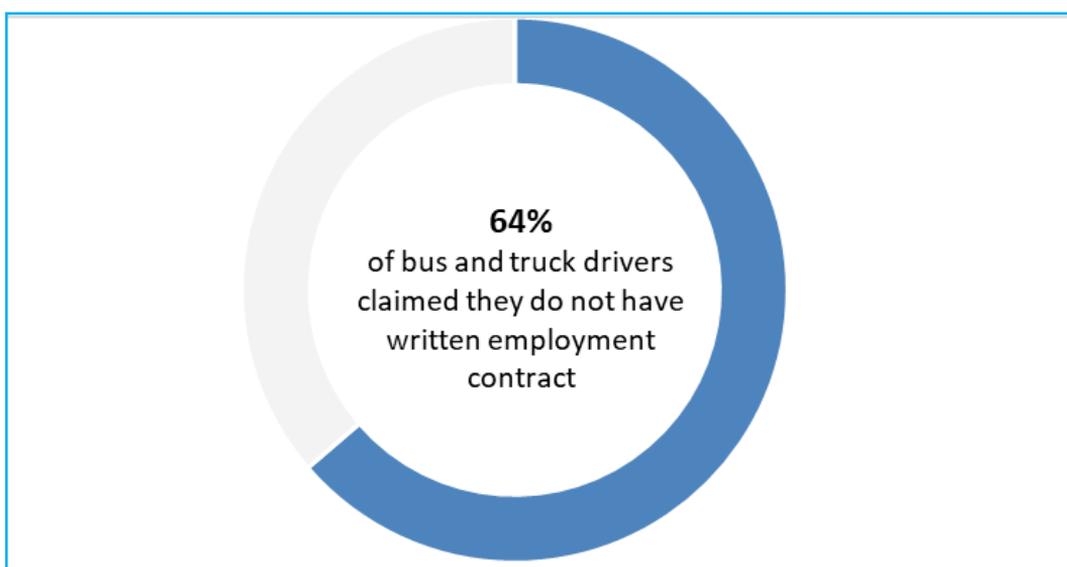


Figure 32: %Respondents (bus and truck drivers) without written employment contracts (N=146)

Source: Field data, 2021

The respondents were also asked whether there were any discussions or negotiations with their employers before they started work. Only 27% of the respondents claimed there were negotiations with their employers before they started work, while 73% said they were not invited for any negotiations. This suggests that most of the workers are subjected to ready-made contracts, with little or no room for negotiations.

382 Arusha HRB Survey Field Report 2021.

383 Ibid.

Freedom of Association: Right to Form and Join Trade Unions

The Constitution of the United Republic of Tanzania of 1977³⁸⁴ and 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 (ICCPR) and the African Charter on Human and Peoples' Right (ACHPR),³⁸⁵ recognize freedom of association as a fundamental human right. This right includes the right to form and join trade unions for the protection of his interests,³⁸⁶ which is also guaranteed under the Employment and Labour Relations Act [CAP. 366 R.E. 2019] (ELRA).³⁸⁷

As workers, the right to form and join trade unions is essential for protection of the labour rights of bus and truck drivers. During the survey, they were asked whether there are trade union branches at their workplaces. Only a quarter of the respondents (25%) claimed trade union branches exist at their workplaces, while 56% said there are no such branches. 19% of the respondents said they were not sure whether branches exist. Some of the interviewed workers claimed that their employers do not like the idea of them joining trade unions and usually discourage them to do so.

Bus and truck workers engaged during the survey were also asked about the effectiveness of their trade unions. 85% of the workers perceive their trade unions to be not effective at all, suggesting that they do not think the trade unions are doing anything to help them. Only 5% of the respondents generally found the trade unions to be effective, while 6% found them to be somewhat effective.

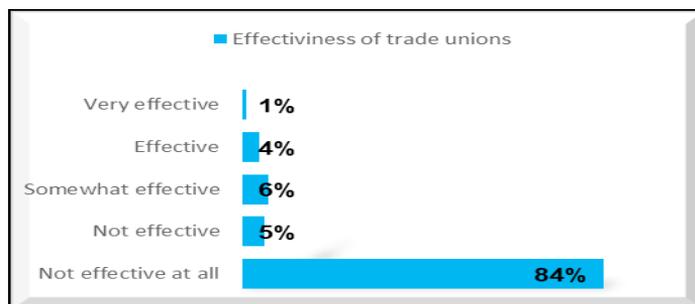


Figure 33: Responses on bus and truck drivers' perceptions on effectiveness of trade unions (N=146)

Source: Field data, 2021

384 Article 20 of the Constitution of Tanzania, 1977.

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

386 Article 22 of ICCPR.

387 Sections 9(1) & 10(1) of ELRA.

During interviews, most workers singled out the Tanzania Union of Industrial and Commercial Workers Union (TUICO) to blame. They claimed that the trade union's concentration is more on collecting member contributions rather than addressing their problems and concerns. In Mtwara, truck drivers accused TUICO of siding with their employers instead of protecting their interests. In Geita, most of the interviewed bus and truck drivers said they did not find trade unions helpful.

"Hawa TUICO hatuna imani nao kabisa brother, haya malalamiko yetu si oya leo, tunahisi wako upande wa waajiri sababu, mnaongea nao vizuri lakini wakija hapa wakiingia humo wanakua kimya tuu, mpaka tunahisi wanapewa kitu kidogo, wanyamaze."

"My brother, we don't have faith in TUICO at all. Our grievances are not new. We feel that they take the side of our employers because they come and talk to us, but when they get into company, they remain silent. We think they are given something so that they don't take any action."

A truck driver - Mtwara

"Tuna matatizo mengi lakini hivi vyama hatuoni umuhimu wake hakuna kinachofanyika."

"We have many problems, but we don't see the relevance of the trade unions, as nothing is being done to help us."

Bus driver - Geita

Occupational Health and Safety

Occupational health and safety are essential for a safe working environment. Employers are obligated under various laws, regulations, rules, and policies to ensure a safe working environment, including the Occupational Health and Safety Act, 2003 and the Employment and Labour Relations Act [CAP. 366 R.E. 2019].³⁸⁸ Key principles and aspects of occupational health and safety include workers knowing their rights; having in place relevant policies; and education and training, which are vital components of safe, healthy working environments.³⁸⁹

During the survey, bus and truck drivers were asked whether they had received any training on occupational health and safety. Only 24% of the workers said they had received such training, while 71% said they had not received training. 5% of the workers said they were not sure whether they had received such training or not. Majority of those who claimed to have received training (70%) said they had received such training at least two times and above.

³⁸⁸ Others include the Occupational Health and Safety (First aid And Welfare Facilities) Rules, 2015; Occupational Health and Safety (First aid And Welfare Facilities) Rules, 2015; Occupational Health and Safety (Notification of Occupational Diseases, Injuries and Dangerous Occurrence) Rules, 2016; Occupational Safety and Health (General Administrative) (Amendments) Rules, 2018; The Occupational Safety and Health (Building and Construction Industry) Rules, 2015; and the National Occupational Safety and Health Policy 2010.

³⁸⁹ 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.

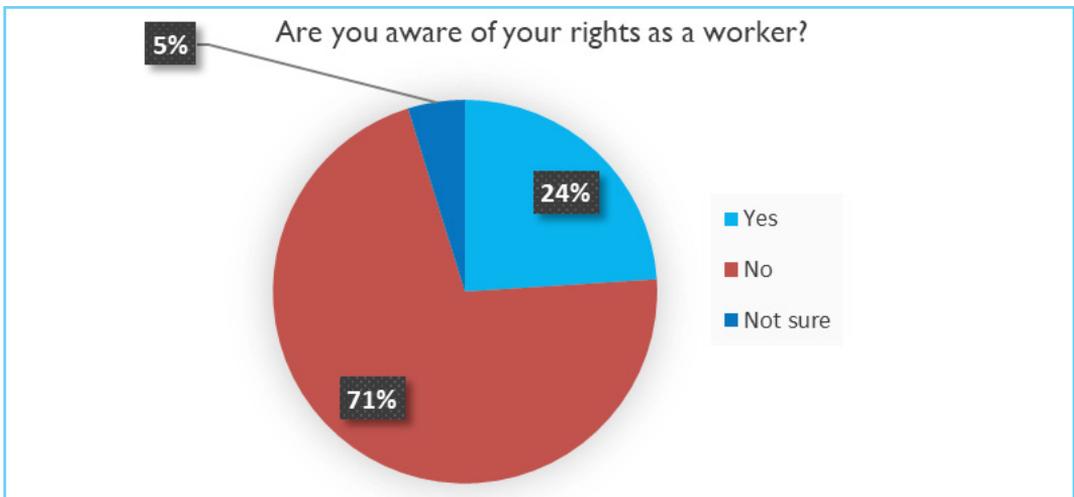


Figure 34: %Responses by bus and truck drivers on receiving training on occupational health and safety (N=146)

Source: Field data, 2021

Workplace Injury and Compensation

During the survey, respondents were asked whether they are aware of laws and regulations governing workplace injury and compensation. Majority of them (82%) claimed they were not aware of the laws and regulations, while only 12% said they were aware of such laws and regulations. However, when asked to mention at least one law or regulation, only 50% of those who claimed to be aware of such laws could mention them.

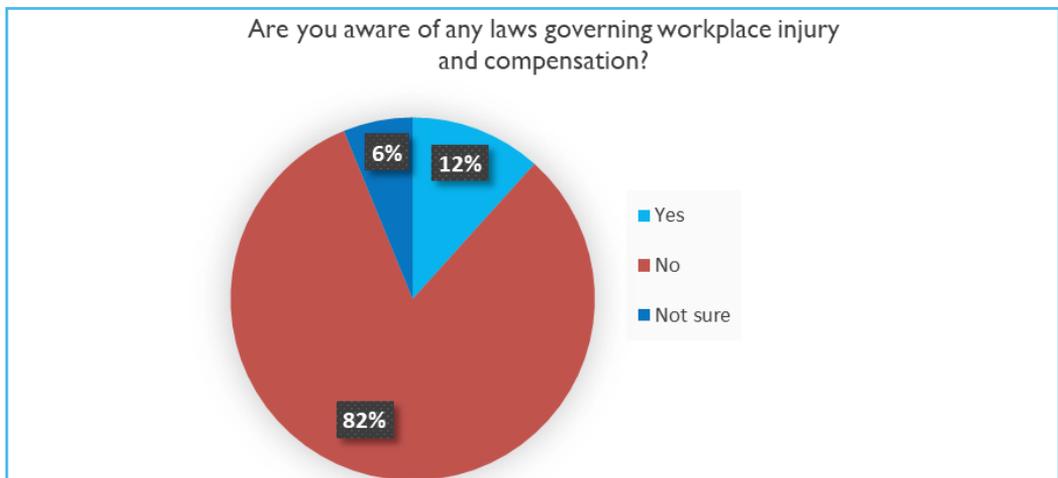


Figure 35: %Responses of bus and truck drivers on awareness of laws governing workplace injury and compensation (N=146)

Source: Field data, 2021

The workers were also asked whether they know any worker who had suffered an injury at workplace, but was not given any compensation by employer or the Workers' Compensation Fund (WCF). 18% of the workers said they do and provided names and contacts of nine fellow workers, some of whom had died following workplace injury. Generally, only 16% of the workers said there are compensation arrangements at their workplaces when a worker suffers an injury, while 61% said there are no such arrangements, and 23% said they were not sure.

Right to Leave

Right to leave is an essential labour right to realization of the right to adequate rest, which is a fundamental human right.³⁹⁰The cap on working hours has been introduced purposely to ensure that workers get **daily workplace rest breaks, daily rest, weekly rest, and annual leave.**³⁹¹ During the survey, bus and truck workers were asked about their right to leave, including annual leave (28 days), maternity leave (84 to 100 days), paternity leave (3 days) and sick leave (126 days maximum), which are guaranteed under the Employment and Labour Relations Act [CAP. 366 R.E. 2019] (ELRA).³⁹²

Regarding annual leave, less than a quarter of the respondents (24%) said they get such leave while majority of them (69%) claimed they are not usually granted annual leave. This means majority of them work through the year, hence very little time for rest and spending time with family. Those who indicated that they get annual leave demonstrated awareness about the number of days allocated for such leave, which is 28 days.

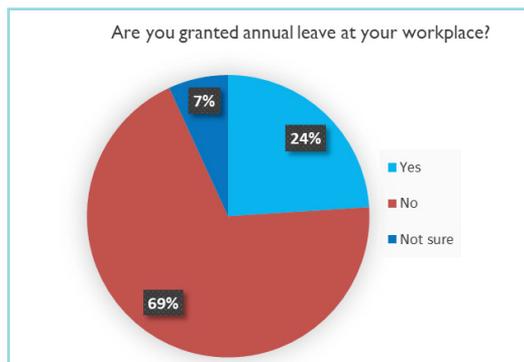


Figure 36: % Responses of bus and truck drivers on getting annual leave (N=146)

Source: Field data, 2021

390 Article 24 of the Universal Declaration of Human Rights (UDHR) of 1948.

391 See Ghosheh, Naj (2016), Remembering rest periods in law: Another tool to limit excessive working hours, Conditions of Work and Employment Series No. 78, International Labour Office, Geneva, Switzerland at http://ilo.ch/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_516123.pdf, accessed 19 May 2021.

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

“Hakuna likizo ya aina yoyote ile. Nadhani waajiri wetu wawe tayari kufuata sheria na kuzingatia jambo hili kwa mapana zaidi, sababu dereva nae ni binadamu na pia tuna familia pia zinahitaji uwepo wetu...”

“No leave is granted here. I think our employers need to reconsider and grant us leave because we are also humans, and we have families which need us to be there for them.

A truck driver - Arusha

“Kuhusu likizo kwenye hii kampuni hakuna wanachokifanya wanakulipa mshahara wa mwezi mmoja ambao ulitakiwa kwenda likizo ili usiende likizo”

“Our employers don’t grant leave. What they do is pay you a one-month salary instead of leave (substitute).”

Bus driver - Dodoma

“Kaka sisi hatuna aina yoyote ya likizo,huko njiani ukiwa umelala wakati unapeleka mizigo ndio likizo yako,tunafanya kazi mwaka mzima bila likizo.”

“My brother, we don’t get any leave, our leave is when we rest along the way while transporting the goods. We work throughout the year.”

Truck driver - Mtwara

Regarding maternity leave, bus and truck drivers who participated in the survey were asked whether female workers are granted maternity leave. Only 5% of the respondents said female workers are granted maternity leave, while 51% said they are not and 44% said they were not sure. But it is worth mentioning that there are very few female workers in the road transport sub-industry.

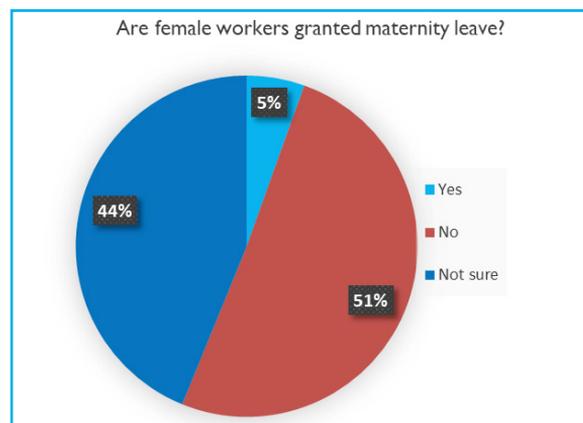


Figure 37: %Responses of bus and truck drivers on granting of maternity leave (N=146)

Source: Field data, 2021

Regarding paternity leave, the survey generally found that most male bus and truck drivers are not aware of paternity leave. Consequently, three quarters of them (75%), said they do not get paternity leave when their wives have given birth. Only 6% of the respondents said they are granted and go on such leave.

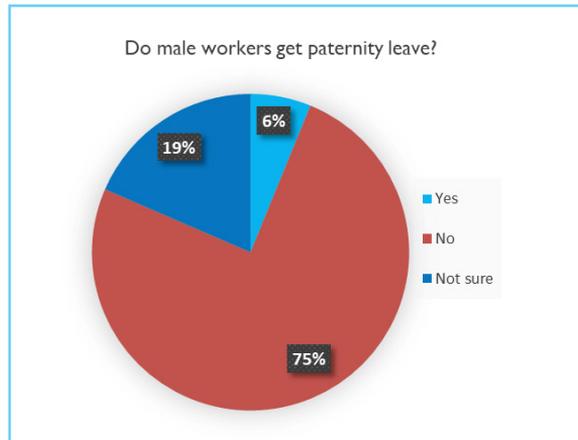


Figure 38: % Responses on bus and truck drivers getting paternity leave (N=146)

Source: Field data, 2021

In terms of sick leave, over half of the bus and truck driver who participated in the survey (53%) acknowledged that they do get sick leaves. 39% said they are not usually granted such leave, while 8% said they were not sure.

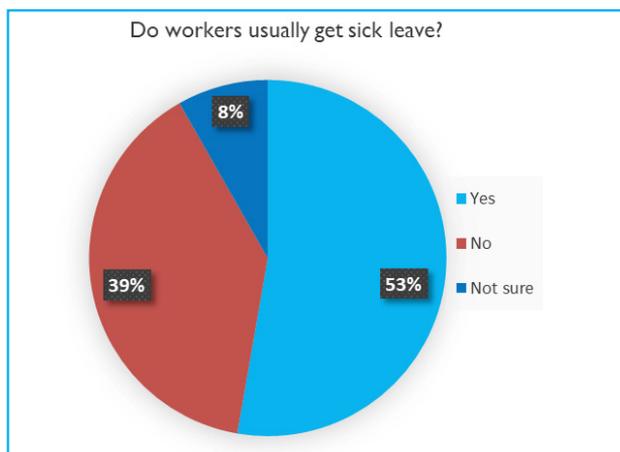


Figure 39: % Responses of bus and truck drivers on getting sick leave (N=146)

Source: Field data, 2021

On the questionnaire, bus and truck drivers were also asked whether they had taken any leave in the past year. The vast majority of the respondents (72%) said they had not taken any leave in the past year, with only a quarter (25%) indicating they had taken leave.

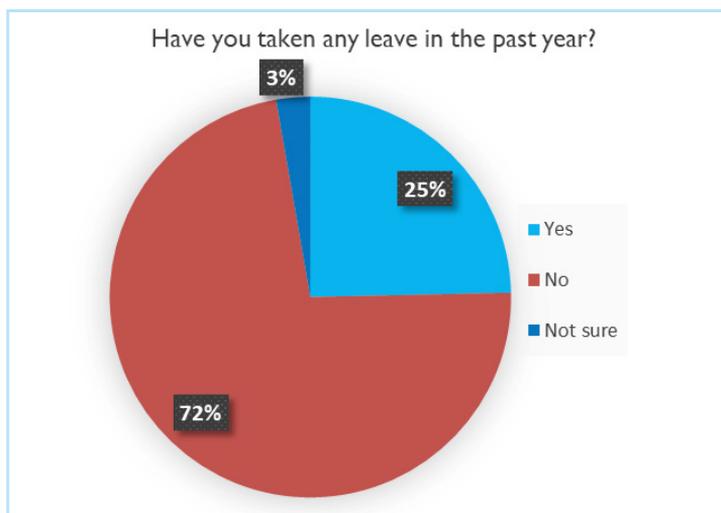


Figure 40: %Responses of bus and truck drivers on taking leave in the past year (N=146)

Source: Field data, 2021

Sick and paternity leave are more elusive for almost all interviewed bus and truck drivers compared to other types of leaves. Maternity leaves are uncommon because overwhelming majority of workers in the road transport sub-sector are male.

Truck Drivers go on Strike: The Case of Dangote Cement Company in Mtwara

Right to strike is essential for protection of freedom of association and promoting and protecting workers' interests.³⁹³ This right is recognized under Section 75 of the Employment and Labour Relations Act [CAP. 366 R.E. 2019], subject to various conditions, including arbitration, conciliation, 30-day mediation period, and workers providing essential services. Strikers are also prohibited from preventing employers from entering premises or locking them inside, and employers should not hire replacements during a lawful strike.

³⁹³ 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.

Right to strike is also recognized under the Employment and Labour Relations (Code of Good Practice) Rules, 2007, which state that strike is a measure of last resort, seeking to resolve disputes of interest between employers and their employees.³⁹⁴ The strike is settled and comes to an end when the dispute that gave rise to it is settled.³⁹⁵ The dispute may be settled by an agreed compromise or a return to work, and the agreed compromise normally takes the form of a collective agreement.³⁹⁶

During this reporting period, truck drivers working for the Dangote Cement Factory in Mtwara Region went on strike in protest of violations of their labour rights. By 19th April 2021, the truck drivers' strike had lasted 12 days.³⁹⁷ Among their key demands were salary increments, employment contracts, and travel allowances.³⁹⁸ It was reported that the strike prompted government intervention, whereby two ministers, Minister of Industry and Trade – Prof. Kitila Mkumbo, and the Minister of Investment - Hon. Geoffrey Mwambe, went to the region to hold meetings with both parties.³⁹⁹ The survey in Mtwara found that more than 400 truck drivers were involved in the strike and that they were also seeking overall better working environment.⁴⁰⁰ This is a second major strike by the truck drivers in four years, following the strike of 2018.⁴⁰¹



Picture 25: Some of the Dangote Cement Factory truck drivers during their strike in Mtwara Region

Picture credit: ITV

394 Rule 39(2) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007.

395 Ibid, Rule 40(1).

396 Rule 40(2) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007.

397 See Anne Robi "Tanzania: Dangote Strike Continues As Govt Meet Management" Daily News Newspaper (Online) 19 April 2021, at <https://allafrica.com/stories/202104200405.html#:~:text=THE%20Ministry%20of%20Industry%20and,have%20sparked%20an%20unending%20strike.>, accessed 31st May 2021.

398 Ibid.

399 Ibid.

400 Mtwara HRB Survey Field Report 2021.

401 See "MADEREVA wa malori ya Dangote wamegoma" AzamTV, June 8, 2018 at <https://www.youtube.com/watch?v=Ym28u4YUxAg>, accessed 1st June 2021.

Interviewed truck drivers mentioned that they were hired by subcontractors, namely *TTHL*, *Tropical* and *Changanyiken* to work for Dangote Cement Plc.⁴⁰² They accused the companies of deliberately violating their labour rights and called for direct employment by Dangote Cement Plc.⁴⁰³ They accused the subcontractors of not fairly and timely paying them their allowances, unfair salary deductions, not granting them employment contracts, and not getting salary increments.⁴⁰⁴ During the interviews, one of the truck drivers revealed that two of their representatives at talks with the company management were fired for their role in organizing the strike.⁴⁰⁵

“Kaka hapa hatulipwi zile allowance(mileage) zetu kwa wakati,na hata ukilipwa ni kiasi kidogo sana,...na hapo kuna wenzangu wengi wanadai allowance za miezi mingi tuu,...na kwa hela hiyo hiyo wanayokupa hapo hapo gari ikiharibika njiani ni juu yako,packing sehemu ya kulaza gari ni juu yako dereva, kula na fine za barabarani pia ni juu yangu dereva.”

“My brother, we are not paid allowances (mileage) on time and even when we are paid is not adequate....and most of my colleagues have not been given their allowances... and when they give you the allowances, they also expect you to pay for vehicle repair, parking, and traffic fines.”

Truck driver – Dangote Cement Plc, Mtwara

During the interviews, the truck drivers called for removal of the ‘middlemen’ (subcontractors), such that they are directly employed by Dangote Cement Plc, in a bid to improve their working environment. This idea was supported by the Mtwara Regional Commissioner, Hon. Gelasius Byakanwa when he visited the cement company during the strike on 12th April 2021.⁴⁰⁶ The Regional Commissioner formed a commission to inquire into complaints by the truck drivers and submit their report by 25th April 2021.⁴⁰⁷ However, some of the interviewed truck drivers mentioned that they were dissatisfied with the efforts made by district and regional authorities to address the challenges they face, and called for intervention of H.E. President Samia Suluhu Hassan.⁴⁰⁸

402 Mtwara HRB Survey Field Report 2021.

403 Ibid.

404 Ibid.

405 Mtwara HRB Survey Field Report 2021.

406 See “RC. BYAKANWA AUNDA TUME MGOGORO WA MADEREVA WA DANGOTE MTWARA” Mtwara Online TV, 13 April 2021, at https://web.facebook.com/Mtwara-Online-Tv-101960654696446/videos/taarifa-kwa-madereva-wa-dangote-chini-ya-makampuni-za-tthl-tropical-na-changanyi/295894788636364/?_rdc=1&_rdr, accessed 31st May 2201.

407 Ibid.

408 Mtwara HRB Survey Field Report 2021.



Picture 26: A protest banner by truck drivers in Mtwara, calling for intervention of the Tanzania President

Picture credit: DW

LHRC's View: Subcontractors or not, Dangote Cement Plc has a responsibility to ensure the labour and human rights of its truck drivers are respected. Since the subcontractors are working on behalf of the company, Dangote Cement Plc cannot escape liability in line with international labour standards, including the UN Guiding Principles on Business and Human Rights.

LHRC's Call: Dangote Cement Plc to ensure the demands of the truck drivers are met in line with labour laws and standards so that the dispute is settled. Those who have been fired for leading the strike should also be reinstated.

Ministries responsible for labour, investment, and trade to collaborate with regional authorities, including labour inspectors, to ensure a proper investigation into the allegations made by the truck drivers in conducted and their demands are addressed in line with labour laws and standards.

Awareness about Labour Laws and Rights

On the questionnaire, bus and truck drivers who participated in the survey were asked whether they know laws governing labour rights and duties of employees and employers. More than three-quarters of the workers (78%) said were not aware of such laws and regulations, with only 11% acknowledging that they have knowledge of relevant laws and regulations. Nevertheless, among the respondents stating they were aware of the laws and regulations, only 40% could mention at least two such laws/regulations when asked to.

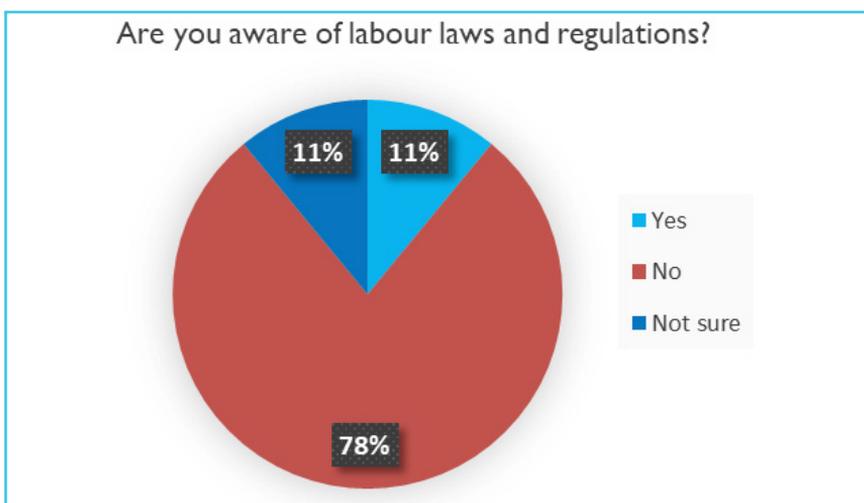


Figure 41: % Responses of bus and truck drivers on awareness about labour laws and regulations

Source: Field data, 2021

Bust and truck drivers who participated in the survey were also asked whether they were aware of their labour rights. Nearly half of the respondents (47%) said they were not aware of such rights, while 45% said they were aware of their labour rights as guaranteed under labour laws.

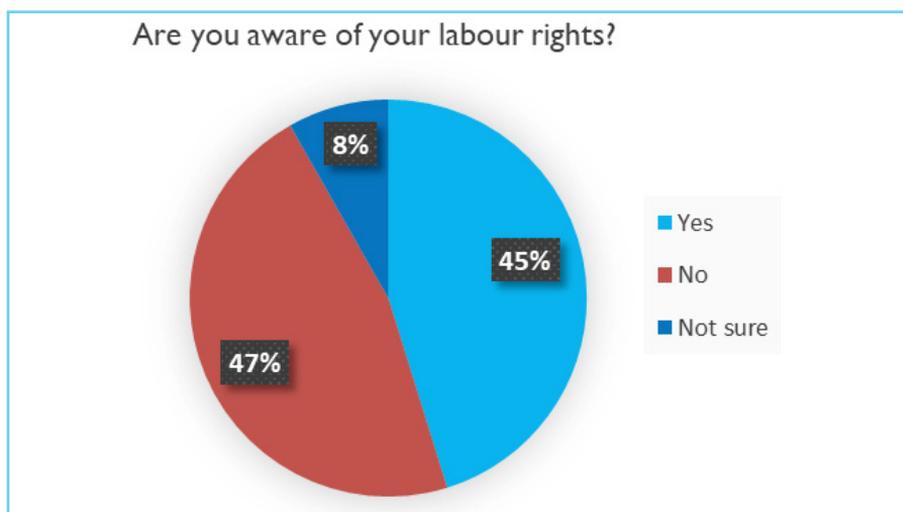


Figure 42: % Responses of bus and truck drivers on awareness of their labour rights

Source: Field data, 2021

However, when asked to mention at least three labour rights, only 50% of workers who claimed to know their labour rights could mention them. Most mentioned labour rights were right to remuneration, right to employment contract, right to leave, right to compensation following workplace injury, right to adequate rest, and right to a safe working environment.

Labour Rights Violations

The survey respondents were also asked about labour rights violations, specifically whether their employers had violated any of their labour rights in the past year. 47% of the respondents claimed their rights had been violated in the past year, while 33% said they had not. 20% of the respondents indicated that they were not sure if they had suffered any labour rights violations during that period. It should be born in mind however, nearly 50% of the respondents had already stated that they did not have sufficient knowledge of their labour rights, hence some of their rights might have been violated and they would not know it.

Survey respondents who stated that they had suffered labour rights violations in the past year were asked what action they took afterwards. Majority of them (36%) said they did not take any action, followed by those who said they did not remember (25%), and those who reported the matter to their supervisors (20%). Only 7% of the respondents said they sought help from trade unions, while 12% said they took other measures.

When asked which labour rights were violated, most of the respondents mentioned the following violations:

- Non-payment of salaries
- Delay of wage payment
- Unfair termination
- Delay of allowance payment
- Unjustified wage deductions
- Inadequate pay
- Verbal threats
- Verbal abuse
- Denial of leave/Reduction of leave days
- Working long hours without rest (beyond normal and maximum working hours)
- Denial of employment contracts/copies of such contracts
- Non-payment for overtime
- Unsafe working environment

Common Challenges

On the questionnaire, bus and truck drivers were also asked to mention challenges they face in the course of their work. The following were mentioned as common challenges:

- ☞ Truck/bus defects and malfunctions, usually caused by lack of vehicle service, repair, or maintenance
- ☞ Excessive traffic fines/Being targeted by traffic police
- ☞ Fabrication of traffic offences/corruption by LATRA and traffic police (Traffic police have become a nuisance/too corrupt)
- ☞ Being forced to pay fines for truck/bus defects
- ☞ Lack of job security
- ☞ Salary/allowance deductions due to truck/bus defects and malfunctions
- ☞ Lack of health insurance
- ☞ Unfair working conditions (including lack of basic social services such as sanitation)
- ☞ Lack of employment contracts, making it difficult to defend labour rights
- ☞ Inadequate and delayed allowance
- ☞ Supervisors who have no knowledge of or background in driving
- ☞ Lack of sufficient knowledge on labour rights
- ☞ Unsafe working environment, without much security
- ☞ Harassment and abuse by employers/other people
- ☞ Not being given sufficient car fuel/fuel allowance
- ☞ Lack of social security coverage

“Tulio wengi hatuna mikataba ya ajira na makato ni mengi. Mfano, ukipata shida boss anakukata kwenye mshahara. Yaani tunaishi kwa posho ndugu yangu. Hapa nilipo sijalipwa mshahara kuanzia mwezi wa 12 hadi leo. Mshahara silipwi kwa wakati”

“Most of us don't have employment contracts...and when anything happens to the truck the repair expenses are deducted from your salary. We are left to depend on allowances. I have also not been paid my salary since December. I do not receive my salary on time...”

Truck driver

“Tozo la faini mbalimbali barabarani, makosa ya kubambikiwa unakuta mshahara wote unaishia kwa polisi. Yaani polisi akikuona umebeba mzigo hata kama una kibali na risiti atakutafutia kosa umuachie pesa. Na boss hahusiki.”

“Harsh traffic fines and trumped-up charges are a big challenge for us. All your salary may end up with the traffic police. When they see you carrying goods, they will find an offense even when you have the permit and receipts, just so you give them money. And this is no concern of the boss.”

Truck driver

“Sisi madereva tunafanya kazi kwenye mazingira magumu na haki zetu kama waajiriwa hazifuatwi, pamoja na kulalamika kote lakini hakuna hatua yoyote inayochukuliwa kutoka kwenye mamlaka husika, mpaka tunachoka na kuamua kugoma.”

“We work in a difficult environment and our employers don’t respect our labour rights. We have made many complaints but not action has been taken by the authorities, which sometimes prompts us to strike.”

Truck driver

2.15.3. Recommendations

To improve the situation of workers in the road transport sub-sector, including bus and truck and drivers, LHRC recommends the following:

- Employers to refrain from infringing labour rights of bus and truck drivers and comply with their responsibility to respect human rights, including allowing them to form and join trade unions
- LATRA and trade unions, including TUICO, to take measures to address challenges faced by bus and truck drivers to safeguard their labour and human rights
- Labour rights stakeholders, including CSOs, to enhance awareness of labour rights among bus and truck drivers

2.16. 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 21: 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 Freedom from violence
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 time beyond 12 hours consistently	Right to the enjoyment of just and favourable conditions of work
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
Denying workers copies of employment contracts	Right to equality before the law/Right to non-discrimination
Firing female workers because of pregnancy/breastfeeding	Right to non-discrimination

Paying the Price for Fighting for Labour Rights?: The Case of Thilak Kumar in Singida

During the survey in Singida, LHRC received information about Mr. Thilak Kumar Naidu, an Indian citizen/expatriate who claimed that he was appointed as General Manager of Mount Meru Retailer Company in October 2018 and later promoted to Chief Operating Officer. However, he was latter forced to work for Mount Meru Millers, without a work permit. He was nevertheless not paid his salary as per agreement and contract. In short, Mr. Kumar claimed violations of his labour and human rights by employer and law enforcement officials as follows:

- ☞ Claimed his passport was seized by the company upon his arrival in Tanzania.
- ☞ He had a bad relationship with his boss, Shailesh Patel, because of demanding his labour rights and those of other workers.
- ☞ He was denied his salaries for over 22 months and was only paid incentives in cash. No NSSF and WCF fees were paid.
- ☞ His former employer manipulated his incentives provided in cash as stealing and money laundering, which is how he ended up in prison.
- ☞ He was unfairly dismissed from his job (unfair termination) and intimidated and harassed by his former employers, who wanted him to sign a settlement deed and leave Tanzania because they have 'money, power, and politics.'
- ☞ Employers warned him and his advocate that if he did not sign the settlement deed, they would fix him with money laundering case.

- ☞ He was arrested on 23rd July 2020 and was forced to handover his phones and passport, was not given reasons for arrest, was interrogated by police officers without his advocate being present and was detained and denied bail. He also claimed that police officers demanded a Tshs. 1 million bribe to release him and took his Tshs. 3 million which was on his pouch. He was released and immediately re-arrested by the RCO and locked up. He also claimed that the police had been paid Tshs. 700,000 to arbitrarily arrest and embarrass him in front of other workers.
- ☞ While behind bars, he was mistreated and denied food and water, putting him under pressure to sign the settlement deed.
- ☞ His brother reached out to the High Commission of India in Tanzania and updated them about his situation, and the Commission started pressurizing RCO for keeping him in lock up for so long. Mount Meru then came up with allegations that he had stolen from them in November 2019. With the help of the Commission, he was eventually released on bail on 31st July 2020.
- ☞ When he was out on bail, Mount Meru kept harassing him, forcing him to sign the settlement deed and threatening him with a money laundering case. They also allegedly warned him if he did not sign, they would add a rape case and even went to the RCO to file more cases but the RCO refused.
- ☞ Later, an officer from the IGP Office was sent to Singida to look into the matter and met with the RPC, who said everything regarding the case was going fine but they were waiting for evidence from Mount Meru to proceed and lamented that the company was delaying and even the police were becoming tired of the case.
- ☞ He continued reporting to the RCO office as required until he was arrested again on 21st August 2020 he was arrested and charged with the money laundering offence on orders from Mount Meru. He claimed that the company offered Tshs. 3 million for him to be fixed with the case.
- ☞ His case is taking too long, as Mount Meru is not providing any evidence to substantiate claims (there are delays).
- ☞ There is a prison officer who is torturing and harassing him a lot, and even stopped his house girl from bringing him food.
- ☞ Eight months on, his wife and three children are suffering as continues to be behind bars since 23rd July 2020 and his health is deteriorating.
- ☞ He wrote to the PARALG to intervene 'to fasten the process and speed of my case so that I know my destiny and I know the way forward.'

Additionally, Mr. Kumar accused the company of conducting various wrongdoings against its workers, including not enrolling expatriates under NSSF and WCF; not creating a bank account for expatriates; allowing foreign workers to work without permit; not granting employment contracts; bribing local authorities; forcing local employees to work more than 12 hours a day and not paying for overtime and giving them weekly breaks; creating situations of accidents, theft and burglaries to claim false insurance money; influencing government officials to acquire land from people/farmers for a cheap price; and harassing people around the factory area with influence of government officials, who are paid up to Tshs. 5 million per month.

LHRC' View: Regardless of whether the allegations of wrongdoings made by Mr. Thilak Kumar against his former employers are true or not, his ongoing detention without trial constitutes violations of this fundamental human rights as a human being and an accused person. These rights include the right to equality before the law, which includes presumption of innocence and a right to fair trial, and the right to liberty and personal security. If the investigation is not complete Mr. Thilak Kumar should be released. LHRC shall continue to follow up on the matter and call for fair treatment of Mr. Thilak Kumar in line with principles of natural justice.

LHRC's Call: Government authorities, including the PORALG and the Tanzania Police Force, as well as the High Commission of India in Tanzania, to intervene to ensure the rights of Mr. Thilak Kumar, as a human being and an accused person, are safeguarded in line with the Constitution of Tanzania of 1977, criminal laws and procedures, and international human rights standards.

LHRC also calls upon the regulatory and other authorities, including labour officers, OSHA, PCCB, NSSF, and WCF to investigate the claims made by Mr. Thilak Kumar against his former employers, Mount Meru.

2.17. 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 2020/2021 are compared with those of the year 2018/2019. Most of the indicators were assessed during both surveys.

Table 22: Comparison of some of the key performance indicators on labour rights and standards in surveys of 2019 and 2021

Labour Standard	Performance Indicators	
	2018/2019	2020/2021
Employment contracts	<ul style="list-style-type: none"> 84% of respondents (employees) with employment contract, 16% without 75% of respondents (employees) claiming to have written employment contracts 	<ul style="list-style-type: none"> 59% of respondents with employment contracts 56% of workers with written employment contracts
Trade unions	<ul style="list-style-type: none"> Almost 50% of employee respondents are 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 are either effective or very effective. 	<ul style="list-style-type: none"> Over two-thirds of the survey respondents (63%) said their trade unions are not effective at all, while 6% said they are not effective
Working hours	<ul style="list-style-type: none"> 83% of workers indicating they are not forced to work beyond stipulated working hours limit. 57% of workers indicating they get paid when they work overtime. 43% do not get paid. 	<ul style="list-style-type: none"> 85% of workers not forced to work beyond normal/ maximum working hours 57% of the workers said they received overtime pay
Leaves	<ul style="list-style-type: none"> 62% of workers indicating 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. 	<ul style="list-style-type: none"> Nearly half of the workers (48%) said they are granted annual leave Nearly half of the respondents had not taken leave in the past year
Awareness of labour laws	<ul style="list-style-type: none"> 78% of workers not aware of labour laws providing for rights and duties of employees and employers 	<ul style="list-style-type: none"> 73% unaware of relevant labour laws and regulations
Awareness of labour 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 	<ul style="list-style-type: none"> 52% claimed to be aware of their rights as workers, while 39% said they were not aware

Source: Field data, 2019 & 2021

CHAPTER THREE:

LAND ACQUISITION FOR INVESTMENT

3.1. Overview of Land Tenure and Acquisition in Tanzania

3.1.1. Introduction

In 1984 the Bill of Rights was incorporated into the Constitution of the United Republic of Tanzania of 1977, which included the right to own property. This right is enshrined in the Constitution under Article 24(1) and (2), and also entails enjoyment of state protection and fair and adequate compensation in the event of compulsory acquisition.

To bring the mother law on the ground, the National land Policy was enacted in 1995 where its implementation was smoothed with the enactment of Land Act, Cap. 113 R.E 2019 and the Village Land Act, Cap. 114 R.E 2019. Other key pieces of legislation that govern the land-related issues and dispute settlements in Tanzania are the Land Act, Cap. 113 R.E 2019, 1999, Land (Amendments) Act, 2004 and associated regulation of 2001, Village Land Act, Cap. 114 R.E 2019 and the Village Land Regulation 2001, the Courts (Land Disputes Settlements) Act, 2002, the Land Use Planning Act, 2007, the Land Acquisition Act, 1967, the Mining Act 2010, the Wildlife Conservation Act and the Tanzania Investment Act, 1997.

For the purpose of land management, the land is classified as general land, village land, and Reserved land. As of 2015, 70% of the land was village land, 2% was general land, and the remaining 28% was general land.⁴⁰⁹ As the trustee of land, the President is mandated to transfer the land from one category to another. Investors can obtain land from General land or Village land. Land ownership is through obtaining Right of Occupancy for citizens and non-citizen investors may occupy the land for investment purpose through a government Granted Right of Occupancy, through Derivative Right granted by Tanzania Investment Centre or sub lease through a Granted Right of Occupancy. Right of occupancy and Derivative Right may be granted up to 99 years and are renewable.

⁴⁰⁹ Ringo Willy Tanga, Tanzania LGAF Synthesis Report 2015, World Bank at <https://documents1.worldbank.org/curated/en/107691504869102521/pdf/119625-WP-P095390-PUBLIC-7-9-2017-10-34-30-TanzaniaFinalReport.pdf>, accessed 20th June 2021.

3.2. Compulsory Acquisition of Land and Compensation

3.2.1. Introduction

Foreigners are prohibited from owning land in Tanzania except for investment purposes.⁴¹⁰ The Land required for investment purposes must be identified, gazetted and allocated to TIC, which then creates derivative rights for investors. The president has powers to acquire any land for public interest or investment under the laws of Tanzania for investment purposes. The president first must transfer village land which is identified to general land.

The Village Land Act stipulates procedures that are to be followed on the whole process of transferring the village land to general land. Villagers are the ones with the discretion to either accept the transfer process or not to accept. The village assembly can only refuse to transfer an area of fewer than 250 hectares and not that exceeding 250 hectares. Although there is a provision for villagers or group of villagers who are allocated with the right to use the land (referred to as “the affected”) to register their unwillingness to support a transfer, still they cannot refuse the proposal because the decision is vested to Village Assembly and minister responsible for land for hectares less than 250 hectares it is not clear if the president can choose to reject village assembly decision not to transfer the land.⁴¹¹

Different researches have noted differences in the procedures for transfer of village land to general land in Tanzania, Procedures in the Village Land Act and procedures which are usually used in alternative are different.⁴¹² The process which is commonly used by the investors rather than the one which is laid down in the Village Land Act makes it impossible to make an informed assessment of the impacts of the process on their land rights as the affected are not fully consulted, no clear documentation of the process and compensation procedures are in place and followed.⁴¹³

410 Read Village Land Act, Cap. 114 R.E 2019together with the s 20(1) of the Land Act, Cap. 113 R.E 2019.

411 G. E. Massay and T. Kassile, Based Investment in Tanzania legal framework and realities on the ground, The Land Deal Politics Initiative, https://www.researchgate.net/publication/327425166_Land-Based_Investments_in_Tanzania_Legal_Framework_and_Realities_on_the_Ground/link/5e8836bd4585150839bd46a1/download Accessed on 14th may 2021.

412 See LHRC (2019), Human rights and Business report 2018/2019 Tanzania Mainland, Dar Es Salaam Tanzania, p.120. and M. Makwarimba and Dr. P. Ngowi on Making Land Investment Work for Tanzania: Scoping Assessment for Multistakeholder Initiative dialogue, final report March 2021.

413 Ibid

3.2.2. Compensation or Adequate Compensation following Acquisition of Land for Investment

Land laws require payment of compensation to individuals who will be or have been affected by the transferor acquisition, provided that they have legitimate rights over the land concerned.⁴¹⁴ Furthermore, the said law directed that compensation should be paid within six months after the land has been disposed of by way of transfer or acquisition.

During the survey, community members were asked whether people get fair compensation in case of land acquisition and whether there are no delays in granting compensation. Like in the previous survey, over half of the respondents (61%), said they were not sure whether people get fair and timely compensation, which raises eyebrows in terms of community members' participation in land acquisition processes. Only 5% said compensation is fair and timely, while 6% said it is unfair but timely. 16% of the respondent claimed compensation is fair but not timely, while 12% said there is no compensation. In the previous survey, 18% said they get fair compensation but not timely and 12% said compensation is unfair but timely.

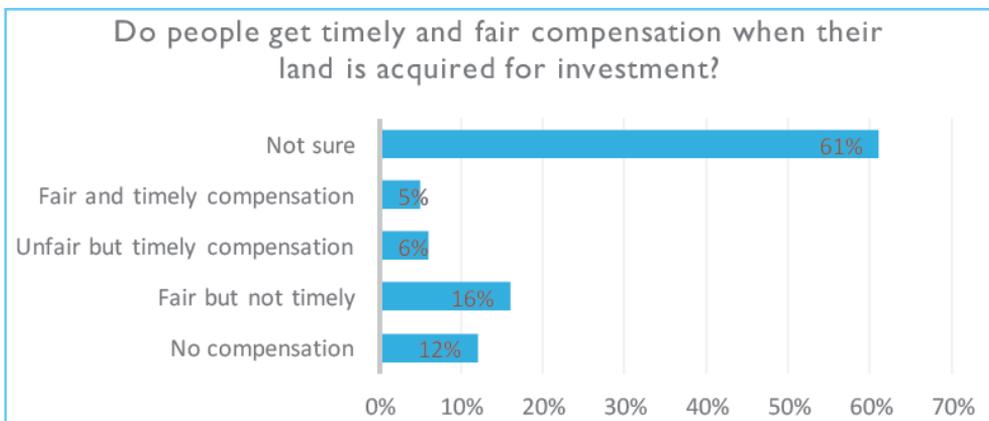


Figure 43: %Responses on timely and fair compensation following land acquisition (N=1,059)

Source: Field data, 2021

414 See Section 11 of Land Acquisition Act, 1967; Section 5(7) of the Land Act, Cap. 113 R.E 2019; and Section 4(8) of Village Land Act, Cap. 114 R.E 2019.

3.2.3. Participation of Community Members in Land Acquisition for Investment

The survey generally found out that the community members are not meaningfully consulted in the processes of land acquisition for investment in their areas. In most cases, the investors consult the local authority and the local authority consult the community members. In few cases, the investors buy land directly from individuals. In some of the regions for example in Kilimanjaro, Mtwara, Dar es Salaam and Tanga the investors were given land by the District or Municipal Councils that were set apart for commercial uses (industrial areas) and therefore they did not deal with the community.

Community meaningful participation implies involving people or the community in projects that will directly or indirectly affect their social context. The core reason for involving the community in the processes of land acquisition is to avoid future conflicts between them and the investors. Meaningful consultation/participation of the community members has been defined as understanding the context of the project and local peoples' way of life, to understand the potential impact of the project on their lives.⁴¹⁵ This allows one to place value on that, adapt your plans where possible, and ultimately ensure they can continue to operate both in the short and long- term. There are also suggested ways to which the participation of the community members can be considered a meaningful consultation or engagement as follows:

- The government should first set the legal framework for public consultation processes. Those processes should provide a clear and certain position for all parties.
- The community engagement process involves ensuring that staff have the skills and capacities to implement consultation in a meaningful way: people in key positions in government or companies understand the community context, can conduct a consultation process sensitively and can ensure the process results in positive change.
- The process is representative and inclusive and perceived as fair.
- The process is an ongoing, rather than finite, relationship.
- Consultation/engagement is a two-way or multi-way process; it may be a process of negotiation leading to an agreement between parties.

⁴¹⁵ See Wilson, E, et al (2016). *Meaningful Community engagement in the extractive industries: stakeholder perspective research priorities*. International Institute for environment and Development London.

- The process includes a way for the company (or government department) to integrate stakeholders' opinions/the results of consultation/engagement into its decision-making processes.
- The budget for the consultation/engagement process reflects that government/industry understands that up-front investment in a robust process will have long-term benefits; that community engagement is a continuous investment
- The process should be ambitious and seek to 'push the boundaries' of good practice.
- The consultation process and all the documents used in the processes should be put in the language that is understood by each party.

During the survey, business/corporate managements were asked whether they have in place any arrangement or mechanism for consulting affected parties prior to acquisition of their land. Only 6% said they have such an arrangement in place. Community members were also asked about their participation during the land acquisition for the investments, and only 22% noted that the investors engage the community members in the process of land acquisition. 70% of the respondents said they are usually not engaged in the processes of land acquisition in their areas, as indicated in figure 44 below.

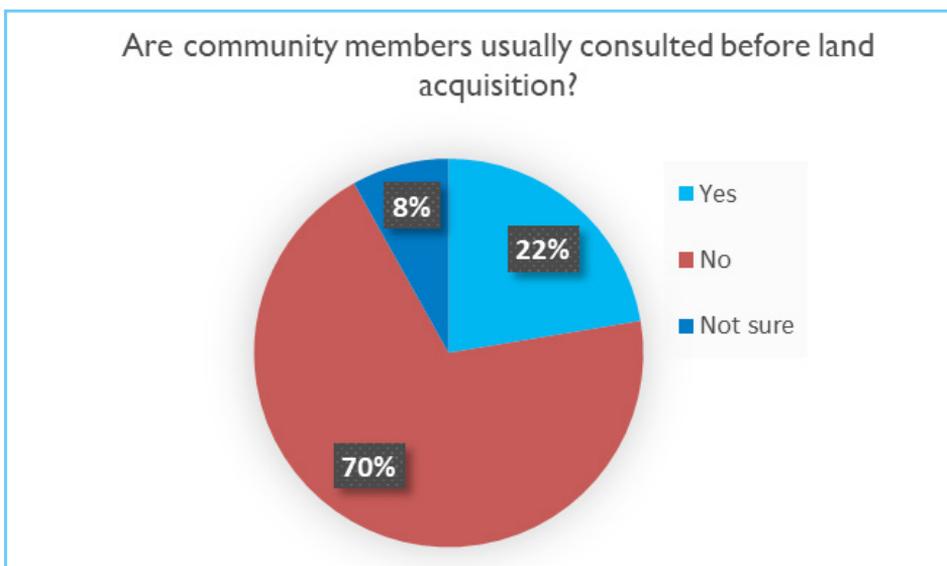


Figure 44: % Responses on citizen participation during land acquisition for investment (N=1,100)

Source: Field data, 2021

The following are few key issues regarding participation of the community members which the survey found in the different surveyed regions:

Lack of transparency, the study reveals that most of the local community members are unaware of the terms of land transaction deals and their legal implications. The local community is not involved meaningfully for them to understand what will happen after the land is acquired both in the short- and long-term run including benefits and the negative impacts. The survey found out that the land valuation processes are among the things which are done without the meaningful consultation of the community members and transparency, hence may render the acquisition process unfair or cause grievances between investors and the community members.

THE COMPENSATION CASE OF MR. MAISA IN MARA REGION

Mr Maisa is a resident of the Mara region, Matongo area. During the land acquisition process in his village, which was done by North Mara Gold Mine, Maisa had 2 mud houses. The investor compensated all 70 landowners except Mr Maisa, who refused to take his compensation which was Tshs.17,320,230/= on the ground that the valuation was not properly conducted. According to Mr. Maisa, the valuation process was not done in his presence and therefore it did not match the value of his properties, including his two mud houses. Maisa opened a case at the Land and Housing Tribunal, challenging the valuation process and the judgement was issued in his favour, awarding him a total of 50 million as fair compensation, after the tribunal found that the valuation process which was conducted on the land was improper. The mine (North Mara Gold Mine) was aggrieved with the decision of the tribunal and appealed to the High Court Mwanza. The High Court ordered the re-valuation, with both parties required to have a government representative who is a valuer, but Mr. Maisa claimed that he did not have one (a representative) since he did not understand the language which the judgement was written, and his lawyer did not notify him about the requirement. Consequently, the High Court decided that he should only be paid 17,320,230/= as compensation, which is yet to be paid to date (6 years later).

The survey also found fraud at the time of buying land especially in the cases where the investor buys land from an individual landowner. In some of the cases, they do not disclose what they are going to do on the land thereafter. For example, in Singida local government authority official raised the concern that one of his community members sold a piece of land to someone without knowing that he aimed at building a petrol station.

The language barrier is another big challenge for community engagements when acquiring land. The villagers usually do not understand English and some both Kiswahili and English. Most of the investors use English as the language of their documents including contracts. For the community to participate effectively then they need someone who can effectively engage them by understanding their local context. In Arusha, Tanga and Kilimanjaro the language barrier was one of the issues raised, that most local leaders enter into a contract with investors without considering the interests of the entire community members. Also, local leaders enter into a contract for investment without understanding the language of the contract and its legal implications.

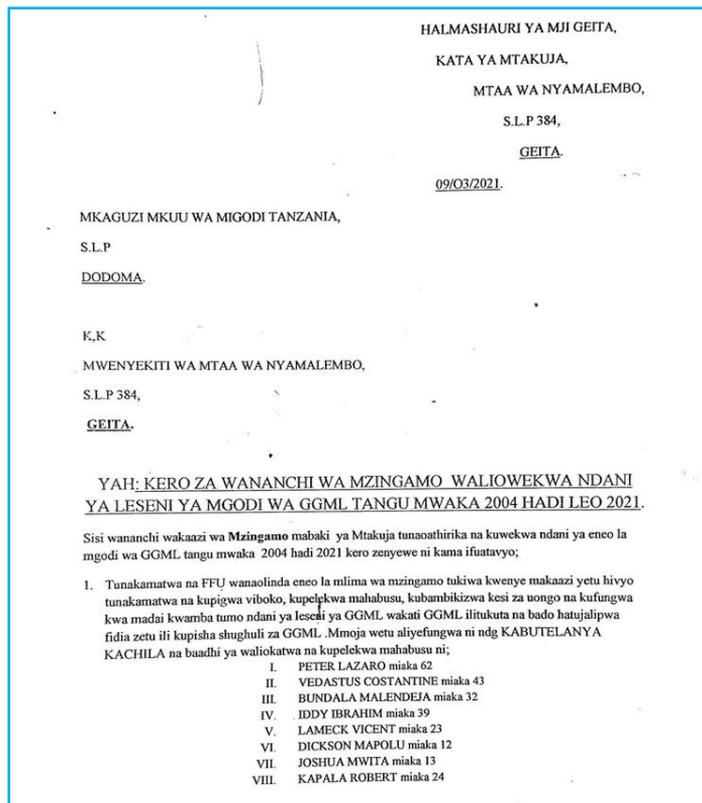
LHRC's View: Free Prior and Informed Consent (FPIC) is very important before and during investment, as it ensures community members are made aware of both positive and negative impacts, including potential threats. FPIC will also help to prevent land-related disputes or conflicts between an investor and the local community.

LHRC's Call: Businesses, ministries responsible for land, trade, and investment, as well as LGAs to ensure there is meaningful participation of community members in the land acquisition process in order to obtain free, prior, and informed consent, in line with principles of business and human rights. Villagers/community members should also ensure they have proper legal representation in such situations.

3.2.4. Disputes and Complaints about Unfair/Inadequate and Untimely Compensation

The survey found that the issues of unfair or inadequate compensation are commonly occurring in the mining areas. Geita was one of the regions in which untimely compensation was an issue specifically around the GGM mining area. The National Mineral Policy (2009) state that, "Establishment of medium and large-scale mines may cause relocation of communities and disruption of their livelihoods. Where relocation is inevitable, the Government will conduct the valuation of land and properties of the affected communities, while the investor will be responsible for payments of compensation, relocation, and resettlement. In this regard, the compensation procedures need to ensure transparency and adequate compensation rates, proper valuation, and prompt payments of compensation. Furthermore, investors in the mining industry will be required to prepare and implement sound relocation and resettlement schemes".

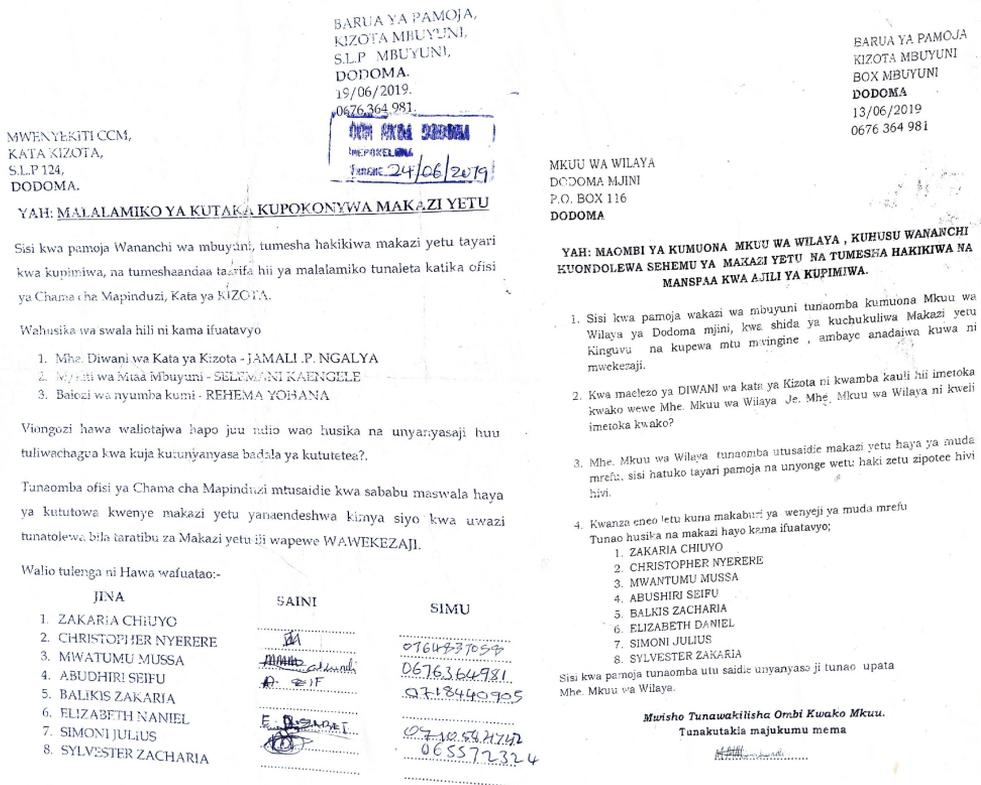
In **Geita**, the survey team met with villagers of Mtakuja ward, at Nyamalembo village. One of the villagers, Lazaro Peter, explained how he lived in the village since 1987.⁴¹⁶ They used to conduct different activities that enabled them to earn a living, including farming, cattle grazing and small-scale mining. In 2004 when GGM came in as investors they were promised that their land will be vividly compensated to leave the licensed mining area for GGM free for them to conduct their activities without any interference. Unfortunately, up to date, they are still living in the licensed mining area, they are not compensated. GGM has prohibited them to build permanent habitable houses, conduct any economic activities to enable them to earn their living as before. They also claim to face a lot of intimidations while living in the mining area. In 2021 the villagers took initiative to take the matter to the mining inspection officer and they are eagerly waiting for feedback.⁴¹⁷



Picture 27: A letter written by residents of Nyamalembo area in Geita to the Chief inspector of Mines complaining about unfair treatment and lack of compensation from GGML

⁴¹⁶ Geita HRB Survey Field Report 2021.
⁴¹⁷ Ibid.

In **Dodoma**, the survey found that there is a land dispute between residents of Kizota Ward (Dodoma Urban) and local authorities.⁴¹⁸ The residents claimed that they were being unfairly evicted from their land in disregard of due process. They noted that attempts to evict them started in 2019, and they wrote letters to the ruling party (CCM) Kizota Ward Chairperson and the Dodoma District Commissioner to complain about the unfair treatment and seek their interventions on the matter. When reached for explanation or opinion on the dispute, the land office in Dodoma City indicated that a committee has been formed to look into the matter and will provide findings and a way forward after completing investigation.⁴¹⁹



Picture 28: Letters written by residents of Kizota ward in Dodoma to CCM chairperson and the District Commissioner in 2019

418 Dodoma HRB Survey Field Report 2021.
 419 Ibid.

3.3. Access to Unutilized Land Reserved for Investment

The human rights and business survey found several complaints on the investors not providing access to communities to utilize part of their land that is unutilized. The survey also found several best practices where the investor allows the community members to access and use the unutilized land without any interference. Businesses were asked whether they allow local community members to access and use part of their land acquired for investment which is not utilized. Like in the previous survey, only 15% of the businesses said they allow community members access to such part of the land, while over 70% said they do not. While most of the investors did not give reasons why they do not allow people such access, some mentioned that some community members tend to later claim that they have acquired such piece of land or become reluctant to leave when the investors need to use the land. In Manyara, one foreign investor said that he had allowed community members to use part of land, but they started using other parts of the land and inviting other people without permission.⁴²⁰

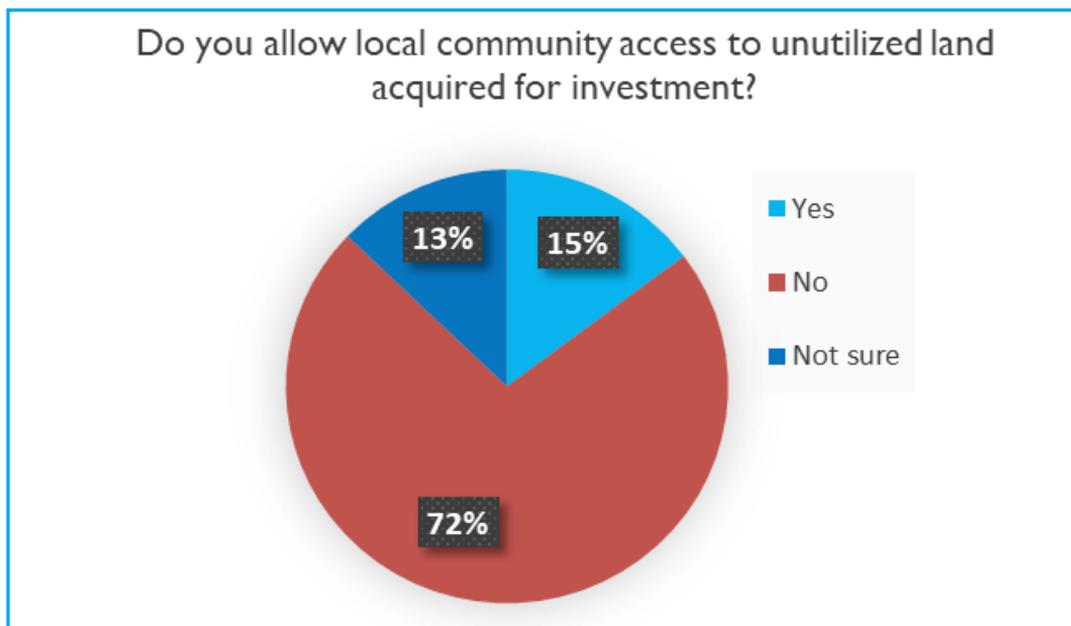


Figure 45: %Responses of businesses/investors on allowing community members access to unutilized land (N=156)

Source: Field data, 2021

⁴²⁰ Manyara HRB Survey Field Report 2021.

Community members were also asked whether they are allowed to access unutilized land by businesses/investors. Only 13% claimed that they are allowed to access such land, while 85% said they are prohibited. In the previous survey, 12% of the community members said they are allowed such access, while 57% said they are not, and 31% were not sure. Denied access was mostly reported in Manyara, Mbeya, Geita, Tabora, Mara and Tanga.

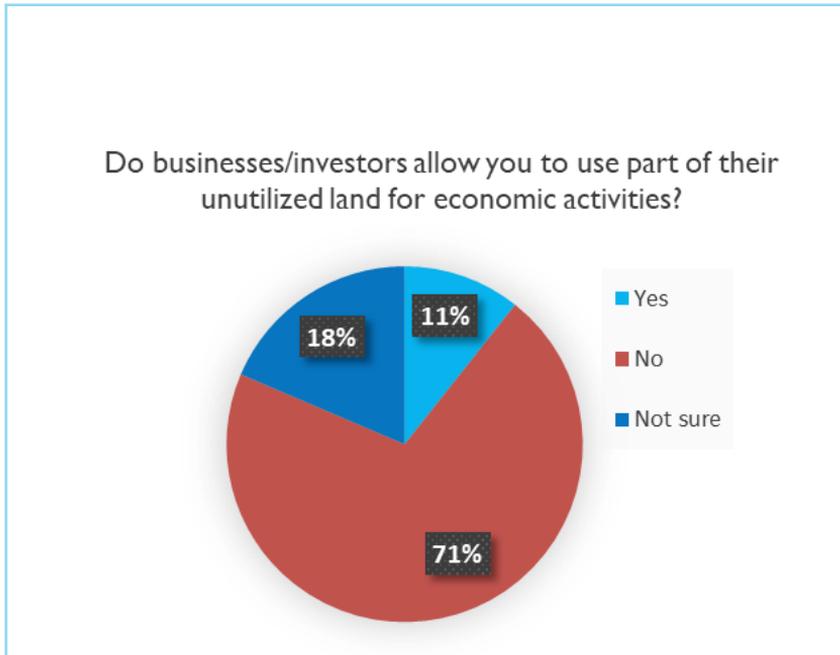


Figure 46: %Responses of community members on businesses/investors allowing them to access unutilized investment land for their economic activities (N=986)

LHRC's View: As part of corporate social responsibility, companies should put in place a mechanism for allowing local community members to access part of land they have leased, that is not utilized, for their economic activities. This could be a way of them giving back to the community, and the arrangement can be made in collaboration with local authorities.

LHRC's Call: There is need to cut the size of land investors can lease to prevent land grabbing and a few people possessing large unutilized land. When given access to unutilized land, community members should not later claim that is their land.

3.4. Effectiveness of Village and Ward Land Tribunals in resolving Land Disputes

3.4.1. Background

The Land Act, Cap. 113 R.E 2019 vests courts/tribunals with jurisdiction to hear and determine all land disputes. These courts/tribunals are from the village to the national level, including: the Village Land Council; the Ward Tribunal; the District Land and Housing Tribunal; and the Land Division of the High Court. Operational mandates of these courts are provided under the Courts (Land Disputes Settlement) Act, No.2 of 2002.⁴²¹

The village Land Council consists of seven members, three of whom must be women-all nominated by the village council and approved by the village assembly.⁴²² It receives land-related complaints, convenes meeting for hearings and mediates between and assists parties to arrive at a mutually acceptable settlement of their dispute.⁴²³

Initially, ward tribunal has jurisdiction and powers to determine land disputes in relation to the area of a district council in which it is established.⁴²⁴ But recent amendments have seen the tribunal only being given the role of the mediator.⁴²⁵ This means they are only allowed to settle the matter amicably and when they fail to do so within 30 days from the date the matter was instituted, then the aggrieved party may proceed to institute the land dispute at the District Land and Housing Tribunal without certificate from the Ward Tribunal.⁴²⁶ The Minister responsible for legal affairs may, in consultation with the Minister responsible for ward tribunals and Minister responsible for lands, make rules prescribing the conduct and procedure of mediation of land disputes.⁴²⁷

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.⁴²⁸ It is composed of one Chairperson, not less than two assessors, whose opinion the chairperson must take into account in reaching the decisions.⁴²⁹ 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

421 See LHRC (2019), *Human Rights and Business Report 2018/2019*, at www.humanrights.or.tz.

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

423 Ibid, section 7

424 Ibid, section 10(1)

425 Section 47 of the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2021.

426 Ibid.

427 Ibid.

428 Section 22(2) of the Courts (Land Disputes Settlement) Act, No. 2 of 2002

429 Ibid, section 23

or member of the household, or authorized officer of a body corporate.⁴³⁰ The District Land and Housing Tribunal has original jurisdiction on all land matters⁴³¹ and has a mandate to hear an appeal against any decision of the Ward Tribunal.⁴³²

The High Court has original jurisdiction in the proceedings for the recovery of possession of the 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.⁴³³ It also has the mandate to entertain proceedings under the investment and land laws, where the government is involved.⁴³⁴ The High Court also determines appeal from the District and Housing Tribunal; and has revisionary powers. The Court of Appeal entertains all matters of appeal relating to land disputes from the High Court.⁴³⁵ It is the supreme Court in Tanzania and thus has powers to affirm or overturn decisions of the lower courts.

The year 2021 has seen several legal reforms so far, including in the justice sector. Key among the legal reforms during this period has been the use of Swahili as the language of the court and all laws to be in Swahili Language. The Written Laws (Miscellaneous Amendments) Act No. 1 of 2021 has amended the Interpretation of Laws Act [Cap 1] to introduce Swahili as the language of laws of the United Republic of Tanzania by amending section 84 of the Act.⁴³⁶ It also expressly states that all laws which are currently in English Language should be translated into Swahili Language.⁴³⁷ Additionally, the amendment law provides that the language of courts, tribunals, and other bodies charged with the duties of dispensing justice should be Swahili.⁴³⁸ This means the land and housing tribunals are also required to use the Swahili Language in dispensation of justice.

3.4.2. Survey Findings

The survey found gaps in the village and land tribunals' ability to effectively resolve land disputes. Interviewed with LGA officials, including land officers, indicated that village and ward land tribunals generally lack effectiveness in resolving land disputes due to various key challenges. These challenges include:

430 Ibid, section 30

431 See section 33 of the Courts (Land Disputes Settlement) Act, No. 2 of 2002

432 Ibid, Section 34(1)

433 See section 37 of the Courts (Land Disputes Settlement) Act, No. 2 of 2002

434 Ibid

435 Ibid, section 38(1)

436 Section 4 of the Written Laws (Miscellaneous Amendments) Act No. 1 of 2021.

437 Ibid.

438 Ibid, section 5.

Low legal knowledge of members of the village and ward land tribunals, that the tribunal members lack legal background that can enable them to analyse the material facts of the complaints and come up with a decision that might be satisfactory to both parties. The low understanding of the tribunal members on legal issues makes them victims when dealing with legal expatriates from the Investors companies.

“Kamati zipo lakini ufanisi wake ni mdogo hawana mafunzo ya mara kwa mara. Huwezi

kushindana na Mwanasheria wa Kampuni wakati nyinyi kamati hakuna wataalamu wa Sheria lazima mtashindwa tu..”

“The committees are there, but their problem is lack of effectiveness, as they lack regular training. You cannot compete with a company lawyer while you lack legal expertise on your side. You are bound to lose.”

A community member - Singida

This challenge was also raised in the previous report prepared by LHRC, Human rights and business report 2018/19- Tanzania mainland. The report quoted the minister responsible for land, Hon. William Lukuvi who noted that most of the tribunal members do not have a legal background and make decisions that are not clearly understood or not in line with the law.

Poor management of the tribunals, it is reported that the tribunals are not well managed because there has been the intervention of the work of the land tribunals by the Judiciary while they are under the umbrella of the Ministry of Land, Housing and Human Settlements. It is not clear whether they are under management of which of the two institutions. Although there have been efforts by the government to bring the tribunals under the Judiciary. We urge the government to hasten the process to ensure that the tribunals are well managed.

“The tribunals do not meet exactly the needs or rights of the citizens. this is because ziko katikati na kutokueleweka kama ziko chini ya Wizara ya Ardhi nyumba na makazi au mahakama. Ivo hizi taasisi mbili zinatupiana mpira mara nyingine badala ya performing it’s responsibility ya kuongoza hizo tribunals.”

“The tribunals do not meet the exact needs or effectively protect the rights of citizens. This is because they lack a clear identity, as we don’t know whether they are under the Ministry of Lands, Housing and Human Settlement or under the Judiciary. The two institutions are both avoiding taking the responsibility of guiding the tribunals and ensure they effectively carry out their duties.”

LGA official - Kilimanjaro

Corruption, tribalism, bias, and delay of the decisions. There are so many claims found by the survey from the community members which are said to be the major reasons for the ineffectiveness of the tribunals. Members of the tribunals are said to be corrupt, tribalists and bias and therefore fail to deliver justice. Delay of the decisions also was another issue analysed by the community members.

Budgetary constraints, the low budget has made it impossible to conduct frequent training for the tribunal members. Also, the tribunals are hunted with a number of challenges as a result of the low budget including lack of office and office equipment.

LHRC’s View & Call: Challenges facing land tribunals have been well documented, including shortage of manpower and capacity gaps. There is need to strengthen these tribunals and ensure qualified personnel are in charge of them to effectively administer land justice. Collaborative efforts on the part of the Ministry responsible for land and the Judiciary are needed in this regard. There is need to provide them with regular trainings and seminars on mediation.

3.5. Human rights violations resulting from unfair land acquisition and compensation

Several 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. below (corporate respect on human rights).

3.6. 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. The key findings on the labour rights and standards for the survey covering the period of 2020/21 are compared with those of the year 2018/19.

Table 23: Comparison of some of the key performance indicators on land rights and standards

Labour Standard	Performance Indicators	
	2019	2021
Participation during the land acquisition	<ul style="list-style-type: none"> 22% of the respondents said community members are involved in the land acquisition process, 30% they were not, and 48% said they were not sure. 	<ul style="list-style-type: none"> 21% of the respondents said community members were involved in the land acquisition process, 71% said they were not involved in the process, and 8% said they were not sure.
Compensation	<ul style="list-style-type: none"> 18% said they got 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 they were not sure whether compensation is granted and timely. 	<ul style="list-style-type: none"> 16% said compensation is fair but not timely, 6% said the compensation is unfair but timely, 11% said there is no compensation granted at all. While 5% said the compensation is fair and timely, 63% were not sure whether compensation is granted and timely
Access to unutilized land.	<ul style="list-style-type: none"> 57% of community members indicated that they are not allowed such access, 12% said they are allowed while 31% were not sure if they were allowed or not. 	<ul style="list-style-type: none"> 61% of the community members said that they are not allowed to access the unutilized land, 9% said they are allowed to access the land while 30% were not sure if they were allowed or not.

CHAPTER FOUR:

BUSINESS COMPLIANCE WITH TAX OBLIGATIONS

4.1. Introduction: Taxation as a Human Rights Issue

Concerned with the growing impact of business activities on the enjoyment of economic, social and cultural rights,⁴³⁹ in June 2017 the UN Committee on Economic, Social and Cultural Rights (CESCR) issued its General Comment No. 24 titled “State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities.”⁴⁴⁰ 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 Covenant rights.”⁴⁴¹ 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.”⁴⁴² CESCR further reminds states that in order to combat corporate tax abuses, they should combat transfer pricing practices and deepen international tax cooperation.⁴⁴³

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,⁴⁴⁴ especially economic, social, and cultural rights. It is essential for achieving economic growth⁴⁴⁵ as one of the major sources of government revenue.

439 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.

440 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.

441 Ibid, para 37.

442 Ibid, para 10.

443 Ibid, para 37.

444 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.

445 See Action Aid, 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,⁴⁴⁶ the Value Added Tax Act,⁴⁴⁷ Stamp Duty Act⁴⁴⁸ and the Tanzania Revenue Authority Act.⁴⁴⁹ The Tanzania Revenue Authority Act, revised in 2019, 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. TRA performs the following key functions:

- To administer and give effect to the laws or the specified provisions of the laws on assessment, collection, and accounting for revenue,
- To monitor, oversee, coordinate activities and **ensure fair, efficient and effective administration of revenue laws** by revenue departments in the jurisdiction of the Union Government,
- To monitor and ensure collection of fees, levies, charges or any other tax collected by any Ministry, Department or Division of the Government,
- To **advise** the Minister and other relevant organs on all matters pertaining to fiscal policy, the implementation of the policy and the constant improvement of policy regarding revenue laws and administration,
- **To promote voluntary tax compliance to the highest degree possible,**
- To take such measures as may be necessary **to improve the standard of service given to taxpayers**, with a view to improving the effectiveness of the revenue departments and maximizing revenue collection,
- To determine the steps to be taken to counteract fraud and other forms of tax and other fiscal evasions; and
- To produce trade statistics and publications on a quarterly basis.

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 taxes paid by businesses, including corporate tax.

446 CAP 332, R.E 2008.

447 Act No. 5 of 2014.

448 CAP 189, R.E 2006.

449 Act No. 11 of 1995.

4.2. Payment of Taxes by Businesses: Trends and Current Situation

The law requires businesses, including companies, 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 other organizations including clubs, societies, associations and other unincorporated bodies.”⁴⁵⁰ 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.

4.2.1. Revenue Collection Trends

For the past seven years, TRA has been reporting increased revenue collection and significant improvement in reaching the targets. Trends indicate a general increase in direct taxes collected by TRA, including corporate taxes. Recently, in October 2019, TRA announced that it had collected a total of Tshs. 1.76 trillion in the month of September 2019, breaking a record since the authority was established in July 1966.⁴⁵¹ This is equal to 97.2% of the target, which was Tshs. 1.81 trillion, and a 29.18% increase compared to revenue collected in September 2018.⁴⁵² TRA also revealed that it had collected Tshs. 1.25 trillion in July 2019, equal to 91.92% of the target.⁴⁵³ In December 2019, this record was also broken after TRA announced that it had collected Tshs. 1.98 trillion during that period.⁴⁵⁴ More recently, TRA announced that it had collected Tshs. 2.088 trillion in the month of December 2020, equal to 101% of the target.⁴⁵⁵ This broke the record revenue collection set in December 2019.⁴⁵⁶

In terms of corporate taxes, statistics show that contribution of corporate tax increased from Tshs. 1,379.7 billion in 2015/16 to 1,660.2 in 2017/18.⁴⁵⁷ While statistics for the periods of 2019 to 2021 could not be obtained, based on the overall progress made in tax collection by TRA, it is fair to assume that the amount of corporate taxes collected during the period of 2019 was good. However, given the huge impact of Covid19 on businesses, it is fair to assume that for the year 2020 and part of 2021 reaching revenue collection targets on the part of companies and other businesses was difficult, hence less revenue collected.

450 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.

451 “TRA yavunja rekodi ya miaka 23, yakusanya Sh1.7 trilioni” Mwananchi Newspaper (Online) 01 October 2019 at <https://www.mwananchi.co.tz/mw/habari/kitaifa/tra-yavunja-rekodi-ya-miaka-23-yakusanya-sh1-7-trilioni--2990140>, accessed on 2nd June 2021.

452 Ibid.

453 Ibid.

454 LHRC Media Survey, 2 January 2020.

455 See “TRA YAVUNJA REKODI, YAKUSANYA TRILIONI 2.088 KWA MWEZI WA DESEMBA, 2020.”

TRA ONLINE TV, 1 Jan 2021, at <https://www.youtube.com/watch?v=xMUpWod8fWE>, accessed 2nd June 2021.

456 Ibid.

457 See National Bureau of Statistics (NBS), Tax Statistics Report 2017/18 Tanzania Mainland, June 2019 at https://www.nbs.go.tz/nbs/takwimu/Tax/TAX_STATISTICS_REPORT_2017-18.pdf, accessed 2nd June 2021.

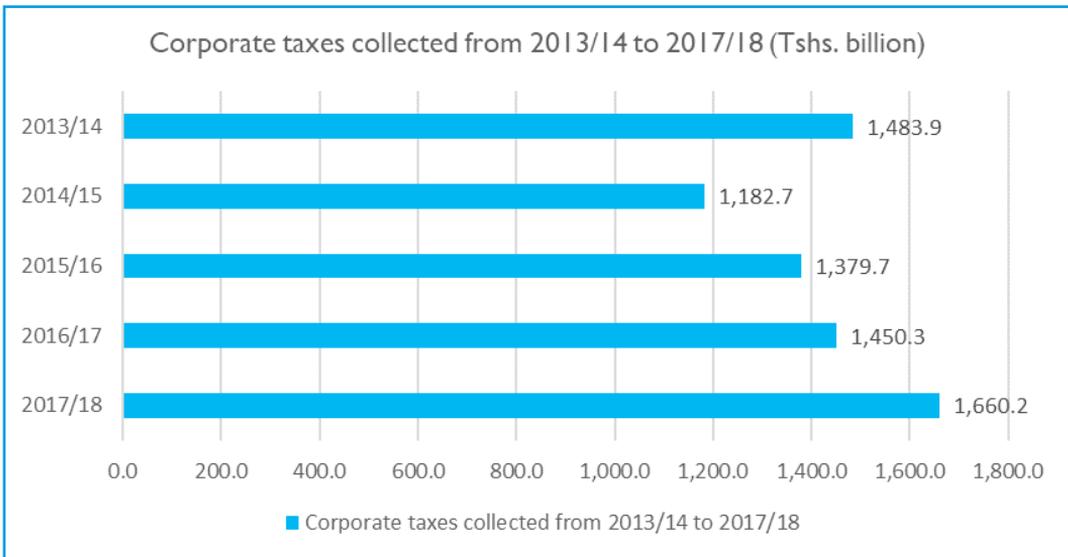


Figure 47: Amount of corporate taxes collected in Tanzania Mainland from 2013/14 to 2017/18 (Tshs. Billion)

Source: Tax Statistics Report 2017/18 Tanzania Mainland

4.2.2. 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.⁴⁵⁸ According to the UN Practical Manual on Transfer Pricing for Development Countries, transfer pricing refers to setting of prices for transactions between associated enterprises involving the transfer of property or services.⁴⁵⁹ It is “the general term for the pricing of cross-border, intra-firm transactions between related parties.”⁴⁶⁰ A good example is when Company A sells equipment to Company B, the latter being a subsidiary company (affiliated to Company A).

Despite the good work done by TRA in increasing revenue collection in the past seven years, including corporate taxes, Tanzania continues to suffer revenue loss due to various factors, including tax avoidance and evasion, as well as transfer pricing and tax exemptions.

458 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.

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

460 Ibid.

In 2018, the International Monetary Fund (IMF) revealed that 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.⁴⁶¹ In 2020, a report by the Tax Justice Network titled “The State of Tax Justice 2020: Tax Justice in the time of COVID-19,” governments around the world are currently **losing USD427 billion each year to tax avoidance and evasion** due to companies shifting their monies to tax havens.⁴⁶² This is **equivalent to annual salaries of nearly 34 million nurses every year or annual salary of one nurse every second.**⁴⁶³ Of the USD 427 billion lost, USD245 billion is lost to global corporate tax abuse, while USD182 billion is lost to global private tax evasion.⁴⁶⁴ According to the Executive Coordinator at the Global Alliance for Tax Justice, Dereje Alemayehu, “The State of Tax Justice 2020 captures global inequality in soberingly stark numbers. Lower income countries lose more than half of what they spend on public health every year to tax havens – that’s enough to cover the annual salaries of nearly 18 million nurses every year.”⁴⁶⁵



Picture 29: Extract from *The State of Tax Justice 2020 Report* indicating the economic impact of global corporate tax abuse and evasion

According to *The State of Tax Justice 2020 Report*, Tanzania is currently losing USD299,485,211 worth of tax annually, of which USD279,081,381 (93%) is the annual tax loss due to corporate tax abuse and USD20,403,830 is the annual tax loss due to offshore tax evasion.⁴⁶⁶ The total tax revenue loss of USD299,485,211 is equivalent to 40.76% of the total tax loss as percent of public health expenditure or annual salaries of 135,577 nurses.⁴⁶⁷

461 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.

462 See Tax Justice Network, *The State of Tax Justice 2020: Tax Justice in the time of COVID-19*, November 2020 at https://www.globaltaxjustice.org/sites/default/files/The_State_of_Tax_Justice_2020_ENGLISH.pdf, accessed 2nd June 2021.

463 Ibid; See also Jeanne Whalen “Tax cheats deprive governments worldwide of \$427 billion a year, crippling pandemic response: study” *The Washington Post* (Online), 20 November 2020 at <https://www.washingtonpost.com/us-policy/2020/11/19/global-tax-evasion-data/>, accessed 2nd June 2021.

464 *The State of Tax Justice 2020: Tax Justice in the time of COVID-19*.

465 See “\$427 billion lost to tax havens every year” *Global Alliance for Tax Justice*, 20 November 2021 at <https://www.globaltaxjustice.org/en/latest/427-billion-lost-tax-havens-every-year>, accessed 2nd June 2021.

466 See Tax Justice Network, *The State of Tax Justice 2020: Tax Justice in the time of COVID-19*, November 2020; See also James Anyanzwa “Kenya, Tanzania enable multinationals evade taxes” 16 March 2021 at <https://www.theeastafrican.co.ke/tea/business/kenya-tanzania-enable-multinationals-evade-taxes-3323250>, accessed 2nd Jun 2021.

467 Ibid.

Tanzania's total annual tax revenue loss, which is mainly contributed by corporate tax abuse, could pay salaries of 135,577 nurses annually.

The State of Tax Justice 2020 Report

A more recent report on tax justice report by Tax Justice Network Africa (TJNA), Corporate Tax Haven Index⁴⁶⁸ (CTHI 2021), indicates that Tanzania is among 70 countries in the world which allow multinational corporations to underpay corporate income tax, responsible for 0.1% of the world's corporate tax abuse risks,⁴⁶⁹ leading to lower revenue collections. According to the report, Tanzania is ranked 65th in terms of how much scope for corporate tax abuse its tax and financial systems allow, with the heaven score of 48/100.⁴⁷⁰

Regarding tax incentives, Tanzania has been known as one of the countries in Africa 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. Recent CAG reports have attested to this, indicating "unreasonable incentives in tax" for investment companies.⁴⁷¹ Major beneficiaries of tax exemptions are multinational investors which possess certificates of incentives from the Tanzania Investment Centre (TIC).⁴⁷²

4.2.3. Tax evasion and avoidance methods

In July 2018, former President of the United Republic of Tanzania, the Late H.E. John Pombe Magufuli, identified main methods used to avoid tax in Tanzania, including transfer pricing.⁴⁷³ 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.⁴⁷⁴ 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 them 30 days to pay their tax dues.⁴⁷⁵ In June 2019, the former President had

468 The Corporate Tax Haven Index is a ranking of jurisdiction most complicit in helping multinational corporations underpay corporate income tax. The Corporate Tax Haven Index thoroughly evaluates each jurisdictions tax and financial systems to create a clear picture of the world's greatest enablers of global corporate tax abuse, and to highlight the laws and policies that policymakers can amend to reduce their jurisdiction's enabling of corporate tax abuse.

469 Tax Justice Network Africa (TJNA), Corporate Tax Haven Index – 2021, at <https://cthi.taxjustice.net/cthi2021/country-list.pdf>, accessed 2nd June 2021.

470 Ibid.

471 CAG Report 2015/2016.

472 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.

473 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.

474 Ibid.

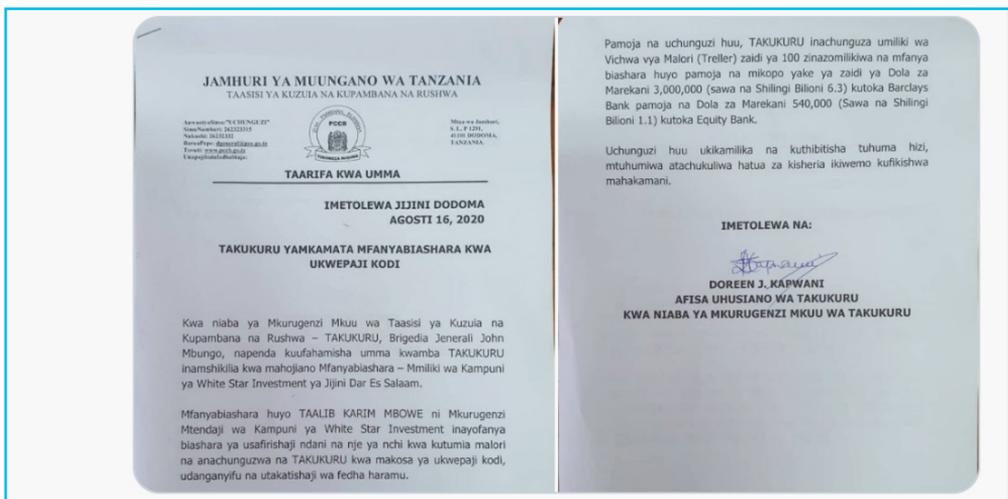
475 See EATV "Rais Magufuli atoa siku 30 kwa wafanyabiashara" 7 June 2019 at <https://www.eatv.tv/news/current-affairs/rais-magufuli-atoa-siku-30-kwawafanyabiashara>, accessed 20th September 2019.

revealed that some businesses tend to maintain two registers as a way of avoiding tax, one which contains true accounts (indicating profits) and sent to the bank, and another which contains fake accounts (usually indicating loss) and sent to TRA.⁴⁷⁶

In December 2019, TRA revealed that traders were using new methods to evade tax. The methods include issuance of electronic fiscal devices (EFDs) receipts which indicate a lesser amount and issuance of fake receipts from machines not provided by TRA.⁴⁷⁷ It was also reported that some businesses resort to convincing customers not to demand receipts in return for a reduced price (discount) and in some cases customers may be given receipts and then required to return them later⁴⁷⁸

4.2.4. Reported cases of tax evasion and avoidance

During this reporting period, LHRC documented at least two reported incidents of tax evasion. In the first incident, the Prevention and Combating of Corruption Bureau (PCCB) reported in August 2020 that it had arrested a businessperson, Taalib Karim Mbowe, for tax evasion and money laundering. The accused person was the Executive Director of White Star Investment Company.⁴⁷⁹



Picture 30: A statement by PCCB over arrest of a businessman accused of tax evasion

476 Gwamaka Alipipi "JPM afichua mbinu za ukwepaji kodi" Nipashe Newspaper, 08 June 2019, at <https://www.ippmedia.com/sw/habari/jpm-afichua-mbinu-za-ukwepaji-kodi>, accessed 2nd June 2021.

477 Rosemary Mirono "Tanzania: TRA Reveals Traders' New Methods of Tax Evasion" The Citizen Newspaper (Online) 27 December 2019, at <https://allafrica.com/stories/201912270601.html>, accessed 2nd June 2021.

478 Ibid.

479 See a statement by PCCB at <https://twitter.com/CloudsMediaLive/status/1294935481654956032/photo/2>, accessed 2nd June 2021.

In October 2020, PCCB announced that it has arrested three officials of the Tanzania Ports Authority (TPA) and one businessman, who were accused of tax evasion, corruption, and occasioning Government loss.⁴⁸⁰ According to the statement issued by PCCB, three TPA officials (Lusubilo Anonisy Mwakyusa; Morris Charles Mchindiuza; and Herman Ndiboto Shimbe), together with Director of Ntinyako Company Limited (Eliya Stephano Ntinyako), were to be arraigned in court for committing corruption and economic crimes, including tax evasion. It was stated that they had occasioned TPA the loss of Tshs. 619,278,260.52; and the tax evasion caused the loss of Tshs. 37,837,409.26.⁴⁸¹

4.3. Tax Obligations: Perceptions of Companies and Small Business Owners

During the survey, businesses were asked about the affordability/fairness of various taxes imposed by the Government. 43% of the respondents claimed the taxes are affordable/fair, a 4% less compared to those who participated in the previous survey in 2019. Another 43% of the respondent said the taxes are not affordable/fair, while the remaining 14% said they were not sure.

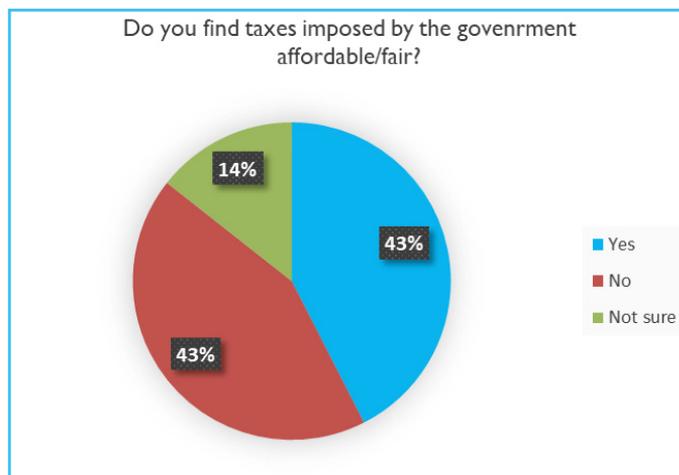


Figure 48: %Responses on perception over taxes imposed by the government (N=160)

Source: Field data, 2021

480 "TAKUKURU YAWABURUZA KORTINI WATUMISHI WATATU TPA TUHUMA ZA UKWEPAJI KODI, KUSABABISHA HASARA" Shinyanga Press Club Blog, 12 October 2020.

481 Ibid.

Among the respondents who claimed that the taxes were not fair, their major concern was different types of taxes they have to pay, imposed by different regulatory or tax collection authorities, including TRA and council officials. This concern was especially aired almost by all small and medium-sized businesses/enterprises (SMEs) that were surveyed, who claimed that multiplicity of taxes was making it difficult for them to do business and pay taxes. They recommended for some of the taxes to be combined. Others recommended for penalties for failure to pay taxes on time to be reasonable to encourage businesses to pay.

“Kuna kodi nyingi sana za halmashauri tunatozwa kwenye hotel na zinatuumiza. Wanatakiwa waweke kodi ya Halmashauri iwe moja inayobeba kodi nyingine ndogo za Halmashauri.”

“There are too many levies paid to the LGA which is too much for hotel owners. There should only be one levy payable to the authority, which shall replace all other levies.”
Hotel Management Official - Kilimanjaro

“Kwa kweli serikali tunaomba iangalie tena namna ya kupunguza viwango vya kodi, ili sisi wenye viwanda vidogo vidogo tupate faida angalau kidogo tusiendelee kwa hasara.”

“We request that the Government considers reducing the tax rates so that even the SMEs can make profits and avoid operating at a loss.”
SME management official - Dodoma

In Shinyanga, business owners and market traders complained about multiplicity of taxes by different authorities, including TRA, OSHA, and LGAs.⁴⁸² They claimed that these taxes are making it difficult for them to make profit, constituted harassment, and have forced some of the business owners to close their businesses. Some of the interviewed business owners also complained about unfair determination of tax payable. They accused some of the TRA officials of not properly determining the taxes that are required to pay, making, or forcing them to pay more than they realistically should.⁴⁸³ At *Ngusonane Market*, market traders complained about being expected to pay various taxes and levies, and usually without being given receipts, and when they question the market authorities they are usually met with an angry reaction.⁴⁸⁴

482 Shinyanga HRB Survey Field Report 2021.

483 Ibid.

484 Ibid.

“Mfumo wa kodi ubadilike na itengwe kodi maalumu kulingana na aina ya biashara au kundi la wafanya biashara fulani mfano wamachinga, vipodosi, nguo, chakula n.k kwa kuangalia mtaji na waendane na hali ya biashara kwani kwa mfano sasa hivi kutokana na janga la Corona, biashara hakuna lakini wao wanadai kodi kubwa ambayo hatuna sasa inakuwa ni vita.”

“The tax system should be changed, and taxes should be imposed depending on the type of business or a group of businesses, for instance petty/itinerant trades, clothing traders, food vendors, e.t.c, depending also on the capital. Taxes imposed should also consider the situation on the ground, for instance the Corona pandemic, which has seriously affected business. But the tax authorities are still imposing high taxes, which are too much for us to afford.”

Business owner – Kahama, Shinyanga

LHRC's View: Tax burden is more of an issue with small and medium enterprises (SMEs) because big companies/multinational corporations usually enjoy various tax exemptions/incentives. Indeed, SMEs in Tanzania have always expressed concern with multiplicity of taxes and high tax rates.⁴⁸⁵ They play a major role in most economies, particularly in developing countries such as Tanzania. It is therefore important to create a favourable environment for them to grow and thrive, including in fair taxes. According to the World Bank, SMEs represent about 90% of businesses and more than 50% of employment worldwide and contribute up to 40% of national income (GDP) in emerging economies.⁴⁸⁶

LHRC's Call: SMEs to be afforded more protection in terms of tax accountability and responsibility. This move will also help to enhance labour rights of workers employed by the SMEs.

4.4. Human Rights Violations Resulting from Non-Compliance with Tax Obligations

Taxes are the bedrock or foundation for realization of economic and social rights, which are guaranteed under the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. As a party to ICESCR, having ratified the human rights instrument in 1976, Tanzania is obligated to ensure progressive realization of social, economic and cultural rights of Tanzanians depending on availability of resources.⁴⁸⁷ To achieve this, the Government needs to mobilize its resources, taxation being one of the major sources of

⁴⁸⁵ See Jonia Kashalaba “Could tax reductions on SMEs have positive impact on Tanzania’s economy?” The Citizen Newspaper (Online) 7 June 2017, at <https://www.thecitizen.co.tz/tanzania/news/business/could-tax-reductions-on-smes-have-positive-impact-on-tanzania-s-economy--2591820>, accessed 2nd June 2021.

⁴⁸⁶ See World Bank “SMALL AND MEDIUM ENTERPRISES (SMES) FINANCE” <https://www.worldbank.org/en/topic/sme/finance>, accessed 2nd June 2021.

revenue. To this end, business 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. Provided 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. To guarantee effective mobilization of these resources the Government has a duty to ensure there are no loopholes in taxation laws.

CHAPTER FIVE:

CORPORATE SOCIAL RESPONSIBILITY, ENVIRONMENTAL RESPONSIBILITY AND CORPORATE RESPECT FOR HUMAN RIGHTS

5.1. Overview of Corporate Social Responsibility and Environmental Responsibility

Corporate Social Responsibility

According to the United Nations Industrial Development Organization (UNIDO), corporate social responsibility (CSR) is when companies integrate social and environmental concerns in their business operations and interactions with their stakeholders.⁴⁸⁸ It can also be defined as strategies used by companies that are designed to ensure that their operations are ethical and beneficial for the society.⁴⁸⁹ It includes environmental responsibility; human rights responsibility; philanthropic responsibility; and economic responsibility.⁴⁹⁰ This means that managements of business enterprises are not only or should not only seek to maximise profits or shareholders' value but also protect the interests of other members

of the society, including workers, consumers, and the community as a whole (social responsibility of businesses).⁴⁹¹ CSR therefore includes business or corporate enterprises having good and fair employment practices and recognizing workers' rights; businesses supplying consumers safe products to prevent harm and refrain from misinforming or misleading them; and business enterprises do not damage the environment, and doing their best to mitigate the damage by adopting a high standard of environmental protection.⁴⁹² Examples of CSR include supporting education, health, and water initiatives; providing sponsorships; and contributing funds for various local projects.

CSR Benefits

- Enhanced access to capital and markets
- Increased sales and profits
- Operational cost savings
- Improved productivity and quality
- Efficient human resource base
- Improved brand image, recognition, and reputation
- Retaining key and talented employees
- Enhanced customer loyalty
- Better decision making
- Enhanced influence in the industry
- Reduced regulatory burden

UNIDO/CFI

488 See UNIDO "What is CSR?" at <https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr>, accessed 2nd June 2021.

489 See Corporate Finance Institute (CFI) "What is Corporate Social Responsibility (CSR)?" at <https://corporatefinanceinstitute.com/resources/knowledge/other/corporate-social-responsibility-csr/>, accessed 2nd June 2021.

490 Ibid.

491 See Subho Mukherjee "Social Responsibility of Business" at <https://www.economicdiscussion.net/business/social-responsibility/social-responsibility-of-business/10141>, accessed 2nd June 2021.

492 Ibid.

The concept of social responsibility started to take shape in 1970s, leading to development of several instruments relating to such matter over the years. Key instruments governing CSR are the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises; the United Nations Global Compact; the International Organization for Standardization (ISO) 26000 Guidance on Social Responsibility; the United Nations Guiding Principles on Business and Human Rights; and the International Labour Organization (ILO) Conventions.⁴⁹³ These are what are known as the core set of internationally recognized principles and guidelines regarding CSR.⁴⁹⁴ Apart from the ILO Conventions, these instruments are not binding, but some of the principles and guidelines contained in them reflect human rights principles covered in the international bill of rights.

Corporate Environmental Responsibility

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.”⁴⁹⁵ Businesses, especially companies, now have a duty to improve their environmental performance and protect the environment. CER stems from the Ten

Environment
Principle 7: Business 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.
Ten Principles of the UN Global Compact

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.**”

To ensure corporate environmental responsibility, Tanzania has put in place various laws, regulations, policies, and rules. These include 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

⁴⁹³ Martje Theuvs & 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.

⁴⁹⁴ Ibid.

⁴⁹⁵ 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>

the major body tasked with protection and management of environment in Tanzania. It has a task of protecting the right to clean, safe and healthy environment, which is protected under the Environmental Management Act.⁴⁹⁶

5.2. Corporate Social Responsibility in Tanzania: Field Findings

5.2.1. Positive CSR Trends: Businesses supporting local development projects

CSR activities in education

Most of the CSR activities that were observed during the survey were to support the education sector. These activities were mostly reported in Mara, Singida, Mtwara, Dar es Salaam, Shinyanga, Manyara, Mbeya, and Dodoma.

In **Mara**, Barrick's North Mara Gold Mine was found to be the outstanding CSR performer, contributing to education and health initiatives.⁴⁹⁷ The survey found an ongoing construction of Matongo Secondary School, funded by the Mine.



Picture 31: Ongoing construction of Matongo Secondary School in North Mara, funded by Barrick's North Mara Gold Mine

⁴⁹⁶ Section 4(1) of the Environmental Management Act 2004.
⁴⁹⁷ Mara HRB Survey Field Report 2021.

In **Singida**, the survey team observed desks donated by the *Kijiji cha Nyuki Industry*, as part of its CSR initiatives. The desks were donated to Kisaki Primary School, located in Singida Municipal Council.⁴⁹⁸



Picture 32: School children found sitting on desks donated by Kijiji cha Nyuki Industry in Singida MC, Singida Region

In **Geita**, AngloGold's Geita Gold Mine (GGM) was once again found to be the leading performer in CSR activities in the region. One of the Mine's contribution in the education sector was construction of a secondary school, Lukaranga Secondary School.⁴⁹⁹ The Mine was also said to have supported construction of a building for the Open University of Tanzania.



Picture 33: *Lukaraga Secondary School (left) and Open University of Tanzania (right) buildings built with the support of GGM in Geita*

498 Singida HRB Survey Field Report 2021
499 Geita HRB Survey Field Report 2021.

In **Mtwara**, Dangote Cement Plc's *Dangote Industries Tanzania Limited* was also observed to do well compared to other companies/businesses in terms of CSR, including through provision of employment opportunities to locals and contributions in education and health sectors.⁵⁰⁰ The company's CSR activities in the education sector included construction of four classrooms, sixteen toilets, and administration block at Kyobya Primary School, as well as construction of teacher houses.⁵⁰¹



Picture 34: *Classrooms under construction at Kyobya Primary School in Mtwara, built with the support of Dangote Cement Industry*



Picture 35: *Teacher houses under construction in Mtwara Region, built with the support of Dangote Cement Industry*

500 Mtwara HRB Survey Field Report 2021.
501 Ibid.

In **Dar es Salaam**, *CRDB Bank* and *NMB Bank* also made donations to schools as part of their CSR programmes.⁵⁰² *CRDB Bank* renovated school buildings at Mashujaa Primary School, while *NMB Bank* donated 200 desks at King'ongo Primary School. Another bank, *DCB Bank*, donated desks to Mburahati Primary School. To support construction of King'ongo Primary School, *ALAF Company* and *Twiga Cement Company* also contributed iron sheets and 200 bags of cement, respectively.⁵⁰³



Picture 36: Desks donated by NMB Bank at King'ongo Primary School in Dar es Salaam

In **Tanga**, *Tanga Cement Plc* was found to be among the businesses that conduct CSR. The company supported construction of classrooms at Pongwe Primary School and Pongwe Secondary School and helped with the renovation of Holili Primary School.⁵⁰⁴ Interviewed management official at the cement company revealed that through the Company's Corporate Social Investment (CSI) programme, which focuses on the areas of education, health, community development, and environmental sustainability, the company had set aside a budget of Tshs. 79,379,754.⁵⁰⁵

502 Dar es Salaam HRB Survey Field Report 2021.

503 Ibid.

504 Tanga HRB Survey Field Report 2021.

505 Ibid.



Picture 37: An official from Tanga Cement Plc handing over donated bags of cement to Holili Ward Officer to facilitate renovation of Holili Primary School

In **Shinyanga**, two companies collaborated to support construction of a classroom building in Shinyanga Town. The companies were *GAKI Company Ltd* and *Afrosian Ginning Ltd*.⁵⁰⁶



Picture 38: *A classroom under construction in Shinyanga Town, with the support of GAKI Company Ltd and Afrisian Ginning Ltd*

506 Shinyanga HRB Survey Field Report 2021.

In **Mbeya**, businesses which were found to actively participate in CSR included *Mdimmi Investment Company Limited* and *Kapunga Rice Project Ltd*.⁵⁰⁷ In terms of contributing to social development, they contributed to construction of two primary schools, including Kapunda Primary School.⁵⁰⁸



Picture 39: Primary schools constructed with the support of Kapunga Rice Project Ltd (left) and Mdimmi Investment Company Limited (right) in Mbarali and Chunya Districts, respectively

In **Dodoma**, key CSR performers included *ALAF Ltd*, *Nholi Gold Mine*, *CRDB*, and *Yapi Merkezi Company*.⁵⁰⁹ In the education sector, *Yapi Merkezi Company* was credited with construction of a wall at Dodoma Secondary School, while *CRDB Bank* supported construction of toilets at Makulu Primary School, as part of their CSR programmes.⁵¹⁰



Picture 40: A wall at Dodoma Secondary School (left) constructed with the support of Yerpi Markezi and toilets constructed at Makulu Primary School with the support of CRDB Bank

507 Mbeya HRB Survey Field Report 2021.
 508 Ibid.
 509 Dodoma HRB Survey Field Report 2021.
 510 Ibid.

In **Tabora**, *SAMOTA Ltd* was recognized for its contribution in the construction of a school. The certificate of recognition was awarded by the Evangelical Lutheran Church – Central West Diocese, recognizing the company’s support in construction of the diocese’s pre and primary school in Nzega District.⁵¹¹

CSR activities in water and health

In the health and water sectors, CSR activities that were observed included helping local community members access clean and safe water and improving access to health services. For instance, in **Singida Afroil Company** installed a water tank to help local community members in Singida Municipality access tap water.



Picture 41: Community members in Singida MC fetching tap water provided by Afroil Company

511 Tabora HRB Survey Field Report 2021.

In **Manyara**, *Manyara Sugar Company* was found to be the leading performer of CSR activities, alongside other companies such as *Ngano Ltd* and *Minjingu Mines & Fertiliser Limited*.



Picture 42: A health centre under construction in Manyara Region, supported by Manyara Sugar Company

In **Mbeya**, Highland Estates Company Limited indicated that it had constructed a well for community members in Mbarali District as part of its CSR activities.⁵¹² The well was meant to increase access to safe and clean water for the community. *Kapunga Rice Project Ltd* was also recognized by the Mbarali District Council for the construction of Kapunga Health Centre.⁵¹³



Picture 43: A well, in Mbarali District, Mbeya Region constructed for community members by Highlands Estates Company Ltd

512 Mbeya HRB Survey Field Report 2021.
513 Ibid.



Picture 44: Certificate of recognition issued to Kapunga Rice Project Ltd for supporting construction of Kapunga Health Centre

In **Dodoma**, the *Nholi Gold Mine* was said to have supported the construction of a maternity ward at Chipanga Dispensary.⁵¹⁴ The move was said to help improve maternal health in Bahi District in the region.

CSR activities in other sectors

The survey found that other CSR activities conducted by businesses in the surveyed regions include construction of police post/station buildings; construction of orphanages; and construction of a mosque. For instance, artisanal miners in Mwakitolyo in **Shinyanga** Region and *Nholi Gold Mine* in **Dodoma** Region supported construction of police stations/posts.⁵¹⁵ In **Dodoma**, *ALAF Ltd* also contributed 300 iron sheets to support Bonanza Market and 100 iron sheets for Kigwe Police Post in the region.



Picture 45: A police station under construction with the support of Mwakitolyo artisanal miners in Shinyanga Region

514 Dodoma HRB Survey Field Report 2021.

515 Shinyanga HRB Survey Field Report 2021; Dodoma HRB Survey Field Report 2021.

In **Mbeya**, Highlands Estates Limited was credited with supporting construction of a mosque in Mbarali District.⁵¹⁶ In **Dodoma**, BRAC Microfinance Ltd was said to be supporting construction of an orphanage in Bahi District.⁵¹⁷



Picture 46: A mosque built with the support of Highlands Estates Ltd in Mbarali - Mbeya (left) and an orphanage built with the support of BRAC Microfinance Ltd in Bahi - Dodoma (right)

LHRC's View: Very few businesses in Tanzania engage in CSR and despite the CSR programmes and activities of these businesses, the overall situation of CSR is not satisfactory as the extractives sector dominates CSR. This might also be explained by the fact that CSR is mandatory in the mining sub-sector, following amendment of the Mining Act of 2010. Other sectors have not made significant progress in their CSR practices. Additionally, apart from the philanthropic aspect, other aspects of CSR, including environmental and ethical aspects are usually forgotten.

LHRC's Call: Companies, including SMEs, to conduct CSR effectively and adequately. Businesses should also improve on other aspects of CSR, especially environmental responsibility, and respect for human rights. CSR should also be made mandatory in other sectors, as is the case in the mining sector.

5.2.2. Community members' perceptions on CSR activities

The survey on business and human rights sought to examine the views of local community members regarding the CSR activities of businesses/companies operating in their respective districts. Community members were asked whether they benefit from business operations through CSR activities. Over half of the respondents (54%) claimed they do, 3.5% more compared to those who participated in the previous survey (2019).

⁵¹⁶ Mbeya HRB Survey Field Report 2021.
⁵¹⁷ Dodoma HRB Survey Field Report 2021.

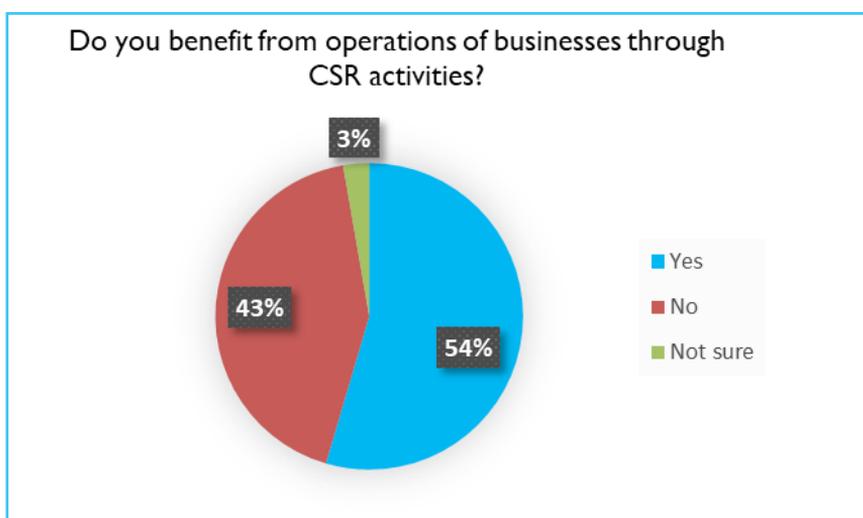


Figure 49: %Responses of community members on benefit (N=1,100)

Source: Field data, 2021

When asked in what ways they mostly benefit from CSR activities by businesses, majority of the respondents (29%) mentioned employment opportunities, followed by education (23%), water (11%), and health (11%).⁵¹⁸

5.2.3. CSR Challenges

During the survey, the following were found to be among key challenges facing CSR in Tanzania:

CSR regarded to be for big companies, not small ones

One of the observations made during the survey is that most businesses do not engage in CSR because 'they are not yet big enough to be able to give back to the community.' This is an excuse that was given by many SMEs and other businesses that are not ready to give back to the community or understand the essence of CSR. This perception was mostly observed in Tanga, Tabora, Manyara, Geita, Mbeya, Kilimanjaro, and Arusha. Most of them claimed that they have not started making enough profits to start giving back to the community. But in line with the UN Guiding Principles on Business and Human Rights, they can still make small contributions as part of their CSR programmes.

Complaints by investors/businesses against LGAs

Like in the previous survey, some of the businesses that were visited complained about harassment regarding CSR by local government officials, claiming that they are now using CSR as an excuse to demand money every now and then. Some of them indicated that when they provide funds to the authorities, they are usually not satisfied with how they are spent and fear that not all the funds provided are used to support community development. They indicated that some of the money ends up in the pockets of officials.

CSR not a legal requirement for most businesses

As reported in the report on business and human rights, CSR remains optional for most businesses as there is still no comprehensive law to govern CSR practices. Only businesses which operate in the extractives/mining sector are forced to comply with CSR as a legal requirement, following amendment of the Mining Act, 2010 in 2017.

Conflicting priorities between businesses/investors and LGAs

In the absence of a comprehensive law regulating CSR, there are conflicting CSR priorities between businesses and LGAs. Discretion on the part of companies/investors to CSR activities means they may focus on areas which are not a priority around their areas of production or operations.

Most businesses not doing well in some aspects of CSR

As discussed in Chapter Two above, most employers do not adequately comply with labour laws and standards, leading to violation of workers' labour rights, and we have seen that CSR begins at workplaces with the workers. This is one of the CSR areas where most businesses are not doing well. Another area is tax responsibility and environmental responsibility.

5.2.4. Performance Indicators on CSR

CSR Issue	Performance Indicators	
	2019	2021
Satisfaction with CSR	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	57% of the community members indicated satisfaction with the CSR while 43% of the community members expressed dissatisfaction with the CSR activities performed by businesses in their areas of residence
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	Only a few companies continue to meaningfully engage in CSR practices. Most CSR activities directed towards education, health and water sectors.	Only a few companies effectively engage in CSR practices. Most CSR activities directed towards education, health and water sectors.

5.3. Local Content Strategy

5.3.1. Introduction

Closely related to CSR is local content strategy, which has been defined as “the advantage given to local businesses and local employment in procurement processes for the oil or gas industries; the preference given to local hiring where possible; and the development of mechanisms for improving local skills as needed.”⁵¹⁹ Alignment with local development plans and policies, such as the Tanzania Development Vision 2025 for the case of Tanzania, is key for effective implementation of local content policies.⁵²⁰

In Tanzanian context, local content has been defined as “value added to, or created in, the economy through deliberate utilization of Tanzanian human and material resources and services in investments in order to stimulate the development of capabilities and to encourage local investments, ownership and participation.”⁵²¹ The local content strategy was introduced in Tanzania to boost the participation of Tanzanians in various sectors in terms of employment, supply of goods and services, capacity building and technology transfer, which was not satisfactory.⁵²² To this end, various laws and policies governing the extractive sector in Tanzania have been reviewed

519 See Patricia I. Vasquez, „Four Policy Actions to Improve Local Governance of the Oil and Gas Sector“, International Development Policy | Revue internationale de politique de développement [Online], 7.1 | 2016, Online erschienen am: 11 Februar 2020, abgerufen am 15 Juli 2021. URL: <http://journals.openedition.org/poldev/2227>; DOI: <https://doi.org/10.4000/poldev.2227>, accessed 20th June 2021.

520 Ibid.

521 See The United Republic of Tanzania Prime Minister's Office, *The National Economic Empowerment Council, National Multi Sector Local Content Guidelines 2019*, at <https://www.uwezeshaji.go.tz/uploads/publications/sw1574164059-NEEC%20-%20Local%20Content%20Guidelines%20A4%20-%2044%20PAGES.pdf>, accessed 20th June 2021.

522 Ibid.

to incorporate local content issues to ensure that Tanzanians are given preference in employment and supply of goods and services in the sector.⁵²³

According to the National Economic Empowerment Council, priority sectors for local content in Tanzania are: the Extractives sector (Mining, Oil and Gas); the Construction sector (Works, Transportation and Communication); the Manufacturing and Trade sector; the Agricultural sector (Agriculture, Livestock and Fisheries); and the Tourism sector (Natural Resources and Tourism).⁵²⁴

Laws and regulations governing local content in Tanzania include Mining Act, Cap. 12 R.E 2019; the Mining (Local Content) (Amendments) Regulations, 2019; the Petroleum (Local Content) Regulations, 2017; and the Tanzania Extractive Industry (Transparency and Accountability) Act, 2015.

5.3.2. Local Content Coordination and Management

According to the National Multi Sector Local Content Guidelines of 2019, local content issues are coordinated from the national to the local government level through the coordination structure stipulated in the Guidelines for the Implementation of the National Multi Sector Framework for Economic Empowerment of 2016. Key players in coordination of the local content include the Annual Economic Empowerment Forum, which is chaired by the Prime Minister of the United Republic of Tanzania and held once a year, and the National Advisory Committee for Economic Empowerment, which is chaired by the Permanent Secretary in the Prime Minister's Office and receives the report of local content implementation from the National Multi Sector Local Content Technical Committee. Local content is managed by various MDAs, with the Ministry of Energy and Minerals as the primary regulator.

5.3.3. Status of Local Content Implementation

In recent years, there have been concerns regarding implementation of local content in Tanzania. In the performance audit report on the implementation of local content provisions and verification of recoverable cost in the production sharing agreements, released in March 2016, the CAG indicated that the Government had not established a sufficient legal, regulatory and institutional framework to adequately manage the implementation of local content provisions.⁵²⁵ He indicated that Tanzania Petroleum Development

⁵²³ Ibid.

⁵²⁴ Ibid.

⁵²⁵ United Republic of Tanzania, National Audit Office (NAO), A Performance Audit Report on the Implementation of Local Content Provisions and Verification of Recoverable Cost in the Production Sharing Agreements, A Report of the Controller and Auditor General of the United Republic of Tanzania, March 2016.

Corporation (TPDC) and the Ministry of Energy and Minerals (MEM) did not put in place concrete measures to ensure adequate implementation of the provisions.⁵²⁶ Additionally, the CAG indicated that MEM did not take action to develop local companies and build their capacities and TPDC did not conduct monitoring and evaluation of the implementation of local content provisions. But more recent reports by *HakiRasilimali* and TEITI have shown improvement in terms of implementation of local content.

According to *HakiRasilimali*, the mining sector was reported to have the value of Tshs. 2.4 trillion through locally (66%) and foreign (44%) procured good and services.⁵²⁷ The mining sector has also contributed to employment, estimated to have employed 7,355 people directly in the formal mining sector and 3,000 indirectly, according to the Tanzania Chamber of Mines (TCME). As of 2020, the mining sector had reportedly provided employed to 7,967 Tanzanians and 158 foreigners, as opposed to 6,623 Tanzanians and 140 expatriates in 2018.⁵²⁸ As of May 2021, extractive companies had reportedly directly employed 7,151 Tanzanians for skilled, semi-skilled and unskilled jobs.⁵²⁹ TEITI's 11th report on the extractive sector has also indicated positive strides by the sector, particularly in terms of employment creation and increased procurement of local goods and services.⁵³⁰ Value payments for locally procured goods and services increased from Tshs. 1.3 billion in 2012 to about Tshs. 1.1 trillion in 2017/18.⁵³¹ Pan African Energy, Shanta Mining Company, and Williamson Diamonds Limited were mentioned as highest spenders.⁵³²

Despite notable improvements in implementation of the local content strategy, several key challenges persist. These challenges include: limited capacity of Tanzanians to undertake large projects (capital and technical skills); limited entrepreneurial and business skills; lack of capacity to supply large quantity of goods timely; challenges related to quality of goods and services; lack of soft skills; and poor monitoring and enforcement of laws.⁵³³ There is also a challenge of lack of disaggregated data for social payments and local procurement.

526 Ibid.

527 See *HakiRasilimali*. The Implication of the Extractive Sector Fiscal Regime to the Economy: A case of the Mining Sub-Sector in Tanzania.

528 Ibid.

529 Ibid.

530 Tanzania Extractive Industries Transparency Initiative (TEITI), THE 11th TEITI Report for The Period of July 2018 to June 30 2019, June 2021.

531 *HakiRasilimali* (2020). A Bird Eye on Extractive Sector Reconciled Revenues: Its Contribution to Tanzania Development Path Over Ten Years (2009-2019). Dar es Salaam, Tanzania.

532 Ibid.

533 The United Republic of Tanzania Prime Minister's Office, The National Economic Empowerment Council, National Multi Sector Local Content Guidelines 2019

During the survey, complaints relating to non-employment of local people were made in Singida and Kahama in Shinyanga. For instance, in Singida, an issue of hiring foreign employees for jobs which can be done by Tanzanians was raised by some respondents,⁵³⁴ while in Shinyanga it was widely reported by the media in June 2021 that some local people in Kahama District took to the streets to demand to be employed by the Bulhyanhulu Gold Mine and for the mine to do more for the local community.⁵³⁵

LHRC's View: Laying down laws and regulations governing local content is a very positive step, but to effectively safeguard the rights of Tanzanians, including the right to enjoy and benefit from natural resources, adequate monitoring and evaluation should be conducted to ensure implementation of local content. In terms of the employment aspect of the local content strategy, the MDAs, led by MEM, should ensure that labour rights are respected.

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 environmental responsibility. EIA is also essential for realization of the right to clean, safe and healthy environment for every person living in Tanzania.⁵³⁶ Ensuring EIA is conducted is key in curbing industrial pollution. In Tanzania, the National Environmental Management Council (NEMC) is mandated to oversee these impact assessments and conducting environmental inspection to check compliance.

During the survey on human rights and business, community members were asked whether they had ever participated in social impact assessment before an investor began business operations. Only 1% of the respondents said they had, while 89% claimed they had not and 10% said they were not sure. In the previous survey (2019) 2% of the respondents said they had participated in the assessment.

534 Singida HRB Survey 2021 Field Report.

535 "WAANDAMANA KUSHINIKIZA KUAJIRIWA KATIKA MGODI WA BULYANHURU" Nipashe, 25 June 2021 at https://www.youtube.com/watch?v=MV4m70_CYJ4, accessed 20th June 2021.

536 See Section 4(1) of the Environmental Management Act 2004.

Have you ever participated in social impact assessment before investor began operations?

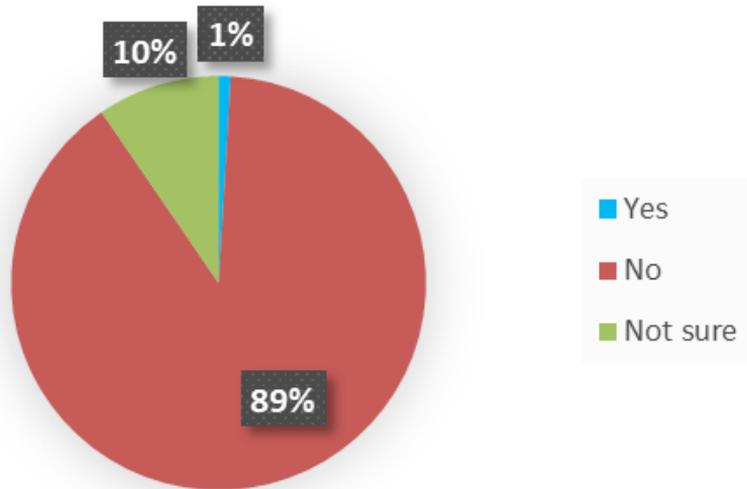


Figure 50: %Responses on community members' participation in social impact assessment (N=1,100)

Source: Field data, 2021

Managements of business enterprises were asked whether they have in place a policy or strategy on sustainable utilization of environmental and natural resources where they operate their businesses. 34% of the respondents said they have in place such a document, while half of them (50%) acknowledged they do not. 16% of the respondents indicated that they were not sure. Additionally, over half of the respondents who claimed to have such a document could not produce a copy.

5.4.2. Reported of incidents of environmental impacts caused by companies/industries

During the survey, complaints of industrial pollution were mostly made in 10 out of the 15 surveyed regions, namely: Dar es Salaam, Tanga, Manyara, Shinyanga, Dodoma, Geita, Mara, Mtwara, Mbeya, and Pwani Regions. The main types of pollution that were reported were water pollution, air pollution, and noise pollution.

Water pollution

Incidents of water pollution caused by business/industrial operations were mainly reported in Dar es Salaam, Shinyanga, Dodoma, Geita, and Mara Regions. For instance, in **Dar es Salaam** industrial waste, usually chemical waste, dumped into Gide/Kibangu River was reported to contaminate the water in the river, which is also used for irrigation by peasants who grow vegetables and greens along the river. Community members and University of Dar es Salaam's Mabibo Hostel were also said to dump waste into the river.



Picture 47: Contaminated water in Gide/Kibangu River in Dar es Salaam



Picture 48: Greens reportedly irrigated with contaminated water along the Gide/Kibangu River in Dar es Salaam

In **Shinyanga**, liquid waste from industries, including *Jambo Food Co. Ltd*, was said to be dumped into and contaminate water sources. In **Dodoma**, mercury from Nholi Mine was said to contaminate some of the water sources, putting both people and animals at health risk in case they consume or come into contact with the water.



Picture 49: One of the water sources in Shinyanga Region that was said to be contaminated by industrial waste



Picture 50: A water source which was said to be contaminated in Bahi, Dodoma

In **Geita**, the survey found that mining activities have contributed to pollution of water sources. Interviewed community members in Katoma and Nyamalembo claimed that water in the sources was contaminated with chemical waste, with artisanal and small-scale miners said to be mainly responsible. Contamination of water sources was said to cause sickness to people who were consuming or using the water, including diarrhoea and skin infections.

Preference of mercury by artisanal and small-scale miners is said to a big challenge in gold mining, leading to soil and water contamination. The United Nations Environment Programme (UNEP) has established that mercury-dependent artisanal and small-scale gold mining (ASGM) is the largest source of mercury pollution on Earth.⁵³⁷ Use of mercury chemical in this regard has server health effects to the miners and surrounding community members due to mercury contamination of water and soil, as well as consumption of fish and other food contaminated with the chemical.⁵³⁸ The use of this chemical in gold mining is a global concern, and according to the World Health Organization (WHO), mercury is one of the top ten chemicals or groups of chemicals of major public health concern and exposure this chemical, even in small amounts, may cause serious health problems and a is a threat to the development of the child.⁵³⁹

⁵³⁷ See Esdaile, L. J.; Chalker, J. M. The Mercury Problem in Artisanal and Small-Scale Gold Mining. *Chem. Eur. J.* 2018, 24, 6905-6916, at <https://chemistry-europe.onlinelibrary.wiley.com/doi/full/10.1002/chem.201704840#chem201704840-bib-0001>, accessed 20th June 2021.

⁵³⁸ Ibid.

⁵³⁹ See WHO, Mercury and health: Factsheet, 31 March 2017, at <https://www.who.int/news-room/fact-sheets/detail/mercury-and-health>, accessed 20th June 2021.

According to *Uhakika wa Maji, TaWaSaNet*, and *Witness International*, ASGM is a big business in Tanzania, producing 10% of the national gold output and employing about half a million people.⁵⁴⁰ In studying the impact of artisanal mining on water sources, they found that the most dangerous problem with artisanal mining is the uncontrolled use of mercury, which escapes into the atmosphere and rivers where it can enter the human food chain. Health effects of the chemical include: muscle weakness, skin rashes and peeling, mental health and memory problems, deafness, blindness, and speech impairment. Among the areas affected by AGSM are Chunya District in Mbeya Region. A 2013 study found mercury contamination to be extremely high along the Lupa River in the district and use of mercury continues to date. Lake Rukwa river basin is also said to be threatened by mercury contamination,⁵⁴¹ as processing of gold ore with mercury is a major concern as the same mercury reaches the river that feeds Lake Rukwa.⁵⁴² Mercury problem has prompted the Government of Tanzania to adopt an action plan to reduce use of mercury by artisanal and small scale miners in gold mining, in line with the Minamata Convention on Mercury of 2013.⁵⁴³



Picture 51: A water source in Nyamalembo in Geita allegedly contaminated with industrial chemical waste

540 See Uhakika wa Maji Programme, The uncontrolled impacts of artisanal mining on our water sources, Case Study Bulletin 9 at <https://static1.squarespace.com/static/5baa3175bfba3e44386d68a5/t/5c0f9f8e0ebbe834a5e9f18f/1544527764253/ASGM+Chunya+Case+Bulletin+9.pdf>, accessed 20th June 2021.

541 Ibid.

542 Subhojit Goswami "As Tanzania's Lake Rukwa continues to dry up, NGOs focus on sensitising locals" DownToEarth, 14 June 2017, at <https://www.downtoearth.org.in/news/water/as-tanzania-s-lake-rukwa-continue-to-dry-up-ngos-focus-on-sensitising-locals-58104>, accessed 20th June 2021

543 See Jamhuri ya Muungano wa Tanzania, Ofisi ya Makamu wa Rais, Mpango-Kazi wa Taifa wa Kupunguza Matumizi ya Zebaki kwa Wachimbaji Wadogo wa Dhahabu, Mutsari Mahsusi, 2020-2025 at <https://www.vpo.go.tz/uploads/files/Mpango-Kazi%20wa%20Taifa%20wa%20Kupunguza%20Matumizi%20ya%20Zebaki%202020-2025.pdf>, accessed 20th June 2021.



Picture 52: A child (left) and an adult (right) showing skin infections caused by use of contaminated water in Geita

In **Mara**, interviewed villagers around mining sites operated by Barrick's North Mara Gold Mine alleged that they were restricted to construct wells in some of the areas because the underground water was presumed contaminated due to industrial chemical waste dumped into a nearby dam. They also feared that the water pipes carrying water for domestic use could also be contaminated.

Air pollution

Air pollution concerns were raised by community members who participated in the survey in Dar es Salaam, Tanga, Geita, Mtwara, Mbeya, and Pwani Region. In **Dar es Salaam**, *MMI Steel Mills Industry* was implicated in air pollution due to smoke emitted to community members living and doing businesses around the area, and it was reported that the industry had been fined and warned by NEMC for environmental pollution.

In **Tanga**, the survey found air pollution caused by operations by Neelkanth Lime Ltd, with community members around the area noting that the situation gets worse on windy days. They also noted that several government leaders have visited the industry and called for the industry management to address the air pollution concerns but nothing has changed so far.

“Kwakweli siku za upepo huwa tunapata shida zaidi kutokana na vumbi linalotoka kwa liemba (Kiwanda cha chokaa)”

To say the truth during windy days we are distressed more, due to the dust coming from Liemba (Lime industry)

A resident of Kiomoni Ward, near the Neelkath Lime Ltd.

Sunday, May 17, 2020

Mmiliki wa Kiwanda Cha Chokaa Tanga Ametakiwa Kudhibiti Vumbi Kutoka Kusambaa Hewani Kuleta Athari Kwa Wananchi.



Naibu Waziri Ofisi ya Makamu wa Rais (Muungano na Mazingira) Mhe. Mussa Sima akiangalia mojawapo ya mawe yanayotumika kutengenezea chokaa katika kiwanda cha Neelkanth cha jijini Tanga ambacho kinalalamikiwa na wakazi wa eneo hilo kufikiwa na vumbi.

Na. robert hokororo

Naibu Waziri Ofisi ya Makamu wa Rais (Muungano na Mazingira) Mhe. Mussa Sima amemuelekeza mwekezaji wa kiwanda cha chokaa cha Neelkanth Chemical cha jijini Tanga kubuni njia mbadala ya kuzuia vumbi kutoka na kusambaa hewani hivyo kuleta athari kwa wananchi.

Mhe.Sima alitoa agizo hilo jana alipofanya ziara ya kukagua kiwanda hicho ambapo pamoja na mambo mengine ililenga kumpa maelekezo ya namna ya kuendesha shughuli bila kuathiri mazingira.

Picture 53: An extract of a newspaper story about Neelkath Lime Ltd whereby a deputy minister directed the industry to address air pollution which was affecting the surrounding community

In **Geita**, the survey found that dust emitted from GGM mining operations was causing air pollution, contributing to tuberculosis (TB). Some of the interviewed residents of Nyamalembo Village remarked that a 9-year-old boy had recently caught TB because of the dust and was awaiting compensation from the mine.

In **Mtwara**, complaints about air pollution were levelled against *Cashew Nut 2005 Limited*. Interviewed community members alleged that a great amount of smoke is usually emitted during processing of cashew nuts, causing air pollution, and endangering the health of the industry workers and people residing nearby.



Picture 54: Smoke coming out of the cashew nut processing industry, *Cashew Nut 2005 Limited*, in Mtwara

In **Mbeya**, rice mills were said to be key players in air pollution, especially in Mbarali District. The operations of rice mills were said to expose both workers at the mills and nearby community members to dust, which can cause health effects, including on the lungs.

In **Pwani**, interviewed community members complained about air pollution caused by operations of a Chinese-owned company, *Fujian Hexingwang Industries Tanzania Co. Ltd*, located in Mkuranga District. They claimed that the industry had been warned by the Minister responsible for environment regarding environmental pollution, but nothing much has been done to address the problem. Air pollution complaints in the region were also made against *Backbone Co. Ltd*, located in Kibaha District.

Noise pollution

Noise pollution was mainly reported in Mara and Mbeya Regions. In **Mara**, such complaints were levelled against Barrick's North Mara Gold Mine, while in **Mbeya** rice mills were said to largely contribute to noise pollution.

Land degradation caused by mining activities

The survey also observed land degradation as one of the environmental impacts of business operations, especially around mining areas. This was mainly observed and reported in Manyara and Dodoma Regions. For instance, in **Manyara** interviewed community members expressed concern with the sinkholes (small but deep holes) created as a result of mining activities, which were damaging the environment. In **Dodoma**, sodium cyanide used in the mining activities was said to contaminate soil.



Picture 55: Sinkholes observed at a mining site operated by Minjingu Mines & Fertilizers Ltd in Manyara

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.⁵⁴⁴ This responsibility is contained in the UN Guiding Principles on Business and Human Rights, and the following five foundational principles:

⁵⁴⁴ Principle 12 of the UN Guiding Principles on Business and Human Rights.

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.

15. 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. There are several ways this can happen, for instance, when business activities pose threat to the health of workers, which may lead to violations of rights to life and health; a company or industry selling substandard or counterfeit product, which may lead to violations of rights to life and health; or where an employer disregards occupational health and safety, which is tantamount to violation of the right to just 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**.

Human rights due diligence comprises four components: a statement of policy articulating the company's commitment to respect human rights; periodic assessments of actual and potential human rights impact of company activities and relationships; integrating these commitments and assessments into internal control and oversight systems; and tracking as well as reporting performance. Company-level grievance mechanisms can contribute in two ways: under the tracking and reporting component of due diligence they provide the company with ongoing feedback that helps it identify risks and avoid escalation of disputes; they can also provide a remedy, a means of alternative dispute resolution.⁵⁴⁵

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 2020/21.

5.5.2. Reported human rights abuses and concerns

Community members views on common human rights abuses by businesses/companies and grievance mechanisms

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. Environmental pollution was mentioned the most as a common corporate human rights abuse (31%), followed by land rights violations in terms of unfair acquisition/eviction from land (16%). Other violations that were mentioned included violations of women's rights, including violence and discrimination (12%), child labour (11%), torture by security guards/police officers (9%), and killings by security guards/police officers (5%).

Community members were also asked to give their views on existing grievance mechanism to address disputes between them and businesses/companies. They generally indicated that they have limited access to remedy and are generally dissatisfied with the existing grievance mechanisms. Asked

⁵⁴⁵ See John Ruggie "Corporate responsibility to protect Human Rights". Kennedy school of Government and Harvard law school, At <https://corpgov.law.harvard.edu/2010/05/15/the-corporate-responsibility-to-respect-human-rights/#:~:text=The%20corporate%20responsibility%20to%20respect%20human%20rights%20means%20to%20avoid,all%20companies%20in%20all%20situations.&text=Knowing%20and%20showing%20is%20the,through%20human%20rights%20due%20diligence.> Accessed on 24th May 2021.

whether the mechanisms put in place by businesses/companies to address their complaints/settle disputes exist, 41% said they do, while 55% said they do not and 4% said they did not know/not sure.⁵⁴⁶ The community members were also asked whether they are satisfied with the grievance mechanisms, only 21% said that they are satisfied and very satisfied with the mechanism, while 28% said they were somewhat satisfied. Over half of them (51%) said they were not satisfied and not satisfied at all with the existing grievance mechanisms.

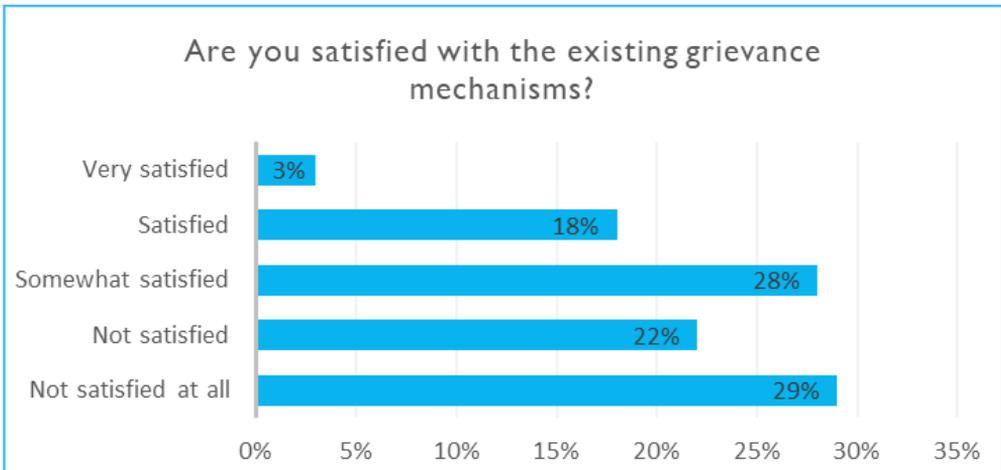


Figure 51: % Responses on community members satisfaction with the business grievance mechanisms (N=599)
 Source: Field data, 2021

When asked about reasons for dissatisfaction with the grievance mechanisms, majority of the respondents (31%) mentioned corruption as the biggest factor, followed by delays (24%), and inefficiency (19%). Other reasons/factors constituted 26% of the responses. A 2019 report by the International Peace Information Service (IPIS) on local community perceptions of industrial mining in northwest Tanzania also revealed that community satisfaction with internal grievance mechanisms is generally low, due to reasons such as complicated procedures and low compensation.⁵⁴⁷

⁵⁴⁶ N=1,099

⁵⁴⁷ 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.

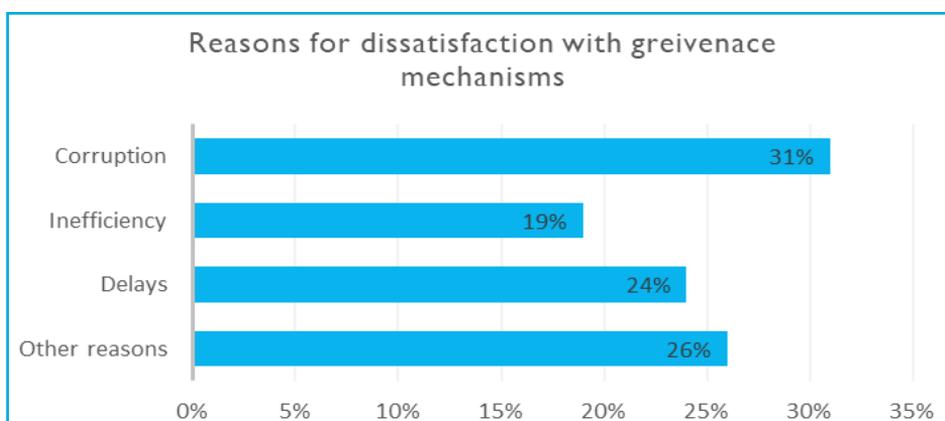


Figure 52: %Responses on community members satisfaction with the business grievance mechanisms (N=599)

Source: Field data, 2021

Interviewed community members blamed and accused their local leaders of engaging in corrupt practices and siding with investors/businesses instead of protecting their rights. Below are some of the quotes by the interviewed respondents regarding grievance mechanisms, corruption, and access to remedy.

Table 24: Some of the quotes of community members regarding grievance mechanisms and corruption

Actual quote	Translation
Mwekezaji amenunua watu wakubwa, inafika mahali hata ukienda kushtaki hakuna msaada kabisa, tunabaki tunaumia.	The investor has the big shots in his pockets, such that you have no where to seek help. We are helpless in most cases.
Viongozi wanapewa kitu kidogo, kwa hiyo wanaelekeza kuwatetea zaidi makampuni na wawekezaji.	Our leaders are corrupt, hence they side with the companies and investors.
Viongozi wetu pamoja na wanaotatua migogoro nahisi wamekamatwa kwa rushwa coz hawasemi wala kuwagusa wenye mgodi tunapoonewa, hasa wale wanaodai fidia hawasikiliziwi na mgogoro unaendeleana hivi Magufuri kafa mimi najiandaa kuhama tu hapa. aliwafuatilia tukaona wawekezaji kuanza kutii lakini walipopata taarifa kuwa amekufa siku hizi wanadharau usiombe. Nikuombe na wewe uwe makini vinginevyo utapotea.	We feel that our leaders and those who have the mandate to settle disputes are corrupt, because they don't take action against the mine owner when they violate human rights, including denial of compensation...there is not much hope since Magufuli died, hence I am prepared to leave this area...he was keeping tabs on them, but when they heard he had died they continued with their old ways. You should also be careful; otherwise you can get lost.

Nadhani ni rushwa, kwa kuwa wenye makampuni wana hela, wamejenga viburi, wala hawajali chochote. Ndio maana mifumo ya utatuzi wa migogoro haina nguvu kwa kuwa mwenye hela akitoa rushwa wewe hohehahe huwezi sikilizwa.

I think it is corruption, since the company owners are rich, they think there is nothing we can do and simply don't care about anything. That is why existing dispute settlement mechanisms are toothless, since they don't listen to you if you don't have money.

Source: Field data, 2021

Violations of workers' rights

The survey found that common human rights of workers that were violated by management of companies/business enterprise were: freedom of association; right to just and favourable working conditions; right to fair remuneration; right to adequate rest; right to adequate standard of living; right to health; and right to be heard (principles of natural justice). All these rights were abused as a result of violating labour rights and standards as discussed in detail under Chapter Two above.

Reported human rights abuses at Williamson Diamond Mine in Shinyanga

Introduction: Human rights violations documented by RAID

In September 2020, Rights and Accountability in Development (RAID), a UK-based NGO that exposes corporate abuses and human rights violations, issued a statement on its research at the Williamson Diamond Mine in Tanzania, owned by Petra Diamonds. In the statement, RAID said that they had been researching human rights issues at Petra Diamonds' Williamson Mine since September 2019, following alerts by other international NGOs and local activists.⁵⁴⁸ According to RAID, over 100 interviews with residents, members of local civil society, local authorities, medical staff, journalists and former security personnel employed at Williamson Mine were conducted.

The research revealed several serious human rights concerns, including:⁵⁴⁹

- Shootings, beatings and other assaults, including of children, by security personnel employed by the company on and around the Williamson Mine, causing serious injuries and death. RAID has received reports of at least 7 killings (of which 2 were under the age of 18) and 35 assaults including shootings, beatings, and torture since Petra acquired the mine in 2009. Many incurred life changing injuries.

⁵⁴⁸ See RAID, RAID statement on its research at Petra Diamonds' Williamson Mine in Tanzania, September 9, 2020 at <https://www.raid-uk.org/blog/raid-statement-its-research-petra-diamonds-williamson-mine-tanzania>, accessed 8th June 2021.

⁵⁴⁹ Ibid.

Williamson Mine employs Zenith Security, a Tanzanian company, to provide security at the mine.

- Torture and cruel, degrading and inhuman treatment at a private detention centre on the Williamson Mine. RAID received numerous reports of artisanal miners and others who were detained, beaten and in some cases tortured. Many were detained for days before being transferred to state law enforcement facilities. Detainees described the Williamson detention centre as overcrowded and filthy, with only a slop bucket for toilet facilities and lack of food. At this stage RAID is unaware of any lawful basis on which Petra operates this detention centre at the Williamson Mine.
- Artisanal miners and others beaten, shot or otherwise injured at the Williamson Mine are often taken to company controlled Mwadui Hospital within the Williamson Mine site. RAID received at least 7 reports of victims being chained to hospital beds and/or chained to other detainees while in Mwadui Hospital. Some victims said they were denied access to their medical records.
- Threats to, and harassment and/or intimidation to human rights defenders, local journalists, and other local residents, including by police and/or local authorities.

The RAID statement also indicated lack of internal grievance mechanism at the Mine, which would allow local community members to engage with the Mine. Most of the interviewed community members indicated that they did not know how they could raise concerns with the Mine, and many said they feared retribution if they did, while a few said they had although they had raised concerns, nothing or little was done in response. The statement also claimed that people who met with RAID researchers and Leigh Day – an independent law firm that has been following-up on reports of human rights abuses at the Mine – received threats.⁵⁵⁰

“Despite years of local activism and widespread reports about the abuses at its Williamson Mine, Petra Diamonds failed to take action. Only after the detailed investigation by RAID and legal action by British human rights lawyers did it publicly respond to the dreadful security-related practices at its mine.”

Anneke Van Woudenberg- RAID Executive Director

550 Ibid.

In March 2021, RAID reported that Zenith Security guards, employed at the Williamson Diamonds Mine, deliberately modified their ammunition to cause greater damage, including death.⁵⁵¹ It reported that the guards replaced rubber projectiles with metal projectiles in their weapons. A former guard who was interviewed confirmed use of lethal ammunition, noting that the guards were authorised to use other bullets as well, not just rubber bullets. His account is consistent with numerous injuries documented by RAID, whereby some metal pellets were still visible under victims' skins. RAID concluded that use of force by the security guards was excessive, unnecessary and disproportionate, contrary to international standards. It also revealed that most of those injured or killed by the guards were taken to Mwadui Hospital, which is owned and operated by the Mine.⁵⁵² RAID's report, published in November 2020, also shows that some people 'were shot with little or no warning, stabbed, detained, stripped, beaten, incarcerated for days in a filthy and cramped holding cell by the mine's entrance, deprived of food and medical treatment, and/or handcuffed to hospital beds at the mine's medical facility.'⁵⁵³

Legal action against Petra Diamonds and Williamson Diamonds Mine

In September 2020, it was reported that a UK-based law firm, Leigh Day, filed claims in the High Court of England and Wales against Petra and Williamson Diamonds Limited⁵⁵⁴ on behalf of 32 anonymous individuals in relation to alleged breaches of human rights at the Williamson mine, including personal injuries and deaths.⁵⁵⁵ Petra reported that it was taking the allegations seriously and was initiating its own independent investigation, through a separate specialist third party.

Petra Diamonds' Settlement

In May 2021, it was reported that Petra Diamonds had finally bowed to pressure and agreed to settle the claims of 71 Tanzanian nationals who suffered human rights abuses at the Williamson Mine, following successful representation by Leigh Day.⁵⁵⁶ It was reported that the company had agreed to pay a total of £4.3 million in a wide-ranging compensation package, including to residents of nearby communities who were shot,

551 "Guards at Petra Diamonds' Tanzanian mine deliberately modified ammunition to inflict greater damage" RAID March 25, 2021 at <https://www.raid-uk.org/blog/guards-petra-diamonds%E2%80%99-tanzanian-mine-deliberately-modified-ammunition-inflict-greater-damage>, accessed 8th June 2021.

552 Ibid.

553 See RAID, THE DEADLY COST OF 'ETHICAL' DIAMONDS: Human Rights Abuses at Petra Diamonds' Tanzanian Mine, 12 November 2020, at https://www.raid-uk.org/sites/default/files/raid_report_petra_diamonds_nov_2020.pdf, accessed 8th June 2021.

554 "Claim is filed over alleged human rights abuses at Tanzanian diamond mine" Leigh Day, 09 September 2020, at <https://www.leighday.co.uk/latest-updates/news/2020-news/claim-is-filed-over-alleged-human-rights-abuses-at-tanzanian-diamond-mine/?s=09>, accessed 8th June 2021.

555 See "Petra Diamonds imefunguliwa kesi katika Mahakama ya Uingereza kutokana na Ukiukaji wa Haki za Binadamu" Jamii Forums, 9 September 2020, at <https://www.jamiiforums.com/threads/petra-diamonds-imefunguliwa-kesi-katika-mahakama-ya-ingereza-kutoka-na-ukiukaji-wa-haki-za-binadamu.1782004/>, accessed 8th June 2021.

556 "Petra Diamonds bows to pressure on human rights abuses at Tanzanian mine" RAID, May 12, 2021, at <https://www.raid-uk.org/blog/petra-diamonds-bows-pressure-human-rights-abuses-tanzanian-mine-0>, accessed 8th June 2021.

beaten, stabbed, assaulted, detained in a filthy and cramped holding cell by the mine's entrance, and handcuffed to hospital beds by security personnel employed at the mine.⁵⁵⁷ It was further reported that a 25 other claims were being investigated, which could see increase of the total pay-out.⁵⁵⁸

Petra's Own Investigations and Action

On 12th May 2021, Petra Diamonds Limited issued a statement on findings of the independent Board Sub-Committee investigation into alleged breaches of human rights at the Williamson Diamond Mine in Tanzania.⁵⁵⁹ In the statement, the company acknowledged occurrence of the alleged human rights violations that "regrettably resulted in the loss of life, injury and the mistreatment of illegal diggers."⁵⁶⁰ The company indicated that it was taking the following key measures:⁵⁶¹

- The closure of the holding facility at the mine;
- The appointment of a new third party security contractor, GardaWorld West Security Limited;
- The suspension of personnel implicated;
- Deployment of a stakeholder engagement expert and a comprehensive engagement plan with the affected communities;
- The implementation of a Community Grievance Mechanism to deal with any day-to-day issues;
- The design of an Operational Grievance mechanism ("OGM") aimed at addressing any historical, or future human rights violations, and the upgrading of the Mwadui medical facility;
- Update of the Company Human Rights Policy Statement;
- Deployment of a stakeholder engagement expert at the Mine, to improve collaboration and create value for both the Mine and its stakeholders and development and implementation of a comprehensive Stakeholder Engagement Plan;
- Opening a new community office inside the main gates of the Mine, with a dedicated grievance desk to enable all stakeholders to raise issues in a free and unimpeded environment.

557 Ibid.

558 See Petra Diamonds Limited, Settlement of human rights claims at Williamson Diamond Mine, Tanzania, 12 May 2021, at <https://ir.q4europe.com/solutions/petradiamonds/3144/newsArticle.aspx?storyid=15059415>, accessed 8th June 2021.

559 See Petra Diamonds Limited, Findings of the independent Board Sub-Committee investigation into alleged breaches of human rights at the Williamson Diamond Mine in Tanzania, 12 May 2021, at <https://ir.q4europe.com/solutions/petradiamonds/3144/newsArticle.aspx?storyid=15059437>, accessed 8th June 2021.

560 Ibid.

561 Ibid.

- Development and launch of a new radio programme “Kwa Pamoja Tunajali” (“Together we care”): to provide a key platform for the Mine and its communities to engage directly, address concerns collaboratively and to facilitate local information sharing.
- Establishment of an independent (Tier 2) operational grievance mechanism that will consider any incidents of potential human rights violations and provide remedy as necessary. It will be managed by an independent panel and operate according to the highest international standards, as set out in the United Nations Guiding Principles on Business and Human Rights
- Community initiatives to support the local economy, intended to provide long term sustainable benefits through income generating projects

RAID's Recommendations

In response to the human rights violations at the Williamson Diamonds Mine and recent settlement by Petra Diamonds, RAID issued a number of recommendations, including:⁵⁶²

- ☞ Petra Diamonds to ensure its reporting is public, truly independent and comprehensive to stop abuses from occurring in the future, after putting in place new oversight and escalation procedures;
- ☞ To ensure there is no repeat of the company's harmful practices, Petra Diamonds should allow effective independent monitoring of the security and human rights situation going forward; and
- ☞ Petra Diamonds to also provide remedy to victims who may not yet have come forward and ensure there is rigorous monitoring of its security operations to prevent any more abuses from occurring.

LHRC's View: LHRC has been receiving reports of serious human rights violations at different mines operating in Tanzania, especially in the Lake Zone, with security guards and local law enforcement officials implicated in excessive use of force, torture, harassment, and subjecting victims accused of trespassing to various forms of violence. Over the years, LHRC has also collaborated with local and international stakeholders to help victims of such violations access remedy both within and outside Tanzania, including in the United Kingdom. LHRC believes there are many more violations at mining areas and many more victims who need help to access remedy.

⁵⁶² “Petra Diamonds bows to pressure on human rights abuses at Tanzanian mine” RAID, May 12, 2021, at <https://www.raid-uk.org/blog/petra-diamonds-bows-pressure-human-rights-abuses-tanzanian-mine-0>, accessed 8th June 2021.

LHRC's Call: *Petra Diamonds* and other companies/investors to adhere to human rights standards as set out in the UN Guiding Principles on Business and Human Rights and refrain from practices that result to human rights violations and suffering local surrounding communities. More collaborative stakeholder efforts are also needed to ensure other victims of corporate human rights violations get remedies and prevent future human rights violation.

CHAPTER SIX:

GENDER AND OTHER FORMS OF DISCRIMINATION IN THE BUSINESS SECTOR

6.1. Introduction: Gender issues in the business sector

The Sustainable Development Goal (SDG) 5 calls for gender equality, likewise the SDG 10 calls for reduced inequalities. Therefore women, men and PWDs should be given equal opportunities to equally access, participate and benefit from development projects and other projects. Women are still much less likely than men to have access to, or control over, productive and natural resources. Women represent the majority of the World's poor. It is estimated that women account for 70% of people who fall below the international poverty line of US \$1 per day.⁵⁶³ PWDs is another group observed living in total poverty as a result of discrimination against them in economic opportunities.

Women have been disadvantaged due to the socio-economic, legal and cultural factors, the inequalities have been observed to persist mostly in the following areas: first, women have less access to modern technologies and financial services than men; second, women receive poorer education, training and technical advice; third, women receive lower pay for equal work and last, women are more likely to suffer from violence and exploitation.⁵⁶⁴

Article 1 of the ILO Convention No. 111- Discrimination (Employment and Occupation) Convention, 1958 emphasizes on gender equity and discourages discrimination at the workplace based on race, colour, sex, religion, political opinion, national extraction or social origin as major concerns on accessing equal opportunity or treatment in employment or occupation. The government of Tanzania as a member of the UN and other regional bodies has ratified and domesticated different international and regional instruments in the protection of these groups.

⁵⁶³ See UNIDO Gender "United Nations Industrial Development Organizations: A guide on Gender Mainstreaming Business, Investment and Technology for Private Sector Development, Vienna 2015. P.1 at https://www.unido.org/sites/default/files/2016-03/new_Guide_on_Gender_Mainstreaming_Business_Investment_and_Technology_Services_for_Private_Sector_Development__3_0.pdf. Accessed on 9/6/2021

⁵⁶⁴ Ibid

The key international instruments which emphasize the elimination of all kinds of discrimination of which Tanzania is a part to are; The Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on Elimination of All Forms of Discrimination Against Women and the International Convention on the rights of persons with disabilities.

Regionally the key documents which discourage discrimination against different people include the African Charter on Human and People's Rights, The protocol to the African Charter on Persons with Disabilities, The African Charter on Human and Peoples' Rights on the rights of women in Africa (The Maputo Protocol) of 2003. Another key document that provides for the rights of women is the SADC Protocol on Gender and Development of 2008 where Tanzania is one of the SADC members, the protocol calls on the equal representation of men and women on decision making at the National level.

Domestically, The Constitution of the United Republic of Tanzania, 1977 provides for equality before the law, which prohibits any form of discrimination, including based on sex and gender.⁵⁶⁵ The government also did initiatives through the formulation of the National Strategy for Gender Development of 2008, Youth Development Policy 2009, National Employment Policy 2008 and Employment and Labour Relation Act 2004. The country also has adopted GBV Policy and Management Guidelines in September 2011 and in November 2011 set up a stakeholder owned instrument to guide 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.

Gender-based discrimination is common at workplaces in Tanzania. The Employment and Labour Relations (Code of Good Practice) Rules, 2007 prohibit workplace discrimination⁵⁶⁶ and call for promotion of equality of opportunity and treatment in employment.⁵⁶⁷ The Rules specifically state that an employer should not directly or indirectly discriminate any employee in any employment policy or practice,⁵⁶⁸ and provides that harassment of an

⁵⁶⁵ See Article 13 of the Constitution of the United Republic of Tanzania 1977.

⁵⁶⁶ Rule 29(1) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007.

⁵⁶⁷ Ibid, Rule 28(1).

⁵⁶⁸ Ibid, Rule 29(2).

employee, whether of sexual nature or otherwise, also constitutes a form of discrimination.⁵⁶⁹ Every employer is also required to develop and publish a workplace plan to prevent discrimination and to promote equal opportunity in employment.⁵⁷⁰ Employer is also required to establish a committee, or task on an existing committee, to promote the application of the employment discrimination plan in the workplace.⁵⁷¹

6.2. The Situation of Women Engagement in the Business Sector

Most women working as casual labourers

The survey found that fewer women are employed in the formal business sector (companies and factories) compared to men. Additionally, most of them work as casual labourers with no employment contracts. For instance, in Mtwara women were observed working as casual labourers with only one in the managerial level, the case was the same observed in Tanga, Tabora, Mbeya and Manyara. One of the reasons which were considered as the reason for most women working just as casual labourers was that most women are not capable of working like men.⁵⁷² Consequently, women were mostly observed working in the pre-production processes which are not considered to be of much importance, unlike men's work of running machines.



Picture 56: Women working as casual labourers in the pre-production section at NeelKanth limestone Ltd in Tanga

569 Ibid, Rule 29(3).

570 Rule 30(1) of the Employment and Labour Relations (Code of Good Practice) Rules, 2007.

571 Ibid, Rule 30(2).

572 Tabora, Manyara and Tanga HRB Survey 2021 Field Reports.

Women working as casual labourers and the issue of maternity leave

The survey also found out that women are usually employed as casual labourers and therefore are not paid on monthly basis but rather on a daily and weekly basis. These women are at risk of not enjoying right to leave, especially maternity leave, which is guaranteed for female employees under labour laws. This implies that each day you work count, therefore they find themselves working the whole year without adequate rest or leave. The survey in Tanga came across women who work until the 9th month of the pregnancy just to get daily bread.

“Usipokuja hulipwi sasa watoto watakula nini? Tunajikaza hivyo hata tukiwa wajawazito, unajifungua fasta unarudi kuendelea na kibarua.”

If you do not come to work you are not paid, where do you think children will get food from? You have to persevere even with pregnancy, you give birth and return immediately to proceed with the casual work.

One of women casual labourer in Tanga

Discrimination against women on basis of pregnancy and breastfeeding

The survey also observed that there is discrimination against women in the business sector. Pregnancy is another means of discrimination in the workplace. The survey generally found that some employers discriminate women and pregnant employees because they have to find another person to take over the duties of the worker who is maternity leave until she returns, hence paying two salaries at once. Some of the interviewed female workers also indicate that their colleagues had been fired because they took a break to go and breastfeed their babies.⁵⁷³ These issues are discussed in detail in Chapter Two above.

Sextortion, sexual harassment and abuse by employers against women employees

The survey found that the issue of sextortion and sexual harassment are among the things that affect women in the business sector. Women explained how they have found themselves in an angle where they have to use their bodies to get relief and privileges at work. The issue was mostly observed in Mara, Mbeya, Shinyanga, Dar es Salaam and Mwanza and Dodoma.

⁵⁷³ Mara HRB Survey 2021 Field Report.

Findings from the survey in Shinyanga show that there are cases of women who experience sexual harassment in the Chinese-owned mines.⁵⁷⁴ The women were said to be subjected to sexual harassment by the Chinese workers/supervisors who slap them on their buttocks whenever they feel like it and sometimes it is done publicly. They also touch their breasts publicly without these women's consent.

“Tunanyanyasika unaweza ukawa unatembea halafu ukapishana na Mchina anakupiga kofi matakoni. Haijalishi hata kama uko mbele za watu. Mida mingine anakushika kiuno na matiti mbele za watu”

“We are being abused, sometimes you may be walking around and suddenly one of the Chinese slaps you in the buttocks. It doesn't matter if you are in public. Other times they hold our waist and breasts in front of people.”

A female employee at a Chinese-owned industry in Shinyanga

“Hawa dada zetu nao wanateseka. Unakuta mchina anampiga kwenye makalio bila sababu yoyote. Wengine wanashikwa shikwa kwenye matiti. Wanakasirika sana lakini hawana watetezi”

“Our sisters are suffering. You find a Chinese man beating them on the buttocks for no reason.

Some touch their breasts, they get angry, but they have no one to defend them.”

A male employee at a Chinese-owned industry in Shinyanga

Sexual abuse to female hotel and bar attendants by customers

The survey also found that women who work in the hospitality sector (Hotels and Bar) face sexual harassments and abuses from customers. The customers unwarrantedly touch different body parts of the women. Most male customers believe that women at the bar or hotel are disgraced, hence they treat them anyhow while attending to them. The issues of sexual abuse of women in this hospitality sector were mainly reported in Tanga and Mbeya.

⁵⁷⁴ Shinyanga HRB Survey 2021 Field Report.

Women in the informal sector

Women constitute the majority (over 60%) in the informal sector, yet they are faced with various challenges, including discrimination, low productivity, excessive regulations, and income inequality. Among the women are usually subjected to various forms of discrimination in this sector are women market traders. The forms of discrimination include sexual violence, economic violence, and unfavourable working environment.

At surveyed marketplaces, some women market traders were found working in dirty environment and complained about mistreatment by male traders. For instance, at Ilala Boma Market, more women market traders were observed selling items and products on the floor compared to their male counterparts, which suggested limited access to market stalls. More women than men were observed selling their items and products along the roads and in dirty surfaces, especially at *Ilala Boma* and *Soko la Ndizi Mabibo* Markets. This puts them at a disadvantage in terms of sales, as customers would prefer to buy from traders with market stalls, especially if prices are the similar or the same. This constitutes unfavourable working environment, exacerbated by gender inequality in the informal sector.



Picture 57: Women market traders at Mabibo Food Market in Dar es Salaam

During interviews with some of the women market traders, they also revealed that most of them own small businesses, especially clothing, food vending, and vegetables, due to challenges of capital. They added that their male counterparts have bigger capital and more influence at marketplaces, hence own bigger businesses.

Economic violence against women and the burden of child neglect

Economic violence against women refers to “Any act or behaviour which causes economic harm to an individual. Economic violence can take the form of, for example, property damage, restricting access to financial resources, education or the labour market, or not complying with economic responsibilities, such as alimony.”⁵⁷⁵ It involves making or attempting to make a person financially dependent by maintaining total control over financial resources, withholding access to money, and/or forbidding attendance at school or employment.⁵⁷⁶

In Tanzania, despite efforts by different stakeholders, both government and non-government, to address violence against women, various forms of violence, especially sexual, physical, and economic violence against women, persist. These incidences are well documented in LHRC’s human rights reports.⁵⁷⁷ Economic violence against women, including their men partially or totally abandoning family maintenance or totally controlling financial resources and earnings, leaves women economically vulnerable as they are forced to work odd or difficult jobs to sustain themselves and their families, and for those working in the informal sector to be without enough capital to sustain or grow their businesses. This situation was observed during the survey in Mtwara, Tanga, Dodoma, Shinyanga, and Dar es salaam Regions. For women in the formal sector, wage discrimination remains a challenge.

Child neglect is also a big factor promoting economic violence against women, leaving them vulnerable to exploitation as cheap labour. It should also be remembered that most of these women were also denied meaningful access to educational opportunities, which is also a form of economic violence, especially in rural areas, hence possessing fewer options in terms of economic emancipation. Interviews with key informants in Mtwara and Dar es Salaam, including a social welfare officer, revealed child neglect as a big problem, leaving women with a big burden of caring for their families,

⁵⁷⁵ See European Institute for Gender Equality “economic violence” at <https://eige.europa.eu/thesaurus/terms/1096>, accessed 20th June 2021; Council of Europe “Socio-economic violence” at <https://www.coe.int/en/web/gender-matters/socio-economic-violence>, accessed 20th June 2021.

⁵⁷⁶ See UN Women “Frequently asked questions: Types of violence against women and girls” at <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence>, accessed 20th June 2021.

⁵⁷⁷ See LHRC’s Tanzania Human Rights Reports 2017, 2018, 2019, & 2020 at www.humanrights.or.tz.

including by working as casual labourers and working in unfavourable conditions to earn a living. Low pay and increased burden also force women to go to work with their children, as they try to balance between work and child care. This practice also puts children at risk of violence and harm.



Picture 58: Women observed engaging in fishing economic activity to earn a living and care for their children in Mtwara Region

In Geita, the survey also found that loss of land, displacement and right to perform economic activities lead to women and family abandonment which has thus increased work burden to women. Loss of land and displacement leads to loss of livelihoods and increased work burden for women in providing for their families. It was reported that most men had abandoned their families for the reason of going to look for work to do, a place to start afresh after the investor has obtained their land and has forbidden them to do any economic activities while waiting for compensation. Where women are traditionally responsible for meeting the subsistence needs of families, and men are no longer able to support them. This burden leads to child labour as women ask their children to sell oranges, bananas, fish, milk to sustain a living.

Non-involvement of women during land acquisition processes and payment of compensation

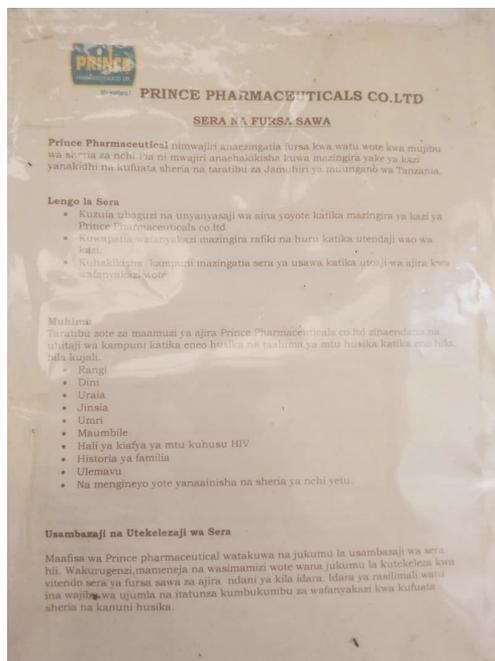
During the survey it was revealed during the land acquisition processes, men were considered to be the owners of the land and house. Women become dependent and sometimes neglected once the compensation is paid to men and the women are not considered in sharing of the property. Women participation in the whole process of land acquisition was observed to be low and therefore they could not have control, decision making and benefit from the land even after the compensation. This can also be observed in the unfair compensation cases where the parties are mostly men.

The survey in Geita found that most of the mining companies paid compensation to men leaving women dependent and unable to secure capital to establish businesses as men. This can be considered as another form of economic violence against women since they both have the right to own property including land. The payment of compensation and royalties to men “on behalf of ” families and communities denies women access to and control over the financial benefits of mining. This encourages women’s economic dependence on men, disempowering them, skewing gender relations, or exacerbating existing inequalities.

6.3. Discrimination based on Race and Tribe

Complaints about discrimination based on tribe

The survey findings reveal that discrimination based on race and tribe is an issue in the business sector. The incidents of tribalism were mostly captured in Dodoma and Geita, where the employers were said to prefer employing people from a certain tribe over others. Few businesses were observed having in place policies that discourage discrimination based on race and tribe.



Picture 59: A copy of non-discrimination policy at Prince Pharmaceuticals Co. Ltd in Mwanza

Racial discrimination

During the survey, few incidents of racial discrimination were reported in some of the surveyed regions. This issue was particularly raised in the Lake Zone, especially in Mwanza, Geita, and Mara Regions. The major concern of interviewed workers in these regions was mistreatment of Tanzanians working in the factories/companies in comparison to expatriates or non-Tanzania workers, including a big gap in wages, even where they possess more expertise or do more work.

“Mtu ambaye sio mtanzania anasikilizwa sana kuliko sisi. Unakuta wote tuna utaalamu na unakuta mimi ndo nafanya kazi sana lakini mtu kutoka nje ya nchi ndo anasikilizwa sana na analipwa mshahara mkubwa kuliko mimi.”

A worker who is not a Tanzanian gets more attention of boss than us. You may find that you possess the same qualifications, and you are actually doing more work but the foreign worker is better treated and paid.

An employee at a mining company in Geita

6.4. Persons with Disabilities (PWDs) and Employment

The PWDs are protected under the international treaties which are binding and creates legal obligations to the state parties. The key principle for the protection of this group is the principle of equality and non-discrimination. The core human rights conventions for the protection of this group are the International Covenant on Civil and Political Rights, the International Covenant on the Economic Social and Cultural Rights, Convention on the Rights of a Child, Convention on the Elimination of all Forms of Discrimination against Women, Convention on the Elimination of all Forms of Racial Discriminations and the ILO Convention concerning the Vocational Rehabilitation and Employment (Disabled Persons) Convention No.159. In 2007 the UN General Assembly adopted a special convention for the rights of this group named the Convention on the Rights of Persons with Disabilities, 2006. Regionally the group is protected under the African Charter on Human and People's Rights of 1981 and the Protocol to the African Charter on the Rights of Persons with Disability.

In Tanzania, the PWDs are protected under the Constitution of the United Republic of Tanzania of 1977, and to bring the mother law on the ground in 2010 the Persons with Disabilities Act (PWDA) was enacted after the ratification of the International Convention on the Rights of Persons with Disabilities. The survey reveals that persons with disabilities are still underemployed in the business sector. During the survey, it was observed that none of the corporates visited had taken a major step toward the inclusion of PWDs. It was also observed that none of the visited corporates has agreed on the allocation of a special budget to the Integration of the Disabled group, to recruitment, and retainment of employees with disabilities in the workplace.

Section 34(1)(a) to (f) of PWDA, 2010 states that it shall be a duty of every employer to (a) take all necessary measures to improve the working environment to prevent injuries and impairment; (b) provide job accommodation and provision of working tools; (c) ensure safe and healthy working conditions for all employees with disabilities; (d) protect employees with disabilities from harassment; (e) permit employees with disabilities to exercise their labour and trade union rights in accordance with any relevant laws; and (f) enable employed persons with disabilities to have effective access to general technical and vocational guidance and continuing training for their carrier advancement.

Likewise, these companies had no policy or strategies to address issues relating to persons with disabilities in their working place. Among the corporates who were surveyed only 1.12% of employees indicated to have a disability while 98.88% indicated that they do not have any kind of disability.

The major reason given for them not being employed is the nature of the tasks which are to be performed in most of the manufacturing companies and industries, whereas PWDs cannot perform some of the activities which need the use of force to the maximum for example running machines.

In Dodoma, at the *Sabasaba Market* the survey team met PWDs who organized themselves to conduct economic activities in the place famously named “*karakana ya walemavu*” meaning disabled workshop where they engage in various activities including welding. Although they managed to organize themselves and conduct business activities these people are still haunted by many challenges, including an unfriendly working environment, for example toilets at the *Sabasaba Market*, which cannot accommodate them.



Picture 60: A PWD at a workshop located at the Sabasaba Market

“Tunapoenda kuomba kazi watu hawatuamini tunatembea kwenye masite ya watu kuomba kazi mbalimbali za ufundi, wanakuangalia ulivyo wanaona hauwezi ila kuna wachache wanaotuamini na kutupa kazi”

People (employers) do not believe we can work when go to seek work. We have visited many working places to seek work but they just look at you and assume you cannot do the job. Only a few people believe in us and give us work.”

A person with physical ability at Sabasaba Market, Dodoma

“Eneo la kufanyia kazi si rafiki sana kwa walemavu changamoto kubwa ni vyoo sisi hatuna choo, vyoo vilivyopo ni vya kulipia na ni changanyikeni kwa watu wa kila aina na mbaya zaidi vina ngazi kwa wanaotumia baiskeli ni changamoto kubwa”

The working environment is not quite friendly for PWDs. The major challenge is lack of disability-friendly toilets, as you have to pay to use the available toilets, which are used by different people and have stairs, which presents a big challenge for those of us using wheelchairs.

A person with physical ability at Sabasaba Market, Dodoma

Although most employers were observed not to trust the employees who have disability, few were able to depart from the odd of discriminating the PWDs in the recruitment. In Geita TC the owner of the shop named Luka's shop employed a person with a disability whose arm was amputated and yet he was observed by the research team carrying packages and arrange them in good order.

6.5. Persons Living with HIV/AIDS and Employment

The International bill of rights which includes The Universal Declaration on Human Rights and the two fundamental 1966 International Covenant on human rights are the key documents in addressing the issue of discrimination based on race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status. The UN Commission on human rights has analysed and considered other status to include the health conditions and status, including those of HIV/AIDS infected persons.

Non-discrimination and equality before the law are fundamental human rights and have acquired a “peremptory norm” status in international law. It is found in the different pieces of legislation including the International

Convention on the Elimination of all Forms of Discrimination against Women, the International Convention on the Elimination of all Forms of Discrimination and the International Convention on the Rights of the Child. Although there is no binding Convention related to HIV/AIDS directly, in 2006 the UN and other stakeholders adopted a consolidated version of international guidelines on HIV/AIDS and Human rights.

The Tanzanian constitution does not specifically provide for the protection of the PLWHA although many provisions are applicable in the protection of this vulnerable group. Article 12 of the Constitution of the United Republic of Tanzania of 1977 states that all persons are born free and are equal, and adds that every person is entitled to recognition and respect of his or her dignity. Article 13 prohibits discrimination based on nationality, tribe, place of origin, political opinion, colour, and religion. Article 14 of the same constitution states that all persons have the right to live and the right to protection of their lives by society in accordance with the law. The same constitution goes further under Article 16 by outlining the right to privacy. Article 22 provides on the right to work and entitlement to equal opportunity to hold any office or discharge any function under the state authority.

Tanzania also has different policies which guide specific intervention on matters relating to HIV/AIDS including the National Policy on HIV/AIDS. In 2001, The Tanzania Commission for AIDS (TACAIDS) was established under the prime minister's office which was empowered to take a lead in all matters in relation to HIV/AIDS policy formation, strategy, and implementation. In adherence to international standards and gender, responsiveness was under guideline Number 1 of the International Guidelines on HIV/AIDS and human rights requires states to establish the national strategic frameworks and policies to deal with the issue at hand. In 2008 Tanzania enacted the HIV/AIDS Prevention and Control Act number 28 of 2008. This law among other matters provides for the rights and obligation of PLWHA per sections 33,34 and 35. The law also prohibits stigma and discrimination per sections 28,29,30,31 while section 32 criminalises acts of stigmatisation and discrimination.

The survey had few observations on HIV/AIDS and employment. Stigma among this group was not much spotted, although few corporates were trying to adhere to guidelines 4 and 8 of the International Guidelines on HIV/AIDS and Human Rights by preventing the spread of this disease to their

workplaces through the provision of Condoms. Tanga, Mbeya and Mtwara were among the regions which showed efforts in the prevention of the spread of HIV/AIDS through the provision of condoms.

During the survey, the corporate managements were asked if they have any policy or guidelines in place which address human rights issues such as gender, HIV/AIDS, disability rights, etc, at their workplace. 38.01% of the respondents indicated that they have such policies or guidelines in place, 43.27% indicated that they do not have such guidelines or policies in place while 19% indicated that they do not know, or they are not sure.

CHAPTER SEVEN:

PERFORMANCE AND EFFECTIVENESS OF REGULATORY AUTHORITIES

7.1. Introduction

In Tanzania, several regulatory authorities have been established to regulate the business sector. These include key, the Occupational Health and Safety Authority (OSHA), the Tanzania Revenue Authority (TRA), Tanzania Bureau of Standards (TBS), Tanzania Fair Competition Commission (FCC), Social Security Regulatory Authority (SSRA), Land Transport Regulatory Authority (LATRA), Tanzania Communications Regulatory Authority (TCRA), Tanzania Medicines and Medical Devices Authority (TMDA) and the National Environmental Management Council (NEMC). These authorities are established and governed by different laws and regulations that give them different mandates, including inspection and monitoring of businesses to check compliance with relevant laws and regulations. Key mandates and functions of these regulatory authorities are summarized in table 25 below.

Table 25: Key Regulatory Authorities in the Business Sector in Tanzania

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 [CAP. 366 R.E. 2019] Occupational Health and Safety Act 2003
National Environmental Management Council (NEMC)	<i>Object:</i> Undertake enforcement, compliance, review, and monitoring of the council 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

Regulatory Authority	Mandate/Functions	Governing Law(s)
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
Tanzania Medicines and Medical Devices Authority	<i>Key functions:</i> regulate medicines, medical devices, and diagnostics.	The Tanzania Medicines and Medical Devices Act, Cap 219 of 2019
Tanzania Bureau of Standards (TBS)	<i>Key functions:</i> Regulating food and cosmetics, including registration of food and cosmetic products, licensing of premises, import and export control, inspection of premises, disposal of unfit products, recall from the market, post marketing surveillance, food borne diseases surveillance and control of advertisements.	Standards Act, 2009 (amended by Finance Act, No. 8 of 2019)
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

Regulatory Authority	Mandate/Functions	Governing Law(s)
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
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 that businesses operate in accordance with the laid down regulations and sound commercial principles; regulate business by administering business and industrial licensing laws; protect the development of creativity in artistic, 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

Establishment of regulatory authorities to regulate the business environment is in line with the Tanzania's duty to protect human rights. As indicated in Chapter One of this report, this duty is stipulated under the UN Guiding Principles on Business and Human Rights and stems from the international bill of rights. This duty extends to protection from human rights abuses by business enterprises; and to do this, States must set up a proper regulatory framework to enforce laws and ensure that these enterprises respect human rights.

The State duty to protect human rights

1. States must protect people against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

General State regulatory and policy functions

3. In meeting their duty to protect, States should:

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

UN Guiding Principles on Business and Human Rights 2011

The Tanzanian Government is therefore responsible for ensuring there are appropriate laws and policies that seek to protect human rights in the business sector, and they are effectively implemented and periodically reviewed. The laws and policies must not contain business respect for human rights and the government has a duty to guide businesses on how they can respect human rights during their operations.

7.2. Coverage of regulatory authorities and engagement with community members and workers

The survey on business and human rights sought to determine coverage of regulatory authorities and the extent to which they engage with community members and workers at the surveyed workplaces. In terms of coverage, LHRC has observed that most regulatory authorities operate at zonal level, which makes it difficult for them to reach as many people as possible. For instance, OSHA is headquartered in Dar e Salaam Region, supported by six zonal offices in Arusha (Northern Zone), Mwanza (Lake Zone), Dodoma (Central Zone), Mbeya (Southern Highlands Zone), and Mtwara (Southern Zone). The distance between the regulatory authorities and the people might explain why most workers and community members are unaware of key regulatory authorities and the functions they perform, as observed in the survey on business and human rights conducted in 2019.⁵⁷⁸

During the 2021 survey, workers at surveyed workplaces and community members were asked about regulatory authorities. In terms of awareness about regulatory authorities, only 16% of the community members who participated in the survey said they are aware of authorities which regulate businesses in Tanzania, while 74% said they do not, and 10% said they are not sure. TRA was most mentioned regulatory authority, followed by OSHA, LATRA, NEMC, and TMDA. In the previous survey (2019), only 16% of the respondents also said they know authorities which regulate businesses in the country.

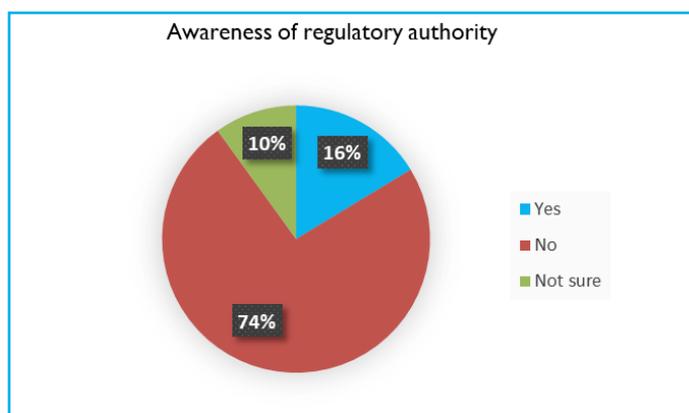


Figure 54% Community members' responses on awareness about regulatory authorities (N=975)

Source: Field data, 2021

578 LHRC (2019), Human Rights and Business Report 2018/19, at www.humanrights.or.tz.

Due to low awareness about regulatory authorities, it was not surprising that only 13% of the community members who took part in the survey indicated that they were aware of the key function of regulatory authorities in the business sector. 72% of the respondents said they were not aware of such functions, while 15% claimed they were not sure. Only 2% of the respondents also indicated that they had been engaged by regulatory authorities in the business sector.

Awareness about regulatory authorities was also found to be low among workers. When asked about the regulatory authorities, only 16% of the workers said they know regulatory authorities in the business sector, which is 12% less than those who claimed to be aware of such authorities in the previous survey (2019). 71% of the workers said they were not aware of such regulatory authorities, while 13% indicated that they were not sure. OSHA, TRA, and TBS were most mentioned regulatory authorities.

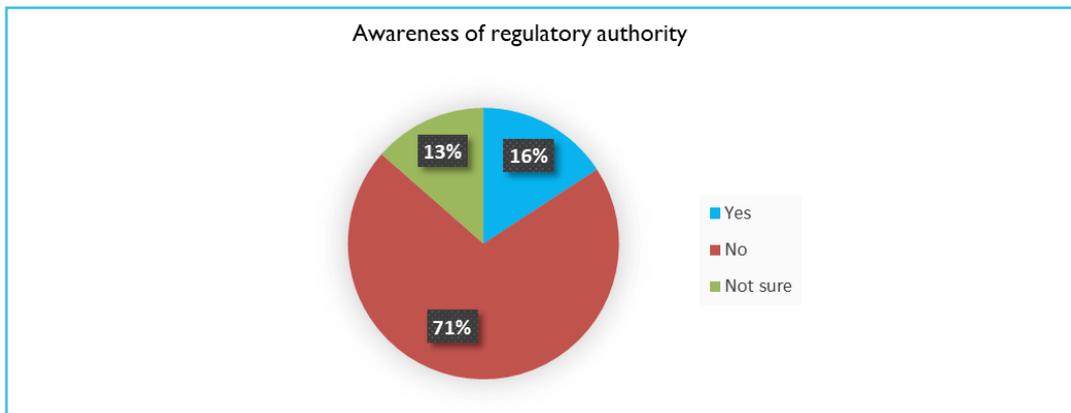


Figure 55: %Workers' responses on awareness about regulatory authorities (N=1,108)

Source: Field data, 2021

When asked whether they know key functions performed by regulatory authorities in the business sector, only 15% of the workers said they do, while 71% said they did not, and 14% said they were not sure. When asked to mention such functions, the most common functions that were mentioned were: revenue collection (TRA), checking quality of goods (TBS), enforcing occupational health and safety standards (OSHA), and fair competition (FCC). Only 6% and 10% of the workers claimed to have engaged or been engaged by regulatory authorities in the business sector.

LHRC's View: Low awareness about regulatory authorities regulating businesses and the key functions they perform among workers and community members point to inadequate engagement of the authorities with these groups.

LHRC's Call: Regulatory authorities to increase engagement with community members and workers to enhance awareness about them and ensure a better understanding of the functions they carry out. This will help to improve business environment and increase people's access to remedy in case businesses fail to comply with relevant laws, regulations, and rules.

7.3. Performance and effectiveness of regulatory authorities: Key issues and concerns

Despite the good work done by various regulatory authorities to ensure protection of human rights in the business sector through business compliance with relevant laws and regulations, several issues and concerns persist. While a proper assessment of regulatory authorities was not possible because of lack of or delay in obtaining permission to engage the regulatory authority branches/offices during the survey, review of secondary sources of data enabled identification of the issues and concerns, which are briefly highlighted below:

- **Inequitable allocation of resources:** Recent CAG audit report on the management of quality of processed food in Tanzania, released in March 2021, revealed inequitable allocation of resources as a key issue for the Tanzania Bureau of Standards (TBS).⁵⁷⁹ The CAG found that TBS available resources were not efficiently utilized and distributed, mainly due to TBS having limited resources, particularly human resources and working tools.⁵⁸⁰ He noted that some TBS Zonal Offices had higher workload compared to others due to inequitable allocation of resources, with TBS not adequately taking into consideration number of food processors, ports of entry and regions to be covered in each zone during distribution of food inspectors. Distribution of vehicles and funds was also found to be not in line with the size of respective zones.⁵⁸¹

⁵⁷⁹ See The United Republic of Tanzania, National Audit Office, PERFORMANCE AUDIT REPORT ON THE MANAGEMENT OF QUALITY OF PROCESSED FOOD IN TANZANIA, A REPORT OF THE CONTROLLER AND AUDITOR GENERAL OF THE UNITED REPUBLIC OF TANZANIA, March 2021, at https://www.nao.go.tz/uploads/Management_of_the_Quality_of_Processed_Foods.pdf, accessed 5th June 2021.

⁵⁸⁰ Ibid.

⁵⁸¹ Ibid.

Inadequate budgets for regulatory authorities also make it difficult for them to effectively carry out their functions, including inspections. According to the International Labour Organization (ILO), underfunded and understaffed labour inspection systems affect their ability to effectively perform their functions.⁵⁸²

■ **Shortage of human resources/manpower, including qualified personnel:** Shortage of human resources continues to be a key challenge for most regulatory authorities, which has implications in terms of performing key functions, including monitoring and inspections of businesses. Some of the available workers at the regulatory authorities are also not qualified to carry out some of the functions, as revealed in the recent CAG report.⁵⁸³ The CAG found that TBS assigned food inspection task to officials who were neither health officers nor environmental officers, as required by Food Regulations.⁵⁸⁴ There were therefore worries that food inspection was conducted by unqualified personnel.

The government blueprint on business environment regulatory reforms has also pointed out the issue of shortage of manpower, including skills and expertise, at regulatory authorities. Many regulatory authorities “have raised the issue of under-resourcing in terms of skills and tools/equipment/facilities that are necessary to ensure compliance.”⁵⁸⁵

In Mtwara, interviewed NEMC official also acknowledged shortage of manpower. He said:

“Nina technical staff wanne tu, ni ngumu kwao kufikia mikoa yote mitatu ya Mtwara, Lindi na Ruvuma’

’I have got only four technical staff, it’s hard for them to cover all three regions Mtwara, Lindi and Ruvuma”

NEMC official - Mtwara

582 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.

583 The United Republic of Tanzania, National Audit Office, PERFORMANCE AUDIT REPORT ON THE MANAGEMENT OF QUALITY OF PROCESSED FOOD IN TANZANIA (supra).

584 Ibid.

585 See Association of Tanzania Employers (ATE), SUMMARY OF THE BLUEPRINT ON REGULATORY REFORMS TO IMPROVE THE BUSINESS ENVIRONMENT, at <https://ate.or.tz/sites/default/files/ATE%20Summarised%20Blue%20Print%20-%20FINAL.pdf>, accessed 6th June 2021.

Additionally, shortage of laboratories and laboratory equipment for testing quality of foods and drugs has been raised as an issue. For instance, recent CAG report on management of quality of processed food in Tanzania, revealed inefficiency of TBS in provision of food test laboratory services. CAG report indicates that TBS has not been efficient in provision of food test laboratory services, characterized by delays in issuing laboratory results. This is contributed by shortages of staff and laboratory equipment and facilities, as well as insufficient laboratories.⁵⁸⁶ The CAG found that TBS had one laboratory, located in Dar es Salaam, and no laboratory in other zonal offices, as well as shortage of 32.4% of laboratory facilities for physical, microbiological, and chemical analyses. There is also a deficit of 45% of staff with qualifications and skills necessary to facilitate efficient delivery, accurate and reliable analytical results.⁵⁸⁷

- **Corruption:** Corruption is still a major challenge affecting the effectiveness of 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 the late H.E President John P. Magufuli remarked during his meeting with businesspersons in Dar es Salaam that he was aware that some government officials at TRA, Tanzania Ports Authority (TPA) and other authorities demand and receive bribes from traders.⁵⁸⁸ OSHA employees have also been implicated in corrupt practices in recent years.⁵⁸⁹

586 The United Republic of Tanzania, National Audit Office, PERFORMA CE AUDIT REPORT ON THE MANAGEMENT OF QUALITY OF PROCESSED FOOD IN TANZANIA: A REPORT OF THE CONTROLLER AND AUDITOR GENERAL OF THE UNITED REPUBLIC OF TANZANIA, March 2021, at https://www.nao.go.tz/uploads/Management_of_the_Quality_of_Processed_Foods.pdf, accessed 5th June 2021.

587 Ibid.

588 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.

589 Nelly Mtema "GOVERNMENT SCRAPS FEES ASSOCIATED WITH OSHA" DAILY NEWS Newspaper, 21 September 2019, accessed 20th September 2019.

In December 2020, it was reported that the High Court had sentenced to jail a TRA official and a police officer, who had collaborated to solicit a Tshs. 40 million bribe from businessmen in Musoma Region after stopping and later seizing their two trucks full of merchandise heading to Mwanza Region.⁵⁹⁰

- **Monitoring and evaluation:** Monitoring and evaluation to track performance of regulatory authorities has been identified as an issue by the CAG. For instance, in his recent report on the management of quality of processed food in Tanzania, the CAG pointed out that the Ministry of Industry and Trade did not conduct monitoring and evaluation to track TBS performance and lacked monitoring and evaluation plan for tracking its performance.⁵⁹¹
- **Overlapping mandates/functions:** During the survey, some of the few regulatory officials who were interviewed confirmed the challenge of overlapping mandates/functions of regulatory authorities. For instance, in Dar es Salaam, an official at OSHA pointed out overlapping functions of OSHA and NEMC and FIRE, in terms of occupational health and safety.⁵⁹²

590 See Bernard James "Case exposes TRA, police frustration of businesses" The Citizen Newspaper (Online) 10 December 2021 at <https://www.thecitizen.co.tz/tanzania/news/-case-exposes-tra-police-frustration-of-businesses-3224448>, accessed 3rd June 2021.

591 The United Republic of Tanzania, National Audit Office, PERFORMANCE AUDIT REPORT ON THE MANAGEMENT OF QUALITY OF PROCESSED FOOD IN TANZANIA (supra).

592 Dar es Salaam HRB Survey Field Report 2021.

CHAPTER EIGHT:

BUSINESS ENVIRONMENT AND CONSUMER PROTECTION IN TANZANIA

8.1. Business Environment

8.1.1. Introduction

Business and business operations in Tanzania are regulated by various national, 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 that trade flows as smoothly, predictably and freely as possible. Of particular note is the General Agreement on Tariffs and Trade (GATT) which is a legal agreement between many countries seeking to promote international trade by reducing or eliminating trade barriers such as tariffs or quotas. Moreover, there are OECD Guidelines for Multinational Enterprises, bilateral and multilateral agreements on trade that Tanzania is part of. Additionally, there are various instruments relating to conduct of businesses, including the International Covenant on Economic, Social and Cultural Rights (ICESCR); Guiding Principles on Business and Human Rights; UN Global Compact's Ten Principles; and ILO instrument 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, human rights, and investment adopted under the East Africa Community (EAC), Southern African Development Community (SADC) and the African Union (AU), including treaties establishing these organizations.

At national level, there are laws and regulations that govern 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, Cap. 113 R.E 2019; the Village Land Act, Cap. 114 R.E 2019; 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 [CAP. 366 R.E. 2019]; and Workmen's Compensation Act, 2008. There are also laws that establish various authorities that regulate the business sector, including TIC, BRELA, TRA, OSHA and NEMC.

8.1.1. Business Environment: Key Concerns for Local Businesses

While the Government continues to take various measures to improve business environment in Tanzania, including reduction of fees, taxes and delays in business transactions, several challenges persist. These challenges include corruption among regulatory authority officials; tax burden; and introduction with new taxes by LGAs without prior and proper consultation with the central government.⁵⁹³ Corruption within LGAs has been well documented in recent CAG reports, and is one of the hurdles in terms of ease of doing business.

For SMEs, competition with foreign companies for local market is a big challenge and most of them feel they are not given as much protection and cooperation as foreign competitors and lament high costs of doing business.

In 2018, the Government adopted a blueprint for improving business environment in Tanzania (Blueprint on Regulatory Reforms to Improve the Business Environment) to address “a number of policy and regulatory challenges” that have been affecting the environment.⁵⁹⁴ Among the key issues and challenges identified and highlighted in the blueprint were:⁵⁹⁵

- multitude of legislative enactments regulating different sectors and industries, such as agriculture, tourism, land, and construction;
- overlapping functions among regulatory authorities/agencies (overlapping regulations);
- duplication of registration requirements;
- multiple separate and overlapping inspections by regulatory authorities;
- high fees and charges (e.g. OSHA);
- long process for obtaining relevant permits and certificates;
- limited Tax relief for promotion of domestic industries;

593 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.

594 See United Republic of Tanzania, Blueprint For Regulatory Reforms To Improve The Business Environment, Ministry of Industry, Trade and Investment, April 2018 at <https://www.mit.go.tz/uploads/files/BLUEPRINT-BOOK-compressed.pdf>, accessed 2nd June 2021.

595 Ibid; See also Association of Tanzania Employers (ATE), SUMMARY OF THE BLUEPRINT ON REGULATORY REFORMS TO IMPROVE THE BUSINESS ENVIRONMENT, at <https://ate.or.tz/sites/default/files/ATE%20Summarised%20Blue%20Print%20-%20FINAL.pdf>, accessed 3rd June 2021.

- lack of adequate one stop centres where all regulatory agencies can be accessed all at once, especially on VAT treatment for raw materials;
- too many regulatory payments and uncoordinated inspections; and
- capacity issues affecting the regulatory framework, including shortage of manpower, skills, and tools/equipment/facilities among regulatory authorities.

In May 2021, it was reported that the Government was planning to review 22 laws that govern trade and investment sectors in a bid to boost trade and investment and improve business climate in Tanzania.⁵⁹⁶ The Minister of Industry and Trade, Hon. Prof. Kitila Mkumbo, revealed that review of these laws is expected to facilitate implementation of the blueprint for regulatory reforms to improve business environment, his remarks coming in the wake of H.E. President Samia Suluhu's call for action to improve ease of doing business in Tanzania.⁵⁹⁷ The Minister revealed that the laws to be reviewed include the Investment Act and the Companies Act.⁵⁹⁸ Review of the laws, which shall include stakeholder engagement, has also been said to intend to protect local industries and businesses from unfair competition by multinational or foreign corporations.⁵⁹⁹ In 2020, the Government reintroduced the value added tax (VAT) refunds for mineral exports through the Finance Act 2020. The refunds were removed in 2017, when Tanzania passed several laws for the extractives sector.

In 2021, the human rights survey also found there was harassment of businesses by authorities, especially tax (TRA) officials or 'tax collection task forces' created to 'deal' with businesses which do not pay tax. In December 2020, it was reported that the High Court had sentenced to jail a TRA official and a police officer, who had collaborated to solicit a Tshs. 40 million bribe from businessmen in Musoma Region after stopping and later seizing their two trucks full of merchandise heading to Mwanza Region.⁶⁰⁰ This type of harassment and businesses by dishonest or corrupt officials, including law enforcement officials, has been among key issues affecting businesses, especially SMEs and small-scale traders. In February 2021, the Member of

596 See Louis Kalumbia "Laws under review in move to boost trade, investment" The Citizen Newspaper (Online) 23 May 2021 at <https://www.thecitizen.co.tz/tanzania/news/laws-under-review-in-move-to-boost-trade-investmemnt-3410866>, accessed 3rd June 2021.

597 Ibid.

598 Alex Nelson Malanga "Why private sector welcomes the review of 22 laws" The Citizen Newspaper (Online), 27 May 2021, at <https://www.thecitizen.co.tz/tanzania/news/business/-why-private-sector-welcomes-the-review-of-22-laws-3416130>, accessed 3rd June 2021.

599 "EDITORIAL: JOINT REVIEW OF BUSINESS BLUEPRINT WELCOME MOVE" The Citizen Newspaper (Online) 24 May 2021 at <https://www.thecitizen.co.tz/tanzania/oped/editorial-joint-review-of-business-blueprint-welcome-move-3411848>, accessed 3rd June 2021.

600 See Bernard James "Case exposes TRA, police frustration of businesses" The Citizen Newspaper (Online) 10 December 2021 at <https://www.thecitizen.co.tz/tanzania/news/-case-exposes-tra-police-frustration-of-businesses-3224448>, accessed 3rd June 2021.

Parliament for Mtama Constituency (CCM), Hon. Nape Nauye, advised the Government and TRA to do away with the ‘task forces’ in revenue collection, instead allow qualified TRA officials to do the estimations and revenue collection, after raising a concern that using the task forces to collect taxes was killing businesses.⁶⁰¹

LHRC's View: Unfavourable business environment may contribute to closure of businesses and slow down Government efforts and goal of combating poverty.

LHRC's Call: Government reforms to improve business environment to give due consideration to SMEs and local businesses.

8.1.2. Covid19 Impact on Businesses

Surveys by CTI and UNDP Tanzania

Like in other parts of the world, the Covid19 outbreak, has had a profound effect on businesses in Tanzania since it erupted in March 2020. A survey on the impact of the disease on industries, conducted by the Confederation of Tanzania Industries (CTI) in May 2020, has shown that the pandemic has significantly contributed to loss in sales, loss in production, and loss in employment.⁶⁰² During the survey, 97.9% of the CTI members confirmed that their businesses had been affected by Covid19, with more than 4 out of 6 subsectors indicating more than 50% loss in sales revenue.⁶⁰³ The subsectors are chemical and chemical products (50%); energy, electrical and electronics (50%); meta and metal products (33.3%); pharmaceuticals and medical equipment (66.7%); plastic and rubber products (25%); and textile and apparel (100%).⁶⁰⁴

The CTI survey also indicated that 93.8% of the respondents said Covid19 affected their production output, especially textile and apparel (67%), pharmaceuticals and medical equipment (67%), and metal and metal products (67%).⁶⁰⁵ In terms of loss in employment, 91% of the respondents anticipated cutting down on employment, especially in textile and apparel (50%); chemical and chemical productions (50%); and energy, electrical, and electronics (50%).⁶⁰⁶ Generally, the survey found that several areas of

601 Godfrey Mushi "Nape acharuka vikosi kazi ukusanyaji kodi" Nipashe Newspaper, 10 February 2021 at <https://www.ippmedia.com/sw/habari/nape-acharuka-vikosi-kazi-ukusanyaji-kodi>, accessed 2nd June 2021.

602 See Confederation of Tanzania Industries (CTI). Analysis of the Impact of Coronavirus Disease 2019 (Covid-19) Outbreak to Industries. May 2020, at <https://cti.co.tz/publications>, accessed 3rd June 2021.

603 Ibid.

604 Ibid.

605 Confederation of Tanzania Industries (CTI). Analysis of the Impact of Coronavirus Disease 2019 (Covid-19) Outbreak to Industries. May 2020.

606 Ibid.

supply chain were affected by the pandemic, due to factors such as: delays in receiving imported consignments of raw materials/production inputs and delivery sales orders (50% of respondents); loss in sales revenue (49% of respondents); loss in production output (47% of respondents).⁶⁰⁷

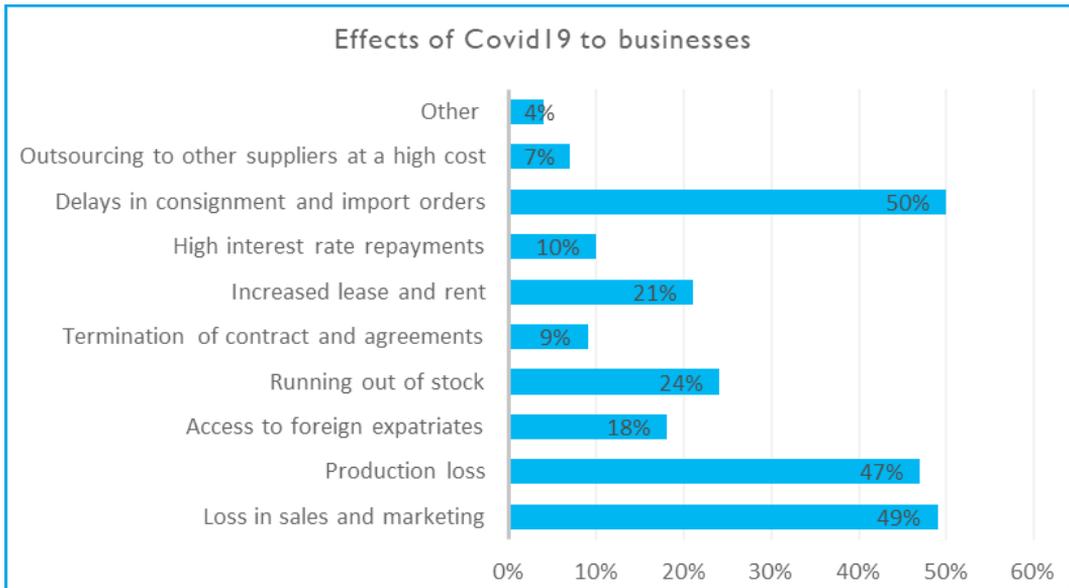


Figure 56: %Responses of CTI members on effects of Covid19 to businesses
Source: CTI survey on impact of Covid19 to industries, 2020

In 2020, UNDP Tanzania also commissioned the Economic and Social Research Foundation (ESRF) to conduct an assessment of Covid19 socio-economic impact in Tanzania, looking at its impact on various sectors and industries such as tourism and hospitality, agriculture, trade, and finance.⁶⁰⁸ For tourism and hospitality industries, Covid19 prompted countries around the world, including Tanzania, to restrict arrivals, hence reduced number of tourists, leading to depressed hotel activities.⁶⁰⁹ It was reported that Covid19 contributed to closure of hotels, especially those that rely heavily on tourists in both Mainland and Zanzibar.⁶¹⁰

UNDP assessment on the impact of Covid19 on the tourism sector are corroborated by the CAG audit report for the financial year 2019/20, which notes that Covid19 pandemic impacted the tourism sector.⁶¹¹ According to the report, tourism revenue for the Ngorongoro Conservation Area Authority

⁶⁰⁷ Ibid.

⁶⁰⁸ See UNDP Tanzania, Rapid Socio-Economic Impact Assessment of Covid19 in Tanzania, April 2020, at <https://www.undp.org/content/dam/tanzania/docs/docs2020/undp-tz-SEA-Report%20Rapid-COVID19.pdf>, accessed 2nd June 2021.

⁶⁰⁹ Ibid.

⁶¹⁰ Ibid.

⁶¹¹ United Republic of Tanzania, National Audit Office, Annual General Report of the Controller and Auditor General on the Audit of the Public Authorities and Other Bodies for the Financial Year 2019/20, March 2021.

and Tanzania national parks decreased by Tshs. 43.59 billion, from Tshs. 417.03 billion reported in 2018/19 to Tshs. 373.43 billion in 2019/20.⁶¹²

In the transportation sector, Covid19 prompted the Government to take health-related measures to prevent spread of the virus, including level sitting and provision of sanitizers. Inter-regional buses also experienced decline in profits as less people travelled due to fear of spread of the disease.⁶¹³ This had a profound impact on labour rights of bus and truck drivers.

In the marine transport subsector, countries all over the world resorted to restricting transportation of both passengers and goods. This led to reduced exported goods, especially from the manufacturing and agricultural sectors, as well as of imported goods.⁶¹⁴

Trade, both wholesale and retail, was also affected by Covid19 because of closure of borders to reduce spread of the virus. For instance, at least 20% of countries that Tanzania usually imports from had placed some sort of restriction, leading to limited supply of goods. Small scale traders, including food vendors, stationery owners, and small restaurants were also affected by closure of schools at all levels for nearly three months because of the pandemic, as most of these traders depend on sales made to students.⁶¹⁵ For cross-border traders, especially women – who constituted 70% of cross-border traders, closure of borders such as Tanzania-Congo, Tanzania-Kenya, Tanzania-Burundi, and Tanzania-Rwanda, had a profound impact on their businesses.⁶¹⁶

In terms of finance and insurance, these sectors were faced with risk of non-performing loans due to borrowers such as corporates and SMEs failing to make profit due to lack or shortage of imports because of Covid19 restrictions.⁶¹⁷ This created a challenge in loan repayment for financial institutions as production and sales declined. The financial institutions were also at risk of individual borrowers falling behind in loan repayments due to reduction of wages or termination of contracts caused by Covid19.⁶¹⁸

612 Ibid.

613 UNDP Tanzania, Rapid Socio-Economic Impact Assessment of Covid19 in Tanzania, April 2020.

614 Ibid.

615 Ibid.

616 Ibid.

617 UNDP Tanzania, Rapid Socio-Economic Impact Assessment of Covid19 in Tanzania, April 2020

618 Ibid.

In Arusha, it was reported in January 2021 that *Mount Meru Flowers* had dismissed 900 employees due to loss in sales in its flower farming business caused by Covid19.⁶¹⁹ The laid-off workers claimed that the company owes them a total of Tshs. 300,000 in unpaid five-month salaries. The director of the company acknowledged the claims made the former employees and added that the company also owes NSSF Tshs. 700 million and had loan repayments worth more than Tshs. 25 billion, as the pandemic severely affected the flower farming business in Tanzania.⁶²⁰

Business and human rights survey: Field Findings

During the survey on business and human rights, nearly all respondents (95%) acknowledged that Covid19 had affected production, marketing, and sales. Consequently, employers were forced to cut down on employment and many workers were left aggrieved by this and other factors such as delay in payment of wages and non-payment of wages. Employers and workers in the tourism and hospitality industries were affected the most in terms of loss in production, loss in sales revenue, and loss in employment. For instance, an interview with one of the directors at *Tanga Beach Resort* in Tanga revealed that because of Covid19, the hotel had not been able to pay wages for nearly three months because it was operating at a loss, and that if the situation did not improve the owner would consider closing the hotel.⁶²¹ The director claimed that they have 118 rooms but were only having an average of 9 clients per day, while running costs remained the same and they still had to pay various taxes.⁶²² One of the workers at the hotel said:

“Tangu ugonjwa wa Corona uingie, kumekuwa na changamoto kubwa kwenye kufanya kazi hapa hotelini na hasa hasa kwenye malipo ya mshahara. Kwa sasa imelazimika tufanye kazi kwa shift za kupokezana wiki mbili mbili ili wafanyakazi wote tubaki kazini na bado hatujalipwa mishahara ya miezi miwili sasa.”

“Since the Covid19 pandemic erupted we have been facing several challenges at the hotel, particularly in terms of payment of wages. We have been forced to work in two shifts so that all workers remain in the job, but we have not been paid our wages for the past two months now.”

Hotel worker - Tanga

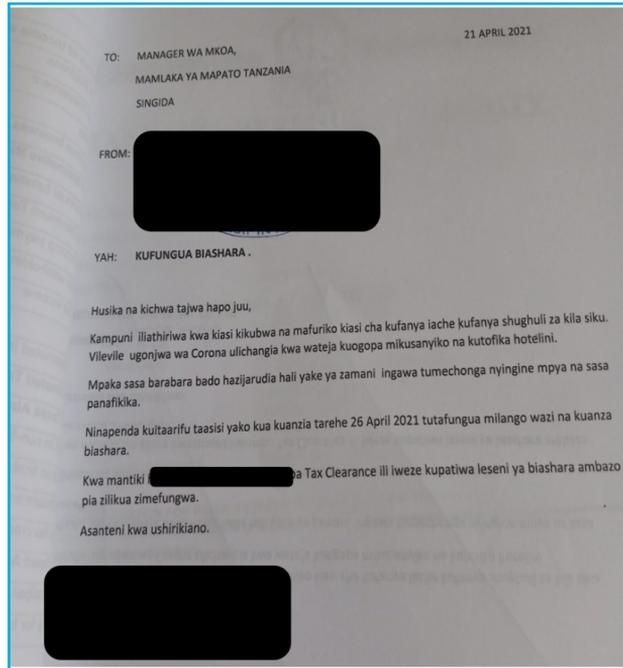
619 “Shamba la maua lasimamisha wafanyakazi 900” Mwananchi Newspaper (Online), 11 January 2021, at <https://www.mwananchi.co.tz/mw/habari/kitaifa/-shamba-la-maua-lasimamisha-wafanyakazi-900-3253236>, accessed 20th June 2021.

620 Ibid.

621 Tanga HRB Survey Field Report 2021

622 Ibid.

In Mara and Singida most of the small factories and businesses that were visited were found temporarily closed due to Covid19.⁶²³ Interviewed workers in the regions at workplaces that were found open stated that some of their fellow workers had been laid off due to the Covid19 pandemic.⁶²⁴



Picture 61: A letter about closure of business due to Covid19 by a hotel investor in Singida written to TRA regional office

In Mbeya, one of the companies that was visited, *Sky Investment Limited*, indicated that it was forced to slow and ultimately temporarily shut down production due to the Coronavirus.⁶²⁵ A management official at the company mentioned this move was made because shortage of raw materials from abroad due to Covid19 restrictions.⁶²⁶ In Shinyanga, an investor lamented about high tax rates imposed by TRA and multiple taxation despite the existence of the Covid19 pandemic, which had profoundly affected businesses.⁶²⁷

⁶²³ Mara HRB Survey Field Report 2021; Singida HRB Survey Field Report 2021.

⁶²⁴ Ibid.

⁶²⁵ Mbeya HRB Survey Field Report 2021.

⁶²⁶ Ibid.

⁶²⁷ Shinyanga HRB Survey Field Report 2021.

“Mfumo wa kodi ubadilike na itengwe kodi maalumu kulingana na aina ya biashara au kundi la wafanya biashara fulani mfano wamachinga, vipodosi, nguo, chakula n.k kwa kuangalia mtaji na waendane na hali ya biashara kwani kwa mfano sasa hivi kutokana na janga la Corona, biashara hakuna lakini wao wanadai kodi kubwa ambayo hatuna sasa inakuwa ni vita.”

“The taxation system needs to change, such that there is a special tax depending on the type of business or a group of taxpayers, for instance itinerant traders, cosmetics traders, clothing traders, food traders, e.t.c....they should also consider the capital and state of businesses...for instance, at the moment the Covid19 pandemic has affected businesses, but they just keep on collecting high taxes.”

An investor – Kahama, Shinyanga

8.2. Working environment at food markets

8.2.1. Food Safety: A Global Overview

Food safety is an important aspect of consumer protection and a public health issue. It is a process that is complex, starting on the farm and ending with the consumer.⁶²⁸ According to the World Health Organization (WHO), access to sufficient amounts of safe and nutritious food is key to sustaining life and promoting good health and unsafe food causes more than 200 diseases – ranging from diarrhoea to cancers.⁶²⁹ WHO estimates that 600 million people (almost 1 in 10 people) in the world fall ill after eating contaminated food and 420,000 die every year.⁶³⁰ Children are among the groups mostly affected by unsafe foods. Children under 5 years of age carry 40% of the foodborne disease burden, whereby 125,000 deaths occur every year. Diarrheal diseases are said to be the most common illnesses caused by contaminated food, responsible for 550 million people falling ill and 230,000 deaths every year.⁶³¹

Unsafe food creates a vicious cycle of disease and malnutrition, particularly affecting infants, young children, elderly and the sick.

WHO

628 See Food and Agricultural Organization of the United Nations (FAO) “Food safety and quality” at <http://www.fao.org/food-safety/en/>, accessed 6th June 2021.

629 See World Health Organization (WHO) “Food safety” 30 April 2020 at <https://www.who.int/news-room/fact-sheets/detail/food-safety>, accessed 6th June 2021.

630 Ibid.

631 Ibid.

According to the World Bank (WB), in most developing countries food safety is given minimal policy attention and investment, except during foodborne disease outbreaks and other crises.⁶³² Consequently, these countries have weak food safety systems, leaving them vulnerable to high costs of unsafe food, especially in Asia and Sub-Saharan Africa. WB estimates that unsafe food costs low- and middle-income countries USD 110 billion in lost productivity and medical expenses each year.⁶³³ To address this issue, there is need for greater investment, better regulatory frameworks, and measures to promote behaviour change.⁶³⁴

8.2.2. Food safety and hygienic practices at food markets: CAG Report and Survey Findings

Traders at marketplaces are faced with various health and safety risks, including poor sanitation, insecurity of people and goods, and physical and psychological effects.⁶³⁵ This is also the situation that affects most food markets in Tanzania, which have become an important source of affordable food for millions of Tanzanians, seeking nutritious and healthy foods.⁶³⁶ To provide the community with safe and nutritious food, there must be proper hygiene controls of food markets.⁶³⁷

In Tanzania, control of hygiene at marketplaces is mainly governed by the Public Health Act, 2009; the Environmental Management Act, 2004; and the Local Government (District Authorities) Act, 1982. There are also by-laws created by LGAs to regulate hygiene, including at marketplaces.

CAG Report findings on hygienic practices at food markets

In March 2021, the Controller and Auditor General of the United Republic of Tanzania (CAG) released his audit report on the hygienic practices in food markets in Tanzania, looking at the period of July 2016/17 to June 2019/20.⁶³⁸ This period was purposively selected due to increased reporting of cases of dumping of solid wastes and other poor hygienic conditions at marketplaces.⁶³⁹

632 The World Bank "The Safe Food Imperative: Accelerating Progress in Low- and Middle-Income Countries" 23 October 2018 at <https://www.worldbank.org/en/topic/agriculture/publication/the-safe-food-imperative-accelerating-progress-in-low-and-middle-income-countries>, accessed 6th June 2021.

633 Ibid.

634 Ibid.

635 See Laura Alfors, Occupational Health & Safety for Market and Street Traders in Accra and Takoradi, Ghana, Women in Informal Employment Globalizing and Organizing, December 2009, at https://www.wiego.org/sites/default/files/publications/files/Alfers_OHS_Street_Traders_2009.pdf, accessed 5th June 2021.

636 United Republic of Tanzania, National Audit Office, Performance Audit Report on the Controls of Hygienic Practices in Food Markets in the Country, Report of the Controller and Auditor General of the United Republic of Tanzania, March 2021, at https://www.nao.go.tz/uploads/Control_of_Hygienic_Practices_in_Food_Markets_1.pdf, accessed 5th June 2021.

637 Ibid.

638 United Republic of Tanzania, National Audit Office, Performance Audit Report on the Controls of Hygienic Practices in Food Markets in the Country (supra).

639 Ibid.

The main findings of the CAG audit were:⁶⁴⁰

- Inadequate controls in supporting hygiene;
- Unsatisfactory market infrastructure and sanitation system;
- Inadequate enforcement of hygienic controls and standards;
- Inadequate efforts of PO-RALG to enhance hygiene in food markets; and
- Inadequate monitoring and evaluation in managing hygiene practices in food markets.

Regarding controls in supporting hygiene, the CAG found that by-laws created by LGAs did not cover pertinent issues related to hygiene control, such as management of solid and liquid waste, penalties and fines, food safety, health check-ups, and market committees.⁶⁴¹ He noted that 8 out of 20 visited formal markets had inadequate management of vendors, characterized by lack of registers for vendors, market stalls on pathways, and inadequate control of number of vendors.⁶⁴² 18 of the 25 markets established more than five years ago did not observe best practices requirements for hygiene, including zoning, food not to be arranged on the floor, management of solid and liquid waste, and improved WASH (water, sanitation, and hygiene) services. It was also found that 6 out of 20 visited formal markets did not have committees and 12 were operating without a constitution.

In terms of market infrastructure and sanitation system, the CAG report indicates that infrastructures and sanitation systems at 15 out of 25 markets were not functioning well to support hygiene requirements, mainly due to insufficient funding for development and maintenance. Despite LGAs receiving adequate funding for markets, only 2 out of 10 LGAs allocated funds for infrastructure maintenance and development. All 25 markets were found to be poorly designed, ranging from drainage deficiency at 16 out of 25 markets, to lack of water supply at 12 out of 25 markets – in the worst-case scenario recorded in Kibondo DC in Kigoma Region, where two of the visited markets were found to have no water in the toilets. Additionally, 16 out of 25 markets had inadequate management of solid wastes and 11 out of 25 had no drainage structures to prevent water stagnation. In urban areas, insufficient sanitation facilities were found to be a bigger problem, where there was one toilet for 716 vendors, compared to rural areas, where there was one toilet for 169 vendors. The CAG further found that there was lack of inspection checklist for food markets, leading to poor inspection and lack of accountability.

640 Ibid.

641 United Republic of Tanzania, National Audit Office, Performance Audit Report on the Controls of Hygienic Practices in Food Markets in the Country (supra).

642 Ibid.

Regarding enforcement of hygienic controls and standards, the CAG found that there was little enforcement at 16 out of 25 visited markets, as traders are still putting food products/items on the floor, contrary to the Public Health Act and its Regulations. Zoning (arrangement of traders based on their food products) was not observed at 17 markets. Lack of regular health check-ups for market traders was also observed.⁶⁴³

Table 26: Indicators of unsatisfactory hygienic condition at food markets visited during CAG audit

Indicators of unhygienic conditions	# Food markets with unsatisfactory hygienic condition
Absence of drainage structures	14
Deteriorated drainage structures	8
Deteriorated waste storage bay	6
Presence of uncollected large quantities of waste	14
Inadequate liquid waste structures	6
Absence of zoning	15
Inadequate sanitation facilities	14
Poor management of food on the floor	16

Source: CAG Report on the controls of hygienic practices at food markets in Tanzania

On PO-RALG efforts to enhance hygiene at food markets, the report states that in Dar es Salaam the ministry stationed only 15 health officers, the number which is not adequate considering the magnitude of hygiene conditions at marketplaces. There was no supportive supervision for marketplaces.⁶⁴⁴

Regarding monitoring and evaluation, the CAG found that there is inadequate monitoring of market activities by LGAs, RS, and PO-RALG, finding no evidence of such activities at 25 visited markets. He also noted that PO-RALG did not have performance indicators for assessing market hygiene.

In his report, the CAG concluded that PO-RALG did not adequately facilitate hygienic practices at food markets to ensure food safety and quality, as evidenced by unsatisfactory hygienic conditions, including draining and liquid waste systems. He also observed that waste containers at most markets were found to have overflowing waste,⁶⁴⁵ with large quantities of wastes remaining unremoved.⁶⁴⁶

643 United Republic of Tanzania, National Audit Office, Performance Audit Report on the Controls of Hygienic Practices in Food Markets in the Country (supra).

644 Ibid.

645 For instance, on 25th January 2020 PO-RALG reported that large quantities of debris remained uncollected at Sabasaba Market in Dodoma City.

646 United Republic of Tanzania, National Audit Office, Performance Audit Report on the Controls of Hygienic Practices in Food Markets in the Country (supra).

Field findings on food safety at marketplaces

During the survey, visited marketplaces in Dodoma, Geita, Kilimanjaro, and Dar es Salaam Regions were found to fall short of hygienic practices. Key issues observed include inadequate sanitation facilities, inadequate or absence of drainage structures, deteriorated drainage structures, absence of zoning, placing of food items on the floor, and filthy/dirty working environment.



Picture 62: Lack of adequate draining structures, leading to unsatisfactory hygienic conditions, observed at Ilala Boma Market in Dar es Salaam

Generally, market infrastructure and sanitation systems at all five food markets that were visited were found to be unsatisfactory, characterized by: drainage deficiency; inadequate management of solid waste; lack of draining structures to prevent water stagnation, especially at Ilala Boma Market and Mabibo 'Mahakama ya Ndizi' Market in Dar es Salaam; and inadequate toilet facilities. This situation also suggests poor or inadequate enforcement of hygienic controls and standards to ensure compliance with laws and regulations governing hygienic practices. Poor food handling was also observed at all five markets that were visited, and food vendors were observed preparing food in unsanitary environment. This environment puts the market traders and food consumers at risk of diarrheal diseases. The unhealthy condition of the markets also suggests that LGAs do not set aside

adequate funds (15% of total revenue generated from market sources) for infrastructure development, maintenance, and sanitation at marketplaces, as observed by the CAG in his audit report.



Picture 63: Deteriorated drainage structures observed at Mabibo 'Ndizi' Market in Dar es Salaam



Picture 64: Food placed on dirty floor/surface at Ilala Boma Market, in disregard of food safety

In Dodoma, the survey found poor management of wastes to be an issue at Sabasaba Market. The survey also found that there is poor or lack of enforcement of hygienic practices as required by the law. For instance, despite existence of toilets, some of the people at the market were said to relieve themselves at unauthorized areas around the market. One interviewed worker said some people avoid the toilets at the market because they cannot pay Tshs. 200 every time they need to go for a short call.

Market infrastructure were also found not to be disability-friendly at most marketplaces. For instance, in Dodoma, some of the interviewed traders with disability mentioned that toilet facilities at Sabasaba Market are not disability friendly. Most toilets were also found to be unsanitary.

“Eneo la kufanyia kazi si rafiki sana kwa walemavu changamoto kubwa ni vyoo sisi hatuna choo, vyoo vilivyopo ni vya kulipia na ni changanyikeni kwa watu wa kila aina na mbaya zaidi vina ngazi kwa wanaotumia baiskeli ni changamoto kubwa”

“The working environment is not disability-friendly...toilets are the major challenge in this regard, which are used by different people, and have stairs – which presents a challenge for those of us who use wheelchairs.”

A trader with physical disability



Picture 65: Toilets at Sabasaba Market in Dodoma which are not disability friendly

In Dodoma, large quantities of wastes were found in the waste storage container at Sabasaba Market. Interviewed traders said the authorities take too long to remove waste from the market. Women market traders were also found beside the waste storage container selling food products placed on the floor, which is contrary to the Public Health Act and its Regulations.



Picture 66: Market traders selling food items on the floor and near an overflowed waste storage container at Sabasaba Market, contrary to public health laws and regulations

At Sabasaba Market in Dodoma, the survey also observed unsafe food storage practices. Some of the traders were observed storing cooking oil in used water bottles, which might not be clean in the first place. Juice vendors were also observed using such bottles to store and sell fresh juice.



Picture 67: Cooking oil put in used water bottles found at Sabasaba Market in Dodoma

In Geita, it was observed there were inadequate toilet facilities at Nkome Market. Consequently, traders/vendors and customers were forced to relieve themselves outside nearby the market. This constitutes unsanitary working environment, putting them at risk of occupational diseases, especially diarrhoea. Lack of such facilities presents a bigger problem for women traders, who are also at risk of contracting urinary tract infections (UTIs). Inadequate water supply was also found to be a challenge at the market, suggesting lack of appropriate WASH services at the market.

LHRC's View: Unsanitary market environment affects both market traders and food consumers, leaving them at risk of contracting diseases. Women, who constitute the majority of informal sector traders, are disproportionately affected by the unhealthy working conditions at marketplaces, characterized by poor or inadequate WASH services. Most women traders are also mothers, who usually take and stay with their children at marketplaces, putting them at risk of occupational diseases such as diarrhoea. According to UNICEF, over 700 children under the age of 5 years die every day of diarrheal diseases due to lack of appropriate WASH services.⁶⁴⁷

Lack of leadership opportunities and discrimination of women market traders is also a reality at marketplaces in Tanzania. Consequently, women traders have little or limited access to market stalls, hence forced to place food items on the floors, which are usually filthy. Inadequate representation in market leaderships also means little protection of women market traders' interests and well-being, including need for appropriate WASH services.

8.2. Consumer Protection

8.2.1. Consumer Protection and Counterfeit and Substandard Products in Tanzania

Legal and regulatory framework on consumer protection

In line with its international human rights obligations, Tanzania has put in place several laws and regulations to ensure consumer⁶⁴⁸ protection in different sectors. Chief among them is the Fair Competition Act of 2003, which seeks "to promote and protect effective competition in trade and commerce, to protect consumers from unfair and misleading market conduct and to provide for other related matters."⁶⁴⁹ The Act establishes the Fair Competition Commission, whose functions include to ensure protection of consumers' interests and provide remedies.⁶⁵⁰ There is also the National Consumer Advocacy Council,⁶⁵¹ whose functions include: representing the interests during consultations with the Fair Competition Commission, regulatory authorities, and government ministries; and received and disseminate information and views on matters of interest to consumers.⁶⁵²

⁶⁴⁷ See UNICEF "Water, Sanitation and Hygiene (WASH): Safe water, toilets and good hygiene keep children alive and healthy." at <https://www.unicef.org/wash>, accessed 6th June 2021.

⁶⁴⁸ The Fair Competition Act, 2003 defines "consumer" under Section 2 as "any person who purchases or offers to purchase goods or services otherwise than for the purpose of resale but does not include a person who purchases any goods or services for the purposes of using them in the production or manufacture of any goods or articles for sale.

⁶⁴⁹ Fair Competition Act, 2003.

⁶⁵⁰ Ibid, Sections 62 & 65.

⁶⁵¹ Ibid, Section 92.

⁶⁵² Ibid, Section 93.

Under the Fair Competition Act of 2003, any person in trade is prohibited from engaging in conduct that is misleading or deceptive or is likely to mislead or deceive.⁶⁵³ In connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services, the Act provides for several prohibitions, including:

- ☞ falsely representing that goods are of a particular standard, quality, grade, composition, style or model or have had a particular history or particular previous use;
- ☞ falsely representing that services are of a particular standard or quality or grade;
- ☞ falsely representing that goods are new;
- ☞ falsely representing that a particular person has agreed to acquire goods or services; and
- ☞ representing that goods or services have sponsorship, approval, performance, characteristics, accessories, uses, or benefits they do not have.

Sections 18 and 19 of the Fair Competition Act prohibit misleading conducts in relation to goods and services, in terms of nature, characteristics, suitability or quantity of goods or services. Section 49 provides that no person is allowed to supply goods to consumers if such goods do not comply with product safety standards or have been banned.

There are also other laws that ensure consumer protection, including those which establish regulatory authorities such as the Land Transport Regulatory Authority (LATRA), the Tanzania Medicines and Medical Devices Authority (TMDA), and the Tanzania Bureau of Standards (TBS). Among other things, these regulatory authorities are tasked with consumer protection. For instance, the Land Transport Regulatory Authority Act, 2019 establishes the LATRA and the Consumer Consultative Council, whose functions include protection of consumer interests.⁶⁵⁴ The Tanzania Communications Regulatory Authority (TCRA) has protection of telecom industry service users among its functions, including through the Postal Communications (Consumer Protection) Regulations, 2018, which entered into force in April 2021. TFDA and TBS work to protect consumers against counterfeit and substandard products by ensuring consumer product safety.

653 Section 15(1) of the Fair Competition Act, 2003.

654 Sections 4, 5, 29, & 31 of the Land Transport Regulatory Authority Act, 2019.

Despite existence of various laws and regulations on consumer protection, counterfeit and substandard products continue to flood domestic market.⁶⁵⁵ These products have been said to usually originate from China, India, the United Arab Emirates (Dubai), Indonesia, Taiwan, Singapore, Pakistan, Hong Kong, South Korea, Bahrain, Malaysia, Burma and Thailand.⁶⁵⁶ Identifying and reporting counterfeit and substandard products is also an issue for most consumers, while challenges inadequate budget allocated for relevant authorities; poor governance and corruption; and lack of effective enforcement of laws persist.

Impact of counterfeit and substandard products

- ill-health
- loss of consumer trust
- loss of market share
- safety risks
- tax revenue loss due to tax evasion

Management of quality of processed food: CAG Report of 2021

In March 2021, the Controller and Auditor General of the United Republic of Tanzania (CAG) released his audit report on the management of quality of processed food in Tanzania.⁶⁵⁷ The main objective of the audit, which covered the entire country, was to assess whether the Tanzania Bureau of Standards (TBS) has adequate capacity for the management of quality and safety of food control activities in Tanzania.⁶⁵⁸ Main findings of the audit were:⁶⁵⁹

- presence of processed food with unsatisfactory quality in the market;
- inadequate strategies and plans to ensure delivery of quality of processed food to the market;
- inadequate implementation of plans and strategies for managing quality of processed food;
- inadequate monitoring and surveillance system of processed food in the market;
- presence of food processed operating with expired TBS Food Product Licenses;
- presence of significant number of uncertified processed food in the market;

⁶⁵⁵ 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; Sosthenes Mwita "Tanzania: Fake Goods Cause Huge Economic Losses" *Daily News Newspaper*, 26 June 2018 at <https://allafrica.com/stories/201806260688.html>, accessed 14th November 2018.

⁶⁵⁶ Ibid.

⁶⁵⁷ The United Republic of Tanzania, National Audit Office, *PERFORMA CE AUDIT REPORT ON THE MANAGEMENT OF QUALITY OF PROCESSED FOOD IN TANZANIA: A REPORT OF THE CONTROLLER AND AUDITOR GENERAL OF THE UNITED REPUBLIC OF TANZANIA*, March 2021, at https://www.nao.go.tz/uploads/Management_of_the_Quality_of_Processed_Foods.pdf, accessed 5th June 2021.

⁶⁵⁸ Ibid.

⁶⁵⁹ Ibid.

- inefficient utilization of available resources to manage the quality of processed food;
- Inefficiency of TBS in provision of food test laboratory services, particularly through delay in the issuance of laboratory results; and
- Inadequate monitoring of TBS performance by the Ministry of Industry and Trade.

In terms of processed food with unsatisfactory quality in the market, the CAG found that 80% of the sampled processed food items from certified food processors (SMEs) in four zones that were visited during the audit exercise did not meet the required food standard.⁶⁶⁰ He noted that TBS provided a clarification, noting that instead of restricting production in order to promote its obligation in business, TBS provided a letter advising the manufacturer to conform to the requirements. However, the CAG observed that this poses high risk to food consumers.⁶⁶¹

Regarding strategies and plans to ensure delivery of quality processed food to the market, the CAG noted that such plans were not preceded by needs assessment to capture human resources, working tools, and equipment needed for effective implementation.⁶⁶² He also observed that “TBS lacked effective collaboration mechanism with other stakeholders like Local Government Authorities (LGAs) and other organizations with accredited food laboratories.”⁶⁶³

In terms of implementation of plans and strategies for managing quality of processed food, the CAG noted that for the period of five years covered in the audit, TBS did not manage to adequately cover ports of entry, food processors and food premises through regular inspection in accordance with the plans. He noted that TBS managed to conduct 74% of the expected routine inspections at 23 of the certified food processors that were visited. He concluded that inspection mechanisms at the ports of entry were not effective.

⁶⁶⁰ The United Republic of Tanzania, National Audit Office, PERFORMA CE AUDIT REPORT ON THE MANAGEMENT OF QUALITY OF PROCESSED FOOD IN TANZANIA (*supra*).

⁶⁶¹ *Ibid.*

⁶⁶² *Ibid.*

⁶⁶³ *Ibid.*

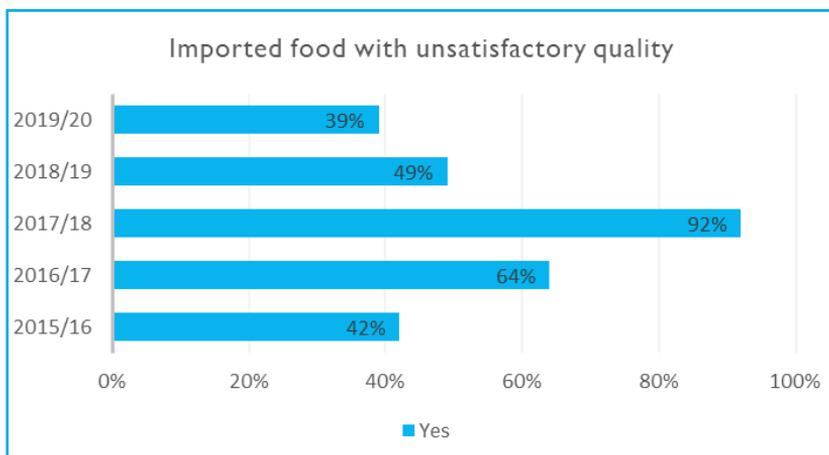


Figure 57: % Imported food with unsatisfactory quality for Dar es Salaam Port (2015 to 2020)

Source: Data from CAG Report on Management of Quality of Processed Food, 2021

According to the CAG report, TBS is mandated and required to establish regulatory measures and performance monitoring system to facilitate continuous improvement of quality of the processed food that is either manufactured locally or imported from abroad. However, the audit found that only 25% of the sampled food processors complied with the requirement by submitting their food samples to TBS laboratory. The audit also revealed that TBS rarely conducts market survey to ensure conformity with standards of food products in the market.

Regarding certification of processed food, the CAG found that in the period of 2015/16 to 2019/20, TBS managed to certify only 251 out of 12,121 food processors, which is equivalent to 2% of food processors trained by SIDO, but a total of 91 food products were registered during the period.⁶⁶⁴ This means that the majority of food processors were not regulated by TBS. It was also observed that TBS was not efficient in certification of food products, taking 9 to 1126 days (3.5 years); and this delay contributes to increasing the number of uncertified products in the market and extend risk to the health of consumers of substandard food productions. Among the reasons for the delay are use of manual certification system and weak coordination mechanism with other accredited laboratories.⁶⁶⁵

664 The United Republic of Tanzania, National Audit Office, PERFORMA CE AUDIT REPORT ON THE MANAGEMENT OF QUALITY OF PROCESSED FOOD IN TANZANIA (supra).

665 Ibid.

Regarding resources to manage the quality of processed food, the CAG found that TBS available resources were not efficiently utilized and distributed, mainly due to TBS having limited resources, particularly human resources and working tools. He noted that some TBS Zonal Offices had higher workload compared to others due to inequitable allocation of resources, with TBS not adequately taking into consideration number of food processors, ports of entry and regions to be covered in each zone during distribution of food inspectors. Distribution of vehicles and funds was also found to be not in line with the size of respective zones. Additionally, TBS assigned food inspection task to officials who were neither health officers nor environmental officers, as required by Food Regulations. There were therefore worries that food inspection was conducted by unqualified personnel.

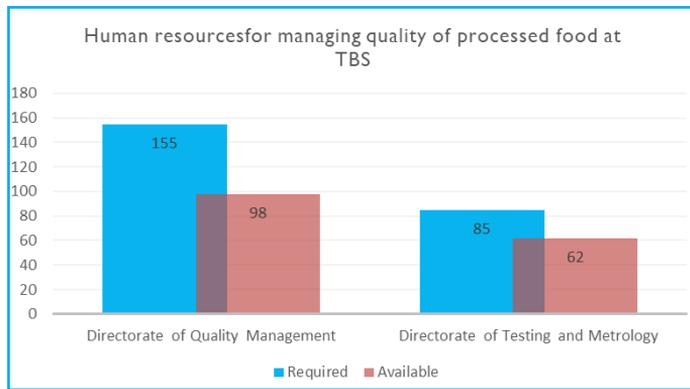


Figure 58: #Human resources for managing quality of processed food at TBS

Source: Data from CAG Report on Management of Quality of Processed Food, 2021

In terms of provision of food test laboratory services, the CAG report indicates that TBS has not been efficient in provision of food test laboratory services, characterized by delays in issuing laboratory results. This is contributed by shortages of staff and laboratory equipment and facilities, as well as insufficient laboratories.⁶⁶⁶ The CAG found that TBS had one laboratory, located in Dar es Salaam, and no laboratory in other zonal offices, as well as shortage of 32.4% of laboratory facilities for physical, microbiological, and chemical analyses. There is also a deficit of 45% of staff with qualifications and skills necessary to facilitate efficient delivery, accurate and reliable analytical results.⁶⁶⁷ Additionally, the CAG report revealed that received samples for testing are poorly handled and stored, including placing them on the floor, as shown in picture 68 below.

⁶⁶⁶ The United Republic of Tanzania, National Audit Office, PERFORMANCE AUDIT REPORT ON THE MANAGEMENT OF QUALITY OF PROCESSED FOOD IN TANZANIA (supra).

⁶⁶⁷ Ibid.



Picture 68: Samples at TBS in a storage area found improperly stored during CAG audit in October 2020

Source: CAG Report on Management of Quality of Processed Food, 2021

Lastly, regarding monitoring of TBS performance by the Ministry of Industry and Trade, the CAG found that the Ministry did not conduct monitoring and evaluation to track TBS performance and lacked monitoring and evaluation plan for tracking its performance.⁶⁶⁸ The CAG report also indicates that the Ministry does not analyse reports submitted to TBS, which would enable it to identify performance problems and advise accordingly, instead of relying on TBS self-evaluation reports. In this regard, the CAG found that the Ministry has not given the monitoring and evaluation activity of her agencies such as TBS high priority.⁶⁶⁹

LHRC's View: To borrow the words of the CAG in his 2021 audit performance report on management of quality of processed food in Tanzania, safety quality of food is of great importance to the public, since consuming food contributes to health and economic productivity of the individual and the national at large. Consequences of unsatisfactory include loss of people's lives, loss of resources of victims' families and high costs incurred by the Government for treatment.⁶⁷⁰

668 The United Republic of Tanzania, National Audit Office, PERFORMA CE AUDIT REPORT ON THE MANAGEMENT OF QUALITY OF PROCESSED FOOD IN TANZANIA (supra).

669 Ibid.

670 Ibid.

LHRC's Call: TBS and other regulatory authorities to ensure effective enforcement and implementation of laws and regulations to guarantee food consumer protection and enhance coordination. The Ministry of Industry and Trade should also make provision for monitoring and evaluation of TBS performance and ensure the regulatory authority is well equipped for the safety and quality of food products.

8.2.2. Existence and impact of counterfeit and substandard products: Field Findings

During the survey, sampled community members were asked about counterfeit and substandard products. One of the questions posed to them was whether they have a tendency of inspecting products to check if they are genuine before buying them. Over half of the respondents (54%) said they do, while 43% said they do no such thing. The remaining 3% said they were either not sure or did not remember. In the previous survey (2019), majority of respondents (55.3%) said they do inspect products before buying them, while 30.7% said they do not do that and 14.1% said they were not sure or did not remember in they inspected them or not.⁶⁷¹

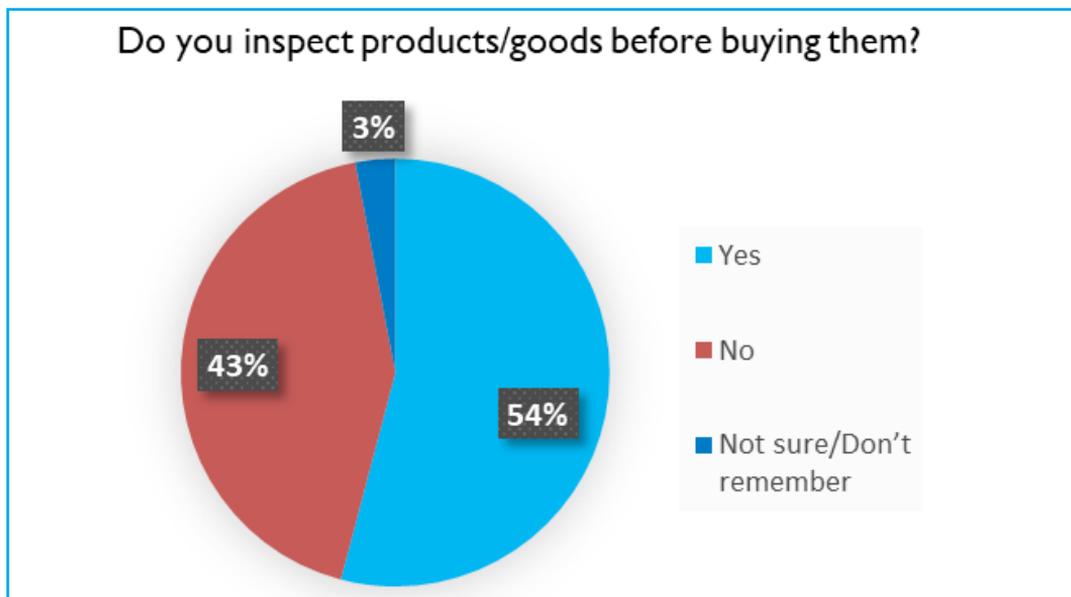


Figure 59: %Responses on community members who inspect products/good before buying them (N=1,100)

Source: Field data, 2021

671 See LHRC (2019). *Human Rights and Business Report 2018/19.*, at www.humanrights.or.tz

The community members engaged during the survey were also asked whether they had come across or bought a counterfeit or substandard product; and the majority of them (61%) said they had not, while 37% said they had come across such products. 2% of the respondents indicated that they were not sure or did not remember, as indicated in the figure 60 below. In the previous survey, 30% of the respondent said they had come across counterfeit and substandard products, 50% said they had not, while 20% said they were not sure or did not remember.

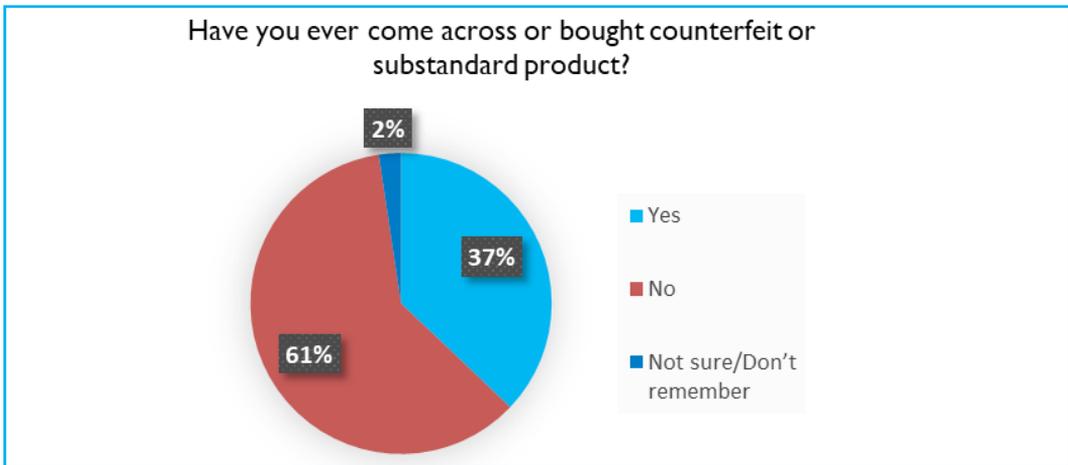


Figure 60: %Responses on coming across or buying counterfeit or substandard product (N=1,100)

Source: Field data, 2021

Community members who claimed to have come across counterfeit or substandard products (37%) were also asked what steps they took afterwards. Only 4% of them said they reported the matter to relevant regulatory authorities, a decline of 1% compared to the survey of 2019. Only 46% of the respondents also indicated they returned to the trader/seller to complain about the product, while half of the respondents (50%) said they did not do anything.

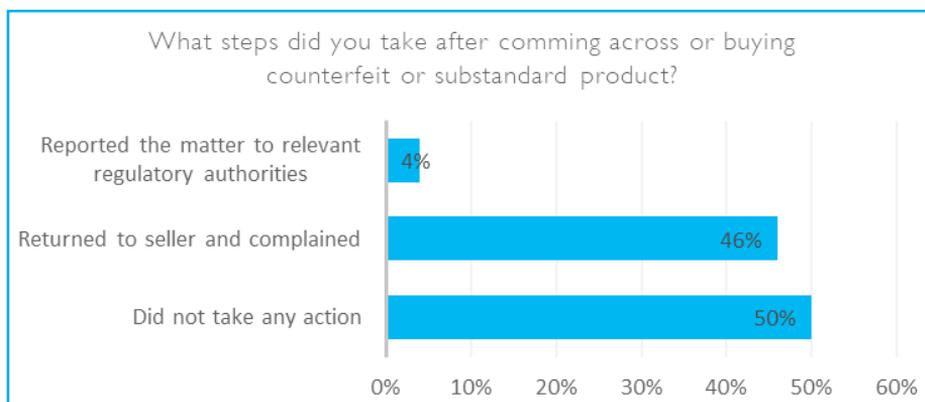


Figure 61: %Responses on action taken by community members after coming across counterfeit or substandard product (N=408)

Source: Field data, 2021

Community members who claimed to have come across counterfeit or substandard products (37%) were additionally asked whether they had suffered any harm as a result of using or consuming counterfeit or substandard products. 31% of the respondents confirmed suffering harm as a result of consumption of counterfeit or substandard product. Examples include diarrhoea and skin infections. Below are some of the responses of the respondents when asked about harm suffered:

Table 27: Some of the complaints of harm caused by counterfeit or substandard products made by community members during the survey

Actual quote	Translation
Sina utaratibu wa kukagua bidhaa, huwa natumia tu. Namwaini Mungu.	I usually don't inspect the products I buy. I just trust God.
Niliirudisha akanibadilishia nyingine. Pia nikamshauri asije kumuuzia mtu mwingine.	I returned the merchandise to the trader, and he gave me another one. I also advised him not to sell the substandard product not another person.
Shamba langu halikuota sababu ya mbegu feki za mahindi.	Maize did not grow in my farm because of fake seeds.
Niliumwa sana tumbo, baada ya kutumia nikaenda hospitali kubwa.	I had serious stomach pain and had to seek medical help at a hospital.
Nilipata madhara ya ngozi, ilikuwa mafuta ya lotion.	I suffered some skin infections after using a lotion I had bought.
Tumbo liliuma sana. Niliharisha.	I experienced stomachache. I also suffered from diarrhoea.

Nilitumia mafuta ngozi iliharibika, huku nyeusi na nyeupe, now nakuwa makini kununua bidhaa manake ilinichukua miezi sita ngozi kurudi kuwa sawa.	Part of my skin changed into white after I used some skin care product. I am now very careful when purchasing products, as it took six months for my skin to return to normal.
Tulikunywa juice iliyokwisha muda wa matumizi na tukaumwa matumbo.	We drank some juice, which had expired, and we had stomach-ache as a result.
Nilimwambia anirudishie pesa yangu, kisha aache kuuza bidhaa zilizoisha muda wake.	I asked the trader to refund me after realizing he had sold be a counterfeit product.
Nilinunua matairi ya gari kumbe yamepita muda wake.	I bought expired car tyres.
Niliwahi kupata madhara ya kuhara baada ya kutumia bidhaa isiyokuwa na ubora.	I suffered from diarrhoea after consuming an expired product.
Nilinunua dawa ya kupiga mswaki feki ikaniharibu meno.	I bought a counterfeit toothpaste and damaged by teeth.

Source: Field data, 2021

The survey also found that illiteracy also presents a challenge in terms of identifying and reporting counterfeit and substandard products. This is because some of the consumers do not know how to read and/or write. It was also observed that some sellers/traders deliberately sell such products, taking advantage of the people who do not take time to check inspect the product and those who cannot read. For instance, in Kilimanjaro a community member noted that some traders have two stocks of products, one stock is that of genuine products and the other is of fake/counterfeit/substandard products.

“Kuna siku nilienda kununua diapers kwenye duka kubwa tu hapa mjini. Kuangalia nikakuta zimeisha muda wake. Nikamwambia mwenye duka, akasema samahani, akaingia ndani stoo akaniletea zingine. Hii ina maana wanakuwa na stock mbili. Kama huangalii unapewa zilizoexpire.”

“There is a day I went to buy some diapers at a big shop here in town. When I checked them I realized that they had expired. When I notified the trader he apologized and gave me some new ones. This tells you that they have two stocks, and if you are not careful they give expired ones.”

Community member – Moshi MC, Kilimanjaro

CHAPTER NINE:

GENERAL CONCLUSION AND RECOMMENDATIONS

9.1. Conclusion

While there have been some notable improvements in some respects, the overall situation of human rights and business has deteriorated compared to the situation during the previous survey of 2019, with violations of labour rights and standards taking the centre stage. Enforcement of relevant laws and regulations to ensure compliance of businesses with labour laws and standards, tax obligations, corporate social responsibility standards; and inadequate performance of regulatory authorities is still inadequate. This conclusion is supported by the following key issues that were observed during the survey:

9.1.1. *Compliance with Labour Laws and Standards*

- ☞ Decline in number of workers with employment contracts
- ☞ Threats for workers demanding contracts and other labour rights
- ☞ Continued violation of the right to form and join trade unions by employers
- ☞ Increased complaints about prohibition of trade union branches/ membership at workplaces
- ☞ Denial of employment contracts and not affording opportunity to negotiate contracts
- ☞ Overworking and underpaying workers
- ☞ Preference of offering short-term contracts
- ☞ Lack of overtime pay
- ☞ Disregard of maximum working hours limit
- ☞ Denial of daily, weekly rests, especially for workers in the hospitality and transportation industries
- ☞ Poor remuneration and delays in payment of wages, exacerbated by Covid19
- ☞ Poor working environment, e.g. lack of PPE
- ☞ Lack adequate training on occupational health and safety and adequate labour inspection
- ☞ Existence of various forms of violence and harassment at their workplaces,
- ☞ Inadequate compensation for injury sustained at workplaces
- ☞ Use of child labour, especially in mining and agriculture sectors

- ☞ Decline in percentage of workers granted annual leave, especially in hospitality, transportation, and private security services industries
- ☞ Maternity discrimination at workplaces
- ☞ Increased reports of unfair termination, especially in the wake of the Covid19 pandemic. The survey generally found that laid down procedures for fair termination of employment are usually disregarded.
- ☞ Lack of company-level worker grievance mechanisms for workers
- ☞ Increase of labour disputes registered at the Commission for Mediation and Arbitration (CMA)
- ☞ Low awareness of labour laws, rights, and duties

9.1.2. Land Acquisition for Investment

- ☞ Lack of fair and/or timely compensation
- ☞ Lack of meaningful participation of community members in the land acquisition process

9.1.3. Business Compliance with Tax Obligations

- ☞ Different types of taxes they must pay, imposed by different regulatory or tax collection authorities/ multiplicity of taxes

9.1.4. Corporate Social Responsibility, Environmental Responsibility and Corporate Respect for Human Rights

- ☞ Most businesses are not doing well in other aspects of CSR, including environmental responsibility and respect for labour rights.
- ☞ Lack of company-level community grievance mechanism to address community complaints related to business operations.
- ☞ Environmental pollution caused by business/industrial operations.
- ☞ Corporate human rights violations.

9.1.5. Gender discrimination and other Forms of Discrimination

- ☞ Sexual harassment at workplaces
- ☞ Maternity discrimination
- ☞ Unfavourable working environment for women and PWDs

9.1.6. Regulatory Authorities Performance

- ☞ Inequitable allocation of resources; inadequate budget; shortage of human resources/manpower, including qualified personnel; corruption; lack of adequate monitoring and evaluation; and overlapping mandates/functions.

9.1.7. Business Environment and Consumer Protection

- ☞ Impact of Covid19 on production, marketing, and sales, resulting into cutting down on employment, non-payment of wages, and reduction of wages.
- ☞ Inadequate enforcement of laws and regulations governing the business sector.
- ☞ Existence of counterfeit and substandard products and inadequate enforcement mechanism for consumer protection.

9.2. Recommendations

To enhance protection of human rights in the business sector, LHRC makes the following recommendations:

9.2.1. To the Government/MDAs and Regulatory Authorities

- ☞ Review the Wage Order of 2013 in consideration of current costs of living
- ☞ The Government, through the Ministry of Labour, Employment and Youth Development, to ensure effective enforcement of labour laws to ensure businesses comply with relevant labour and human rights laws and standards.
- ☞ The Government, through the Ministry of Constitution and Legal Affairs, to spearhead ratification of the ILO Violence and Harassment Convention.
- ☞ The Government and the Judiciary to improve access to remedy in the business sector, including by strengthening key institutions such as the CMA.
- ☞ Ensure labour rights are included in the new constitution, should the constitution-making process continue.
- ☞ 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, through the Ministry of Lands, Housing and Human Settlements, to review the Land Policy in line with international human rights standards.

- ☞ 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.
- ☞ 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 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-related 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.
- ☞ The Government, through 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 discussed in this report and recent CAG reports in order to increase revenue collection.
- ☞ 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, comply with their CSR.
- ☞ Government, through the ministries responsible for investment and trade, land, and environment, should ensure compliance with Environmental impact assessment (EIA) and social impact assessment (SIA) requirements in line with the laws, including the Environmental Management Act.

- ☞ The Government should act against businesses that violate human rights as part of its duty to protect human rights and ensure the victims have access to effective remedy.
- ☞ 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.
- ☞ 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 to check compliance with relevant laws and regulations.
- ☞ Regulatory authorities should increase efforts of raising community awareness about their mandates and functions to increase accessibility.
- ☞ The Government should strengthen the capacity of regulatory authorities to effectively carry out their functions, including ensuring business compliance with laws and standards.

9.2.2. To Business Owners

- ☞ 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.
- ☞ Ensure provision of adequate/fair and timely compensation in case of land acquisition for investment.
- ☞ Refrain from arbitrarily restricting labour rights.
- ☞ Adhere to Environmental impact assessment (EIA) and social impact assessment (SIA) requirements before starting business operations.
- ☞ Create strong grievance mechanisms for workers and community members to address disputes and complaints.

9.2.3. To Community Members

- ☞ Community members and employees should report practices that lead to abuse of human rights in the business sector to the relevant authorities, including regulatory authorities.
- ☞ Community members and local authorities should refrain from corrupt practices that hinder land-related rights.

9.2.4. To CSOs and NHRI

- ☞ 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.
- ☞ CSOs, CHRAGG, and other stakeholders should ensure that rights relating to gender and non-discrimination are mainstreamed in all plans and activities of companies.
- ☞ Increase advocacy around key issues identified in this report.

LIST OF BUSINESSES/CORPORATE ENTITIES VISITED DURING THE SURVEY

#		
1	Arusha	Bonite bottlers Karatu depot; Sunflag (T) Ltd; Ayalabe Dairy Milk; Gibbs Farm; The Retreat at Ngorongoro Karatu; Pepsi SBC Arusha; Mount Meru Flower Limited
2	Manyara	DPRR Manyara ; Coca Cola Bonite Bottlers; Intelligence Securico Company Ltd; Sierra Company Ltd; Manyara Sugar Company Ltd; Mati Super Brand Ltd; Minjingu Mines & Fertilizers Company Ltd; Tazama Security Company Limited; Njake Oil Company; Werema Micro Credit Ltd; Suba Agro & Engineering Co Ltd; Ngano Limited; Haydom Lutheran Hospital and Development (HHL); Magugu Estate; Suresh Estates; Mirerani Tanzanite Mines; Gendabi Salt Mines;
3	Tabora	New Tabora Textile Company Limited; TMP Kipalapala Printing Limited; Bonite Bottle Limited; Acqua Pure Drinking Water Company Limited; Tabora Chalk Company Limited; Pentagon Bakery Limited; SAMOTA Company Limited; Gradiator Investment Company Limited; Masanja Joseph Timber Factory; Nzega Coach Company Limited; Tabasamu Oil Mill Limited; Gibson Bakery Limited; Syona Drinks Limited; Salu Security Company Limited; Kishapu Oil and Mills Limited
4	Kilimanjaro	Dekker Bruins; Harsho Group; Msami Bar and Lodge; Oasis Young Plants; Nronga Women Cooperative Society; Livestock Market (Mnadani); Weruweru Riverside Lodge; Experience Tanzania Harambee Inn; Mkenya Executive Lodge; Rocktronic Construction; Chavda Hardware; Memorial Market; Mwika Market; E. Shayo Hardware; Vasso Agroventures Ltd; Chambers Hotel; Building & General Trading Co. Ltd

5	Mara	Musoma Fish Processors Ltd; Shima Guard; Giraffe Garden Hotel; JITO Security Ltd; Winners bakery; Marin Tanneries; Jema Chemicals; Zakaria Transportation Company; Mati bakery; Willy bakery; Safi Foods; North Mara Gold Mine
6	Singida	Lightness English Medium School; Super Stan Sembe Mills; Mpipiti Gold Mine; Turu Best; Amanah Trustee Secondary School; Tanfoam Limited; Joel Traders; Target Elementary Academy; Rwezaura Bar; Star Rice Milling Machine; Lake View Resort and Apartments; Regency Hotel And Resort Limited; Elisua Investment Company Limited; Ahmed Said Ghalib Trade
7	Mtwara	Cashwenut Company (2005) Limited; Akros Limited; Yalin Cashewnut Company Limited; Sheby Mix Investment Company; Dangote Cement Factory; Kiwango Security; Tropical Contractors Limited; Tanzania Trading House (TTH); Changanyikeni Company Limited; Ikachu Limited; Termnar; Bezalel Primary School; vMasasi Inn; vWanyumbani Construction; PetroAfrica
8	Mbeya	Mdimmi Investment Company Limited; Sompco Company Limited; LY Hotel; Mbwilo FM Company Limited; Highland Estates Limited, "Zones za Mashine ya Kukoboa Mpunga"; Kapunga Rice Project Limited; Trans Highway Trucking Company Limited; Sky Investment Limited; Huafeng Kilimo Tecknolojia.
9	Tanga	Tanga Cement Plc Ltd; Tanga Fresh Company; NeelKanth Limestone Ltd; Anjari Soda Factory Limited (ASFL); Mamujee Products Ltd (Podoa); Asher Industries Ltd; Tanga Beach Resort; Nyinda Hotels; Young Engineering Ltd; Kumburu Sisal Plantation; Charuvala Co. Ltd; Khalizo Sotele Co. Ltd; New Novel; Slahabu Home Pure Product; AlphaKrust Ltd
10	Dar es Salaam	TATA Holding Company Limited; Diesel and Auto Electric Services Limited; Kansai Plascon Tanzania Limited; AFRICAB; MMI STEEL MILLS; Kilimanjaro Transportation Co. Ltd; Twiga Security Company Limited; Kajenjere Trading Company Limited; Lake Group; Quality Foam Limited (QFL); Royal Soap and Detergent; Chai Bora Tanzania; Karafuu Tours
11	Geita	Geita Gold Mining Ltd; GIPCO Construction Ltd; FABEC Investment; MG HOTELvJEMA Africa Co.Ltd; GREEN GML Hotel; NENESI Bakery; Makono; Ndyamukama Co.Ltd;vPuma Fuel Co.Ltd Pro Mining; GUARDWARD Security Co.Ltd; RZK; ALPHA Hotel; Group 12 Security; Massa Security Co. Ltd; Bageni Filling Station; Bugado Filling Station; GAMBO; KASSCO Co.Ltd; MAGOME Security Co.Ltd
12	Shinyanga	Jambo food production Company, Afrisian Company limited, Fresho Investment Co. Ltd, GAKI Investment Company limited, East African spirits Limited, Madina Bakery and Albany Bakery, Kahama Cotton Company Ltd, Nida, Chemi & Cotex, Karena Annex Hotel, Kigemu Security Company, Ringi Microfinance Ltd, Meridian Hotel, Empire Multipurpose hotel, Msirikale Microfinance Ltd, Confluvium Company and Musoma Food Company Ltd.
13	Mwanza	Tanzania Fish Processing Ltd; Prince Pharmaceuticals Company LTD; New Mwanza Hotel; China Civil Engineering Construction Corporation (CCECC); Mwanza Huduma; Gas Entec; Texas Hardware Ltd; Fidea Investment (Mwanza Water); Musoma Foods; SBC (T) LTD – Pepsi; Mwatex (2001) LTD; Adden Palace Hotel; Sayona Steel LTD
14	Dodoma	Alko Vintages Co. Ltd; Modern Mattress Manufacturing Ltd; Semama Investment; Sao Hill Industries Ltd (Dodoma Branch); Dangote Depot Dodoma; ALAF Manufacturing and Processing Company; Kimbinyiko Transportation Company; Nyanza Road Works Construction Company; Samaki Samaki Garden; Peace and Love Filling Station; Maboto Microfinance Ltd; Ulanga Milling Sunflower Company; Mwinami Microfinance Credits Ltd; PYXUS Agriculture Tanzania Ltd; Insight Security Company; Y2K Lodge; Buro Microfinance Ltd; Mapanda Milling Oil; Wapakaya Investment Company; Guard Garder Company; Manyoni Investment
15	Pwani	Lake Steel Ltd/ Lake Group; Everwell Cable and Engineering Co. Ltd; Zhong Fu International Limited; FUJIAN HEXINGWANG Industry Tanzania Company Limited; Hill industrial complex (Hill group); SAMAKI INDUSTRY LTD; Backbone Co. Ltd

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