



LEGAL AND HUMAN RIGHTS CENTRE

HUMAN RIGHTS AND BUSINESS REPORT OF 2014



Taking Stock of Labour Rights, Land Rights, Gender, Taxation, Corporate Accountability, Environmental Justice and Performance of Regulatory Authorities





LEGAL AND HUMAN RIGHTS CENTRE

HUMAN RIGHTS AND BUSINESS REPORT 2014

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- Maagwi Kimito vs. Gibeno Warema (1985) TLR 132.
- Petitioner vs. State Bank of India, Petition No. 1856 of 2002 X of Mumbai India Inhabitant.
- Udaghwenga Bayay and 16 Others vs. Halmashauri ya Kijiji cha Vilima Vitatu and Jumuiya ya Hifadhi ya Wanyamapori – Burunge, Civil Appeal No. 77 of 2012 (Land Tribunal, Manyara).



LIST OF ABBREVIATIONS AND ACRONYMS

AIDS	Acquired Immune Deficiency Syndrome
CAG	Controller and Auditor General
Cap.	Chapter of the Laws of Tanzania
CHODAWU	Conservation, Hotels, Domestic and Allied Workers Union
CMA	Commission of Mediation and Arbitration (Labour Court)
COI	Certificate of Incentive
COWTU	Communication and Transport Workers Union
CROs	Customary Right of Occupancy
CSR	Corporate Social Responsibility
DLHT	District Land and Housing Tribunal
Dr.	Doctor of Philosophy
DRC	Democratic Republic of Congo
EACSO	East African Common Services Organisation
EFD	Electronic Fiscal Device
ELRA	Employment and Labour Relations Act, 2004
EPZ	Export Processing Zone
EPZA	Economic Processing Zone Authority
EPZA	Export Processing Zone Authority
FGDs	Focus Group Discussions
G.N	Government Notice
GBV	Gender Based Violence
GDP	Gross Domestic Product
GGM	Geita Gold Mines
HQ	Head Quarters
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
KII	Key Informant Interview
KM ²	Square Kilometres
LGAs	Local Government Authorities
LHRC	Legal and Human Rights Centre
MKUKUTA	<i>Mkatati wa Kukuza Uchumi na Kuondoa Umaskini</i> (National Strategy for Growth and Reduction of Poverty)
MoLHS	Ministry of Land and Human Settlement
NAFCO	National Agriculture and Food Corporation
NAO	National Audit Office
NBS	National Bureau of Statistics
No.	Number
OSHA	Occupational Safety and Health Authority of Tanzania



PCCB	Prevention and Combating of Corruption Bureau
Prof.	Professor
PWDs	Persons with Disabilities
RAAWU	Research, Academicians and Allied Workers Union
RAs	Regulatory Authorities
Ref.	Reference
SAGCOT	Southern Agricultural Growth Corridor of Tanzania
SPSS	Statistical Package for the Social Sciences
SSA	Social Security Authority
SuQ	Survey Questionnaires
TALGWU	Tanzania Local Government Workers Union
TAMICO	Tanzania Mining and Construction Workers Union
TASU	Tanzania Seamen Union
TAT	Tea Association of Tanzania
TEWUTA	Telecommunication Workers Union of Tanzania
TIC	Tanzania Investment Centre
TLPAN	Tanzania Land Policy Action Node
TMAA	Tanzania Mineral Audit Agency
TNRF	Tanzania Natural Resource Forum
TPAWU	Tanzania Plantation and Agriculture Workers Union
TRA	Tanzania Revenue Authority
TRAWU	Tanzania Railway Workers Union
Tshs	Tanzanian Shillings
TTU	Tanzania Teachers Union
TUCTA	Trade Union Congress of Tanzania
TUGHE	Tanzania Union of Government and Health Employee
TUICO	Tanzania Union of Industries and Commercial Workers
URT	United Republic of Tanzania
USD	United States of America Dollars
VLUP	Village Land Use Plan
WSA	Water Surface Area
WT	Ward Tribunal

PREFACE

The Legal and Human Rights Centre (LHRC) was registered in 1995 under the Companies Act, Cap. 212 of the Laws of Tanzania. The Centre envisages a just and equitable society (in all human rights spheres including the business sector). It is a non-partisan, non-profit sharing, non-governmental organization, which strives 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 advise; monitoring and follow up of human rights violations; and advocacy for reforms of policies, laws and practices to conform to international human rights standards.

The LHRC is guided by a number of core values that govern the way its members, Board, staff and partners interact with each other. The stated values are; integrity, equality, transparency, accountability, professionalism, volunteerism and voluntarism.

The Strategic Outcome Four (4) of the LHRC's six years Operational Plan (2013-2018) is about improved monitoring of government and companies compliance to regional and international standards with regards to economic, social and environmental rights. The report at hand is part of the deliverable outputs of this outcome.

As such, LHRC brings to the general public this report, which extensively and analytically assesses the extent of compliance to human rights standards by corporate companies operating in Tanzania. The compliance assessments have been made against the national and international standards governing corporate business sector, in particular, regarding labour rights, land management, taxation, corporate social responsibility, environmental justice and gender. A new chapter on the national regulatory authorities (RAs) relating to business activities in Tanzania has been added this year in order to assess effectiveness and efficiency of RAs.

These reports and particular its last two editions have instigated some debates on corporate matters in Tanzania. For instance, part of the 2013 findings were used in parliament to demand for operationalization of the Workmen Compensation Act, 2008; its findings and recommendations on environmental pollution resulted into suspension of operation of one of the industries; and that, the generality of the last year's report had instigated some employers to improve working conditions for their employees as it is comparatively discussed in the main part of the report.

Please, take time to read all chapters of the report (as they are interrelated in a way) and, where possible, use this report to pursue desired changes for the betterment of the workers, employers and national economic development.

Prof. Geoffrey Mmari
LHRC Board Chairperson



ABOUT THE STUDY AND REPORT

The socio-economic and political reforms that Tanzania has gone through in recent years have a direct bearing to the promotion and protection of human rights. For instance, with the introduction of liberal market economy in Mid 1980s, the government relieved itself from being an active player in production and supply of goods and services; *in lieu* thereof, private sector and more precious corporate companies, became the ringleaders of economic management. The government remained with regulatory responsibilities only. The private sector, being the controller of the economy, has direct influence to business standards, some of which if not checked, could be applied to the detriment of consumers or workers. This is where the aspect of monitoring governance and corporate companies' compliance to human rights standards comes to play.

As such, this report, which is consecutively published since 2012, makes an assessment on status of human rights compliance in business sector. Moreover, unlike previous two versions of similar report, the 2014 added a chapter which evaluates effectiveness and efficiency of the regulatory authorities (RAs), which enforces business standards. More than 20 RAs were assessed.

The study covered 15 regions (being 50%) of Tanzania Mainland basing on sample rationale indicated in chapter one of this report. It should be noted that, the findings of this assessment are based on the respondents' own opinions; secondary data gathered from the field; as well as researchers own analysis.

The human rights – business themes which gagged this assessment were in regards to labour rights; taxation; land management; corporate accountability; environmental justice; and gender-related rights.

The report has nine chapters. Chapter one presents general overview of corporate sector; Tanzania's demographic features; objectives and methodology of the study. Chapter two covers employment and labour relations rights and duties. Chapter three addresses land management issues in respect of ownership and safeguarding the interests of local communities. Chapter four is on tax compliance, transparency and accountability by corporate companies. Chapter five covers positive and negative trends with regards to corporate social responsibility. Chapter six is on environmental justice, while Chapter seven discusses gender issues and groups in corporate companies. Chapter nine is a new inclusion, covering an assessment of the effectiveness of RAs. Chapter nine provides for recommendations and conclusion.

LHRC will continue widening the scope of this assessment or study to reflect the needs of a particular time. However, the already identified areas of concentration shall be maintained in order to measure progress made in each year.

The report is designed to suit both duty bearers, right holders as well as other interested groups such as students and academicians who would wish to expand any part of this study through further studies. Furthermore, report can be used as a learning material; a ‘mirror’ to reflect some changes amongst corporate companies; and workers; reference notes or advocacy tool on human rights in relation to corporate business sector in Tanzania.

The structural flow of each chapter covers international legal frameworks, national legal frameworks, situation on the ground, empirical studies, and then an analysis basing on the frameworks and situation on the ground. In each sub-section, there are specific recommendations made. The graphs, tables, pictures and quotations of the respondents have been used in order to illustrate some points.

It should be noted that, individuals or companies which have been specifically mentioned in this report were used as examples due to the sample we had and not necessarily implying poor or best practices in regards to human rights compliance on their part. The claim raised by the management of the Shanta Company that the previous edition of this report misrepresented some facts about their company, raises the issues of lack of transparency and cooperation between corporate companies and various levels of government. This results to lack of information to the public at large. LHRC commits to balance information provided in its reports, if corporate companies or any other persons or institution would be ready to avail information being sorted on time.

Finally, once again LHRC invites comments and opinions on this report. Moreover, as per last year, it would be great if actors in corporate sector would be upfront to share any updates on human rights promotion and protections in their workplaces. In this way, they will be recognized and very well supported for the betterment of their businesses.

Dr. Helen Kijo-Bisimba
Executive Director
LHRC



EXECUTIVE SUMMARY

0.1 Introduction

This report presents the findings of the situational analysis on the status of compliance to human rights based standards by corporate sector in Tanzania. The assessment was done in a form of a study which covered 15 (50%) regions of Tanzania Mainland. The study samples were chosen in terms of geographical location; availability of various types of investments; findings of LHRC's previous studies of 2011, 2012 and 2013 in order to assess improvements; and the so called 'hot spots' areas, which are notorious for human rights violations.

The areas assessed were labour rights; land rights; taxation; environmental justice; corporate social responsibility; and effectiveness of regulatory authorities (RAs). A total of 1,165 sampled individual persons, some being representatives of corporate companies, regulatory authorities, judiciary, law enforcers and local government officials were met. Moreover, more than 60 government and non-government officials (not-sampled) were consulted in the course of executing this assignment. The modes of interaction were physical interviews (75%), self-administering questionnaires (20%), phone calls or emails (5%). About 42% of the interviewees were women. Sampling of individual persons also considered age groups; level of education; and other factors.

Questionnaires were administered by 30 university graduates, who were research assistants. Data analysis was done through SPSS and other methods to correspond with nature of the study approaches used (qualitative and quantitative).

0.2 Thematic Areas Covered by the Study

Seven thematic areas were covered by the study. The areas were; labour rights, land rights, taxation, corporate accountability to the community and government, environmental justice, gender related rights and regulatory environment of the business sector in Tanzania.

Sub components under labour rights were on employment contracts, collective bargaining; freedom of association, discrimination, leaves, workmen compensation and awareness of labour rights. The land rights and management considered security of land tenure of local communities against investment companies. The taxation chapter assess status of revenue collections, impacts of massive tax exemptions to the national economy and situation of illicit financial flows.

The environmental justice looked at both internal and external situations of corporate companies' operation. The chapter on gender-related rights assesses rights of gender

group in the corporate sector. Such groups include women, persons with disabilities, people living with HIV/AIDS and children; and the chapter on regulatory authorities presents the findings of the assessment on the effectiveness of the RAs to enforce legal standards falling within their respective mandates.

0.3 Main Findings

It was generally found that there are weakness in law enforcement; and that, the current legal frameworks on labour rights, land, gender, taxation, environmental justice and regulatory environment need some reforms. Most of the challenges highlighted in this report are attributed to these two factors. Moreover, majority of workers and members of the public as well as some of the employers were ignorant of legal procedures pertaining their rights and responsibilities.

0.3.1 Labour Rights

It was found that, at least 99% of the contract documents reviewed during this study did not include job descriptions as part of the contract apart from indicating the position in which an employee was engaged for. The ‘mutual agreement’ as a prerequisite component of contractual agreement is more theoretical because less than 25% of the current employment contracts were bargained or negotiated before signing. Only 28.7% of workers in private companies were in known oral or written contracts. Out of the 28.7%, only 24.9% were given written contracts, while the remaining 75.1% were working based on oral contracts (with uncertain terms). Branches of Trade unions were available and operational in only few workplaces (about 30% only). Some of the economic subsectors, such as security guarding services, did not have specific trade unions. Most trade unions or their branches were dormant due to various reasons including corruption (leaders side-lining with employers against members of the unions).

Discrimination based on disability and gender appeared on top of the list. Disability as a factor for discrimination secured 71.6% followed by gender reasons, which got 11.0%. Religious and political affiliations as factors for discrimination got 2.8% and 1.6% respectively to make them as least possible factors for discrimination at workplaces. Less than 20% of private sector employees in corporate companies are women. As for workmen compensation, only 41.7% of the workers were of the view that, such compensation was or would be paid once a worker was or will be injured in the course of employment. The most ‘difficult’ leaves to grant by employers were maternity (11.0%) and paternity (3.3%) leaves. Therefore, annual leave was the most or commonly allowed by majority (67.8%) of companies visited. But again, some of the companies allowed it with conditionality. Sick leaves (17.9%) were also allowed with a lot of hesitations. At least 80% of all companies visited during the study were



paying salaries which ranged between Tshs 100,000 (USD 55.6) and Tshs 300,000 (USD 166.7) for posts below managerial positions. However, local hotels and bars' remunerations were as low as Tshs 50,000 (USD 27.8) per month.

At least three quarter (76.5%) of interviewed workers from different private companies across the country were not aware of the law or laws governing labour rights and responsibilities in Tanzania. Moreover, workers' awareness of company's guidelines and policies relating to the rights and responsibilities of a worker and employer showed that, a large portion of them (78.8%) were unaware of the documents (employers' internal guidelines and policies).

0.3.2 Land Rights and Investments

The legal and traditional norms on land tenure systems in Tanzania have increasingly been challenged by higher demands for land attributed to an increase of population size; and investments especially in rural areas (village lands) caused by liberalized economy. The obtainment of land titles has been a huge challenge in Tanzania. For instance, only 373,655 customary rights of occupancy (CRO) titles were granted as of June 2014. Around 40% of the Tanzanian populations are adults. Therefore, it can be assumed that, at least 17 Million Tanzanians would need either GRO or CRO certificates. Furthermore, the study observed that 64.7% of the plots were owned without formal documentation and that there was widespread lack of information and land insecurity in the villages. 47.7% of the respondents in the visited villages reported lack of participation in land management, in particular with regards to disposition of their lands for investment concessions.

Land conflicts in areas where investments are taking place were common. Factors which trigger conflicts include; i) an increased pressure on land and natural resources both human and animal population; ii) global warming and climate change (land and natural resources degradation); iii) demarcation/ reservation of land for national parks, game reserves, conservation; iv) poor land governance systems; and v) commercial pressure on land including large scale land acquisition for investments. At least 75% of arable land in Tanzania was found to have been occupied by either local residents or investments companies or other institutions including government agencies. The arable land in Tanzania is only 11%. The expansion of national parks was very rapid. Tanganyika had only one national park in 1961, the 14,763 KM² Serengeti Park. However, currently, the number of parks and other protected areas has expanded to more than 16 in the country. Tanzania has set aside well about 40% of its territory for wildlife conservation. No alternative land or sufficient compensation had been given to the victims who have been evicted from their land due to creation of national parks and conservation areas.

Adjudication of land conflicts was also ineffective due to lack of land tribunals. For instance, only 49 District Land and Housing Tribunals (DLHTs) have been established in Tanzania from 1st October, 2003. Out of those, 7 tribunals were not functioning. Such tribunals are supposed to be initiated in every district. Based on the current number of districts of Tanzania (145), it appears that, the deficit in terms of coverage was 71%. That is less than 30% of Tanzania Mainland's districts with such tribunals.

0.3.3 Taxation

The revenue collection has been steadily expanding every year especially from 2008. For instance, the revenue collection between 2008/2009 and 2012/2013 expanded by 91% (from 4.05% to 7.74% in 2008 and 2013 respectively. The Local Government Authorities (LGAs) collection of own source revenues reached Tshs 252.5 billion during the financial year 2013/ 2014. Such collections were equivalent to 66% of the annual estimates of shillings 383.5 billion.

Despite the fact that revenue collections have been on increase, billions of money were lost through tax exemptions and illicit. Large tax payers enjoyed special treatment in such a way that, they were allowed to get exemptions of almost everything including entertainments such as cable (DSTV) connections; accommodation; clothes; and toilet papers. The said companies virtually incur no cost in running of their businesses. Everything they wish to could be exempted. Tax exemptions rose from Tshs. 1.48 trillion during the 2012/ 2013 financial year (FY) to Tshs. 1.82 trillion in 2013/ 2014 FY. That means, a total of Tshs. 0.34 trillion (being 18.7%) of exemptions was just within a year. The VAT relief as stated above were estimated to claim nearly 50% of all exemptions. The relief had increased to Tshs. 676 billion from Tshs. 571 billion during the same period (2012/2013 to 2013/ 2014). Therefore, VAT exemptions were increased by Tshs. 105 billion, being 15.5% increase within a year.

Besides, Tanzania lost billions of money in illicit financial flows. The country loses about Tshs. trillion (USD 1.87 billion) in tax revenue every year through (evasion or avoidance of taxes and smuggling of minerals) by dishonest companies in import and export. For instance, gemstones from Tanzania worth Tshs. 635 billion (USD 352,777,778) were smuggled out of the country annually through illegal channels, ending up in either Kenya or India (among other countries). Kenya imported tanzanite valued at USD 100 million while India documented annual imports of the tanzanite gemstone worth USD 300 million, while the official export figures for tanzanite in Tanzania was only USD 38 million per annum which is equivalent to only 20% of the total tanzanite gemstones being mined from Mirerani, Manyara region.

The use of Electronic Fiscal Device (EFD), was highly rejected by local traders in 2014, for the following reasons; i) low awareness amongst traders on importance of



EFD (30.8%); ii) some of the traders influence others to reject EFD (10.3%); iii) EFD machines are very expensive to purchase (28.2%); iv) EFF system is exploitative of our businesses, reduces profits (20.5%); v) other reasons (10.3%).

0.3.4 Corporate Social Responsibility (CSR)

The ‘giving-back’ to the community by companies remained to be optional because of lack of specific law on CSR. Majority (78%) of villagers and urban dwellers, were not seeing any tangible benefits of having investors in their areas.

Instead of supporting the communities, some of the investors have been using coercive measures to deal with members of communities who happen to be in conflict with them over certain issues. As such, there are so many investment-related conflicts which occur in various areas main ones being; land alienation (20.4%); and environmental pollutions (28.0%). Moreover, at least 80% of the investors did not have either the mechanism of engaging with the community to sort out social or legal disputes amicably; or their mechanisms were unknown or weak.

At least 90% of the companies visited, had contributed something to the community apart from employment opportunities. Nature and types of supports as CSR included; i) supports are directed more on education (36.3%), followed by health (27.7%), road infrastructures (19.2%), and water (16.3%) , ii) supports were directed mostly to ‘conspicuous’ areas where visibility was higher than areas considered not as visible; iii) giving to the community because the company has earned excessive or wants to clear some space for next production or reducing ‘clatter ’ from the production sites.

0.3.5 Environmental Justice

Authorities mandated to enforce environmental standards lacked sufficient capacity. For instance, according to last year’s records, OSHA had only 53 workplace inspectors for the whole country and only 11 vehicles to monitor more than 27,500 workplaces which were available as of June 2014. Therefore, based on this figure, 1 OSHA Inspector monitored at least 520 workplaces. At least 75% of the workplaces across the country were currently operating without being registered by OHS. That reality also suggests the fact that OSHA has not been able to strategically encourage voluntary compliance – for workplaces themselves to volunteer registration rather than for the agency to coerce them.

Most of the companies visited during the study had OHS policies which were formulated between 2013 (30%) and 2014 (70%) probably in response to the legal requirements or recommendations made by LHRC last year in a similar report. However, less than 15% of employers had displaced OSHA policies at conspicuous areas at workplace.

The study came across a number of incidents whereby; some workers got injured or died due to poor OHS conditions at their workplaces.

Environmental pollution, in particular, land degradation, is a serious problem in all investment areas. The land degradation, over-cultivation and deforestation are among attributing factors of degradation in the region. For instance, the Mtwara – Dar es Salaam natural gas pipeline construction project has claimed several hectares of natural trees and farmers plantations.

Only 6.5% of members of the public were involved in the EIA when investment projects were established in their areas in recent years. Only 12.6% of workers interviewed stated that, they were involved in the monitoring or inspection of the working conditions of the companies they were working with.

Natural resources were steadily depleting. For instance, in 1976, the Selous-Mikumi ecosystem had 109,419 elephants, but by 2009 the number had dropped to 38,975, and today, an aerial survey conducted by the Frankfurt Zoological Society in late 2013, estimated a remainder of 13,084.6. This represents a 66% decline over the last four years and a decline of nearly 90% from the seventies. Declines have also been registered in Tanzania's other elephant populations, with a fall in Ruaha-Rungwa from 35,461 to 20,090, a decline of 36.5%, from 1990 to the present day. Therefore, it is unfortunate that, Tanzania is no longer home to one of the largest elephant populations in Africa.

0.3.6 Gender Related Rights in Business Sector

At least 50% of the employers stated that they had some working policies or practical norms which prohibited workplace gender based violence (WGBV). However, such policies or norms (if any) were not working favourably for women. Sexual violence were named to be the most common WGBV (scored 53.4%), followed by physical assaults (24.1%); and threats (22.4%). There were numerous forms of WGBV between workers themselves or workers and employers, including; physical assaults (6.8%); sexual harassment (21.7%); bullying (67.7%); and sexual assault (1.2%). There are so many incidents occurring without being reported due to threats, fear of losing jobs or lack of awareness of due legal process.

Discrimination of persons with disabilities (PWDs) at the workplace is a challenge that is relevant in both developed and developing countries. For instance, according to the ILO sources, a survey carried out in France showed that less than 2% of those having mentioned their disability in their curriculum vitae (CVs) were called for an interview. Therefore, PWDs are mainly recruited through temporary job agencies to 'minimize risks' for employers. The recently study conducted by CCBRT, which assessed the



proportion of employed PWDs in education, health and private sectors, revealed that among all 24,552 teachers surveyed from all learning institutions (private and public alike) in Dar es Salaam, Mara, Lindi, Mbeya, Singida and Tabora only 519 equivalent to 2.1% were PWDs.

Apart from being discriminated, PWDs experience harsh working conditions. Most of the employers, including government agencies, have failed to create friendly working environment for them. At least 50% of the workers were of the views that, their working environment were either very insensitive (31.9%) or insensitive (27.7%) to disability rights as stipulated in this report.

Regarding HIV/AIDS apart from stigma, other most common HIV/AIDS related challenges at workplaces included; i) discrimination; and ii) lack of HIV workplace programmes. These three factors (that is, stigma, discrimination and lack of workplace HIV programmes), has led to high silence level of one's HIV status. For instance, out of about 450 workers interviewed during this study, none of them (0%) volunteered to reveal his or her health status, and that, none of the companies visited (0%) had a record of such persons.

Addressing HIV/AIDS at workplaces as this report suggests, has a lot of meaning to the business of the company. For instance, it is estimated that, about 68% of companies (in Tanzania) have lost staff because of HIV/AIDS related problems, while this can be minimized by proper prevention of new infections and by treating PLWHA with respect and provision of medical care for them. In doing so, infected persons will remain productive while living a normal life.

Regarding the protection of local small producers (SMEs), it is found that, the SMEs which were predominantly occupied by the so called 'informal actors' account for a large share of output and employment with estimates ranging between 40% and 60% of non-agricultural GDP. The sector (SME) makes up 72% in Sub-Saharan Africa (SSA), which include Tanzania. Despite that reality, the sector is not supported as is the case with 'large investors.'

Due to lack of effective protection of local producers and traders, 'large investors' have been able to displace or overshadow the local small producers from their ventures by:

- i) Doing the same 'very normal' business which the local traders were doing;
- ii) Introducing high technology which facilitate them to exhaust resources more swiftly that the locals who use rudimentary tools due to lack of capital support (do not have sufficient surplus as the table below shows);
- iii) Import cheaply (through waiver of tariffs and taxes) and therefore, sell at lower prices; and

- iv) manipulation of local business structures. During the study, most shops in Kariakoo Market, Dar es Salaam were occupied by Asians.

0.3.7 Regulatory Authorities (RAs)

It appeared that, almost all of them (RAs) consider their performance as being ranging between 40% and 50% of the expected levels. Only 41.9% of the RAs had in place specific performance assessment tools (to measure the outputs and outcomes or impacts) of their work. 58.3% of the RAs considered their legal mandates sufficient for them to perform their specific duties as RAs of the corporate business sector in Tanzania. At least 75% of the RAs had physical accessibility of their services which was limited to less than 15% of the total regions of Tanzania Mainland.

Out of the 429 respondent workers of corporate companies interviewed on the knowledge of existence of any regulatory authority, only 22.4% stated that, they know some of them. Out of those 96 (22.4%) workers who said ‘YES’ they know RAs, only 9.8% of them had used such authority to address certain challenges they had once faced as employees of corporate companies.

The low awareness among workers of existence of RAs was noticed by this study to be virtually the same as of the general members of the public. As the table below shows, out of 447 members of the public, only 19.5% of them stated that they had little knowledge of existence of regulatory authorities. Out of those who said ‘YES’ to existence (and may be functions) of RAs, only 4.9% of members of public claimed to have used RA’s services to sort out certain challenges. Moreover, only 1.8% of ordinary members of the community had ever participated in the work of RAs such as research, evidence collection, and monitoring generally.

0.4 General Recommendations

0.4.1 Labour Rights

- a) The government should work towards; a) strengthening law enforcement mechanism to ensure that, all employers and workers are abiding with current legal standards governing employment and labour relations; b) amending or enacting a new law in order to regulate employment of foreign workers in Tanzania; and c) operationalizing the Workmen Compensation Act, 2008 and its regulations (if any).
- b) Civil rights groups (including trade unions and their branches) should initiate more practical ways of rising workers’ awareness on the employment and related laws.



- c) Labour rights should be incorporated in the proposed new Constitution.

0.4.2 Land Rights

- a) The government should hasten issuance of Certificates of Land Titles to all citizens who possess land in order to protect its tenures.
- b) The government should facilitate enactment of a law which limits the size of land given to investors; and to retrieve dormant land from investors in favour of majority of citizens who are increasingly becoming landless.
- c) There is a need to centralize land-bank management, preferably to TIC only, unlike the current situation, whereby several other investment agencies are empowered to create land banks for (foreign) investments.
- d) The responsible Ministry should hasten initiation of Land Tribunals all over the country in order to speed up adjudication of land disputes.

0.4.3 Taxation

- a) The government should facilitate amendment of all laws and rules in order to control massive tax exemptions. Such exemptions should not exceed 1% of GDP.
- b) There is a need to reconsider the institutional capacity of the Tanzania Intelligence Agency, especially in regards to control of financial and non-financial illicit, which causes loss of billions of Tanzanian money.

0.4.4 Corporate Accountability

- a) There is a need to have a specific law on corporate accountability in Tanzania; to begin with, the government should list down development priority areas which corporate companies can be encouraged to support.
- b) There is a need to have a monitoring system which will be used to assess the extent in which corporate companies contribute to the community (to monitor types and nature of support). Companies which do not ‘pay-back’ to the community should not be given tax exemptions.

0.4.5 Environmental Justice

- a) There is a need to improve institutional capacity of OSHA, TMAA and NEMC for them to work more efficiently in order to, *inter alia*, control pollutions caused by investment activities.

- b) Law enforcement needs to be improved in order to safeguard unlawful utilization of natural resources including killings of elephants. Members of the public should be encouraged to take an active role in the protection of the natural resources.

0.4.6 Gender Related Rights

- a) The government should encourage corporate companies to adopt affirmative measures in order to ensure that, women, PWDs and PLWHA are not discriminated against employment in the private sector.
- b) Community development officers of each district or municipals should ensure that, gender-related rights are mainstreamed within corporate companies' plans and activities.

0.4.7 Regulatory Authorities (RAs)

- a) There is a need to harmonize the current legal framework on corporate business practices to eradicate overlapping of responsibilities amongst RAs; or scaling up of activities or mandates of some of the RAs (complementing to each other to improve physical accessibility of their (RAs) services across the country.
- b) Regulatory authorities should be supported to expand throughout Tanzania by establishing branches, increase number of workers and facilities.
- c) Observance of human rights standards in business sector should be one of the criteria or points of consideration for the RAs to monitor or assess.



CHAPTER ONE

GENERAL INTRODUCTION

1.1 Tanzania's Demographic Features

The current population size of the United Republic of Tanzania was estimated to be 44.9 million people by the 2012 national population census.² Its annual growth rate stands at 2.7%. Around 51.3% of the total population are females; and the remaining 48.7% are males. Tanzania Mainland has a total of 43,625,354 occupants while Zanzibar has 1,303,569 occupants. The population size has increased from only 12.3 million people in 1967 when Tanzania carried out its first national census to, about 33 million people within 45 years.

Tanzania has a multi-ethnic population. There are approximately 120 different ethnic groups living in Tanzania.³ There are, mainly, Bantu-speaking and Nilotic speaking groups. Each tribe speaks its own language. However, all Tanzanians are unified by Kiswahili as the national language. English language is also used as medium of instruction in schools (mostly from secondary school levels for public schools), offices and judicial records.

Such tribes are found within 30 administrative regions, which comprise an average of five districts each. Therefore, as of 2014, there were about 150 districts. The said districts are subdivided further to form wards and villages. Registered villages were estimated to be slightly above 11,000 in total. The village governments are supervised by village councils under the control of the village assembly. As it is further discussed in the coming parts of this report, each administrative unit has some kinds of sovereignty. For instance, the management of the village land is statutorily vested on the village councils and assemblies.

The cultural norms and practices (of the tribes) are enforceable to some issues in particular, matrimonial cases. However, most of the resource-related laws enacted in recent years, have created a room for applying some traditional norms in the management of the resources. For instance, the wildlife and forestry laws allow creation of community based conservation groups.

2 NBS, '2012 Population and House Census: Population Distribution by Administrative Area. March 2013. Page iii. The exact number is 44,928,923 people of whom 23,058,933 (or 51.3%) are female and the remaining 21,869,923 (or 48.7%) are males. Tanzania Mainland has a total of 43,625,354 occupants while Zanzibar has 1,303,569 occupants.

3 LHRC (2009) Tanzania Human Rights Report of 2009. Pages 2 and 3.

1.2 Population Growth and Implication to Land and Investments

Tanzania has a total area of 945,203 square kilometres, with arable land of approximately 88.58 million hectares, out of which 44 million hectares (46.5%) are considered suitable for agriculture.⁴ The high growth rate (with an average of 2.7% per annum as stated above), has socio-economic and political implications. Generally, the increase in number of people has intensified the scramble for land and land related resources in rural and urban areas.⁵ The current population density of Tanzania Mainland is estimated to be 49 KM². However, major cities like Dar es Salaam have higher density due to urbanisation.⁶

Tanzania is considered to have ‘free’ arable land for investment. However the reality on the ground suggests otherwise. For instance, given the current population density against the size of arable land, there is only 0.92 hectares of arable land per person in Tanzania.⁷

The arable land for common uses such as peasantry and pastoralism both in rural and urban areas is increasingly shrinking due to; i) land grabbing by economic powerful individuals or companies; ii) alienations under the laws for ‘public interests’, mainly foreign investments; iii) creation of land banks under various schemes such as the Tanzania Investment Centre (TIC); Economic Processing Zone Authority (EPZA); Southern Agricultural Growth Corridor of Tanzania (SAGCOT); and others; and iv) widening the wildlife and forestry protected areas. For instance, as it is further explained under paragraph 3.3.4 of Chapter three of this report, Tanzania had only one national park in 1961, the 14,763 KM² Serengeti Park (being only 1.6% of the total land size). Currently, the numbers of parks and other protected areas have expanded to more than 16 in the country. Tanzania has set aside about 40% to 43.7% of its territory for wildlife and other conservations⁸ (being an expansion of over 39% within 50 years).

4 URT, an Assessment and Evaluation of Ownership of Farms above 50 Acres in Tanzania Mainland 2013. Ministry of Land and Human Settlement, Dar es Salaam. Page 1. Unsuitable land mainly covers areas affected by soil leaching, proneness to drought, and tsetse infestation.

5 LHRC (2013) Human Rights and Business Report in Tanzania of 2013: Taking Stock of Labour Rights, Land Rights, Gender, Taxation, Corporate Accountability and Environmental Justice in Tanzania. LHRC: Dar es Salaam. Page 2.

6 Dar es Salaam as the fastest growing city in Tanzania has 3,133 residents per KM² (2012 census) increased from 1,787 residents per KM² (2002 census).

7 URT, An Assessment and Evaluation of Ownership of Farms Above 50 Acres in Tanzania Mainland 2013. Ministry of Land and Human Settlement, Dar es Salaam. Page 1.

8 WGIA (2013) The World Indigenous World Report of 2013. IWGIA: Copenhagen. Pages 384 – 390. Note, the Ministry of Tourism and Natural Resources’ 2009 Report stated that, at least 43.7% of the total landmass was somehow protected area, whereby, wildlife conservation areas consumed only 28% of the total area.



As argued by a similar report in 2013, land grabbing in favour of investment has never been of positive effects to local community as far as income poverty in Tanzania is concerned. Instead, majority of Tanzanians were still very poor amid increased investments. Land conflicts have continued to emerge as a result of scarcity of land for traditional economic activities such as pastoralism, hunting, gathering and peasantry.

Almost all land conflicts and killings during the year 2014 in Kiteto, Manyara region and other places, were, to a large extent caused by land pressure which compelled pastoralists or farmers to move from their traditional areas and forced them to have access to lands which were already occupied. Plantations occupied by ‘investors’ are not invaded as they are highly secure with title deeds and security guards.

1.3 Nature of Corporate Business Sector in Tanzania

According to TIC,⁹ Tanzania offers a range of investment opportunities, which are supported by presence of peace and political stability. Moreover, the country is situated in a strategic location because it faces the Indian Ocean, which is a gateway for the five landlocked countries surrounding it.¹⁰ Other factors which make Tanzania the most attractive place to invest include, ‘attractive incentives and investment guarantees’; and plenty of natural resources, some of which could not be found anywhere else in the world; and presence of special investment schemes such as export processing and special economic zones.

Indeed, at the time of this study (December 2014), there were more than three thousand small and large scale companies which invested in various economic sectors including; mining; agriculture; construction; service provisions (education, health and hotels); telecommunication; manufacturing; and trade.

It was noted that investments in these sectors had contributed to the national economy. However, such benefits are contingent to sound policies in place and strong governance systems that support the implementation of these policies¹¹ - to improve the livelihood of common citizens. Currently, Tanzania and Tanzanians benefit very little from these investments if compared to massive profits which corporate companies earn. Paragraph 6.4 of chapter 6 of this report explains more about this matter.

Besides, some of the ‘investors’ accepted to invest in the country on merit but perform below the required expectation even after several years of existence in Tanzania. For instance, Tanzania is regarded as one of the largest fishing nations in Africa. It is

9 TIC ‘Tanzania Investment Guide 2013-2014. Dar es Salaam: Tanzania. Pages 12-14.

10 Those countries are the Democratic Republic of Congo (DRC), Rwanda, Burundi, Uganda and Zambia.

11 TNRF, ‘Land and Investment.’ <http://www.tnrf.org/en/lbi> accessed on 24th December, 2014.

ranked in the top 10 countries in terms of total capture of fisheries production. The annual fish production is about 341,065 tons.¹² However, despite this reality, the sector contributes only 1.4% to the national Gross Domestic Product (GDP).

As the table below shows (based on the information extracted from the Ministry of Fisheries), most investors in fisheries sub-sector were performing far beyond the targets as of 2010 (and 2014) for unknown reasons.

Table 1: Installed Capacity against Average Production of Fish – Tons per Day

Plants (in Tanzania)	Established	Installed Capacity (Tons/ Day)	Average Production (Tons/ Day)
Vicfish Ltd (Mwanza)	1992	107	25 (23.4%)
Tanperch Ltd (Mwanza)	1992	120	20 (16.7%)
Nile Perch Fisheries Ltd (Mwanza)	1992	90	30 (33.3%)
Prime Catch (Exporters) Ltd (Mara)	2000	100	20 (25.0%)
Musoma Fish Processors Ltd (Mara)	2001	40	20 (50.0%)
Vickfish Ltd (Kagera)	2005	60	18 (30.0%)
Sea Production Ltd (Tanga)	1998	50	<1 (<2%)
Bahari Food Ltd (Dar es Salaam)	2005	10	<1 (<10%)
Tanpesca Mafia Ltd	2003	50	2 (4%)

Source: Ministry of Livestock and Fisheries Development (MLFD, 2010).

It is ironic to note that an investor can spend more than 15 years operating and still not produce even half of the expected targets. Producing below the targets has an implication to revenues – state gets low taxes while the investor continues to benefit from ‘little’ of what he or she is earning. For instance, water surface area (WSA) of Lake Victoria for Tanzania is 51%, for Uganda is 43% and for Kenya is 6%. The economic benefit showed¹³ that the fisheries sector contributes to the GDP of Tanzania for 1.8%; Uganda for 1.5%; and Kenya for 0.5%. On Employment in this sector, Tanzania had 80,053 persons employed; Uganda had 41,674 persons employed; and Kenya had 54,163 persons employed. Comparing with water surface area, GDP contributions and employment to fishermen, it showed that, Kenya was benefiting more than Tanzania. The benefits Tanzania earned from utilization of Lake Victoria in terms of contribution to the GDP and employment opportunities were not proportional to WSA it covers.

12 TIC ‘Tanzania Investment Guide 2013-2014.’ Dar es Salaam: Tanzania. Page 29.

13 Abila Richard O, Konstantine O. Odongkara, and Paul O. Onyango, ‘Distribution of economic benefits from the fisheries of Lake Victoria. the authors of this paper are from Kenya Marine and Fisheries Research Institute, Fisheries Resources Research Institute in Uganda and Tanzania Fisheries Research Institute’ (Undated). Re-accessed from: www.firi.go.ug 27th December, 2014.



LHRC calls upon the need to conduct a thorough environmental economics investigation to ascertain the realities of the figures given by investors against the profits they are making and depleting of resources as a result of investment activities. Otherwise, the country would continue to count successes by looking at a number of investors annually instead of the diminishing resources and revenue collected.

1.4 Rationale of This Study

Tanzania was considered to be among the ‘best’ countries to invest in business sector due to the reasons stated above. As such, many investors are now attracted to come in to the country to invest, hence, widening the corporate sector.

The issue of business impact on human rights has been placed on the agenda of the United Nations (UN) due to increase of corporate sector nationally, regionally and internationally. Over the years, the United Nations human rights machinery has been considering the scope of business’ human rights responsibilities and finding ways for corporate sector to be accountable for the impact on human rights caused by their operations.

There is no institution or regulatory authority (RAs) in Tanzania which specifically assesses the stated human rights compliance in business sector. The current legal framework, including the Constitution of the United Republic of Tanzania of 1977 does not vest such mandates to existing RAs as it is further discussed in Chapter 8 of this report.

Therefore, based on UN’s essence and because of the said institutional gap, LHRC envisages monitoring the corporate sector to assess to what extent its actors, which are corporate companies, comply with regional and international legal and human rights standards. In particular, a focus was made to employment and labour rights; gender; land rights; sustainable utilization of resources - environmental management; accountability; and transparency in tax payments.

Findings of this assessment will be utilized to, among other things, enforce corporate social accountability principle. This will include advocacy for improvement of laws, policies and practices as well as redress on the rights of victims. It will also enhance dialogues and litigations at local and international levels aimed at enforcing fair compensation, ethical business practices, environmental care, economic development, as well as social responsibility.

1.5 Aims and Objectives of This Study

1.5.1 Aims of the Study

This study therefore aimed at finding out policies and laws that lead to bad practices by corporate sector in particular environmental, land and labour rights. The study was further aimed at looking at malpractices in tax payments or collection by the government and corporate sector. Gender related issues also formed a large part of this assessment.

1.5.2 Objectives of the Study

The main objective of the study was to come up with information which will help both State and non-state actors in making sound decisions with regard to allocation of resources, accountability (at all levels), and directing efforts towards improving compliance on the four themes (labour, tax, environment and land rights). Specifically the objectives of the study were:-

- a) To identify gaps and areas that need reforms on labour rights, land rights, environmental justice and tax compliance;
- b) To assess the effectiveness and efficiency of the corporate business sector's regulatory authorities;
- c) To enlist practical recommendations that will in future be used to advocate for formulation of new policies and/or reforms on existing policies and legal framework shaping and increasing accountability of the corporate sector in relation to identified thematic areas;
- d) To publish and disseminate research findings in the form of this report.

1.6 Methodology for Data Collection and Analysis

1.6.1 Study Approaches

This study applied a normal survey approach in data collection and analysis components,¹⁴ such as participatory qualitative and quantitative methods. The rationale of choosing qualitative (descriptive) method was to ensure that in-depth information and analysis of the issues intended to be collected from the field are obtained. The quantitative (numerical) method was intended to collect opinion of the respondents on various issues entailed in the four main themes mentioned above.

14 According to Arlene (1985), Survey is a method of collecting information from people about their ideas, opinion, experience, plans, and background and so on. It is one of the components of research methods. [See: Fink, Arlene and Jaqueline Kosecoff (1985) How to Conduct Survey. Sage Publications: London. Page 13].



1.6.2 Tools and Mechanisms for Data Collection

Several tools and tactics were used to collect data from the field. The main tools used were an interview guide and the survey questionnaires (SuQ) prepared in an assortment of five sets for managers of corporate companies; workers; members of the community; RAs; specially for interviewing Kariakoo market's business persons in Dar es Salaam. The distribution of questionnaires per category of respondents was as follows:-

Table 2: The Distribution of Questionnaires per Category of Respondents

S/ No.	Category of Respondent(s)	No. of SuQ Targeted	No. of SuQ Administered	Percentage of SuQ Administered
1	Corporate Companies	150	58	38.7%
2	Workers	450	429	95.3%
3	Members of the Community	450	447	99.3%
4	Regulatory Authority (RAs)	65 ¹	43	66.2%
5	Kariakoo as a Special Study Area	50	19	38.0%
	Total:	1,165	996	85.5%
6	Others (not sampled) such as Police, PCCB, Magistrates, etc – Approximately: 60			

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

The target for corporate workers was to reach out to at least 30 workers per study region. The same formula was applied to members of the community. The SuQ incorporated both closed and open ended questions for quantitative and qualitative information gathering. More of qualitative information was gathered through KII and FGDs.

Mechanisms used for data collection were focus group discussions (FGDs); key informants interviews (KII); and documentary reviews from various reliable sources as tools for gathering field information contained in this report. The documentary review included perusal of international and national laws, policies and other reliable sources of information as footnoted in this report.

1.6.3 Study Samples' Types and Rationale

The study samples were chosen in terms of geographical location; availability of various type of investment (business sector); findings of LHRC's similar previous studies of 2011, 2012 and 2013 in order to assess improvements; and the so called 'hot spots' areas, which are notorious for human rights violations.

a) Geographical Samples

A total of 15 regions in Tanzania Mainland (being 50% of all regions in the Mainland) were sampled based on the criteria stated above. These were; Dar es Salaam; Tanga; Arusha; Manyara; Morogoro; Iringa; Kilimanjaro; Mbeya; Lindi; Mtwara; Mwanza; Tabora; Mara; Kagera; and Dodoma regions. Three new samples, namely Kilimanjaro, Lindi and Dodoma regions were brought in this year to replace Njombe, Ruvuma and Geita regions which were covered in 2014.

Dar es Salaam is a cosmopolitan city where all key government and private offices are located; Dodoma was for assessing the situation of the central part of the country (it is the capital city of Tanzania). Tanga was for studying sisal plantations, manufacturing industry and progress of EPZ project; Arusha and Manyara were for assessing investments in tourism, hotels and mining; while Morogoro, Iringa, Tabora, Kilimanjaro and Mbeya had plantations and industries as most of them were found in these regions. Mwanza, Mara, Kagera were for fishing and mining sectors. Lindi and Mtwara were for assessing natural gas exploration and its socio-economic impacts to the environment, social justice and other human rights aspects.

An average of two districts in each region was visited. Therefore, the study reached more than 30 districts (being about 20% of all districts in Tanzania Mainland). Additionally, a minimum of 60 administrative wards (around 2 for each district) were reached during the study.

b) Individual Samples

A total of 1,165 sampled individual persons, some being representatives of corporate companies, regulatory authorities, judiciary, law enforcers and local government officials were met. Moreover, more than 60 government and non-government officials (not-sampled) were consulted in the course of executing this assignment. The modes of interaction were physical interviews (75%), self-administering questionnaires (20%), phone calls or emails (5%).

i) Number of Individuals Community Members

A total of 447 members of the community in the 15 regions were interviewed, out of whom 42.3% were females and the remaining 57.7% were males.

**Table 3: Number of Respondents (Community Members) - By Sex**

N=447 [Community Members]	Frequency	Percent
Female	189	42.3
Male	258	57.7
Total:	447	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Moreover, the study reached community members of all age groups from 18 years and above as indicated in the table below.

Table 4: Number Respondents (Community Members) - By Age Groups

N=447 [Community Members]	Frequency	Percent
18 – 25	94	21.0
26 – 35	165	36.9
36 – 60	162	36.2
61+	26	5.8
Total:	447	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

The sampling took into account the level of education and nature of economic activities which respondents were engaged in at the time of the study as depicted below:

Table 5: Number Respondents (Community Members) - Levels of Education

N=447 [Community Members]	Frequency	Percent
Completely illiterate	48	10.7
Standard 7 Leaver	201	45.0
Form 4 Leaver	109	24.4
Form 6 Leaver	22	4.9
Collage Graduate	67	15.0
Total:	447	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Moreover, the illiteracy rate among Tanzanians with disability is 48%, compared to 25% among people without disabilities.¹⁵

15 NBS (2009) Tanzania Disability Survey Key Results and Last Year GBS Review of 2008.

Most urban-based respondents were business persons, while majority of those who were interviewed in rural settings were actually farmers, agro-pastoralists and fishermen.

Table 6: Number Respondents (Community Members) - By Type of Work

N=447 [Community Members]	Frequency	Percent
Business Person/ Trader	162	36.2
Fisherman	22	4.9
Farmers + Pastoralists	116	26.0
Student	31	6.9
Employee	74	16.6
Jobless	42	9.4
Total:	447	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

The study therefore, was inclusive of all gender groups in terms of sex, age, economic activities, and other factors. Therefore, being quite representative as it is shown above, makes it scientifically reliable study.

Moreover, at least 80 Kariakoo and Machinga Complex markets' traders were interviewed on issues connected to protect local traders; of whom, 38.5% were females, and the remaining 61.5% were males. Chapter seven of this report covers the findings on this matter.

ii) Numbers of Individual Workers

A total number of 429 individual workers of corporate companies in the 15 regions sampled were interviewed through questionnaires. Almost half of them were persons aging between 26 and 35 (most active youth groups according the national youth policy).

Table 7: Number Respondents (Workers) - By Age Group

N=429 [Workers in Private Sector]	Frequency	Percent
18 – 25	72	16.8
26 – 35	206	48.0
36 – 60	139	32.4

NBS: Dar es Salaam.



N=429 [Workers in Private Sector]	Frequency	Percent
61+	12	2.8
Total:	429	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Therefore, majority of workers in the private corporate business sector in Tanzania were found to be youths whose ages ranged between 26 and 35 years. Only a few of elderly persons (2.8%) were engaged in the private sector. It seems that this sector is fond of youths because they are more dynamic, with a lot of expectations – and therefore, easy to make use of them even if it is for low-paid labour. Most of them were actually standard seven leavers as the table below shows.

Table 8: Number Respondents (Workers) – Levels of Education

N=429 [Workers in Private Sector]	Frequency	Percent
Completely illiterate	4	0.9
Standard 7 Leavers	126	29.4
Form 4 Leavers	116	27.0
Form 6 Leavers	44	10.3
College Graduates	16	3.7
Completely illiterate	123	28.7
Total:	429	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Finally, the workers interviewed were assessed in terms of their working experiences. The interest was to see on how long they have been working as casual labourers for their employers. As chapter two of this report shows, at least 75% of workers interviewed did not have formal employment contracts. They were working as casual labourers. Therefore, the following table gives a reflection of persistence of casual labouring in private sector in Tanzania.

Table 9: Number Respondents (Workers) – Number of Years in Work

N=429 [Workers in Private Sector]	Frequency	Percent
Below 1 Year	58	13.5
1 Year	50	11.7
Between 2 – 5 Years	164	38.2
Between 5 – 10 Years	91	21.2

N=429 [Workers in Private Sector]	Frequency	Percent
Above 10	66	15.4
Total:	429	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

iii) Sample Size by Institutions/ Companies

Several institutions as indicated above were consulted. Such institutions included government departments; law enforcers; judicial officers; management of corporate companies; academic institutions; RAs; and others. The list is very long and therefore, could not be reproduced here.

1.7 Validity of Sample Size and Authenticity of Information

The sample size and types were sufficient to justify findings of this study due to the reasons stated above. Secondly, the triangulation of data collection methods, approaches and tools, has enabled the team to verify information collected. The FGDs and KII were used as on-spot ways of verifying data collected through questionnaires and other tools. At least two FGDs were conducted in each region.

Thirdly, the study was undertaken by researchers who are university graduates. Moreover, the study team was assisted by LHRC’s paralegals and monitors who are knowledgeable of the areas visited. A draft copy of this report was shared to some members of the study team as well as selected respondents for validation.

1.8 Data Analysis

The study employed qualitative and quantitative techniques in data/ information collection, which automatically command use of same techniques in interpretation and discussion of data collected. As such, the quantitative information was analyzed using the Statistical Package for Social Sciences (SPSS), which produces most of the tables contained in this report.

1.9 Limitations of the Study

Accessibility of the data from the field was limited by a number of factors, some being lack of updated statistical information from the government offices, in particular, RAs. Most of them said that their 2014 statistics were to be made available from January 2015 onwards. Therefore, the finalization of this report was to delay for one month in order to get some of the statistics needed. This was the case also for private sector and civil society organizations. For instance, there is scanty of information on gender,



particularly, women and persons with disabilities in business sector. Therefore, the researcher had to use primary data collected from the field.

Secondly, some of places within sampled regions were not accessible due to rainfall and security reasons. For instance, the study team failed to visit Kiru, Babati district, Manyara region as planned due to chaos that erupted in reaction to the murder of investors at the Kiru plantations.

Thirdly, most of upcountry regulatory authorities (branches) refused to offer information on the ground that, a permission to do so must be sought from their HQs.

Fourthly, some of the employers were also unwilling to be interviewed or allow their workers to participate in interviews. Therefore, the researchers had to use alternative ways of getting access to the workers and some of members of the management team.

Lastly, the time allocated for this study was not sufficient to investigate more than what have been gathered so far. LHRC will endeavour to widen the scope of the study and analysis in coming years.

1.10 Ethical Considerations

All ethical considerations such as informed consent and confidentiality were observed. No respondent below 18 years was allowed to participate in this study because that would have compelled researchers to seek parent or guardian's consent. The respondents were not compelled to give their names. They were also not compelled to respond to all questions posed to them. As such, participation to this study was an option and not mandatory. Moreover, all interviews were conducted in Kiswahili language and that, the SuQ for workers and community members were written in Kiswahili language. This was aimed at allowing respondents to give their informed consent to participate in the survey as well as availing reliable information.

CHAPTER TWO

EMPLOYMENT AND LABOUR PRACTICES

2.1 Introduction: Labour Rights and Standards

Employment or labour standards are claimable legal and human rights connected to or associated with labour relations between workers and employers. In the context of this report, such rights are entitlements as provided for under the international and national standards, namely, laws, policies and administrative practices.

The stated rights or standards are broad issues. However, they can be streamlined into two or three components, namely; the rights to job safety and security; equal and fair remunerations; and freedom to associate. Such labour standards are enumerated in the international conventions as well as in the national laws and other guidelines as stated earlier on. The names, nature and types of the labour conventions and laws are extensively covered in the coming paragraphs of this chapter.

It is worth to point out from this outset that, the responsibility to implement such standards is vested on everyone, in particular, employers (including corporate companies) and their associations; and workers as well as trade unions. The reinforcement and monitoring of standards are on the hands of government machineries. According to Article 1 of the International Labour Organization (ILO) Employment Policy Convention, 1964 (No. 122) all States, including Tanzania, are required to declare and pursue an active policy designed to promote full, productive and freely chosen employment. Such a policy should aim to ensure that:-

- a) There is work for all who are available for and are seeking work;
- b) Such work is as productive as possible; and
- c) There is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his or her skills and endowments in, a job for which he or she is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

Such and other ILO's Conventions and other treaties have, to a certain extent, been ratified and domesticated in Tanzania through various laws, some of them being the Employment and Labour Relations Act, 2004;¹⁶ and Labour Institutions Act, 2004.¹⁷

16 Act No. 6 of 2004.

17 Act No. 7 of 2004.



Each category of labour rights such as compensation, safety, and contract, has been addressed by specific laws to include; the Occupational Health and Safety Act, 2003;¹⁸ the Environmental Management Act, 2004;¹⁹ and the Law of Contract Act, Cap. 345.

This chapter covers the findings of the assessment of implementation of labour standards. International and national legal frameworks have been used as benchmarks to measure the progress. Moreover, findings of previous years of similar study by LHRC and other empirical research including government statistics have also been used to gauge the progress made during the year 2014.

2.2 Contracts and Collective Agreement

A contract is an agreement that creates binding obligation upon parties.²⁰ In the context of this report, such parties are employers and workers. Therefore, the legal basis of an employment relationship between an employer and a worker is the contract of employment. The contract can, sensibly, be made orally or in written form. However, the validity of the contract depends on a number of things. Section 10 of the Law of Contract Act, Cap. 345 states that all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void (by the laws). Section 13 of the same law defines ‘consent’ that is when parties to the contract agree upon the same thing in the same sense. The Employment and Labour Relations Act (ELRA), 2004 does not define employment contract; rather, it stipulates prerequisite and other factors to consider in employment. Such factors include minimum age²¹ and gender (non-discrimination).²² Moreover, Section 14 of ELRA, 2004 indicates the types of contracts;²³ and Section 15 provides for minimum contents of every employment contract.²⁴ Sections 14 and 15 of this law require every employer to provide the employee with employment contract from the first day of commencement of employment.

18 Act No. 5 of 2003.

19 Act No. 20 of 2004.

20 Abbott, Keith et al (2002) Business Law, 7th Edition: Ashford Colour Press: Hampshire, UK.

21 Section 5 of ELRA, 2014.

22 Section 7 of ELRA, 2014.

23 Namely; a contract for an unspecified period of time; a contract for a specified period of time for professionals and managerial cadre; and a contract for a specific task.

24 Which include; (a) name, age, permanent address and sex of the employee; (b) place of recruitment; (c) job description; (d) date of commencement; (e) form and duration of the contract; (f) place of work; (g) hours of work; and (h) remuneration, the method of its calculation, and details of any benefits or payments in kind. Moreover, Section 16 of ELRA, 2004 requires every employer to display a statement in the prescribed form of the employee’s rights in a conspicuous place. Most of such rights are supposed to be embodied in the employment contracts.

As for collective agreement, according to the ILO's instruments,²⁵ it means an activity or process leading up to the conclusion of a collective agreement. Section 4 of ELRA, 2004 refines more ILO's definition by defining collective agreement as a written agreement concluded by a registered trade union and an employer or registered employers' association on any labour matter. Therefore, in Tanzanian context all such agreements must be entered through registered trade unions.

LHRC is concerned that, some of the trade unions are dormant due to various reasons including corruption (their leaders side-lining with employers against members of the unions). Moreover, some of the trade unions do not have countrywide branches. Therefore, by subjecting such (collective) agreements to be bargained and colluded through 'registered trade unions' could jeopardize obtainment of workers' rights.

As regard to the assessment of the labour situation on the ground for the year 2014, it was generally found that, almost the same legal challenges persisted in 2014 however there was a slight improvement²⁶ on the contractual agreements made and entered between employers and employees. That is, a lot of workers were still in employment without formal oral or written agreements; and even the few written contracts, had several legal weaknesses mainly attributed to failure to tally contractual terms with minimum labour standards prescribed in the law. Some of the irregularities in contractual terms identified during this study included:-

2.2.1 Setting Terms below the Legal Standards

That is to say, deducing employment terms below the requirements of the ELRA, 2004. For instance, Clause 6 of the Mtibwa Sugar Company's contract document

25 The ILO has adopted a number of instruments dealing directly or indirectly with collective bargaining and related issues: the Collective Agreements Recommendation, 1952 (No. 91), 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), the Workers' Representatives Convention, 1971 (No. 135), the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), the Rural Workers' Organisations Recommendation, 1975 (No. 149), the Labour Relations (Public Service) Convention, 1978 (No. 151), the Labour Relations (Public Service) Recommendation, 1978 (No. 159), the Collective Bargaining Convention, 1981 (No. 154), and the Collective Bargaining Recommendation, 1981 (No. 163). Note that, this information is copied from: Gernigon, B; A. Odero; and H. Guido 'ILO *Principles Concerning Collective Bargaining*', In, International Labour Review, (2000), Vol. 1. Pages 33 – 55.

26 For instance, apart from other weaknesses identified in the samples of employment contracts, the Alliance Tobacco Tanzania Limited (Morogoro region), clause 9 of the company's English version contract states that, '*the employee is entitled to any other benefits conferred by the law even if not stated in this agreement.*' Such kinds of whole cognition of statutory terms are highly commended by LHRC. However, there is a need to specify all essential terms specifically owing to the fact that, majority of the workers are illiterate or semi-illiterate who do not know what the law says. In fact, they do not have copies of the law the employer has referred to.



(which is designated for ‘specific tasks’) limits sick leaves to only 3 days per month. That means, should it happen that a worker falls sick for more than those days within a month, such worker is automatically in ‘breach’ of the employment contract. Moreover, Clause 4 of the Highland Estates Limited’s contract document states that *‘Mwajiriwa atajigharamia tiba yake na familia yake’* (an ‘employee shall be responsible for own and his family’s medical expenses.’) The ELRA, 2004 requires employers to pay medical costs for its employees. Moreover, most of the contracts reviewed during this study have indicated daily or monthly remunerations which were below the statutory minimum wage order as indicated below.

2.2.2 Clouding Terms with Ambiguous and Indefinite Phrases

Usage of unclear words with a different interpretation; for instance, Clause 2 of the Alliance Tobacco Tanzania Company Limited’s contract (English version, signed in February 2014), states that:-

The company may terminate your employment in the event of **incapacity**, **incompatibility**, misconduct, insubordination, or operational requirement of the employer as per Employment and Labour Relations Act of 2004’ [Emphasis added].

The terms ‘**incapacity**’ and ‘**incompatibility**’ are vague and not even defined or clarified in the relevant law. Apparently, such vague terms could be used to terminate a worker once he or she sustains some injuries in the course of executing official duties. However, this study did not manage to establish whether such terms have ever been used unfavourably against any worker in the company.

2.2.3 Generalization of Terms, In Technical Language

In relation to the above point, employees signed contracts with generalized or complicated terms. For instance, the Tanga based Mamujee Products Limited’s contract document is just a single page document with only four short generalized terms. For instance, Clause 10 states that *‘employer shall be required to abide with and respect all rules and laws on employment and employment service terms of the company.’* None of the workers (0%) interviewed at that Company had knowledge of such ‘rules,’ ‘laws’ and ‘terms.’

The field data on workers’ awareness of the company’ guidelines and policies relating to the rights and responsibilities of a worker and employer showed that, less than a quarter of the workers interviewed were aware of the said documents. A large portion of them (78.8%) as the table below shows, were unaware of the documents (employers’ internal guidelines and policies):-

Table 10: Workers’ Level of Awareness of Internal Governing Guidelines and Policies

N=429 [Workers Responses]	Frequency	Percent
Yes	91	21.2
No	338	78.8
Total:	429	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

LHRC calls upon the need to share internal company’s guidelines and policies to workers during the orientation phase of employment. The documents such as ‘Human Resource Manual/ Policies’ of the private company can be used as part of the interpretation of ERLA, 2004’s rules, in particular the *Employment and Labour Relations (Code of Good Practice) Rules, 2007*.²⁷ Rule 11(1) requires all employers to implement disciplinary policies and procedures that establish the standard of conduct required by their employees. Sub-rule 6 of Rule 11 allows the labour Court to use such employer’s policies and procedures as part of interpretation and enforcement of the Rules. It is therefore important that, internal policies are formulated and made known to employees.

Lack of awareness of such policies by workers creates a feeling that, the company has bad policies and administration. For instance, some workers of the Lee Cement Company (Lindi) allegedly quit their jobs for failing to comprehend complicated contractual terms.²⁸ Such complications were, however, not stated. A worker of Dangote Cement Company (Mtwara) contended that, his level of education is standard four, but a copy of contract given for him to sign was in English language - while he is a typically a Swahili speaker.²⁹ Therefore, the contract was quite ‘complicated’ for him to understand the contents.

2.2.4 Use of Incorrect Laws or Provisions

Some of the employers used incorrect law or provisions of the laws as basis in employment contractual agreements. For instance, Clause 9 of the Highland Estates

²⁷ G.N No. 42 of 16/2/2007. These Rules are made under Section 99(1) of ELRA, 2004. The stated provision (Section 99(1)) is with regards to formulation of rules and guidelines to supplement enforcement of ELRA, 2004.

²⁸ Corporate Human Rights Compliance Assessment, Lindi Field Report of 2014 (LHRC’s Report II). Pages 4.

²⁹ Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2014 (LHRC’s Report I). Page 5.



Limited's contract document state that '*mwajiri ataweza kuchukua hatua za kinidhamu dhidi ya mwajiriwa kwa mujibu wa kanuni za ajira sura ya 366 za sheria ya usalama kazini*' ('the employer can take disciplinary measures against the employee pursuant to the employment rules **Chapter 366** of the occupational safety law'). The '*sura ya 366 za sheria ya usalama kazini*' is purported to be '*Employment Ordinance, Cap. 366*' which was repealed in 2004 under Section 103(1) of ELRA, 2004; while the contract cited above and which is referred to was entered in 2011 and was still enforceable in November 2014 when this study was conducted.

2.2.5 Enforcing Erroneous Procedures

There are employment laws implementation procedures which do not exist anymore but were found to be applied by some of the employers. For instance, on 6th February, 2013 the Mbarali Estate Limited of Rujewa district, Mbeya region summarily terminated the contract of one employee who was a tractor operator. Part of the termination letter reads '*Uongozi wa Kampuni umekuachisha kazi kuanzia leo tarehe 7/2/2013 kwa manufaa ya kampuni ... utalipwa mshahara wako wa siku sita (6) uliofanya kazi kuanzia tarehe 1/2/2013 hadi tarehe 6/2/2013*' (*the management of the company has, from today, terminated your contract for the benefit of the company ... you will be paid your six (6) days salary you have worked for from 1st to 6th February, 2013*'). There are two legal challenges here; i) summary dismissal as a way of terminating an employment contract is no longer enforceable in Tanzania following the enactment of ELRA, 2004; and ii) part-payment of the work done is not sanctioned under the law unless it is specifically stated in the employment contract basing on that due legal grounds.

2.2.6 Contracts without Job Descriptions

Again at least 99% of the contract documents reviewed during this study did not include job descriptions as part of the contract apart from indicating the position in which an employee was engaged for. In this regard, employers were at liberty to exploit workers. A former worker of the diamond mining company in Maganzo-Kishapu, Shinyanga told the team that, he was employed as an 'office attendant' way back in 2008. He was instructed to operate the tractor which carried sand from the open pits in the mining area within the two months of his employment. Later on, he was to drive a heavy machine without any training and sometimes acted as day time guard. The salary remained the same for all the new assigned jobs until he left the company last year in 2013.

Few companies (less than 10%) such as Tanzania Poultry Farms Limited (TPF) of Arusha have contracts with specified job descriptions. Apart from that, TPF's contract document was quite exhaustive of all minimum standards including inclusion of

annual, sick, maternity and paternity leaves.³⁰ Such kinds of complaints were heard in many places visited. A worker at Highland Estate Limited (Mbeya) said that, a worker can do ‘anything due to lack of job description, it can be carrying the luggage; doing general cleanness; operating machines; and so on. It all depends on what the boss will decide at the particular moment.’³¹

Other associated challenges relating to drafting and implementation of employment contract as witnessed during this study included; use of ‘standard contract’ (non-negotiable contracts); use of short term contracts; and preference of ‘gentle-man agreements’ as it is further explained below.

2.2.7 Use of Contracts with ‘Ready-Made’ Terms

Most employers who offer written contracts normally use ‘standard contracts’ whereby, terms and conditions are ‘ready-made.’ That is, the terms are superimposed without consultations with workers as the field data below shows:-

Table 11: Ways in Which Contractual Terms were Obtained – Private Sector Workers’

N=429	Frequency	Percent
Decided by the Employer Alone (Employer had Prescribed Terms)	287	66.9
Through Collective Bargaining between Employer and Trade Union	76	17.7
Based on my Proposal (and remained the same)	25	5.8
Other Ways	41	9.6
Total:	429	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Information from the table above suggests that employment terms are, to a large extent, dictated by the employer. The ‘mutual agreement’ as a prerequisite component of contractual agreement is more theoretical than practical as this study found out

30 Clause 6(a) to (d) of TPF’s contract document. Clause 7 of this company’s contract document clearly states that, the company will contribute 10% of the salary to the social security fund (NSSF). Clause 4 of the document describes working hours, while Clause 5 covers overtime payment arrangements – which is calculated according to the law or doubling the daily payment if a worker volunteers to work during holidays. LHRC urges other companies’ contract documents to follow this best practice.

31 Corporate Human Rights Compliance Assessment, Lindi Field Report of 2014’ (LHRC’s Report II). Page 25.



because less than 25% of the current employment contracts were bargained or negotiated before signing. Therefore, it is up to a worker either to accept or refuse and lose the opportunity of getting an employment altogether.

In most cases (more than 66%), workers accept the ready-made terms as they are prescribed due to a dire need of employment and thus ready to engage in anything to earn money for survival. Most interviewed workers of the Arusha based Tanzania Poultry Farms Limited's stated that they had no opportunity to negotiate terms of their individual contracts. One of the long serving workers of the company said on 8th November, 2014 at Arusha, as is below translated that³²:-

I have been working with this company for over ten years now. Initially, we were not given written contracts ... but later, the employer succumbed to our constant demands to have written contracts. I think the employer was deviating from the long arm of the law – to engage us without contracts. However, contracts are given out are in a prescribed format. Everything is already written in the contract documents. Therefore, a worker is just required to sign.

The TUICO regional Assistant Secretary in Mwanza Ms. Tupilike Njela, asserted that not more than three (3) companies in Mwanza region have collectively negotiated terms with respective trade unions. She said, as a trade union they have been able to negotiate employment terms with the Tanzania Bureau Limited (TBL) and Vicfish. At the time of this study, TUICO was also in negotiation with another fishing company known as Nile Perch Fisheries.³³

The situation in Kagera was to a large extent different from most of other regions. According to the field report for this region,³⁴ it seemed that workers in this region are more proactive to demand for their rights – at least negotiating employment terms before signing contracts. For instance, more than 70% of workers with written contract negotiated the terms with their employers as depicted in the table hereunder:-

32 The said worker was quoted by: Arusha, Human Rights Corporate Compliance Assessment Arusha Field Report of 2014 (LHRC's Report I), Page 9.

33 Corporate Human Rights Compliance Assessment, Mwanza Field Report of 2014 (LHRC's Report I), Pages 2 and 3.

34 Corporate Human Rights Compliance Assessment, Kagera Field Report of 2014 (LHRC's Report I), Page 12.

Table 12: Trend of Workers who Negotiated Terms – Selected Companies, Kagera Region

S/No.	Name of the Company	No. Workers Interviewed	No. of them who Negotiated Terms
1	Tigo	5	2 (40.0%)
2	Waves (Airtel)	4	1 (25.0%)
3	ICA Investment Ltd	4	4 (100%)
4	Kagera Tea Ltd	6	6 (100%)
5	Tanganyika Instant Coffee Ltd	3	3 (100%)
	Total:	22	16 (72.2%)

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

The situation in Kagera needs a deep analysis by, *inter alia*, widening the sample of workers to be interviewed as well as ascertaining ‘secrets’ behind this extremely opposite situation to other regions across the country. Then the same can be learnt and replicated in other regions.

2.2.8 Offering Short-Term Contracts

It was ascertained that, most of the employers visited tend to offer short term contracts of between one and six months and then, keep on renewing them for several years. For instance, a worker of Chemicotex Company based in Arusha, said that, he had been given three months contracts for four years in a row. Such contracts did not indicate most of the labour entitlements until last year when he was enrolled to contribute to the National Social Security Fund (NSSF). A similar situation was reported by some of the employees of Musoma Fish Processing Limited (Musoma, Mara region); and Kapunga Rice Project Limited (Mbeya).

The lawyer of one of the fish processing companies in Mwanza was of the view that, the law (ELRA, 2004) does not provide sufficient protection of workers who are in probation period. The legal gap is specifically seen as regard to termination of employment during or after probation period. According to him, his company, which is owned by Tanzanians of Indian origin, tend to utilize that loophole. He said³⁵ in November, 2014 that:-

Employers tend to look for lacuna (loopholes) in laws to avoid legal responsibilities. They offer short term contracts maximum of three months, whereby, employers either terminate him or offer another three months

35 Corporate Human Rights Compliance Assessment, Mwanza Field Report of 2014 (LHRC’s Report II). Page 7.



probationary contract upon expiry before a worker is confirmed and that could be the case for years. Most workers have been terminated from employment through this legal trick and that, those who dare to seek redress in Court, have been losing their cases; because, they are not confirmed as employees. Therefore, they are not legally entitled to challenge unfairness of termination under the employment law.

LHRC sees weight in the lawyer’s opinion as, indeed, such loophole has been used by some unscrupulous employers to defy workers’ rights, while maximizing profits. It is time that whole of ELRA, 2004 is revisited following a decade of its implementation. So many socio-economic and political events have happened in between (2004-2014) including, increased competition between corporate companies which tremendously affects the rights of workers and consumers as main targets of such business competition.

Besides, as one of the employee at Kapunga Rice Project Limited, in Mbeya stated, working under short term contracts is in itself a form of insecurity.³⁶ It creates a sense of uncertainty, which can also affect performance because a worker tends to focus on the long term productivity of the company.

2.2.9 Preference of Informal Agreements

Thirdly, a good number of companies still engage their workers without any form of agreement apart from the ‘gentleman concords.’ For instance, some of the ‘casual’ labourers working with CRJE East Africa Company Limited, a construction company operating in Arusha, said that, they have been working with company for years as ‘vibarua’ (casual labourers). One of them alleged that, he has been with the company for over five years but the employer still regarded him as a casual worker.

The primary data on this issues showed that, only 28.7% of workers in private companies visited during the study were in known oral or written contracts.

Table 13: Workers in Private Companies with Known Oral or Written

N=429	Frequency	Percent
Yes	123	28.7
No	306	71.3
Total:	429	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

36 Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2014 (LHRC’s Report I). Page 8.

Those who said ‘NO’ did not have any form of formal agreement despite being casual labourers. The ‘formal agreement’ in the context of this argument here includes being given a copy of contract or at least to be registered in workers’ log book. Opposite to that is the informal agreement whereby a worker is engaged for work but is not documented or known by the company’s formal system.

Out of the 28.7% workers who said they had some form of working agreements, only 24.9% according to the field data, were given written contracts, while the remaining 75.1% were working based on oral contracts as the table below shows:-

Table 14: Proportion of Workers with Written and Oral Contracts

N=429	Frequency	Percent
Written Contract	106	24.9
Oral Contract	323	75.1
Total:	429	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Some of the employees interviewed across the country felt that a written contract is a form of assurance of their work (security of employment), but unfortunately they could not force their employers to give them. Such sentiments were heard from workers of various companies including the Mara Coffee Limited (Mara region); and the Mtibwa Sugar Estate (Morogoro).³⁷

The situation in Mwanza region could be regarded as replicable to all regions visited and can be used as a good case study in this matter. The study has revealed that written contracts were preferably available for workers holding managerial positions, such as managers, foremen, accountants, public relations officers, supervisors, human resource officers, and the like. However, the remaining workers who account for more than 80% in almost all companies visited are undocumented casual labourers. For instance, the Mapsell Security Limited, a private security firm based in Mwanza, was stated to have at least 100 workers in which, all of them (100%) were supposedly to have no written contacts.³⁸ *‘Once recruited, a worker’s name is put on the list of*

37 Other companies which were allegedly not offering written contracts to most of their employees included; the TPM (1998) Limited (Morogoro); Radio Ukweli (Morogoro); Alliance One Limited (Morogoro); Manyara White House Hotel (Manyara); Sierra Company Limited (Manyara); Ngano Estate Company (Manyara); Sinyati Limited (Mdori, Manyara); Mohamed Enterprise (Kilimanjaro); Bella View (Kilimanjaro); Katani Limited (Tanga); Afritext (Tanga); Pareto Company (Iringa); and Kilimanjaro Flair Company Limited (Kilimanjaro).

38 Corporate Human Rights Compliance Assessment, Mwanza Field Report of 2014 (LHRC’’s



employees and that is all ...’ said one of the security guards of the company, who was interviewed during this study in November, 2014.

It is also unfortunate that security guarding services, being a new business in Tanzania do not have specific trade unions which could have been used as a mouthpiece to pressurize and address challenges which private guards currently face. LHRC advises such groups to hasten initiation of their trade union.

A random sampling of companies in Kilimanjaro region can also be used to highlight this matter and bring more perspective. The figure below illustrates, an average of two third (2/3) of workers in Kilimanjaro who were found to have been working without written contract or formal agreements.

Table 15: Use of Written Contracts of Some of the Kilimanjaro’s Companies, 2014

No.	Some of the Companies Sampled ²	No. of Workers Interviewed ³	No. of Workers with Written Contracts	No. of Workers without (Written) Contracts
1	Killflair Company (Hai)	6	2 (33.3%)	4 (66.7%)
2	Coffee Curing Company	12	5 (41.7%)	7 (58.3%)
3	Bella View Company (Rombo)	8	3 (37.5%)	5 (62.5%)
4	Mohamed Enterprises (Same)	14	0 (0%)	14 (100%)
	Total:	40	10 (25.0%)	34 (75.0%)

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

For their part, some of the employers argued that, casual workers are persons with low level of education and they are paid on daily basis because their reliability is quite uncertain. Yet still, other employers such as the Manager of the Manyara Whitehouse Hotel (Babati, Manyara region)³⁹ believed that, if a worker is given a formal written contract, he or she can be arrogant and lazy knowing that the contract protects him or her from being fired without following due legal process. Other employers argued that human rights compliance in labour law is ‘expensive’ and that, complying with everything would reduce their income base (profit).

Report II). Page 6.

39 He is quoted in the Corporate Human Rights Compliance Assessment, Manyara Field Report of 2014’ (LHRC- Report II). Page 6.

Moreover, other reasons given as excuses for not entering into formal written agreements were quite strange and interesting. For instance, on 8th July, 2014, TPAWU as a concerned trade union wrote a letter to TPM (1998) Limited, a Morogoro based company advising the management of the company to assess the names of its employees who were working without written contracts for a number of years and then, ensure that, the eligible ones are given copies of the same. TPAWU's letter received a response on the same day from the management of the company. Paragraph two of the company's letter stated that:-

Tatizo letu kubwa ambalo hata nyinyi chama (TPAWU) mnalijua ni serikali kutonunua magunia yetu ili mwekezaji huyu apate uwezo wa kuajiri kwa kutoa mikataba moja kwa moja wakati mtu anapoajiriwa - na kuachana na utaratibu tulionao sasa. Endapo hali itakuwa ya kuaminika, mikataba itatolewa kama mlivyopendekeza. Tunaomba subira itawale.

[Our main challenge is well known to you as a trade union (TPAWU). The government is reluctant to buy our bags (*magunia*), a situation which renders the investor unable to offer us employment contracts. Should the situation be sound, the said contracts will be granted as advised. Bear with us].

That means, as long as the government or buyers do not purchase the investor's sacks, no contracts will be given to workers. Such a strange argument is not supported by any part of the current legal framework on employment and labour relations. As of July 2014, there were at least 138 workers in the TPM (1998) Limited who were working without contracts.⁴⁰

Indeed, LHRC understands some the employers' concern as stated above. However, it is of the opinion that, contractual agreements which expressly or impliedly suggest permanent employment normally gives a worker and employer certainty of labour supply. Therefore, an employer could actually create an environment whereby its workforce is maintained sustainably. Apparently, employers who refuse to enter into formal agreements with their worker are deliberately doing that in order to avoid statutory obligations such as pay as you earn (PAYE) taxes (discussed in chapter four of this report), social security remittances and workers' entitlements attached to employment contracts.

Otherwise, LHRC applauds some of the corporate companies which have been able to comply with the law regarding employment contract standards. One of the stated companies, which demonstrated best practice at least on how they have framed its contracts, is the Nyakato Steel Mills Limited (Mwanza). This company offered

⁴⁰ Source: Copies of the letters availed to the Research Team by the anonymous respondents in Morogoro in November, 2014.



written contracts which incorporate all legal requirements under ELRA, 2004.⁴¹

2.2.10 Use of Ineffectual Contract Deeds

Some of the companies offered written contracts, with good terms, but eventually did not fulfil obligations indicated in such documents. Therefore, documents were apparently used as ‘show-cases’ for labour officers and trade unions to see that they adhere to labour laws. For instance, an employee of the Mamujee Products Limited (Tanga), alleged during this study that⁴²:-

The owner of Mamujee factory usually offers written contracts; but, does not fulfil his obligation by hundred percent as he arbitrarily terminates workers’ contracts whenever he thinks they have underperformed. The madam Human Resource can fire ten workers within one hour. The owner of the factory takes advantage of the situation, by exploiting and harassing workers as many people in Tanga are in dire need of employment due to the high level of unemployment.

A senior leader of the Trade Union Congress of Tanzania (TUCTA) for Tanga regional branch informed the study team on 13th November, 2014 that, his trade union has issued strong warnings several times against such kind of employers; and that, incidents related to unlawful terminations and breach of contracts were still escalating in the region.⁴³

LHRC understands that, the escalating number of cases reported in the justice machineries, can be an indicator for increased incidents of violations of rights or increased level of awareness on the same. Be it as it may, it is important that such unlawful behaviours are controlled. On the other side, workers should abide to their job descriptions in order to avoid terminations. There is no right without obligation. As such, workers need to be responsible, work hard to enhance production level for their employers.

Finally, as regards to enforcement of the law on collective agreement, the study noted that, the situation is still not impressive as further indicated below under ‘freedom of association’ subsection. Some of the contractual deeds reviewed in 2014, had the following gaps:-

- 41 Apart from being translated into Kiswahili language, the company has incorporated all important employment contract terms including all statutory leaves (plus the paternity leave); overtime payments; and terminal benefits. The framing of contractual terms is quite balanced to favour both sides (employer and employee).
- 42 An anonymous informer is quoted in the Human Rights Corporate Compliance Assessment, Tanga Field Report of 2014’ (LHRC’s Report I). Page 7.
- 43 Corporate Human Rights Compliance Assessment, Tanga Field Report of 2014’ (LHRC’s Report I). Page 8.

- a) They did not describe all basic employment and labour terms as per ELRA, 2004;
- b) They covered some of the terms which contravened the statutory standards on labour rights and duties.

For instance, Clause 4 of the collective bargain's contractual deed between the Tanzania Plantation and Agricultural Workers Union (TPAWU) and Sisal Association of Tanzania (SAT)⁴⁴ is on 'fringe benefits' termed as '*marupurupu*' in the deed. Sub-Clause 1 covers '*msaada wa posho ya usafiri wa likizo*' (that is, 'leave transport allowance'), which is impliedly offered as '*msaada*' ('assistance') and not legal entitlement. Moreover, the wording of that provision is unclear even for a legal expert. The said Clause 4.1 leads as follows:-

Malipo ya likizo ya Tshs 66,000 yatatolewa kila mwaka wa pili wa likizo kwa mwajiriwa aliyetimiza siku 56 za likizo ndani ya miaka miwili. Vinginevyo, kiasi cha malipo kitawiana na siku zake za likizo anazopaswa kupewa ndani ya miaka miwili [A leave allowance in a tune of Tshs 66,000 will be paid in every second year of the annual leave to the employee who has attained 56 days of his or her leave within two years. Otherwise, the employee would be paid part of the payment in accordance with the number of days he was entitled to be paid within two years].

Such kind of terms unduly compels a worker to work consecutively for two years before he or she could break (for an annual leave). Moreover, the annual leave allowances of two years are compounded as one package in order to 'increase' it.

2.3 Freedom of Association, Trade Unions and Strikes

Article 2 of the ILO's Convention on the Freedom of Association and Protection of the Right to Organize, 1948 (No. 87) states that '*workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.*'

Moreover, Article 20(1) of the Constitution of the United Republic of Tanzania of 1977 provides for a general right to associate.⁴⁵ Such rights are localized in Tanzanian labour context by the provisions of ELRA, 2004.⁴⁶

44 Signed on 16th August, 2014 by the leaders of TPAWU and SAT. The contract came into force retrospectively from 1st July, 2014.

45 The stated provision says that '*every person has freedom, to freely and peaceably assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests.*'

46 Sections 9(1); and 45 to 65 of ELRA, 2004 cover the rights, duties, registration procedures, and



As a way of exercising their rights, both employers and workers of various economic subsectors have established associations. Currently, there are more than 10 different types of trade unions. Such unions are for the promotion and protection of rights of their members in the following sub-sectors:-

- a) Conservation, Hotels, Domestic and Allied Workers Union (CHODAWU);
- b) Telecommunication Workers Union of Tanzania (TEWUTA);
- c) Communication and Transport Workers Union (COWTU);
- d) Tanzania Mines and Construction Workers Union (TAMICO);
- e) Research, Academicians and Allied Workers Union (RAAWU);
- f) Tanzania Local Government Workers Union (TALGWU);
- g) Tanzania Plantation and Agriculture Workers Union (TPAWU);
- h) Tanzania Railway Workers Union (TRAWU);
- i) Tanzania Seamen Union (TASU);
- j) Tanzania Teachers Union (TTU);
- k) Tanzania Union of Government and Health Employee (TUGHE);
- l) Tanzania Union of Industries and Commercial Workers (TUICO).

The umbrella association of all trade unions of Tanzania Mainland is commonly known as TUCTA.⁴⁷ This national congress was founded in 2000 as a new umbrella organization following the demise of similar national congresses.⁴⁸

There are at least three challenges which face trade unions in private sector as this study found. First, none-existence of union branches at most workplaces; second, existence of in active branches ; third, resistance from employers to allow their workers to participate in trade unions activities especially meetings; and four, little awareness on part of the workers and trade unions' leaders to use their legal mandates to demand for workers' rights.

governance of the trade unions and employers' associations. Section 9(1)(a) and (b) state that, employee shall have the right to form and join a trade union; and to participate in the lawful activities of the trade union.

47 That is, the Trade Union Congress of Tanzania.

48 For instance, the National Union of Tanganyika Workers (NUTA) existed between 1964 and 1976. In 1977 the Tanzanian Workers or Jumuiya ya Wafanyakazi Tanzania (JUWATA) replaced NUTA and become the umbrella organization. Moreover, following an economic crisis in the early 1980s, growing pressure for trade union autonomy in conjunction with the country's transition to a multi-party system in 1990 led to the JUWATA's dissolution and the founding of the Organisation of Tanzania Trade Unions (OTTU) in 1992. In 1998, the Trade Union Act No. 10 made trade unions independent of the government. OTTU was dissolved and replaced with TUCTA in 2000, which exists to date (Source: <http://www.tucta.or.tz/index.php/affiliates> accessed on 31st December, 2014).

Regarding none-existence or rather establishment of union branches at workplaces, a case of Tanga is a vivid illustration, whereby, out of five (5) companies sampled to assess this (existence of trade union), only 1 (20.0%) had a union branch. In Mwanza, out of all companies visited (about 10) none of them had established a branch of workers' union. Kagera region, 2 (40%) out of 5 companies interviewed had trade unions branches established at their workplaces. Such companies with trade unions were the Kagera Tea Limited (had TPAWU); and Tanganyika Instant Coffee Limited (had TUICO). Those with no trade unions established were ICA Investment Ltd; Tigo; and Waves (Airtel) companies.⁴⁹

The situation in Tanga offers another illustration in regard to activeness of members of trade unions. According to leaders of TUICO and TAMICO, employees have been reluctant to attend union meetings in the region. This situation is attributed to three possible reasons, namely:

- i) Ignorance of their rights and the importance of trade unions;
- ii) Employers' restrictions; and
- iii) Despair on unions not doing enough to promote and safeguard their rights. Leaders told the team that, most employers were active in paying their subscription fees but did not allow their workers to attend activities of the unions. Some of the workers at the Nile perch fisheries in Mwanza alleged that, their branch trade union does not help them. They gave an example that one of them (worker) was physically assaulted by the employer right in front of the trade union branch chairperson but nothing against the employer has been done to date.⁵⁰

Secondly, as for the question of the existence and importance of the trade unions, the study team was astonished to note that, some of the workers across the country were totally unaware of existence of workers unions. For instance, out of 5 Vicfish Company's workers who were randomly picked up in Mwanza, only 2 (40%) were able to tell something about TUICO. The rest (60%) had no knowledge of existence of TUICO let alone its purpose and functions. The situation can be worse than that for workers who are employed in companies operating in remote settings.

LHRC sees that, trade unions have not performed to the desired level. A separate comprehensive study is needed to ascertain more reasons for underperformance apart from the ones indicated in this report. That can be done by TUCTA in the near future. Otherwise, workers will continue losing their rights without sufficient assistance for proper legal redress.

49 Corporate Human Rights Compliance Assessment, Kagera Field Report of 2014 (LHRC's Report I). Page 12.

50 Corporate Human Rights Compliance Assessment, Mwanza Field Report of 2014 (LHRC's Report I), Page 4.



Thirdly, regarding direct or indirect resistance to establishment or to allow operations of trade unions' branches at workplaces, this study found out that, some employers tend to launch a 'cold war' against leaders of unions in a way that, they are totally frustrated to handle their activities. Sometimes employers reduce durations of employment contracts for the leaders of trade unions. For instance, the Kapunga Rice Project Limited (Mbeya) was alleged to have allowed its workers to engage in trade union's activities including election of leaders. However, the trick side is, almost all workers are given a one year contract without a possibility of renewal. Despite the fact being non-conclusive in regard to existence or non-existence or effectiveness of trade unions in companies, in a simple logic, no trade union can flourish and operate under this circumstance, whereby leadership and membership revolutionize every time. It is hard to gain momentum due to a large number of turnovers. The Dabaga Company (Iringa) refused the establishment of a trade union branch at its workplace as it considers trade unions at work place as being politically motivated.⁵¹

However, on the other hand, LHRC commends efforts demonstrated by some trade unions across the country, which are increasingly becoming proactive to enforce rights of their members more than they used to be in previous years. For instance, the regional CHODAWU office of Manyara, wrote a demand letter⁵² on 22nd October 2014 to Burunge Wildlife Management Area (WMA), directing it to adhere to labour law standards as agreed on the 3rd September, 2014 meeting. In the letter the employer WMA was to ensure; i) workers are given employment contracts in accordance with Sections 15(1)(a)-(i) and 16 of ELRA, 2014; ii) workers identity cards; iii) working hours in accordance with the law; and iv) annual leaves. The trade union also demanded increment of the current minimum wage scale. It is not certain whether the employer implemented those directives, but at least workers have a union which seems to listen to them and dare to take steps to address their rights when infringed.

Moreover, on the same note, LHRC commends all companies which have endorsed establishment of trade unions branches. Companies which have demonstrated good practices included the Mbeya-based Tanzania Breweries Limited (TBL); Mbeya Cement Company Limited; and Coca Cola Kwanza Limited.

51 This is in accordance with the allegations of some workers interviewed (Ref.: Corporate Human Rights Compliance Assessment, Iringa Field Report of 2014' (LHRC's Report II). Page 9.

52 Reference number CHD/MNR/WW/VOL.1/32, signed by the CHODAWU's Regional Secretary.



Picture 1: TUICO Branch Office inside the premise of Mbeya Coca Cola Kwanza Limited. (Source: LHRC Study, 3rd Nov. 2014)

LHRC urges other trade unions to take proactive roles in assessing, following up, addressing and firmly demanding for the rights of their members. That should go along with awareness sessions on labour rights and duties.

2.4 Discrimination at Workplaces – General

Article 1(a) of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) defines ‘discrimination’ at workplace to mean any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. Article 7 of the Universal Declaration of Human Rights (UDHR), 1948 states that, all persons are equal before the law and they are entitled without any discrimination to equal protection of the law.

Besides, there are ILO conventions which distinctively address such types of discriminations. For instance, Article 2 of the ILO Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951 (No. 100) requires adoption of measures to ensure presence and enforcement of the principle of equal remuneration for men and women workers for work of equal value.

Such principles are localized in Tanzania by the provisions of the Constitution of the United Republic of Tanzania of 1977; ELRA, 2004; the HIV and AIDS (Prevention



and Control) Act, 2008;⁵³ the Persons with Disabilities Act, 2010;⁵⁴ other laws and various national policies. Gender discrimination at workplaces is extensively covered under chapter seven of this report.

The study has ascertained that, discrimination at workplaces manifests through different forms, namely; sex; nationality; disability; seniority; sometimes religious; political affiliations; and ethnicity. The perception survey on this matter came out with the following findings from the field (of this study):-

Table 16: Main Possible or Attributing Factor(s) to Discrimination at Workplaces – Workers’ Opinions

N=429 [Workers’ Responses – Each one Requested to Choose only One Cause]	Frequency	Percent
Discrimination of Persons with Disabilities (disability-based discrimination)	307	71.6
Gender based discrimination (e.g. being pregnant or female, etc.)	47	11.0
Discrimination against Persons Living with HIV/AIDS (health status)	22	5.1
Discrimination based on ethnicity or place of origin	34	7.9
Discrimination based on religious affiliations	12	2.8
Discrimination based on political affiliations.	7	1.6
Total:	429	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014

Discrimination based on disability and gender appeared on the top of the list. The disability as factors for discrimination secured 71.6% followed by gender, which got 11.0%. Religious and political affiliations as factors for discrimination got 2.8% and 1.6% respectively to make them as least possible factors for discrimination at workplaces.

Such factors named above are a reality. For instance, the study ascertained that, some companies tend to employ persons coming from the owner’s country to do even ‘casual’ jobs which can be done by a lay person in Tanzania such as manual operation of the machines as the picture below shows.

53 Act No. 28 of 2008. For instance, Sections 28 prohibits formulation or enactment of the policy or law in the manner that discriminates directly or by its implication persons living with HIV and AIDS, orphans or their families. Section 30(c) is more specific one on employment. It states that a person shall not deny any person employment opportunity (on account of his or her health status – HIV/AIDS status).

54 Act No. 9 of 2010.



Picture 2: Employees of Asian origin busy at work. The latter were employed by one of the companies in Mtwara in Nov. 2014.

The Labour Officer in Mtwara told the research team that some of the companies in the region have employed foreigners who have been operating without work permits as required by the laws. Moreover, the job opportunities offered to foreigners were actually ordinary ones which could be done by a common Tanzanian.⁵⁵ His observation is seconded by the Minister for Labour, Ms. Gaudentia Kabaka, who stated that, the Mtwara based cement company, Dangote, illegally brought in the country more than 300 persons to work for them (company). Such jobs could have been done by Tanzanians.⁵⁶

Moreover, an anonymous respondent employed by the Mtibwa Sugar Estate Limited of Morogoro region alleged that, a senior manager (farm machinery and transport department) mistreats his subordinates including workers. He is alleged to be very harsh to the extent of physically assaulting them. In one occasion, he is stated to have physically abused the information and technology officer and some security officers, right in front of the Mvomero's OCD. Ironically, no action was taken against him.⁵⁷

Incidents of abuse of powers against employees holding junior positions were heard almost all places visited and they were more rampant in hotel and tourism industry.

55 Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2014' (LHRC's Report I). Page 11.

56 Theopista Nsanzugwako '*Sheria Mpya ya Vibali vya Ajira Yaja.*' HABARILEO Newspaper, 9th February, 2015. Translated: '*New Work Permit in the Pipeline.*' This information appeared again on the same newspaper 10th February, 2015 as editorial.

57 Corporate Human Rights Compliance Assessment Morogoro Field Report of 2014' (LHRC's Report II). Page 14.



There are cases similar to that of the Mtibwa Company, gathered from the Siera Company and Manyara Whitehouse Hotel both in Manyara region. However, a thorough separate enquiry is needed to get insights of all these incidents especially due to the fact that most of the employers were unwilling to speak to researchers to balance issues raised against them.

The study also noted that, the salary scales and payments for some of the companies assessed were uneven and inconsistent with the levels of education and working experiences. While in some companies the main determinant factor was considered to be ethnicity. Some foreign companies' top managerial positions are occupied by foreigners only, even when their levels of education or experience are less than those of the Tanzanians.⁵⁸

Moreover, despite tribalism being illegal and immoral practice in Tanzania, the study noted few incidents whereby, supervisors of some of the companies were using it as 'eligible factor' for employment or determinate to nature and kind of disciplinary actions against workers. For instance, a resident of Igogo in Mwanza who worked at two fishing companies on different occasions said that, there was a Kurya (tribe) foreman in one of the companies who used to impose several employment restrictions to all none-Kurya job seekers. For instance, he would demand for a monetary bribe if the job applicant is male or sexual interaction if the applicant is of the opposite sex. Such outrageous restrictions were not applicable to applicants who were Kurya.⁵⁹ Moreover, a fish processing company in Kagera was also named notorious for discriminating Tanzanians and in lieu thereof, opting for the Kenyans to hold all managerial and junior positions.

Thousands of foreigners come to Tanzania for work every year. According to the Ministry of Labour, a total of 7,432 applications for working permits (Class B) for foreigners were received in 2013/2014. Out of that, 6,237 (being 83.9%) were accepted; 1,175 (15.8%) applications were rejected; and the remaining 20 (0.3%) applications were left pending for further investigation.⁶⁰ Records for previous years could not immediately be obtained till the end of this study. But it is obvious that the number of applicants and those working illegally is on the increase. There is a need

58 Specific examples could not be cited here because researchers did not secure copies of salary slips. However, so many stories regarding this discriminatory practice were heard throughout the regions, in particular in connection to companies owned by Indian and Chinese investors in Manyara, Tanga, Mtwara, Dar es Salaam and other regions.

59 Human Rights Corporate Compliance Assessment, Mwanza Field Report of 2014 (LHRC's Report II), Page 8.

60 See: *Hotuba ya Waziri wa Kazi na Ajira Mheshimiwa Gaudentia M. Kabaka (MB) Akiwasili-sha Bungeni Makadirio ya Mapato na Matumizi ya Fedha kwa Mwaka 2014/2015* (the Budget Speech of the Minister for Labour, Hon. Gaudentia M. Kabapa (MP) for the Financial Year 2014/2015). 24 June, 2014, Dodoma Tanzania. Paragraph 26 (not paged).

to ensure that, those given permits are actually eligible persons and they are potential for Tanzanian socio-economic development agenda. Efforts ought to be taken to curb illegal workers.

LHRC urges the government to centralize procedures and authorities that grant work permits for foreigners. Currently, at least five government authorities are allowed to offer certain types of working permits to employers. Such authorities or institutions include; the Tanzania Investment Centre (TIC); Export Processing Zone Authority (EPZA); Immigration Department (Ministry of Home Affairs); Ministry of Trade and Industry (MoTI); and Ministry of Education and Vocational Training (MoEVT). The government needs to pass the employment permit law to address this challenge. Otherwise, space for employment of Tanzanians will continue to decrease.

The discrimination at workplaces based on gender patterns, in particular, sex was found to be rampant in all places visited. Female workers were dominant in hotel and tourism sector, while men predominantly occupied factory, construction or engineering-based sectors. That situation could be influenced by stereotyping factors right from the family levels, male-female segregation of activities are decided based on cultural norms. However, there are other reasons noticed during the study, including the use of women as ‘points of attraction’ for customers. That could be reason on why most female hotel attendants wear short skirts or tight trousers. In Arusha, for instance, there is a local pub which is commonly known as ‘*Matako*’ (bottom) because all female workers there were, apparently, employed on the basis of being fat with big-bottoms or wide hips. Therefore, skinny females are automatically excluded from employment.

Generally as it is further discussed in part eight of this report, the number of women in private sector employment is relatively low compared to men. For instance, a random survey in corporate companies in Mbeya⁶¹ came out with the following statistics:-

Table 17: Proportion of Female Workers in Employed by Some of Mbeya’s Companies

S/No.	Name of the Company	About the Workers ...			
		Total Number	No. of Males	No. of Females	Difference (No.)
a.	Coca cola Kwanza Ltd	252	230 (91.3%)	22 (8.7%)	208
b.	Tanzania Breweries Ltd	190	160 (84.2%)	30 (15.8%)	130
c.	Kapunga Rice Project Ltd	44	37 (84.1%)	7 (15.9%)	7
	Total	486	427 (87.9%)	59 (12.1%)	345

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

61 Corporate Human Rights Compliance Assessment Mbeya Field Report of 2014 (LHRC’s Report I), Page 13.



It is quite obvious that less than 20% of private sector employees in corporate companies are women. The percentage can be different if this analysis was to be conducted for Arusha or Kilimanjaro regions where one of the most dominant economic sub-sectors is tourism and hotels (which employ more women than men). But again, the percentage of women in formal employment (in private sector) cannot be more than 30% national-wise.

Discrimination is both a legal and a moral concern. This is why it was illogical to enquire if workers or employers like or dislike it. However, it was imperative to know whether employers are aware of **specific** national (or international) laws which prohibit discrimination against any persons and in all forms. The following were their responses:-

Table 18: Employers' Level of Awareness of the Law which Prohibit Discrimination

N=58 [Number of Employers]	Frequency	Percent
Yes	42	72.4
No	9	15.5
Not Sure	7	12.1
Total:	58	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

At least 72% of workers in private sector understood that, discrimination at workplace is illegal. However, only less than 2% of them were able to mention any law which prohibits discrimination at workplace, while 12.1% of the said workers were not sure of presence of such laws.

2.5 Workmen Compensations

The workmen compensation is simply a form of an insurance which provides wage replacement and medical benefits to a worker injured in the course of employment. Workmen compensation has also acquired a lot of international attention as one category of labour rights. There are numerous labour instruments passed to address it. The international and national legal frameworks also cover social security as part of core labour rights.

As for workmen compensation, there are Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18); Workmen's Compensation (Accidents) Convention, 1925 (No. 17); and other instruments.⁶² The Social Security (Minimum

62 Others include; the Equality of Treatment (Accident Compensation) Convention, 1925 (No.

Standards) Convention, 1952 (No. 102) requires member States to ensure that a range of benefits including medical care, sickness, unemployed benefits, old-age, employment injury, family, maternity, invalidity and survival benefits are guaranteed to its people (not only workers).

Moreover Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 states that everyone has the right to social security, including social insurance. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 has also some provisions on social security. For instance, Article 11(1)(e) of CEDAW provides for the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work. Article 22 of the Universal Declaration of Human Rights (UDHR), 1948 makes it clear that, ‘everyone’ should have the right to social security.

Workmen’s Compensation Ordinance, Cap. 263 which existed since 1949 was repealed by the Workers’ Compensation Act, 2008.⁶³ However, the newly enacted law is not operational. . Instead, old laws such as the Accident and Occupational Diseases (Notification) Ordinance, 1952 (passed 62 years ago) have been evoked to adjudicate compensation issues as the case below indicate. However, the Ministry of Labour stated in June 2014⁶⁴ that, the Workers’ Compensation Fund (WCF),⁶⁵ established under Section 74 of the said 2008’s legislation, was due to start because its regulations were complete.

This study found that, the enforcement of workmen compensation was generally marred with a number of challenges including; use of old law as stated above;⁶⁶ grant of trivial and unsustainable amount or support; delay of payments; unwillingness of some of the employers to pay. For instance, the table below shows only 41.7% of workers who responded to this study were of the view that, such compensation was or would be paid once a worker was or will be injured in the course of employment.

19); Workmen’s Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42); and Workmen’s Compensation (Agriculture) Convention, 1921 (No. 12).

63 Act No. 20 of 2008.

64 See: *Hotuba ya Waziri wa Kazi na Ajira Mheshimiwa Gaudentia M. Kabaka (MB) Akiwasili-sha Bungeni Makadirio ya Mapato na Matumizi ya Fedha kwa Mwaka 2014/2015* (the Budget Speech of the Minister for Labour, Hon. Gaudentia M. Kabapa (MP) for the Financial Year 2014/2015). 24 June, 2014, Dodoma Tanzania. Paragraph 20 (not paged).

65 The Fund will be operated through insurance and pension systems, whereby, workers who are injured or die in the course of their employment will be directly compensated by the Fund. All employers will be charged to contribute to this Fund.

66 For instance, the law applicable to date for giving employers notice of accidents as form No. 1 of the labour division shows is the *Accident and Occupational Diseases (Notification) Ordinance, 1952*.



Table 19: Workers Sentiments on Employers Readiness to Pay Workmen Compensation

N=429-1 [One Response Ticked Both Yes And No]	Frequency	Percent
Yes	179	41.7
No	114	26.6
Not Sure [Not Certain]	135	31.5
Missing/ Unused Data	1	0.2
Total:	429	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

A combination of responses were given ‘NO’ (26.6%) and ‘NOT SURE’ (31.5%) making a total of 58.3% of the workers who believed that no compensation was paid or will not be paid. whereby only 41.7% of the companies were ready to grant compensation to their workers.

As for payment procedures, in most cases, those who are injured in the course of executing their duties at workplaces suffer a lot. For instance Ms. Maria Patasi Tarimo sustained serious injury on 18th January, 2012 while at work. She was assessed to have sustained permanent partial incapacity in 2012 as the picture below shows.



Picture 3: Mary Patas depicts her chopped palm. Mary sustained the said injuries while at work.

However, as of November 2014, her fate regarding compensation was not fully known. There was a series of communication between the Morogoro regional labour office and her employer, Alliance One Tobacco Limited. The amount in dispute was only Tshs 685,500 (USD 381) to cover total temporary incapacity for 180 days and the permanent partial incapacity in April 2014. Such delays prompted her to consult private lawyers⁶⁷ for specific and general damages.

Worst still is a case of Ms. Edna Hamisi Danga, 37 years, who sustained an injury on 28th May, 2010 while at work. According to the medical report and disability assessment conducted by the Muhimbili Orthopaedic Institute (MOI), Dar es Salaam,⁶⁸ Danga sustained injury to the right hand when she was a machine operator. Part of her hand was chopped off as the picture below shows.



Picture 4: Ms. Edna Hamisi Danga with her mutilated hand in 2014

The doctors advised that she (Ms. Danga) should not start working due to the nature of the injuries sustained. However, the employer insisted she resumes work after only a week, contrary to the doctors' advice. On the other hand, Ms. Danga was still struggling to get fair compensation, from her employer who seemed to refute. As a result of this wrangle, the employer, Mamujee Products Limited (Tanga) fired her without a thirty days' notice as the law requires.⁶⁹ She was still struggling to get compensation for her

⁶⁷ She consulted B.L Tarimo and Company Advocates, who on 24th April, 2014, wrote a letter with reference numbers BLTC/ADV/2115/226 to the leadership of the tobacco company. Status of her case is not known.

⁶⁸ The report was issued by MOI in a form of brief letter, dated 8th May 2013, referenced with number MOI/CR/VOLVIII.480, signed by Dr. V. J Mithali and Dr. L.N.M Losokotala the specialist and consultant of orthopaedic surgeon respectively.

⁶⁹ The employer's letter was dated 5th June, 2013, referenced as MPL/EDH/16, signed by the Relations Officer, one Muhiri Jeremia. However, on 26th June 2014 the lady wrote again the



injuries as of June 2014, five years later.

The third case study involves, Mr. Ali, an employee of an Arusha based company. During the study, he told the team that, one of his fingers had been chopped off by a machine he had been operating a few months earlier. He was given only Tshs 200,000 (USD 110) as full compensation for his permanent injury. The picture below depicts the missing fingers.



Picture 5: Mr. Ali depicts his chopped fingers on November 2014

Apart from injuries caused by the machines, thousands of workers in Tanzania are affected by harmful chemicals; excessive lightening and noises in factories; pollutions; and so many other occupational diseases. For instance a worker at Mamujee Products Limited Tanga said that, her skin had been severely damaged due to chemical intrusion into her body caused by lack of protective gears. The picture below shows, her arms with all sorts of permanent rashes and scars.

letter to her employer insisting that she deserved fair compensation and that, the company has to take responsibility for its failure to give her protective gears (paragraph 1 of her letter, which was acknowledged to have been received by the company on 5th July, 2014). It is not certain what happened thereafter.



Picture 6: A Tanga based employee displays her skin problems sustained due to lack of protective gears

The lady contended that she paid all medical costs from her own sources because the employer could not give her compensation on time and her worry was that further delay to secure treatments would render more medical complications. She spent at least Tshs 500,000 (USD 278) at KCMC Hospital, Moshi. She thought that her employer would refund her upon return but that has not been the case to-date despite repeated reminders.

As for status of remittance of social security deductions to the designated Funds, it was found that, almost all companies visited in 15 regions were at least complying with the laws. However, such schemes are predominantly in favour of workers with written contracts (permanent employment). The logic here is that, since more than 75% of workers across the country are engaged as casual and undocumented employees, it could be that almost the same portion of workers in Tanzania are currently working without being members of social security schemes. Some of the exemplary companies making social contributions according to their workers included Tanga Fresh Company (Tanga); and Simba Cement Company (Tanga).

2.6 Leaves and Fringe Benefits

There is no specific ILO instrument on various leaves for workers apart from the Maternity Protection Convention, 2000 (No. 183), which only covers women. However the rights to various leaves are covered in the provisions of various conventions. The 2000's Convention on maternity leave states, inter alia that, women who are absent from work on maternity leave shall be entitled to a cash benefit which ensures that they can maintain themselves and their child in proper conditions of health and with a suitable standard of living and which shall be no less than two-thirds of her previous earnings or a comparable amount.



On its side, ELRA, 2004 provides for a number of leaves, main ones being; an annual leave (Section 31); sick leave (Section 32); maternity leave (Section 33); and paternity leaves (Section 34).

As the statistics below shows, majority of companies do not offer all specified statutory leaves to their workers. Some of them like Mara Coffee Limited were found to have a quite impressive working environment including tea and lunch breaks but did not allow sick, maternity and paternity leaves.

Moreover, as it was stated earlier, granting of leave is considered a ‘privilege’ and not a matter of ‘right’ under the laws. For instance, Clause 4 of the collective bargain’s contractual deed between the Tanzania Plantation and Agricultural Workers Union (TPAWU) and Sisal Association of Tanzania (SAT)⁷⁰ is on ‘fringe benefits’ termed as ‘*marupurupu*’ in the deed. Sub-Clause 1 covers ‘*msaada wa posho ya usafiri wa likizo*’ (‘holiday transport allowance’), which is offered as ‘*msaada*’ (‘Msaada’) and not a legal entitlement. Moreover, the wording of that provision is unclear even for a legal expert. The said provision 4.1 reads as follows:-

Malipo ya likizo ya Tshs 66,000 yatatolewa kila mwaka wa pili wa likizo kwa mwajiriwa aliyetimiza siku 56 za likizo ndani ya miaka miwili. Vinginevyo, kiasi cha malipo kitawiana na siku zake za likizo zinazopaswa kupewa ndani ya miaka miwili.

[A leave allowance in a tune of Tshs 66,000 will be paid in every second year of the annual leave to the employee who has attained 56 days of his or her leave within two years. Otherwise, the employee would be paid part of the payment in accordance with a number of days he was entitled to be paid within two years].

Probably, they meant to say that, annual leave shall be granted accumulatively after two years of service. Be it as it may, LHRC is of the view that, such kinds of terms unduly compels a worker to work consecutively for long time before he or she could get a break (for an annual leave). Moreover, the annual leave allowances of two years are compounded as one package in order to ‘increase’ it.

As the below statistics show, only a few corporate companies in private sector comply with the law on various leaves. Maternity (11.0%) and paternity (3.3%) leaves were found to have been the most difficult leaves to be granted by employers. Therefore, the annual leave was the most or commonly provided by majority (67.8%) of companies visited. But again, some companies provided it with baseless conditional ties.

⁷⁰ Signed on 16th August, 2014 by the leaders of TPAWU and SAT. The contract came into force retrospectively from 1st July, 2014.

Table 20: Status of Provision of Different Statutory Leaves for Workers

N=429 [Workers' Responses]	Frequency	Percent
Annual Leave	291	67.8
Maternity Leave	47	11.0
Paternity Leave	14	3.3
Sick Leave	77	17.9
Total:	429	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Moreover, sick leaves (17.9%) are normally allowed with a lot of hesitations and conditionality which are not stated in the labour law. There is an incident which occurred in Tanga in 2004, where a worker of one of the urban based manufacturing companies died at the factory while working simply because he was not given a day off for medical check-up. The narration of that awful incident as provided by one of the female respondents of the company in November 2014 is worth quoting here in full. She told the team⁷¹ that:-

That worker (the deceased) was not feeling well at the time he reported at office around 3 pm. Thus, he approached the female supervisor of plastic department of the factory for permission to return home. However, the supervisor refused and instead, assigned him to take light duties, namely to cut flash with the machine. The deceased worker obeyed the boss and began to work at the machine. However, it was only after he had cut several flashes that he fell down and was found unconscious on the floor by his fellow section workers who were not around at the time of the incident. The administration was immediately informed of the incident; but, no one showed concern. Instead, leaders responded and argued that carrying a fainted worker in the company's vehicle would create a precedent in which every other worker could now start demanding the same treatments (to be carried by office vehicles). However, after long hesitations, the said bosses allowed the office car to carry the deceased worker. But that decision came very late as it seemed that the man had died some few minutes earlier. Surprisingly, even after his death, the administration did not bother to facilitate burial arrangements, let alone condolences or transport to take the body to Morogoro region, a place where his relatives wanted to bury him. As such, all such arrangements and costs were borne by his fellow workers.

71 Human Rights Corporate Compliance Assessment Tanga Field Report of 2014 (LHRC's Report I). Page 16. Interview with the informer was on 9th November, 2014 at Tanga town.



Such incident can be used to reverberate loudly the importance of sick and other leaves for workers. LHRC urges all employers and trade unions to ensure that, such leaves are provided as they are important to the life and welfare of workers as well as employers. Sometimes, losing a worker could mean losing productivity and reputation of a company.

2.7 Remunerations and Implementation of Minimum Wages Order

Article 1(a) of the ILO Convention on Equal Remuneration, 1951 (No. 100) defines the term ‘remuneration’ to include the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment. Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966 emphasizes on the right to ‘equal pay for equal work.’ A purpose of ‘just and fair remuneration’ is well articulated on human rights point of view under Article 23(3) of the Universal Declaration of Human Rights, 1948.

Now, to ensure the right is enforceable in practice, the ILO Minimum Wage Fixing Convention, 1970 (No. 131) states under Article 1(1) to (3) that, the State should undertake to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.

Such rights and principles are guaranteed in the local context under the Constitution of the United Republic of Tanzania, 1977 and labour laws. For instance, Article 23(1) of the Constitution of Tanzania states, *inter alia*, that, every person is entitled to remuneration commensurate with his or her work. Sub-Article 2 of Article 23 of the Constitution insists on ‘just’ or ‘fair’ remuneration. Section 27(1) of ELRA, 2004 requires employers to pay their employees ‘*any monetary remuneration to which the employee is entitled*’ (according to the law). An arbitrary deduction of employee’s salary is prohibited under Section 28 of the ELRA, 2004. The government has also gazetted wage minimum standard order (quoted in after second paragraph below).

There are several legal and human rights issues happening on the ground regarding payment of remunerations. Such issues include payment of remunerations below minimum wage standards; delayed payments; unlawful deductions of remunerations; and payments of remunerations which do not commensurate with employer’s amount and nature of work.

The applicable minimum wage standards for various private sectors came into effects from 1st July 2013 and are supposed to last for three years till 30th June, 2016. Such standards are as indicated in the table below which is extracted from the Government Gazette (G.N) number 196 of 2013.

Table 21: Minimum Wages In Tanzania With Effect From 1st of July, 2013⁷²

Sector	Sub-Sector Area	Minimum Wage per Hour	Minimum Wage per Day	Minimum Wage per Week	Minimum Wage per Fortnight	Minimum Wage per Month
Health Services		677.00	5,077.33	30,463.90	60,927.76	
Agricultural Services		512.85	3,846.50	23,078.70	46,157.40	100,000.00
Trade, Industries and Commercial Services	Trade, Industry and Commerce	589.80	4,423.40	26,540.50	53,081.00	115,000.00
	Financial Institutions	2,051.45	15,385.50	92,314.80	184,629.60	400,000.00
Telecommunication Services		2,051.45	15,385.80	92,314.80	184,629.60	400,000.00
Communication services	Broadcasting, etc ⁴	769.30	5,769.70	34,618.05	69,236.10	150,000.00
Mining	Mining and prospecting licenses	2,051.45	15,385.80	92,314.40	184,629.60	400,000.00
	Primary Mining Licenses	1,025.80	7,692.90	46,157.40	91,314.80	200,000.00
	Dealers licenses	2,367.10	11,539.35	69,236.10	138,472.20	
	Brokers licenses	1,025.80	7,692.90	46,157.40	92,314.80	200,000.00
Private schools services (from nursery to secondary)		718.00	5,385.02	32,310.15	64,620.35	140,000.00

⁷² The minimum wage rates in the table are in Tanzanian Shillings (Tshs). They can be converted in the United States of America Dollars (USD) at a rate of Tshs 1,800 per USD 1 which was applicable as of December 2014 when this study was concluded.



Sector	Sub-Sector Area	Minimum Wage per Hour	Minimum Wage per Day	Minimum Wage per Week	Minimum Wage per Fortnight	Minimum Wage per Month
Domestic Workers (DWs) and Hospital Services	DWs employed by Diplomats and Potential businessmen	769.30	5,769.70	34,618.05	69,236.10	150,000.00
	DWs employed by entitled officers	666.70	5,000.40	30,002.30	60,004.60	130,000.00
	DWs employed by others ⁵	410.30	3,077.15	18,463.00	36,925.90	80,000.00
	Other domestic workers					40,000.00
	Potential and Tourists hotel	1,282.15	9,616.10	57,696.75	115,393.50	250,000.00
	Medium Hotels	769.30	5,769.65	34,618.05	69,136.10	150,000.00
	Restaurants, Guest Houses and Bars	666.70	5,000.40	30,002.30	115,393.50	130,000.00
Private Security Services	International or potential security Companies	769.30	5,769.65	34,618.05	69,136.10	150,000.00
	Small companies	512.85	3,846.50	23,078.70	46,157.40	100,000.00
Energy Services	International Companies	2,051.45	15,385.80	92,314.80	184,629.60	400,000.00
	Small companies	769.30	5,769.65	34,618.05	69,136.10	150,000.00
Transport Services	Aviation Services	1,795.05	13,462.55	80,775.45	161,550.90	300,000.00
	Clearing & Forwarding	1,538.78	11,539.35	69,136.10	138,472.20	300,000.00
	Inland Transport	1,025.80		46,157.40	92,314.80	200,000.00

Sector	Sub-Sector Area	Minimum Wage per Hour	Minimum Wage per Day	Minimum Wage per Week	Minimum Wage per Fortnight	Minimum Wage per Month
Construction Services	Contractor Class I	1,666.80	12,500.95	75,005.75	150,011.50	325,000.00
	Contractors Class II-IV	1,435.05	10,770.05	64,620.35	129,240.70	280,000.00
	Contractors Class V-VII	1,282.15	9,616.10	5,769.75	115,393.50	250,000.00
Fishing and Marine Services		1,025.80	7,692.90	46,157.40	92,314.80	200,000.00
Other sectors not mentioned above		512.85	38,446.45	23,078.70	46,157.40	100,000.00

Source: Government Notice Number (G.N No.) 196 of 2013 [also available at: [www. mywage.org/Tanzania](http://www.mywage.org/Tanzania)]

The calculation of rates and pay period is as per Section 19 of ELRA, 2004, which states that, the daily rate is calculated on the basis of 9 working hours in a day; weekly rate is calculated on the basis of 45 hours in a week or 6 working days in a week; fortnightly rate is calculated on the basis of 90 hours or 12 working days; while the monthly rate is calculated on the basis of 26 working days in a month or 234 hours in a month.

At least 80% of all companies visited during the study were paying salaries which ranged between Tshs. 100,000 (USD 55.6) and Tshs. 300,000 (USD 166.7) for posts below managerial positions.⁷³ However, local hotels and bars' remunerations were as low as Tshs. 50,000 (USD 27.8) per month. Minimum payment of Tshs. 100,000 (USD 55.6) is within the prescribe rate under the Minimum Wage for Private Sector Order, G.N No. 196 of 2013 as indicated on the table above.

⁷³ Few companies such as the Bella View (Rombo, Kilimanjaro); the Killflair (Hai, Kilimanjaro); the Mohamed Enterprises (Same, Kilimanjaro); the Coffee Curing; and others especially local bars and hotels were allegedly paying as low as to Tshs 98,000 (USD 54.4) and Tshs 70,000 (USD 38.9) or below than that. This is in accordance with some of their anonymous workers interviewed during this study.



However, LHRC urges the government to revisit these rates imposed three years ago. The inflation rate in respect of most consumable goods such as food stuff is high in 2014. For instance, as of June 2014, the Annual Inflation Rate (AIR) for food consumed at home and away from home stood at 8.7% [Ref.: NBS 'National Consumer Price Index (NCPI) for June, 2014' (Press Release, referenced with numbers NBS/S.40/21/490), 8th July 2014. Page 2]. Prices of some commodities such as sugar and fresh meat in the market escalated in urban areas, while Tanzanian currency continued to devaluate against USD (from Tshs 1,560 in January 2014 to Tshs 1,800 in December 2014 according to BOT statistics). A kilo of fresh fish in Dar es Salaam is now sold at Tshs 9,000 (USD 5) from around Tshs 6,000 (USD 3.3) of last year 2013. It is the same situation for other food stuffs including fruits and vegetables. Moreover, schools fees and transport costs are also high. Therefore, tuning the wage rate in the same figure basing on the 2011 factors is unrealistic and unfair to workers.

Secondly, delayed salaries were a common practice for some corporate companies except mining companies. In most cases, workers or their trade unions need to exert pressure in order to get salaries. The study came across an incident in which a worker of one of the wine processing factories at Hombolo areas, Dodoma region having been unable to get her salary for some time, decided to complain to the District Administrative Secretary (DAS) of Dodoma.⁷⁴

The sources did not inform whether the aggrieved lady succeeded in her matter. But the point here is that, incidents of salary delays are not inadvertent factors but wilfully done. While commenting on reasons for stated delays, some of the employers stated that, the delays are occasioned by a number of factors, some being; delay of payments from clients especially government departments; and 'low seasons' in certain months. For instance, the Arusha based Corridor Spring Hotel Limited leadership said that, delays of payments in most of the hotels in Arusha are common during 'low season' where the business flow becomes relatively slow due to decrease in number of tourists coming in the country but, that is not the case during 'high seasons.'

Thirdly, non-payment of salaries or use of other things in lieu of the monetary salary was noticed in almost all small scale miners. For instance, Kasim, one of the 'wanaapolo' (small scale informal miners) had not been paid his salary for over four years. He told the team that his employer used to collect all the raw mineral stones he had mined and there after allowed him to crush the rubbles (remaining sands) and the boss regarded whatever came out of it as his pay.⁷⁵

Fourth, the use of unlawful methods to calculate amount of wage to be paid to a worker. Sections 26 and 27 of ELRA, 2004 require use of hours, days, weeks or months as

74 Corporate Human Rights Compliance Assessment, Dodoma Field Report of 2014 (LHRC's Report II). Page 12.

75 Corporate Human Rights Compliance Assessment, Arusha Field Report of 2014 (LHRC's Report I). Page 12.

measurements or units of amount of work done to justify the amount of wage. But contrary to that, the small scale mining companies (as illustrated above), some of the plantations and processing industries have been paying their workers per unit-labour force exhausted in the production. For instance, the Mara Coffee Limited was alleged to have been paying its casual workers Tshs 15,000 (USD 8.3) per filled sack (bag) of coffee.⁷⁶ If that is true then, their unit of measurement of labour is ‘number of sacks filled in by the worker’ and not ‘hours or days’ which the worker has exhaustedly used to fill in the sacks. That could mean, if a worker uses two or seven days to fill a sack, his or her salary will remain the same Tshs 15,000 (USD 8.3).

Fifth, making salary payments depending on extent of productivity, some employers devised a strange excuse of delaying or refusing to pay salaries. For instance, some of the workers at the Minjingu Mines and Fertilizer Company (Manyara) contended that salary payments by their employer is a conditional phenomenon which depends on extent of production on a particular day. Therefore, there are some days where they work without salaries simply because the company did not earn sufficient produce.⁷⁷

Sixth, delay or refusal of increment to staff as per required salary scales or ranks. This is not common in private sectors in Tanzania because employment is on fixed terms. Therefore, in very rare cases does one get a salary raise during subsisting contractual term - unless it is from probation to full term contract. However, the study noted that most professional private companies such as high learning institutions and large hospitals did apply salary schemes similar to those of the government. That is, increasing one’s salary if he or she is promoted to another position based on work experience or increased level of education.

One such private institution is the Kilimanjaro Christian Medical Centre (KCMC), based in Moshi, Kilimanjaro region. The study team faced stiff resistance to interact with either the management or employees of the hospital. That was notwithstanding the fact that the team had complied with all ‘pre-entry instructions’ given by the corporate lawyer, Mr. Nelson Lengai. Having that as the case, the team opted to interview the leadership for the Trade Union at KCMC branch where several labour issues were gathered from the stated interview. The union leadership told the team that, one of the main labour issue, which remained unresolved for quite sometimes was in regard to salary increments corresponding with individuals respective ranks. He alleged that⁷⁸:-

76 Corporate Human Rights Compliance Assessment, Mara Field Report of 2014 (LHRC’s Report I), Page 16.

77 Corporate Human Rights Compliance Assessment, Manyara Field Report of 2014 (LHRC’s Report II), Page 13.

78 Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2014 (Report I). Page 8.



... [w]orkers here (KCMC) operate under very pathetic conditions. The government may disburse some grants as salary increments for hospital workers yet such funds do not go down to eligible workers. The situation is challenging for KCMC workers. I have been proactive as a leader to follow up these issues. We once organized a meeting with staff to discuss the matter. Sadly, the Director came on stage, grabbed the microphone and smashed it on my face as I began to address them. I lost one of my teeth from the blow. Failure to grant you permission to assess human rights situation in this facility is an indicator that all is not well between workers and their employer. We call upon the government to pay salary increments to individual workers instead of doing so to the institution.

2.8 Forced Labour

Article 5(1) of the ILO Convention Concerning Forced Labour or Compulsory Labour, 1930 (No. 29) provides that, '*no concession granted to private individuals, companies or associations shall involve any form of forced or compulsory labour for the production or any collection of products which such private individuals, companies or associations utilize or in which they trade.*' This convention is supplemented by the 1957 ILO Abolition of Forced Labour Convention (No. 105), which requires all States around the world to adopt measure in order to suppress and no to make use of any form of forced or compulsory labour.

Such principles are reflected in the national legal frameworks on labour and criminal law generally. Section 6(1) of ELRA, 2004 states that, '*any person who procures demands or imposes forced labour; commits an offence.*' Subsection 2 of Section 6 defines '*forced labour*' to include forced '*bonded labour or any work exacted from a person under the threat of a penalty and to which that person has not consented.*' As such, 'forced labour' undermines basic principles of contractual agreements discussed above under Paragraph 2.2 of this report. Some elements of forced labour in Tanzania legal framework can also be seen in the provisions of the Law of the Child Act (LCA), 2009;⁷⁹ Anti-Trafficking in Persons Act, 2008;⁸⁰ and other laws.

Section 80(1) of LCA, 2009 is the same as Section 6(1) of ELRA, 2004. But, it adds the word 'induce' to read, '*any person who induces, procures, demands or imposes forced labour to a child, commits an offence.*' On the other hand, the anti-trafficking law is more elaborative. Section 3 of this (anti-trafficking) law defines forced labour and slavery to mean '*the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception.*'

79 Act No. 21 of 2009.

80 Act No. 6 of 2008.

Incidents of forced labour occur in various forms as the definitions above suggests. The study could not get a hard-fact case from the primary sources because such incidents seem to take place in secrecy or hidden places. Moreover, the concept of ‘forced labour’ is relatively new to not only workers, but also trade union leaders and employers. As such, it was hard to link what happens on their workplaces to forced labour. This is, in itself, a crucial finding in the sense that, public awareness programs should be launched in order to address it.

Field data shows that, at least 62% of the employers visited during the study claimed to have a policy or guideline which prohibits forced labour as the table below shows:-

Table 22: Employers with Workplace Policies Addressing Forced Labour

N=58 [Employers’ Responses]	Companies	Percent
Yes	36	62.1
No	16	27.6
Not Sure	6	10.3
Total:	58	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Ironically, none of the staff were able to show a copy of a policy or guideline which prohibits forced labour when asked to do so. It may not be scientifically proper to conclude to the contrary the opinion of the respondent, but it can be logically stated that, lack of evidence means lack of fact. It is indeed doubtful on whether such a big number of companies (62.1%) have policies on forced labour. Probably, this should be regarded as a wakeup call for them to incorporate it.

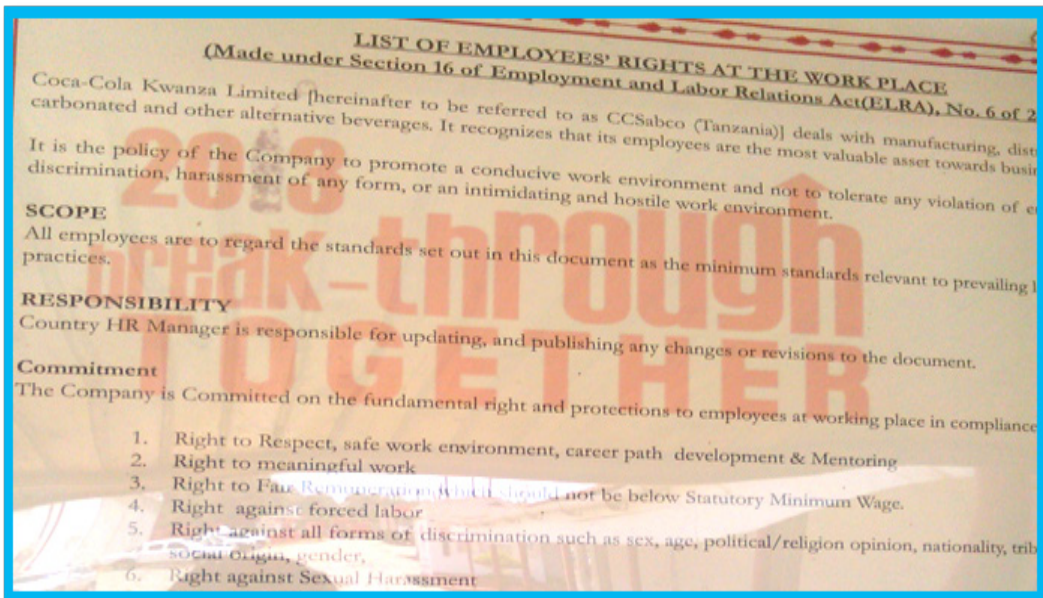
Some recommendations which LHRC advances in regard to issues surrounding forced labour or trafficking in persons include; i) to formulate a specific policy of forced labour or human trafficking; ii) through the Ministry of Community Development, Gender and Children, design public awareness programs on the causes and effects of trafficking and forced labour; iii) intensify investigation and prosecution of trafficking and forced labour related cases; iv) put more resources to respective law enforcers including providing them with specialized trainings on trafficking and forced labour; v) localize law enforcement down to the grassroots levels, for instance by engaging with village leadership; and vi) to implement other recommendation on this issues as have been given by the International Organization for Immigration (IOM); US Department of State; and other institutions including the treaty monitoring bodies (TMBs).



2.9 Awareness of Labour Rights, Duties, Laws and Procedures

Every person has an obligation to raise awareness on employment rights and duties including employees and their employers. Section 16 of ELRA, 2004 requires every employer to display a statement in the prescribed form on employee's rights under the law on a conspicuous place. The implementation of this requirement is crucial due to the fact that, at least 75% of workers in private sector (as it is stated above), are engaged without formal contracts.

Out of the 105 companies visited during this study, Coca Cola Kwanza Limited Company in Mbeya was the only 1 (0.9%) which seemed to have implemented this requirement. The company displayed a 'List of Employee's Rights on the walls within its premises. The list showed various rights in a simplified form as stated in ELRA, 2004 as the picture below shows:-



Picture 7: A Placard with Employees' Rights at Mbeya Coca-Cola Kwanza Limited as captured in Nov. 2014

Other corporate companies are urged to emulate this best practice as a simple way to raise workers' awareness at workplaces. Needless to say, Coca Cola Kwanza Limited will have to translate this placard into Kiswahili language in order to make it more accessible to majority of workers who are, as statistics in chapter one of this report shows, either illiterate or semi-literate. Trade unions and labour inspectors could also work together to ensure this statutory requirement is adhered to.

As regard to the level of awareness, field data of this study as presented below shows a slight increase compared with the last year's (2013) situation.

However, such trend is quite uneven. That is, the level of awareness is not the same compared with sectoral or geographical or regional basis. According to the general trends, workers employed in corporate companies in Arusha, Kilimanjaro, Mwanza, Mbeya (Urban) and Dar es Salaam, are more aware of labour rights compared with those in Iringa, Manyara, Mtwara and Mara regions. Moreover, it was noted during this study that, workers in construction, engineering and private security guards are a bit more aware of their rights and are less tolerant once their rights are infringed. That is they are a bit proactive to seek legal redress than workers in other economic subsector as per 2004 CMA Statistics in Mtwara indicated hereunder:-

Table 23: Trend of CMA's Cases per Sector and Sex, Mtwara Region, June 2014

	Construction	Hotel	Private Security	Energy	Transport	Trading ⁶	Education	Health	Finance/ Banking	Domestic Work	Public Service	Others ⁷
Total Number of Cases is 101												
Male	20	7	20	6	5	7	3	2	6	2	5	4
Female	3	0	1	1	0	2	1	3	1	1	1	0
Total & (%)	23 (23%)	7 (7%)	21 (21%)	7 (7%)	5 (5%)	9 (9%)	4 (4%)	5 (5%)	7 (7%)	3 (3%)	6 (6%)	4 (4%)

Source: Extracted from the Mtwara CMA Quarterly Progress Report for the period of April – June, 2014.

That is, a total number of 101 labour cases (new and old ones) were recorded by the Mtwara CMA between April and June, 2014. Out of those, only 16 (15.8%) were lodged by female workers. Therefore, men were (84.2%). Construction and private security sectors formed almost half all of the claims. That reality suggests that labour officers, trade unions and other stakeholders need to put more efforts in addressing labour challenges facing these sub-sectors. Such cases are, to a large extent, attributed by the increase of investments in Mtwara, particularly, natural gas and oil explorations, extractions and construction of the Mtwara-Dar es Salaam gas pipeline.

Unfair termination accounted for 75% of all CMA cases in Mtwara and Mbeya regions.⁸¹

81 Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2014 (LHRC's



The CMA’s labour disputes national statistics for the year 2013/2014 showed that, a total of 8,584 disputes were registered by CMA, of which 3,144 (37%) cases were adjudicated and concluded; while 1,935 (23%) cases were mediated; 1,209 (14%) were arbitrated; and the remaining 2,296 (27%) were still pending for mediation and arbitration.⁸² An officer at the CMA in Dar es Salaam, who preferred anonymity, informed the study team that the number of cases reported was actually shooting up.

This is also a good indicator to show that, workers are at least proactive to demand for job security. It is also an indicator that, many employers are still ignorant or arrogant to comply with the due legal process. While some workers seemed to wake up to demand for their rights, others were still in total darkness. For instance, a male worker at the Coffee Curing Company in Kilimanjaro region said that, he has never seen a copy of any labour law let alone know if such laws existed in Tanzania. Moreover, an employee of SIETCO Construction Company (Mpwapa, Dodoma) said it was the first time that he heard about the ‘so called trade unions.’⁸³ The primary data on the extent of awareness of labour laws and procedures suggested that, awareness of laws and procedures governing labour rights and responsibilities is still relatively low (only 23.5%) as measured in 2013 by the same LHRC study.

The following table presents results of level of awareness with comparison to the general perception (all gender groups) with responses based on workers’ levels of education. The third table on row shows how workers currently address their problems – based on their ignorance of the law and procedures:-

Table 24: Status of Workers’ Awareness on Labour Laws – General Group

N=429 [<i>Basic Q’n: ‘Are You Aware of Any Law Governing Labour Rights in Tanzania</i>]	Frequency	Percent
Yes	101	23.5
No	328	76.5
Total:	429	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Report I). Page 19.

82 See: *Hotuba ya Waziri wa Kazi na Ajira Mheshimiwa Gaudentia M. Kabaka (MB) Akiwasili-sha Bungeni Makadirio ya Mapato na Matumizi ya Fedha kwa Mwaka 2014/2015* (the Budget Speech of the Minister for Labour, Hon. Gaudentia M. Kabapa (MP) for the Financial Year 2014/2015), 24 June, 2014, Dodoma Tanzania. Paragraph 50(i) (not paged).

83 Corporate Human Rights Compliance Assessment, Dodoma Field Report of 2014 (LHRC’s Report I), Page 4.

Therefore, at least three quarter (76.5%) of workers interviewed from different private companies across the country were not aware of the law or laws governing labour rights and responsibilities in Tanzania. Last year (2013)'s response on the same question, based on almost same samples regions and nature of corporate companies showed that, only 25.6% of the workers were aware of the said laws.⁸⁴ As such, the trend is generally the same to 2014. As regards to workers' awareness levels per their levels of education, the following were the responses:-

Table 25: Status of Workers' Awareness on Labour Laws – Per Workers' Levels of Education

		Levels of Education ... [Std = Standard, Form 4/ Form 6 = Ordinary/ High Level Secondary Schools]					
N=429		Completely Illiterate	Less than Std 7	Completed Std 7	Form 4	Form 6	Collage
	Yes	0.9%	5.9%	13.9%	25.7%	6.9%	46.5%
	No	1.0%	11.6%	31.1%	30.5%	2.7%	23.2%

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

There is no doubt that illiteracy in Tanzania is one of the main attributing factors towards violation of human rights. That is to say, some employers simply use ignorance to guarantee infringement of workers' rights, of whom majority have less than form four level of education as chapter one of this report showed. An implication to this finding is that, any awareness program or intervention strategy on gender rights should take into account this reality. Ignorance of the law and procedures has also some implications on how workers handle their labour problems. The study found that at least 87.9% of them (as the table below shows) can take certain action once they are aggrieved. The challenge is that, most of them do not use courts of law to seek redress. They (workers) normally refer their cases to the same person who has infringed their rights. Normally, they take the boss's 'decision' as final and conclusive. That is why only 1.2% of them seemed to lodge cases in labour Court (CMA). The challenge of low awareness of labour rights, duties, laws and procedures involves also some of the local and foreign employers.

84 LHRC (2013) Human Rights and Business Report in Tanzania – 2013: Taking Stock of Labour Rights, Land Rights, Gender, Taxation, Corporate Accountability, and Environmental Justice in Tanzania. LHRC: Dar es Salaam, page 48.

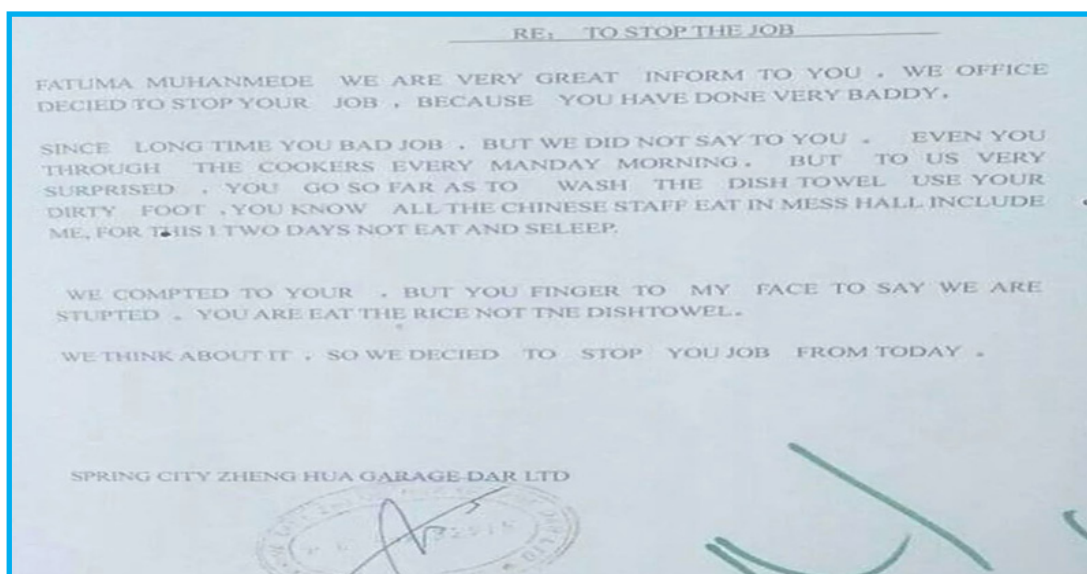


**Table 26: Most Preferred Ways of Addressing Labour Grievances
[Workers' Responses]**

N=429 [Not Multiple Responses]	Frequency	Percent
Complain to Boss/ Employer	253	59.0
Report to Trade Union	107	24.9
Complain to Police	12	2.8
File a Case in Court/ CMA	5	1.2
Just Keep Quite	52	12.1
Total:	429	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

The illustrations of poor formulation of employment contracts as well as use of improper laws have been covered above in this chapter. In addition to the above incidents, this study came across several others where employers used wrong procedures to terminate workers. Indeed, as the Mtwara and Mbeya CMA officers said, most labour disputes at the Court originate from unfair termination contrary to Section 37 of ELRA, 2004. A scanned copy of the 2014 termination letter (pictured below) by a Chinese company, the Spring City Zheng Hua Garage Limited in Dar es Salaam⁸⁵ could enlighten well on this point:-



Picture 8: A Termination Letter with grammatical errors written by Chinese Company in Dar es Salaam in 2014

85 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2014 (LHRC's Report III), Page 9.

The above letter is written in broken ‘English’ and therefore hard to understand. It is apparently purported to be a termination letter. The employer tells the employee that her performance is bad and that there was a violent incident where the latter pointed a finger to the boss, an act regarded as rebellious.

Indeed, underperformance and insubordination practices can be grounds for termination. However, what matters is on whether due legal procedures such as notice of termination was given. This was however not adhered to in the case above. In most cases, employers seek legal assistance when things are not well.

LHRC is of the view that, it is prudent for companies to consult lawyers or familiarize themselves with labour laws before they take decisions that violate labour rights.

2.10 Performance Indicators on Enforcement of Labour Rights

The following is the summary of key findings in a form of performance indicators on implementation of labour rights and duties by employers (corporate private companies) and their workers. The summary depicts a comparative picture between labour rights situation for the years 2013 and 2014. It should be noted that, not all ‘performance indicators’ used in 2013 were reassessed in 2014. However, at least all main indicators have been compared between the two years in order to measure the progress of implementation of stated rights and duties.

Table 27: Comparison of Performance Indicators on Implementation of Labour Standards between 2013 and 2014 Years – LHRC Studies

S/ No.	Status of Implementation of Employment and Labour Related Rights – Corporate Sector in Tanzania		
	Sub-Category of Right(s)	Performance Indicators	
		Year 2013	Year 2014
i.	Contracts	<ul style="list-style-type: none"> At least 80% of workers had no written contracts. Between 70% and 90% of the workforce in private sector were casual labourers. An average of 55% of the contractual agreements contained uncertain terms. 	<ul style="list-style-type: none"> Only 28.7% of the workers were in known oral or written contracts (therefore 71.3% had no contracts). Out of those 28.7% workers who said they had some form of working agreements, only 24.9% were given written contracts; while the remaining 75.1% were working based on oral contracts.



S/ No.	Status of Implementation of Employment and Labour Related Rights – Corporate Sector in Tanzania		
	Sub-Category of Right(s)	Performance Indicators	
		Year 2013	Year 2014
	Contracts	<ul style="list-style-type: none"> • Only 1.9% of workers lodged their cases at CMA. 46.2% complained orally to their supervisors/bosses; and 32.9% complained to their trade union branches. • Employers use technical language to shadow terms of contract. • 95% of the contract deeds miss certain legal rights or have set negative standards against workers. 	<ul style="list-style-type: none"> • Again at least 99% of the contract documents reviewed during this study did not include job descriptions. • Only 1.2% of workers lodged their cases at CMA. 59.0% complained orally to their supervisors/bosses; and 24.9% complained to their trade union's branches. • Less than 25% of the current employment contracts were bargained or negotiated before signing. • All most all contracts (more than 90%) had set terms below legal standards; clouding the terms with ambiguous terms/phrases; generalized terms; used technical language; some cited wrong laws; etc.
ii	Trade Unions	<ul style="list-style-type: none"> • Not all trade unions were active. • 41.6% of the workplaces had branch trade unions (Dar's situation), of which 60% were dormant unions. • Most of the trade unions were not pro-workers' interests. • 12.1% of workers ranked their trade unions as very effective. 15.9% ranked their unions as average, and 18.2% said their trade unions were ineffective 	<ul style="list-style-type: none"> • Most of the branch trade unions were not active. • In Tanga: out of five (5) companies sampled, only 1 (20.0%) had such the union branch at its workplace. In Mwanza: out of all companies visited (about 10) none of them (0%) had established a branch of workers union at workplace. In Kagera: 2 (40%) out of 5 companies interviewed had trade unions branches established at workplaces. • Workers have been reluctant to attend union meetings in the region. That situation was attributed to three possible reasons, namely; i) ignorance of their rights and importance of trade unions to them; ii) employers' restrictions; and iii) despair having seen that

S/ No.	Status of Implementation of Employment and Labour Related Rights – Corporate Sector in Tanzania		
	Sub-Category of Right(s)	Performance Indicators	
		Year 2013	Year 2014
ii.	Trade Unions		their unions are not doing enough to promote and safeguard their welfares.
iii.	Discrimination	<ul style="list-style-type: none"> Only 15.0% of the respondents agreed that there was discrimination in their workplaces. 31.1% of them mentioned race, tribal and ethnicity as main forms of discrimination. Majority of foreign companies discriminate Tanzanians from occupying senior positions within the companies. 	<ul style="list-style-type: none"> Discrimination at workplaces was still a reality. At least 72% of the workers in private sector understood that, discrimination at workplace is illegal. However, less than 2% of them were able to mention a law which prohibits discrimination at workplace. 12.1% of the said workers were not sure of presence of such law. Discrimination based on disability and gender reasons appeared on the top of the list. Disability as factor for discrimination secured 71.6% followed by gender reasons, which got 11.0%. Tanzanians were increasingly discriminated from employment opportunities even for casual labour. The current legal framework does not provide sufficient protection of Tanzanians. Less than 20% of private sector employees in corporate companies are women. However, majority of the (junior) workers in tourism and hotel subsectors are women.
iv.	Forced Labour	<ul style="list-style-type: none"> Only 24.4% said ‘YES’ to existence of forced labour in their workplaces. Majority of those who said ‘NO’ were not aware of various form of forced labour. 	<ul style="list-style-type: none"> Emerging incidences of human trafficking for sexual exploitation/sex workers – case of Asian hawkers stated in the report.



S/ No.	Status of Implementation of Employment and Labour Related Rights – Corporate Sector in Tanzania		
	Sub-Category of Right(s)	Performance Indicators	
		Year 2013	Year 2014
v.	Compensation	<ul style="list-style-type: none"> • TB, severe flu and skin rashes are common diseases in most working places. • Only 3.5% Tanzanians were members of the social security funds. • Only 6.5% of the Tanzanian entire workforce has joined social security funds. 	<ul style="list-style-type: none"> • Still marred with a lot of same challenges. • Only 41.7% of the workers stated that, compensation was or would be paid once a worker was or will be injured in the course of employment. • At least 75% of the workers were working without being connected to social security funds because they are ‘informal’ workers.
vi.	Leaves	<ul style="list-style-type: none"> • At least 70% of workers were not aware of other statutory leaves apart from annual leave. • 64.2% of workers said their employers normally give them annual leave; 24.2% get sick leave; 10.0% get maternity leave; and only 1.7% said to have received paternity leave. 	<ul style="list-style-type: none"> • The most ‘difficult’ leaves to grant by employers seemed to be the maternity (11.0%) and paternity (3.3%) leaves. • Annual leave was the most or commonly allowed by majority (67.8%) of companies visited. But again, some of the companies allowed it with baseless conditionality. • Sick leaves (17.9%) are normally allowed with a lot of hesitations and conditionality, which are not stated in the labour law.
vii.	Remunera- tions/ Fair Wages	<ul style="list-style-type: none"> • Majority of workers (26.3%) and 36.5% earn between Tshs 100,000 and 200,000 respectively. • Employers seem to be inconsiderate over experience in workplace in terms of years of service as sufficient factor for salary increment. • 12.6% earn below Tshs 70,000 (most of them were Bar Attendants). • 98% were not aware of probable criteria used to decide on the wage to be paid. 	<ul style="list-style-type: none"> • At least 80% of all companies visited were paying salaries which ranged in between Tshs 100,000 (USD 55.6) and Tshs 300,000 (USD 166.7) for posts below managerial positions. However, local hotels and bars’ remunerations were as low as Tshs 50,000 (USD 27.8) per month. Some of these salary scales were below minimum wage standard/ order. • Majority of workers were not aware of probable criteria used to decide on the wage to be paid (at least 66% of them did not negotiate terms of contracts

S/ No.	Status of Implementation of Employment and Labour Related Rights – Corporate Sector in Tanzania		
	Sub-Category of Right(s)	Performance Indicators	
		Year 2013	Year 2014
	Remunera- tions/ Fair Wages	<ul style="list-style-type: none"> Collective bargaining is practiced by few major companies. 	<ul style="list-style-type: none"> including remuneration). Delayed salaries were seen as almost common practice of some of the corporate companies except mining companies. In most cases, workers or their trade unions need to exert pressure in order to get salaries. There was a tendency of using other things in lieu of the monetary salary. There was also delay or refusal to provide salary increment to staff as per required salary scales or ranks.
viii.	Awareness of Labour Laws	66.8% are completely unaware of the labour laws. Out of 25.6% who said ‘YES’, only 7.4% of them tried to mention the law by its number and not full title.	At least three quarter (76.5%) ⁸ of workers were not aware of the laws governing labour rights and responsibilities. Section 16 of ELRA, 2004 requires every employer to display a statement in the prescribed form of the employee’s rights – but, Out of 105 companies visited during this study, only 1 (0.9%) seemed to have directly implemented this requirement.

Source: LHRC, Corporate and Human Rights Studies of 2013 and 2014.



CHAPTER THREE

LAND ACQUISITION AND MANAGEMENT FOR INVESTMENTS

3.1 Introduction: Tanzanian Landscape in Land Rights – History That Matters

The Tanzanian land tenure system, in particular, regarding the protection of the rights of the local communities of their land against external intrusions, has evolved over time. In pre-colonial times, land ownership was based on customary laws or norms delivered from traditions and customs. During that time, the land ownership was predominantly communal, owned by a tribe, clan or family.⁸⁶ However, the communal tenure system changed with the introduction of colonialism in 1880s. The colonial powers converted ownership of all lands into their hands.

Section 3 of the (colonial) Land Ordinance, Cap. 113⁸⁷ stated that *‘the whole of the lands of Tanganyika, whether occupied or unoccupied on the date of the commencement of this Ordinance, are hereby declared to be public lands.’* Logically, the law stripped the communities of their pre-colonial full ownership of their lands. According to some literature,⁸⁸ that position was amended in 1928 to recognize deemed right of occupancy deriving out of customary use and occupation of land as the tenure of the same status *‘as a written document or right of occupancy under the Land Ordinance.’*⁸⁹ However, that was not a total protection against land alienation from local communities’ ownership.

As the land economic uses expanded, more alienation took place. For instance, between 1923 and 1926 an average of 24,000 acres per year or approximately a total of 120,000 acres of lands (which were occupied by the local communities) were alienated on behalf of foreigners (companies) under the facilitation of the said Land Ordinance, Cap. 113.⁹⁰ Such trend was maintained ever since. It was during this time (1920s) that commercial farming (plantations) was introduced in the country.⁹¹

86 TLPAN, ‘The Challenges of Land Ownership in Rural Tanzania: What Needs to be Done?’ Policy Brief No. 4, 2014. Page 1. Note, TLPAN = Tanzania Land Policy Action Node.

87 Enacted in 1923.

88 See: Barume, Albert Kwokwo (2010) Land Rights of Indigenous Peoples in Africa with Special Focus on Central, Eastern and Southern Africa. IWGIA Document 115. Copenhagen. Pages 138 and 139.

89 Those changes were introduced as part of the implementation of the then League of Nations (LONS)’s rules namely, the *Mandate Agreement Between the League of Nations and Britain of 1922*, relating to the administration of Tanganyika which reaffirmed the importance of every colonial power to protect the rights of local populations.

90 Barume, *ibid*, page 138.

91 Mshana, R (Undated) The Economic Impact of German Colonial Rule and the question of

Picture 9: Settlers in one of the plantations in Tanganyika



(Source: ‘Tanganyika-plantations’ www.google.com search, December 2014).

As such, ever since colonialism to the present, the land tenure system has changed from communal to a dual land tenure system, namely; customary right of occupancy (CRO); where the village land is allocated to an individual or group of individuals; and, granted right of occupancy (GRO). Moreover, land is allocated through a periodic title deed of between 33 and 99 years depending on the type of land use.

Currently, such tenure system and all other issues associated to land management in Tanzania are governed by several laws⁹² and regulations, main ones being; the Land Act, 1999;⁹³ the Village Land Act, 1999;⁹⁴ the Land Registration Act, Cap. 334; the Registration of Documents Act, Cap. 117; the Land Acquisition Act, 1967;⁹⁵ and the Courts (Land Disputes Settlements) Act, 2002.⁹⁶

Reparation. Accessed from: <http://www.tanzania-network.de/> on 19th December, 2014.

92 Other land related laws include: Urban Planning Act, 2007 (Act No. 8 of 2007); Mortgage Financing (Special Provision) Act, 2008 (Act No. 17 of 2008); Unit Titles Act, 2008 (Act No. 16 of 2008); Tanzania Investment Act, 1997 (Act No. 26 of 1997); Mining Act, 2010 (Act No. 14 of 2010); Wildlife Conservation Act, 2009 (Act No. 5 of 2009); Export Processing Zone Authority Act (EPZA), 2002 (Act No. 11 of 2002); and RUBADA Act, 1975 (Act No. 5 of 1975).

93 Act No. 4 of 1999.

94 Act No. 5 of 1999.

95 Act No. 47 of 1967.

96 Act No. 2 of 2002.



Moreover, the traditional norms are enforceable to a certain extent pursuant to Section 3(1) of the Interpretation of Laws and General Clauses Act, 1972. This position was reaffirmed by the Court of Appeal in the case of Maagwi Kimito Vs. Gibeno Warema (1985) TLR 132, when the Court ruled out that, *'the customary laws of this country, now have the same status in our Courts as any law, subject only to the Constitution and any statutory law that may provide to the contrary.'* It is also noted by this study that, the 1999 land laws (cited above), had mainstreamed stated norms into their provisions. For instance, Section 180(1)(a) of the Land Act, 1999 clearly stipulates that, the Court shall apply the customary laws of Tanzania in implementation and interpretation of the land law.

The legal and traditional norms on land tenure systems Tanzania have increasingly been challenged by higher demands for land attributed to an increase of population size as it was indicated in chapter one of this report; and investments especially in rural areas (village lands) caused by liberalized economy. In most cases, land owners under customary rights of occupancy are considered as inferior – without sufficient security of tenure against land grabbing.⁹⁷ The stated pressure for land acquisition has escalated conflicts all over the country. Moreover, that pressure has necessitated some administrative and legal reforms in a bid to address it.

This chapter makes a brief analysis about the extent in which an increase in investments in Tanzania has positively or negatively impacted on the rights and duties associated with land management in the country. Examples of incidents are also indicated as a way of supplementing arguments. Some specific and general recommendations regarding the challenges identified have also been included in this chapter.

3.2 Status of Land Tenure and Alienations for Investments: Some Practical Concerns

Section 4(1) of the Land Act, 1999 states that all land in Tanzania shall continue to be public land and remains vested in the President as trustee for and on behalf of all citizens of Tanzania.⁹⁸ At individual levels, ownership of land is vested only to Tanzanian citizens; whereas, non-citizens (investors) are subjected to derivative right of occupancy (DRO).⁹⁹ The President has powers to acquire or convert ownership of

97 Chambi Chachage, Land Acquisition and Accumulation in Tanzania: The Case of Morogoro, Iringa and Pwani, A Research Commissioned for PELUM Tanzania, October 2010, pg. 9.

98 Section 4(2) of the same law, confers on the President the power to delegate authority to perform land administrative duties for the purpose of enhancing the economic and social welfare of the citizens to various officials.

99 To occupy land through designated authorities, in particular, the Tanzania Investment Centre (TIC). The mandate of TIC is extensively covered in the coming chapters of this report. There are also other authorities (their laws cited above) with mandates almost similar to TIC. Such authorities are EPZA and RUBADA. Some discussions about them are also presented in this and other parts of this report.

any land at his or her own wish for ‘public interest.’¹⁰⁰ The term ‘public interest’ is not defined anywhere in Tanzanian laws. In most cases, it is used to include allocation of land for public or private investment projects.

The Commissioner for Lands is the main and overall responsible authority on land matters. The powers vested on the Commissioner may be delegated to the Land Officers at district and municipal levels. There are also recently initiated ‘Land Zonal Offices’ which were seven (7) in number as of June 2014. Such offices were situated in Mtwara, Mwanza, Dar es Salaam, Moshi, Dodoma, Mbeya and Tabora.¹⁰¹ Besides, there are also so called ‘land banks’ created to attract investments. Such banks are under management of the Tanzania Investment Centre (TIC) and Export Processing Zone Authority (EPZA). Other government authorities or schemes in possession and management of large chunk of land for investments are Rufiji Basin Development Authority (RUBADA) and Southern Agriculture Corridor of Tanzania (SAGCOT).

On the other hand, the control and management of the village lands is generally under the Village Councils (VCs), statutory organs available in each village in Tanzania. Most of the decision about land is required to be endorsed by the Village Assembly (VA), which is a supreme organ in all matters pertaining village governance. It is mandatory for all investors to acquire VA’s endorsements before occupying a village land.

As regards to individual ownership, Article 24 (1) of the Constitution of the United Republic of Tanzania of 1977 provides that, every citizen has the right to property and to the protection of his or her property in accordance with the law. In this context, ‘property’ includes land. More specifically, the right to occupy land is provided for under Section 19(1) of the Land Act (LA), 1999; and Section 22(1) and (2) of the Village Land Act (VLA), 1999. The two provisions state that every citizen has the right to own land.

The evidence to land ownership include certificate of rights of occupancy (CRO), whereby in urban areas, it is referred to as ‘Granted Right of Occupancy’ (GRO), while in village is termed as ‘Customary Right of Occupancy’ (CRO).

The obtainment of such titles has been a huge challenge in Tanzania. For instance, only 373,655 CRO titles were granted as of June 2014.¹⁰² Around 40% of the Tanzanian

100 Acquires under authority given under the Land Acquisition Act, 1967.

101 URT, *Hotuba ya Waziri wa Ardhi, Nyumba na Maendeleo ya Makazi, Mheshimiwa Prof. Anna Kajumulo Tibaijuka (MB), Akiwasilisha Bungeni Makadirio ya Mapato na Matumizi ya Wizara ya Ardhi, Nyumba na Maendeleo ya Makazi kwa Mwaka wa Fedha 2014/2015* (Minister for Land’s Budgetary Speech for the 2014/2015 FY), Paragraph 17, Page 10.

102 That figure is a combination of Ministry of Land- June 2014 figure (24,945) and the one pre-



populations are adults. Therefore, it can be assumed that, at least 17 Million Tanzanians would need either GRO or CRO certificates. Such certificates (CRO) could not be issued by the village council without having Village Land Certificates (VLC). It is, again, unfortunate that, only few villages have been given VLC as of June 2014 as the table below shows:-

Table 28: Status of Land Titling in Tanzania Mainland

Indicator(s)	Situation/ Status 2014	Percentage
Number of Villages	11,091	N/A
Surveyed Villages (which could be given Village Land Certificates)	9,451	85.2%
Village with Village Land Certificates (VLC)	972	8.8%
Village with Village Land Use Plans (VLUP)	1,471	13.3%
Number of Customary Right of Occupancy Issued	373,655	2.2% ⁹
Population	44.9 Million	

Source: TLPAN, Policy Brief No. 2, 2014103 (Modified by MoLHS' June 2014 Statistics).

The concern here is that, traditional or informal land ownership (without documentations) has been exposing villagers into a risky situation whereby their land can be taken at any given time without sufficient security of tenure. Most of the land alienations in the forms of grabbing and forceful evictions have been facilitated by such omission (documented land titles).

As such, LHRC urges the government and other stakeholders to hasten processes of VLUP, issuing of VLC and eventually, CROs' certificates. Otherwise, majority of villagers across the country will continue losing their land in the hands of investors and other greedy persons. Moreover, land title deeds are useful evidence for demanding compensation or resettlements once one's land is acquired or transferred for investments of other uses. Each LGA can allocate certain amount of funds from own sources (plus support from central government) to facilitate confirmation of village demarcations, conducting VLUP, and so on.

Regarding the size of the land which is traditionally owned, a recent study by the Tanzania Land Policy Action Node (TLPAN)¹⁰⁴ on peoples' awareness of the

sented in TLPAN 2013 study (cited below). See: Minister for Land, Budgetary Speech for the 2014/2015 FY, Paragraph 21, Page 12.

103 TANPN, 'The Issuance of Certificates of Customary Rights of Occupancy in the Bread Basket Region of Tanzania: A Lesson to Learn.' Policy Brief No. 2 of 2014. Page 2.

104 TLPAN, 'The Challenges of Land Ownership in Rural Tanzania: What Needs to be Done?'

provisions of VLA, 1999 especially among smallholder farmers, ascertained that, most of the households owned between 1 to 10 plots with the average of 3 plots per household under CRO. The main plots were mainly used for human settlement (17.8%); agriculture (58.9%); and a combination of human settlement and farming (23.3%) indicating that, the largest proportion of land is used for agricultural activities especially in rural areas. Furthermore, the study observed that 64.7% of the plots were owned without formal documentation and that there was widespread lack of information and land insecurity in the villages.

Furthermore, this study shares similar finding with that of TLPAN to the extent that, legal land ownership in Tanzania is still engulfed with:-

- a) Conflicts regarding land use between farmers and pastoralists, local communities and investors or individual persons with other land users; and
- b) Massive relocation of people done by big national and multinational investment companies with the motive of expanding production scale thus leaving small-scale producers landless.

Obviously, reallocation or alienation for probable good cause (real public interest) and through proper procedures, including prompt and fair compensation is not a problem. However, as this study found out, in most cases, the alienation of land titles, in particular for investments was done without sufficient consultation and informed consent of land owners. For instance, almost half of the villagers stated that, they did not give informed consent to the alienations of their lands as the table below explains:-

Table 29: Ways in Which Individual Land was Alienated for Investment – Citizens’ Responses

N=447 [Responses of Ordinary Villagers]	Frequency	Percent
Voluntary agreement between a villager and investor.	56	12.5
Voluntary agreement between LGA and an investor.	57	12.8
Land taken without villagers’ knowledge/ deceit.	47	10.5
Surrendered ownership after being attracted with compensation. ¹⁰	74	16.6
Not sure what happened – did not give consent in any way.	213	47.7
Total:	447	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Policy Brief No. 4, 2014. Page 2. Note, the study was conducted in Kilombero, Mbozi and Wanging’ombe districts of Morogoro, Mbeya and Njombe regions respectively. At least 150 respondents were interviewed in five wards from each district visited.



The MoLHS 2013 study¹⁰⁵ came out with almost similar findings, whereby it was observed that, 43.4% (LHRC study is 47.7%) of the respondents in the visited villages reported lack of participation in land management, in particular with regards to disposition of their land. The Ministry's study further noted that, lack of community participation in land allocation decisions could be caused by either lack of interest by villagers to attend village assemblies¹⁰⁶ due to apathy or ignorance, or could be a result of dishonesty by village leaders deliberately excusing the community from the process.

3.3 Associated Land Conflicts in Investment Areas

There are several factors which trigger land conflicts in East Africa, Tanzania inclusive. Such factors include:

- i) An increased pressure on land and natural resources both human and animal population;
- ii) Global warming and climate change (land and natural resources degradation);
- iii) Demarcation/reservation of land for national parks, game reserves, conservation;
- iv) Poor land governance systems; and
- v) Commercial pressure of land including large scale land acquisition for investments.¹⁰⁷

This part shall focus on only a few of them as noticed in the field during the study.

3.3.1 Land Conflicts Associated to Large-Scale Land Acquisitions: No More 'Freeland'

A notion that Tanzania has vast 'free' land which an investor could come and occupy could now be refuted with merely simple facts that at least 75% of the arable land in Tanzania is now occupied by either local residents or investments companies or other institutions including government agencies.

105 URT, An Assessment and Evaluation of Ownership of Farms Above 50 Acres in Tanzania Mainland 2013. Ministry of Land and Human Settlement, Dar es Salaam. Page 74.

106 The community participation in land allocation is through the village assembly, which approves the allocation of land to an investor. Participation of the community members is what determines legality and validity of the particular transaction on land.

107 UN Economic Commission for Africa, 'Natural Resources and Conflict Management: The Case of Land.' Ad-Hoc Expert Group Meeting (AEGM), Study, Dar es Salaam Tanzania, February 2012. Page 35. **ALSO SEE:** TNRF, 'Land and Investment.' <http://www.tnrf.org/en/lbi>, accessed on 28th December, 2014.

The arable land in Tanzania is only 11%. This fact makes Tanzania the second country in East Africa to have a smaller arable land as the table below shows:-

Table 30: Arable Land as Per Percentage of Total Land Area, East Africa

Country	Total Land Area, '000 KM ²	Arable Land as Percentage of Total Area
Tanzania	945	11.3%
Burundi	26	35%
Kenya	569	9.5%
Rwanda	26.3	52.7%
Uganda	241.5	33%

Source: World Development Indicators, 2009.

Furthermore, the 2013 statistics of the Ministry of Land showed that, a total of 1.1 million hectares (9% of the arable land) was under large scale farming. Private registered operators (investors) own 50.2% of the area under large scale farming – averaging at 1,309 hectares per farm. Moreover, the government of Tanzania through TIC has recently been working on establishing a Land Bank and over 2.5 million hectares of land have so far been earmarked potentially for investment.¹⁰⁸ RUBADA, which oversees the multi-sectoral development of the Rufiji basin, ‘owns’ the land spreading almost over one third (30%) of the country from Coastal Region to Katavi, Ruvuma, Dodoma and Singida regions. Several companies were leased into this land. For instance, Lukulila Holding Farm Company had 5,500 while villages in or close to it have 6,500 hectares.

Those are the national figures, which could not give a real picture of the situation on the ground. For instance, the same 2013 study by the Ministry of Land showed that, in most districts suitable land for agriculture is utilized in full or to an average of 75% as the table below illustrates:-

¹⁰⁸ URT, An Assessment and Evaluation of Ownership of Farms Above 50 Acres in Tanzania Mainland 2013. Ministry of Land and Human Settlement, Dar es Salaam. Page 19.



Table 31: Land Availability and Population Dynamics (Selected Districts/Regions)

District	Total Area (KM ²)	Arable Land (KM ²)	Cultivated Land (KM ²)	Population Size	Density for Total Area	Density for Arable Land	Household Size	Percentage (%) of Area Cultivated
Misenyi	2,708.8	548.4	548.4	202,632	74.8	369.5	4.2	100
Monduli	64,190.0	289.2	289.2	158,929	2.5	549.5	4.7	100
Tabora	1,092.3	819.0	819.0	226,999	207.8	277.2	4.7	100
Same	13,309.0	450.0	413.0	269,807	20.3	599.6	4.5	92
Mkuranga	2,432.0	1,934.0	1,662.3	222,921	91.7	115.3	4.3	86
Mafia	407.0	260.0	218.0	46,438	114.1	178.6	3.9	84
Tandahimba	1,673.4	1,573.0	1,295.1	227,514	136.0	144.6	3.7	82
Ileje		101,600	72,997.0	124,451		1.2	4	72
Mpwapwa	7,379.0	2,289.9	1,311.9	305,056	41.3	133.2	4.6	57

Source: Ministry of Land, 2013.¹⁰⁹

Therefore, in a real sense, there is no free land in Tanzania. In order to acquire land for investment, it seems that the ‘deals’ to land allocations are either done behind the backs of the land owners (villagers) or that, the community are not given a true sense or implication of the allocations as showed in the table above. When communities wake up, it is usually too late to remedy the situation – hence conflicts. Occasionally compensation could be paid but this is usually grossly inadequate¹¹⁰ as it is further discussed below in this chapter.

Despite that reality (of scarcity of arable land), this study found that, the law or guidelines to limit the size of the land for investors were not ready or not in use in 2014. As such, chunk of lands were in the hands of investors who (most of them) could not develop even half of the land given. In January 2013, the Prime Minister of Tanzania, Hon. Mizengo Kayanza Peter Pinda announced that, Tanzania will start restricting size of the land that a single large scale foreign and local investor can lease

109 URT, An Assessment and Evaluation of Ownership of Farms Above 50 Acres in Tanzania Mainland 2013. *Ibid.*

110 Promises are made about employment opportunities and the improvement of rural infrastructure but many times these do not materialize. Examples are to be found in the areas of Kahama, Buzwagi, Nzega and Tarime in Tanzania where investors in minerals extraction found themselves at logger heads with local communities (Ref.: UN Economic Commission for Africa, ‘Natural Resources and Conflict Management: The Case of Land.’ Ad-Hoc Expert Group Meeting (AEGM), Study, Dar es Salaam Tanzania, February 2012. Page 48).

for investment use.¹¹¹ As such, LHRC urges the government to fulfil its promises as soon as it is practicable in order to mitigate land conflict associated with this matter.

3.3.2 Stinginess and Selfishness: Restrictions to Access Unutilized Investment Lands

The study found that, some of the land conflicts between villagers and investors in investment areas were instigated by some of the investors who took big chunks of village land while they do not have any important investment activity carried out in the areas they possess. As such huge parts of their land were unutilized. The villagers gave them the land on expectation that, they will get development in return, but that has not been a case.

Probably, it would have been much better if they were at least allowing local communities to access for free the unutilized parts of the land. But, again, this was not the case. At least 60% of the local community members interviewed said that, the investors did not allow them to use any land even if it was not utilized in a particular period of time as the table below shows:-

Table 32: Whether the Investor gives Local Communities Access to Investment Land (which is not utilized)

N=447 [Community Members' Responses]	Frequency	Percent
Yes	96	21.5
No	279	62.4
Not Sure	72	16.1
Total:	447	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Therefore, less than quarter (only 21.5%) of members of the local communities were allowed to access unutilized investment land. It should be noted that, an investor, as a lawful land possessor, has the right to allow or refuse access to his land; however, the point here is on how the investor pays attention to pertinent issues of the communities surrounding him.

The study noted that, investors who refused free access to their land were actually sub-leasing the same to villagers - without contributing to any social services in the areas they have invested let alone pay income taxes.¹¹² For instance, according to the

111 'Guidelines for land allocation to investors', <http://farmlandgrab.org/post/view/21520-guidelines-for-land-allocation-to-investors>, accessed 17th December, 2014.

112 The Income Tax Act, 2004, as discussed further in the coming chapters, requires every in-



June 2014, Budget Speech by the Minister for Land, (cited above), in Kagera region, such undeveloped lands are sub-leased to pastoralists including from neighbouring countries (especially Kagoma Region, Muleba district, Rutoro Ward).

Furthermore, according to the Minister, apart from being meanness, there are some investors who possess village land without endorsement of village councils, and that, they are in possession of large pieces of land beyond what the village council could grant to them (it is supposed to be not more than 500 acres). On this, the Minister ordered during the Budget Speech, that:-

Ninatoa Rai kwa wananchi kutambua haki zao na kuwaondoa watu kama hao katika maeneo yao kwa kusaidiwa na Wakuu wa Wilaya ili zoezi liwe tulivu na endelevu. Ninarudia tena kwamba Mamlaka ya kugawa ardhi ya kijiji ipo mikononi mwa Mkutano Mkuu wa Kijiji na mkutano huo sharti uwe na akidi. La sivyo ugawaji wa ardhi unakuwa batili.

I call upon citizens to understand their rights and evict such people from their land with the help from District Commissioners in order to ensure peace and sustainability of this move. I reiterate my plea that, the power to allocate land is within the Village Assembly with a proper quorum. Contrary to that, any (land) allocation is invalid.

The Minister went on clarifying that, the government was in the move to return all plantations which were either, improperly allocated to the investors (such as the Kapunga Farm, Mbarali, Mbeya whereby the process to revert the 1,870 hectares to villagers was on going as of June 2014); or, had been abandoned by their owners as it shall be deliberated further in the Parliament on this matter. The Ministry of Land is also aware of the fact that, some of the investors own land without valid land titles. Other large farms which were due to be acquired for villages' use included several sisal plantations in Tanga. Moreover, the Ministry was still waiting for judicial decision regarding the Maloge plantation in Sumbawanga which was abandoned but its title deed used as collateral while the surrounding communities remained landless.

What the Minister for Land says, was a common practice almost throughout the country, as previous report similar to this one unveiled in 2013. Many of the unutilized plantations were found in the same status in 2014. For instance, according to the Acting District Executive Director of Hanang, the seven NAFCO's plantations¹¹³ (six of them being privatized) had a total size of 70,000 KM². Six of the plantations were under investors' management. However, only 50% of the land of those six farms was

come, from every source to be taxable. Therefore, earning some money/ profit without paying taxes amounts to tax evasion.

113 The stated former NAFCO wheat plantations included; Mulbadaw, Setchest, Warreta, Bassotu, Gawal, Murujanda and Gidagamowd with each one having an average of 10,000 KM². Apart from Bassotu Plantation the rest have been privatised.

being utilized. The remaining 30,000 KM² remained as dormant land. A large part of the ‘invested’ farmland was allegedly to be owned by Ngano Limited (which affiliated with Westgate Mall of Kenya). Same claims of using dormant land title deeds as security for bank loans were also heard in Hanang in connection to the NAFCO plantations.

In Ubaruku ward, Mbarali district, Mbeya region, the Highland Estates Limited is stated to own about 6,030 hectares of land. However, the company was not able to cultivate all hectares. Surrounding communities faced acute shortage of land, but were not allowed to gain free access to the investor’s land even when it was unutilized. To the contrary, such villagers were to hire an acre of land for Tshs 275,000 (USD 153) per season – paid to the investor. In other ways, the investor was allegedly subleasing the land to villagers, an act which is contrary to the law on derivative rights to land ownership. Other commercial land used said to be allowed by the investor was ‘contractual farming’ whereby, a smallholder farmer was allowed to cultivate prescribes crops in a prescribed manner.¹¹⁴

Some terms of the contractual farming deed mentioned above, were noted by this study to be very harsh and irrational. For instance, Clause 3 of the Contract Deed read that, a contract could be terminated at the investor’s wish when it will appear that, the other part endangers safety of other farmers. The contract deed did not describe any administrative process before terminating the farmers’ contract. The remedies on part of the farmers were also unclearly stated.



Picture 10: Part of Mbarali Estate Farm in Ubaruku, owned by Highland Estates Limited. The land has for years been unutilized.

114 No other person was allowed to cultivate any other crop apart from rice (Clause 9 of the Contract Deed states). However, the investor had planted mango trees in the same farms. Therefore, contractual terms were unbalanced.



The Mbeya based company namely the Kapunga Rice Project, owned about 7,370 hectares. Similar stories of subleasing were heard from Kapunga villagers. However, unlike others, renting fees of this company went as high as Tshs 3,000,000 (USD 1,667) per season.¹¹⁵ Despite being an illegal land transaction as said earlier on, villagers could not afford paying such huge amount as rental fee.

Subleasing land allocated for investments without prior permission of the Commissioner for Land is an illegal transaction. LHRC is concerned with the fact that, in most cases, the fees or rather, income obtained from the rental fees are not taxed because they are neither receipted, nor recorded and possibly, not audited. As for this one, it is hereby suggested that, the process to acquire all dormant land as the Minister for Land promised, should be hastened.

Incidents of land conflicts caused by restricted or limited access to the investment land was noticed by the said 2013 MoLHS study to be varying from farms or areas owned by local investors, to areas which were owned by foreign investors. The Ministry's study noted that, 35.0% and 40.5% of farms owned by foreign companies and companies share between foreigners and Tanzanians had many complaints from villagers respectively as compared to 24% of farms owned by Tanzanians' companies as the table below clarifies further:-

Table 33: Complaints from Villagers against Types of Ownership of Farms/Land

Types of Land Ownership	Whether there are complaints from villagers about the conduct of farm projects/ investments	
	Yes (%)	No (%)
Companies owned by Tanzanian	24.0	76.0
Companies owned by Tanzanians and foreigners	40.5	59.5
Company of foreign citizen only	35.0	65.0
Farm owned by individual Tanzanian	10.3	89.7
Farm owned by individual foreigner	25.0	75.0
Farm owned by institution	24.3	75.7
Total:	16.5	83.5

Source: Ministry of Land, 2013.¹¹⁶

The situation implies that either local communities have negative attitude towards the foreigner taking up their land or foreigners acquire land and invest in large prime and

115 Corporate Human Rights Compliance Assessment Mbeya Field Report of 2014 (LHRC's Report II), Page 20.

116 URT, an Assessment and Evaluation of Ownership of Farms above 50 Acres in Tanzania Mainland 2013. Ministry of Land and Human Settlement, Dar es Salaam. Page 79.

fertile areas on which villagers depend on.

- *Case Study I: Sustained a permanent disability because of going close to the investor's land*

Owing to the scarcity of land occasioned by evictions or land grabbing and denial of an access as stated above, normally villagers storm in the investors' land in order to graze, fetch water or other socio-economic undertakings.

Such incidents fuel conflicts, some of which are criminal in nature. For instance, way back on 10th July, 2011 one Mwigalu Ngulu of Kapunga village, Mbarali, Mbeya region claimed to have been chased and knocked by a motor vehicle with registration number T566BQH allegedly driven by Gert Bark Huzein, a foreigner who works with the Kapunga Farm (rice plantation in the area). On the material day, Mr. Ngulu was grazing his cattle at his usual place outside the farm area when he saw the accused person drive fast towards him. He tried to run away but could not manage. The car hit him and the case dragged in Court for three years and on 18th July 2014, the accused was found not guilty – due to legal technicalities such as ‘inconsistence of victim's narrations.’ Mr. Ndulu, who is now permanently incapacitated, was astonished by the decision of the Court as his case was crystal clear that he was wilful knocked down by the foreign manager.

LHRC is concerned that some of the unscrupulous managers have been using their financial muscles and economic influence to mistreat their workers or members of the community on the belief that, they could easily manoeuvre with justice machineries.

An officer with PCCB¹¹⁷ told the team that, such incidents by some of the investors are known but it has always been difficulty to Conner them because they deal with the justice system in a highly confidential way and that, complainants (ordinary citizen) normally delay to report their cases to PCCB or discontinue to assist the bureau in following up of their cases.

- *Case Study II: Restrictions were elongated to other resources as well: Case of Kapunga Village, Mbarali, Mbeya*

Apart from restricted access to unutilized land, some of the investors went further to break pathways, access to water sources and other resources. The Kapunga villagers, as it was observed by this study, faced such kinds of restraints allegedly initiated by the rice plantation company. For instance, the Kapunga villagers claimed that, there

¹¹⁷ PCCB is the Prevention and Combating of Corruption Bureau established under the PCCB Act, 2007.



were times when the investor restricted them from accessing water from the Ubaruku stream on the ground that he was the one who paid water bills to RUBADA.¹¹⁸



Picture 11: Ubaruku stream in Mbarali. The water source has been a cause of frequent clashes between the investor and Villagers

Regarding restrictions on pathways across or along the farmland, the study observed that, one of the pathways along the investor’s land was closed by a sand-mound and in the same farmland area was a warning signboard written ‘USIPITE, AMRI’ (‘DON’T PASS, ORDER’) as the pathway (road) and the said signboard indicate hereunder :-



Picture 12: The sand-mound and warning signboard as captured by the study team at Ubaruku, Mbarali, November 2014

118 Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2014 (LHRC’s Report II), Page 23.

3.3.3 Issues Associated with Participation of Local Communities

The study inquired from the investor on whether they had any arrangement which compelled them to consult all affected parties including women and elders prior to the acquisition of the land and commencement of the investment. Their responses, as the table below shows, were that, more than 58% said ‘NO’, they did not have such arrangement of consultation with the local communities.

Table 34: Investors’ Arrangement to Consult with Communities (Prior to Acquisition of Land)

N=[Members of Investors’ Management Teams]	Frequency	Percent
Yes	17	29.3
No	34	58.6
Not Sure	7	12.1
Total:	58	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Relating to this matter, the study found that, residents of the Vilima Vitatu village, Babati, Manyara were still in legal wrangle with the Burunge Wildlife Management Area (WMA). The central issue between the two sides was rooted on the claim that, a large part of the village land is designated or annexed as WMA for tourism and purported wildlife conservation without villagers’ informed consent and compensation.

Administrative ways to sort this matter out did not yield fruitful outcome in such a way that, some of the villagers decided to institute a case in 2012.¹¹⁹ The case was still pending in Court for determination of this land matter.¹²⁰ All these uncertainties have caused the investor’s¹²¹ stay in the area to be scratchy, with endless disputes with some of the villagers. The investor himself was alleged to be one of the parties who prompted the long overdue conflict. Villagers, who are predominantly pastoralists, claim to have been officially reallocated at that place by the government after being evicted from the NAFCO farms some years back.

119 Udaghwenga Bayay and 16 Others Vs. Halmashauri ya Kijiji cha Vilima Vitatu and Jumuiya ya Hifadhi ya Wanyamapori – Burunge, Civil Appeal No. 77 of 2012 (Land Tribunal, Babati, Manyara).

120 Human Rights Corporate Compliance Assessment Manyara Field Report of 2014’ (LHRC’s Report I). Page 11.

121 The investor was a French based company known as the En Lodge En Afrique (ULEA), an owner of the Chem-Chem Lodge in the area.



This matter was extensively covered in previous similar reports by LHRC. Henceforth, LHRC once again advise that, district and regional administrations should sort this matter out by organizing unbiased consultative meetings between villagers, WMA, and the investor in order to; i) assess the nature and magnitude of the conflict; and ii) educate each side on the legal related rights and responsibilities connected to this issue. Otherwise, as this study observed, the conflict has been taking a new face every day, while government leaders, including the Village Chairperson and the Village Executive Officer (VEO) seemed to be not conversant about the gist of the matter. Any resolution to be reached should be in writing because it seems that, most of what had been discussed was not documented.

The other areas where non-participation of community in investment threatens the very basic existence of the investors were in the Hanang district, Manyara region. Within this district, there were on-going constructions of the Manyara Cement Mini Plant; and the Gendabi Salt Plant under Hans Industries. Such investment initiatives were stated to be in interference with traditional cemeteries (graveyards) which were located in the areas several years back.

From the study point of view, the incident of granting land titles on graveyards could suggest two things. One, there was no consultation with the village land machinery in order to ascertain proper areas for investments, which will not agitate the communities to reject the investment projects. Two, it can be taken as an evidence of top-down model of decision making operating in Tanzania, which normally disregard local environmental setups. As it is clearly demonstrated in the minutes of the Village Council and the Village Assembly, the plan to establish those Plants did not start with or involve the villagers. Even some local government officials claimed that they had been brought into the plan without their knowledge. A critical question remains to be on whether or how the environmental impact assessment (EIA) and/ or environmental audit (EA) were conducted prior to the commencement of plants' installation. As it is further discussed in chapter six of this report, such assessments are mandatory under environment laws.

3.3.4 Expansion of Wildlife Preservation Areas Towards Village Lands

Tanganyika had only one national park in 1961, the 14,763 KM² Serengeti Park. Currently, the number of parks and other protected areas has expanded to more than 16 in the country, and Tanzania has set aside well about 40% of its territory for wildlife conservation. No alternative land or sufficient compensation has been given to victims who had been evicted from their land due to creation of national parks and conservation areas. Some of the major evictions occurred fifteen years ago (2000 – 2014) on the pretext of expanding wildlife conservation areas towards village land have been documented by LHRC and PINGO's Forum (among other CSOs)¹²² were:-

122 LHRC (2009) Tanzania Human Rights Report of 2009. LHRC: Dar es Salaam. Page 125;

- a) The 2000's Nyamuma village evictions, whereby a chunk of the village land was taken up to make the Ikorongo Game reserve;
- b) The 2006 Mbarali evictions whereby pastoralists were evicted from Ihefu area to give room for expansion of the Ruaha National Park which was doubled from 10,300 KM² to 20,226 KM²;
- c) In 2008, the Lake Manyara National Park was doubled in size from 330 KM² to 649 KM². Some of the villages bordering this Park were squeezed;
- d) In 2009, some residents of villages co-existing in wildlife protected area within Loliondo Game Controlled Area (LGCA), Ngorongoro district, were forcefully evicted on the allegation that they had trespassed a hunting block licensed to a foreign investing Arabic company known as Ortello Business Corporation (OBC). About 200 houses belonging to the Maasai were burnt, women were raped and properties destroyed. The situation over there is not settled as of 2014 because a constitutional case to challenge the illegality of such eviction remained pending at the High Court of Arusha¹²³ for about five years now without even a single hearing. Moreover, there was still a feeling that village land within LGCA would be reduced by 1,500 KM² in order to create a buffer zone for wildlife. The government refuted that sentiment; however, it has not given a formal written order as an assurance of its commitments;
- e) Twice in 2012, the Tarangire National Park wardens burnt down houses at Kimotorok village, claiming that they were illegally built inside the national park while in fact it is the national park that has expanded into Kimotorok and other villages on the eastern side of the park. In the same year, villages bordering Saadani National Park, Mikumi National Park, and others have been struggling against evictions.

It should be noted that, Tanzania like so many other countries around the world considers wildlife as main point of tourist attraction. This could be true, but arrangement to conserve the natural beauty could be done without adversely affecting surrounding communities. It is strange to note that, while local communities were forcefully pushed out of the national parks, same authorities allowed construction of luxurious hotels and camp sites in almost all national parks in Tanzania. Loliondo, Serengeti and other protected areas have airstrips, some of which are large enough to manage passenger flights. Such biased decisions are fondness of investment money to the detriment of local communities who are constitutionally owners of the said resources.

WGIA (2013) The World Indigenous World Report of 2013. IWGIA: Copenhagen. Pages 384 – 390.

123 Note: Citation of the case was not provided here because LHRC (author/ publisher of this report) is one of the petitioners of the said case.



3.3.5 Issues Association to Compensations of the Land Alienated for Investments

As it has already stated elsewhere in this report, more than 75% of investment activities involve land. Moreover, in most cases, the land needed for investments is preoccupied by local communities. Therefore, to acquire it one will need to compensate the title holder of the land in question. It is trite legal norm that, once one's property is taken for any reason and by anyone, such a person is entitled to full, fair and prompt compensation under the laws of Tanzania.

The laws governing land acquisition and compensations are mainly; the Constitution of the United Republic of Tanzania of 1977; the Land Act, 1999; Village Land Act (VLA), 1999; the Land Acquisition Act (LAA), 1967; and some of the regulations made under these laws.

Section 11 of LAA, 1967; Section 5(7) of the Land Act, 1999; and Section 4(8) of VLA, 1999 require payment of compensation to individuals who will be or have been affected by the transfer or acquisition, provided that they have legitimate rights over the land concerned. Moreover, compensation is supposed to be paid within six months after the subject land has been disposed of by way of transfer or acquisition.

Sections 3 and 4 of the Land (Assessment of the Value of Land for Compensation) Regulations, 2001¹²⁴ state that, the basis for assessment of the value of any land and exhausted improvement for purpose of compensation under the land law shall be the market value of such land.

This study has observed that, there are several challenges which engulf right to compensation in Tanzania. Such challenges include; i) delayed payments of compensation; ii) undervaluing of the property to be compensated; iii) partial payments; and iv) wilful denial of compensation due to forceful evictions or claims of illegality of the subject property. For instance, 153 Songwe-Viwandani residents, Mbeya, had their land acquired for investments some years back. However, none of them has been paid any money to-date let alone being given an alternative settlement. The Ikuti residents, also in Mbeya, were still following up their compensation at the time this study was conducted due to acquisition of their land in favour of the Tanzania Breweries Limited (TBL). However, their demands have been overturned on the ground that, the company was allocated the said land by the municipal council.

Furthermore, areas visited, citizens complained that the evaluation exercise (as part of compensation) was not conducted openly. Affected individuals were not informed of items required to be paid as compensation, basis of assessment of compensation, time

124 G.N No. 78 of 4th May, 2001. This regulation is made under Section 179 of the Land Act, 1999.

of prompt payment of compensation, and payment of interest when compensation is not paid promptly. Land laws require adequate participation of affected individuals during the exercise of compulsory acquisition or transfer of land from the very early stage to the payment of compensation.¹²⁵

As the data from the ground appears on the table below, there have always been some confusions and challenges regarding compensation. Such confusions and challenges included:-

- a) Delay of paying compensation through various tricks including lodging frivolous cases in Court.
- b) Refusal of paying compensation on various reasons including allegations of lack of proper documentation on part of the local residents.
- c) Corrupting few claimants in order to accept part payments and then, justify evictions of the remaining if they continue refusing to accept little or partial payments.
- d) Unfair amount of compensation.
- e) Compensation without alternative settlements.

Table 35: Opinion on the Way Compensation was Processed – Citizens’ Opinion

N=447 [Community Members’ Responses]	Frequency	Percent
There was compensation granted	91	20.4
There was compensation (but delayed for long time)	90	20.1
There is prompt but unfair compensation	49	11.0
There was prompt and fair compensation	12	2.7
Not sure (respondent not sure of the situation)	205	45.9
Total:	447	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

From the table above, only 2.7% of the community members, whose lands was taken, were of the opinion that, the compensation given to them was prompt and fair as the laws cited above require. In most cases, the government claims to have had no sufficient funds at the time compensation payments are needed. Therefore, compensation is usually paid late or not paid at all. For instance, according to the Budget Speech of June 2014 by the Minister of Land, (pages 16 and 17), the Ministry planned to evaluate and pay compensation of 40,000 properties in 2013/2014 FY. But, as of April 2014, only 29,098 (being 72.7%) properties were assessed - but not yet compensated (being 0% compensation)).

¹²⁵ Section 5(4) of the Land Act, 1999; and Section 4(5) of the Village Land Act, 1999.



3.3.6 Delayed Justice is Justice Denied: ‘Snail Pace’ of Land Tribunals

Sections 167, 62 and 3(1) of the Land Act, 1999; VLA, 1999; and the Courts (Land Disputes Settlements) Act, 2002 respectively provide that, all every dispute or complaint concerning land shall be instituted in the Court having, jurisdiction, to determine land disputes in a given area. Subsection 2 of Section 3 of the land dispute law enlist the special land Courts and Tribunals, namely;

- a) The Village Land Council (VLT);
- b) The Ward Tribunal (WT);
- c) The District Land and Housing Tribunal (DLHT);
- d) The High Court (Land Division); and
- e) The Court of Appeal of Tanzania (CA).

Most of the conflicts between local community members and investors are initiated from DLHT because of the monetary jurisdiction, in which the law requires that, all disputes with value above Tshs. 3,000,000 (USD 1,667) should be initiated in the land Courts above WT.

The promptness, effectiveness and fairness of adjudication of any case depends on a number of factors, some being; accessibility and availability of judicial organs (justice machinery organs); legal representation; presence of proper quorum; judicious and unbiased decisions by the adjudicators.

As for the accessibility and availability of the stated land tribunals, the study noted that, only 49 DLHTs have been established in Tanzania from 1st October, 2003. Out of those, 7 tribunals were not functioning.¹²⁶ Such tribunals are supposed to be initiated in every district. Based on the current number of districts of Tanzania (145), it appears that, the deficit in terms of coverage was 71%. That is less than 30% of Tanzania Mainland’s districts were having such tribunals.

Such situation compels service seekers to take long and expensive trips to and from the tribunals located to the neighbouring districts or regions. A study conducted by the Foundation for Civil Societies in 2014¹²⁷ quoted a person with disability who spent two to three days travelling from Kaliua district to Tabora urban in order to access DLHT’s services. It was further stated that, sometimes such a person was to walk for such a long distance only to find that, his case is adjourned to other dates because there was only one Chairperson (adjudicator) for this tribunal.

126 Ministry of Land’s Budget Speech (cited above), June 2014.

127 FCS (2014) State of Human Rights of Persons with Disability in Tanzania. FCS: Dar es Sa-laam. Page 35.

Other challenges include, lack of sufficient staff and facilities. The context of this study did not allow dwelling much of those factors. But suffice to note that, such weaknesses had direct implication on the right to access to justice as well as the speed of disposing land cases in such a way that, only few cases were reported and fewer of them were heard during the year as the table below shows:-

Table 36: National Statistics on Status of Adjudicating Land Cases in Tanzania Mainland - 2014

Explanations	Cases On Records of the Land Tribunals as of June 2013	New Cases Filed/ Registered between July 2013 and April 2014	Cases Resolved between July 2013 and April 2014	Pending from May 2014
Number of Cases	18,328	11,548	11,432	18,444
Percentages/ Remarks	N/A	Current: 29,879 ¹¹	38.3%	61.7%

Source: Designed/Extracted from Ministry of Land's Budget Speech (Para 35, Pages 20 and 81), June 2014.

3.4 Performance Indicators on Land Management

The following is the summary of key findings in a form of performance indicators on the enforcement of the rights pertaining land management and acquisition in Tanzania. The summary depicts a comparative picture between land rights situation for the years 2013 and 2014. It should be noted that, not all 'performance indicators' used in 2013 were reassessed in 2014. However, there has been a comparison of all main indicators between the two years in order to measure the progress of implementation of stated land rights management.



Table 37: Comparison of Performance Indicators on Implementation of Land Rights Standards between 2013 and 2014 Years – LHRC Studies

S/ No.	Status of Implementation of Land Rights – Corporate Sector in Tanzania		
	Sub-Category of Right(s)	Performance Indicators	
		Year 2013 (Selected Hints)	Year 2014
i.	Land Size	<ul style="list-style-type: none"> • Only 31.3 of the total landmass is habitable as village land, while 80% of Tanzanians are village dwellers. • Owing to TIC, RUBADA, SAGCOT, EPZ and other initiatives with land banks for investments, it could be that, only 20% of the total land is for ordinary citizens. • More than 30% of the landmass is for conservation. 	<ul style="list-style-type: none"> • At least 75% of the arable land in Tanzania was now occupied by either local residents or investments companies or other institutions including government agencies. • The arable land in Tanzania is only 11%. • Private registered operators (investors) own 50.2% of the area under large scale farming – averaging at 1,309 hectares per farm. • The government of Tanzania through TIC has recently been working on establishing a Land Bank and over 2.5 million hectares of land. • RUBADA, which oversees the multi-sectoral development of the Rufiji basin, ‘owns’ the land spreading almost over one third (30%) of the country from Coastal Region to Katavi, Ruvuma, Dodoma and Singida regions.
ii.	Investment Vs. Local Land Users	<ul style="list-style-type: none"> • Accessibility of land resources steadily decrease with an increase of investment volumes in Tanzania. • Agricultural productivity and pastoralism have gone down in recent years making both rural and urban Tanzanians live in abject poverty. 	<ul style="list-style-type: none"> • The legal and traditional norms on land tenure systems Tanzania have been increasingly challenged by higher demands for land attributed to, inter alia, an increase of investments especially in rural areas. • The obtainment of land titles has been a huge challenge in Tanzania. Only 373,655 CRO titles were granted as of June 2014. More than 64% of the plots were owned without formal documentations (posing a challenge of land insecurity in the villages).

Status of Implementation of Land Rights – Corporate Sector in Tanzania			
S/ No.	Sub-Category of Right(s)	Performance Indicators	
		Year 2013 (Selected Hints)	Year 2014
iii.	Investments and Conflicts	<ul style="list-style-type: none"> National parks have expanded from only 1 in 1961 to 16 more in 2013, being more than 30% of the current landmass. 35% of the local residents have been affected by massive evictions. 61.0% of the respondents were not consulted by land grabbers. 	<ul style="list-style-type: none"> Same findings about expansion of protected areas. 47.7% of the respondents in the visited villages reported lack of participation in land management, in particular with regard to disposition of their lands. Some of the factors which triggered land conflicts were; i) an increased pressure on land and natural resources both human and animal population; ii) global warming and climate change; iii) demarcation/ reservation of land for national parks, game reserves, conservation; iv) poor land governance systems; and v) commercial pressure of land including large scale land acquisition for investments. Only 49 District Land and Housing Tribunal (DLHTs) have been established in Tanzania from 1st October, 2003. Out of those, 7 tribunals were not functioning. Such tribunals are supposed to be initiated in every district. Based on the current number of districts of Tanzania (145), it appears that, the deficit in terms of coverage was 71%.
iv.	Compensation	<ul style="list-style-type: none"> Land bankers have taken huge tracks of land through evictions without adequate consultations, evictions, compensation or prompt payments of the same. 	<ul style="list-style-type: none"> More 75% of investment activities are involving land. Moreover, in most cases, the land which is needed for investments is preoccupied by local communities.



Status of Implementation of Land Rights – Corporate Sector in Tanzania			
S/ No.	Sub-Category of Right(s)	Performance Indicators	
		Year 2013 (Selected Hints)	Year 2014
	Compensation	<ul style="list-style-type: none"> Only 3.5% of respondents said to have reported fair compensation; 20.8% did not receive any. Only 8.3% had fair bargaining with investors; 17.7% had their land negotiated by LGAs; 15.9% had their land taken through undue influences or deceit; while, 36.0% just saw their land being taken away (not sure of the procedures and justification). 	<ul style="list-style-type: none"> Only 2.7% of the community members, whose lands was taken, were of the opinion that, the compensation given to them was prompt and fair as the laws cited above require.
v.	Access to Dormant Investors' Land	<ul style="list-style-type: none"> Total of 73.9% of community members were denied access to dormant/ undeveloped or not developed land of investors – which turn into bushes. Political leaders and law enforcers fail to take actions against land hoarders due to impunity. 	<ul style="list-style-type: none"> At least 60% of the local community members interviewed said that, investors did not allow them to use any land even when it was underutilized for a particular period of time. Despite that reality (of scarcity of arable land), the law or guidelines to limit the size of the land for investors were not ready or not in use in 2014. As such, chunks of land were in the hands of investors who (most of them) could not develop even half of the land given.

Source: LHRC, Corporate and Human Rights Studies of 2013 and 2014.

CHAPTER FOUR

CORPORATE COMPLIANCE AND TRANSPARENCY IN TAXATION

4.1 Introduction to Tax Management: Past and Present Tax Regimes

4.1.1 Brief Reflection of the Past Tax Administration – Personal to Corporate Taxation

The payment of tax in Tanzania is not a new phenomenon and existed from the colonial period (prior to 1961), where indigenous people were compelled to pay various forms of taxes to their local rulers or colonial masters. Some individual taxes paid during the time were, head tax which was introduced by the Germans in 1898, and later on formalized under the House and Poll Tax Ordinance of 1912. Other taxes introduced by the colonialists included customs in 1940s through the Customs Tariff Ordinance No. 5 of 1940; and the Controller of Customs in 1946.¹²⁸

In 1948, tax administration was put under the East African High Commission (which managed Kenya, Uganda, Tanganyika and Zanzibar Protectorate). In 1958, the East African Income Tax Management Act was enacted. After independence, both customs and income tax administrations were put under the East African Common Services Organisation (EACSO).¹²⁹

The British law can be regarded as one of the first legislation to introduce taxation in corporate business in Tanganyika (now Tanzania). But generally, colonial rulers exempted their companies from paying taxes.

Apparently, current massive incentives in a form of tax exemptions and holidays can be regarded as ‘hangovers’ of the colonial ways of tax administration – which vested tax burdens on shoulders of local people while profitable corporate companies enjoyed exemptions.

128 TRA ‘Tax Administration in Tanzania 1961-2011: Uhuru Golden Jubilee.’ Dar es Salaam: Tanzania. Pages 7-16.

129 After independence of Tanganyika (Tanzania) in 1961, the tax administration at country level was under the Internal Revenue Division of the Treasury, which administered personal tax, sales tax, and other indirect taxes. The taxes which were under EACSO were administered under the Income Tax (Management) Act, 1958; East African Income Tax Act, Cap. 24; and other laws.



4.1.2 Current Tax Administration: Focus on Corporate Taxation

In Tanzania, the tax regime is governed by several laws, rules and regulations.¹³⁰ Types of taxes which are mostly collected in Tanzania under those various laws include income taxes; VAT; withholding taxes;¹³¹ and stamp duties.

The main government agency charged with the responsibility of managing tax collection is the Tanzania Revenue Authority (TRA). However, the Local Government Authorities (LGAs) collect some of the taxes or levies within their jurisdictions. For instance, the laws¹³² establishing or governing LGAs empower any LGA to pass by-laws that allow the authority to charge local taxes and collect levies or fees within its jurisdiction.

The types of taxes, fees and levies collected by the LGAs are; property tax; service levy; crop and forest produce fees; hotel and guest house levy; slaughtering fees; bill boards and sign fees; market fees; trading licence fees; and liquor licence fees.¹³³ Therefore, taxes from huge investments such as mining are solely collected by TRA. Associated taxes or levies which LGAs could collect are mainly ‘construction minerals.’¹³⁴ Such kinds of ‘minerals’ include gravel, stones, debris, sand, lime, and soil (which are not valuable compared to gold, tanzanite and other gemstones collected by the central government through TRA).

130 Main laws being: the Income Tax Act, 2004; Estate Duty Act, 1963; Personal Income Tax Act, 1955; Sales Tax Act, 1976; Entertainment Act, 1970; Stamp Duty Act, 1972; Motor Vehicle (Tax on Registration and Transfer) Act, 1972; Training Levy Act, 1972; Foreign Vehicle Routes Act, 1973; Road Traffic Act, 1973; Foreign Vehicle Licensing Act, 1977; Pools and Lotteries Act, 1977; Foreign Levy Travel Act, 1979; Road and Fuel Toll Act, 1985; Video Business Registration Act, 1988; Specialized Buildings Act, 1993; and Value Added Tax, 1997.

131 Such as: interests, dividend, royalties and management fees. These taxes are withheld by the payer at prescribed rates, which vary with the nature of payment.

132 Namely, the Local Government (District Authorities) Act, 1982 (Act No. 7 of 1982); the Local Government (Urban Authorities) Act, 1982 (Act No. 8 of 1982). The taxation and levy matters at LGA level are governed by, inter alia, the Local Government Finances Act, 1982 (Act No. 9 of 1982); and the Urban Authorities (Rating) Act, Cap. 289, which are all read together with various amendments including the Financial Laws (Miscellaneous Amendments) Act, 2008 (Act No. 9 of 2008); and the yearly enacted Finance Acts – to implement the national budget.

133 TRA ‘Central and Government and Taxes Administration by Tanzania Revenue Authority.’ 1st Edition, July 2013. Dar es Salaam: Tanzania. Page 35.

134 For instance, the Mbeya district council has formulated the by-laws on construction minerals known as ‘*Sheria Ndogo za Halmashauri ya Wilaya ya Mbeya (Ushuru wa Madini ya Ujenzi)*’, G.N No. 407 of 28/12/2012.

Other associated types of revenues are collected by other agencies in the forms of fees, fines and annual subscriptions. Such agencies include the regulatory authorities (discussed in chapter eight of this report), police, judiciary, and professional bodies. Despite the fact that there has not been any study to ascertain realism of such collection as far as financial accountability is concerned, LHRC urges the Controller and Auditor General (CAG) to verify all accounts of these other revenue collectors. For instance, it is now common throughout the year to see many traffic police officers each with a receipt or fine book on his or her armpit and vigorously imposing on-spot ‘fines.’ The remittance of the ‘fines’ collected need to be audited and results shared in public. Moreover, the government needs to come out with proper registration which will designate some of the traffic officers (and not everyone) preferably those who have financial management background as the financial laws (cited elsewhere in this report) require.

The TRA is established under the TRA Act, 1995¹³⁵ as an autonomous tax revenue collection agency. Section 5 of the 1995 law lists functions of TRA to include:-

- a) Assessing, collecting and accounting for all central government revenue and administering and giving effect to the laws relating to such revenue;
- b) Monitoring, overseeing and co-ordinating the administration of revenue laws of the central government in the jurisdiction of the union government;
- c) Advising the government on matters relating to fiscal policy, implementation of policy and constant improvement of policy regarding revenue laws and administration;
- d) Promoting voluntary tax compliance to the highest degree possible;
- e) Production of trade statistics and publications;
- f) Improving the quality of services to taxpayers;
- g) Counteracting fraud and other forms of tax evasions.

Besides, this agency (TRA) has its internal rules and plans. For instance, during the year 2014 TRA was implementing the Fourth Corporate Plan (2013/2014 – 2017/2018) with a mission of ‘*making easy to pay tax and make lives better.*’ Its vision during this plan is to increase revenue to GDP ratio of 19.9% by 2018. The authority is optimistic of this plan because past experience has shown that trend of taxpayers’ compliance is on increase.

Apart from the national laws, tax administration in the country is also, to a certain extent, influenced by a number of international agreements on taxation and financial standards including the bilateral and mutual agreements on taxation with various countries including, Zambia, Sweden, India, and Canada.¹³⁶

135 Act No. 11 of 1995.

136 ‘International Double Taxation’ <http://www.taxation-tz.com/2011/05/international-double-taxation.html>, accessed on 22nd December, 2014.



4.2 Reflections on TRA's Institutional Performances

The revenue authority (TRA) is spread all over the country from district the level. Therefore, its coverage is 100% as compared with other government agencies. Moreover, TRA has continued to improve its coverage by introducing online tax payments whereby a tax payer could remit some of the taxes through mobile phones.

Moreover, it introduced an Electronic Fiscal Device (EFD) system since 1st July 2010, with the aim of enhancing tax compliance. The system is being implemented in two phases. The first one covered VAT registered taxpayers, while the second involves the remaining categories of taxpayers countrywide. All eligible taxpayers are required to acquire and use EFD machines. Failure to acquire and use fiscal device or issue fiscal receipt/ invoice attracts a fine of Tshs 3,000,000 or imprisonment for a term not exceeding 3 years.

The implementation of EFD was stronger in 2014 compared to previous years. The study noted that, TRA deployed on street a number of its enforcers to reinforce use of the machines. However, such a move faced stiff resistance from majority of business persons across the country.



Picture 13: Closed shops in Iringa (left) and Mwanza business person (right) at the stand gather to desist EFD machines

Source: <http://rundugai.blogspot.com/> & <http://bakaringamba.blogspot.com/>

Part of this study enquiry was on reasons behind such resistances of the EFD machines. The Kariakoo market, Dar es Salaam, being the largest common markets in Tanzania, was sampled for the investigation. A number of reasons were given by the traders as the table below shows:-

Table 38: Reasons for Contesting Use of EFD Machines – Kariakoo Market Traders’ Response

N=89 [Kariakoo Market Traders’ Responses]	Frequency	Percent
Low Awareness Amongst Traders on Importance of EFD	22	30.8
Some of the Traders Influence Others to Reject EFD	14	10.3
EFD Machines are very Expensive to Purchase	21	28.2
EFF System is Exploitative of Our Businesses (Reduces Profits)	18	20.5
Other Reasons	14	10.3
Total	89	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

LHRC commends TRA and the government at large for such initiatives; however, advises the same to go back to the ‘drawing board’ in order to iron out all challenges which caused the resistance as the table above suggests. Convening consultative meetings like the ones which were organized by the Prime Minister in February 2014 regarding EFD could be one viable solution. Otherwise, use of force or severe punishments without getting into the root of the problem cannot lead to improving tax payment and collection system.

4.3 Performance in Revenue Collections from Corporate and Others

There are various ways to assess the performance of revenue collection, including considering an expansion of revenue collected; and, by assessing the extent of self-compliance by tax payers, which is an indicator of decline of the cost of tax collection.¹³⁷

By considering all these ways, the study noted that, the revenue collection has been steadily expanding every year especially from 2008 according to the above cited TRA sources. For instance, the revenue collection between 2008/2009 and 2012/2013 expanded by 91% (from 4.05% to 7.74% in 2008 and 2013 respectively. On the other hand, the cost associated with tax collection declined from 3.8% to 2.7% respectively during the same period (2008-2013). That means, a notion of taxpayers’ self-compliance introduced by TRA was catching-up well.

As the table below further illustrates, the national revenue collection performance of over six years (2008-2014) shows an increase of collection for both Tanzania Mainland and Zanzibar:-

¹³⁷ TRA ‘Seventh Taxpayer’s Day: Achievements and Challenges.’ November, 2013. Pages 1 and 2.

**Table 39: Trends of Tax Collections 2008-2014**

Tanzania ...	In Billion Tanzanian Shillings					
Mainland	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14¹²
Revenue Target	4,497.1	4,855.9	5,690.7	6,228.8	7,871.4	10,935.5
Actual Collection	4,049.1	4,456.6	5,405.3	6,494.9	7,739.3	7,771.5
Performance (%)	90	92	95	104	98	93
Annual Revenue Growth (%)	19.9	10.1	21.3	20.2	12.2	Not obtained
Zanzibar	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14
Revenue Target	49.2	63.2	69.2	100.6	106.7	Not obtained
Actual Collection	53.9	60.1	76.4	91.7	103.9	Not obtained
Performance (%)	109.6	95.0	110.3	91.1	97	Not obtained
Annual Revenue Growth (%)	35.3	11.4	27.1	20.1	13.3	Not obtained

Source: Extracted from, TRA ‘Seventh Taxpayer’s Day: Achievements and Challenges.’ Nov., 2013. Page 5 and other sources.

The study noted similar trends of tax collections at regional levels. For instance, the grand regional total collection of Mtwara region between 2005 and 2013 increased from only Tshs 2,659.40 billion to Tshs 39,567.90 billion of actual collections. The actual collections were as high as to Tshs 53.9 billion in 2012 but dropped to Tshs 39.5 due to deterioration of domestic collections.¹³⁸ Manyara region’s actual collections rose from Tshs 944,000,000 in 2005/2006 to 8,129,000,000 in 2013/2014. Such an increase has been attributed to increase in number of investments in hotels and workers in the region.¹³⁹

Furthermore, LGAs collection of own source revenues reached Tshs 252.5 billion during the financial year 2013/ 2014. Such collections were equivalent to 66% of the annual estimates of shillings 383.5 billion.¹⁴⁰

Despite such levels of performance, LHRC believes that more could have been collected by curbing tax evasion and tax avoidance. Moreover, as it argued last year

138 A copy of Domestic Revenue, Customs and Excise table given by the TRA Regional Office, Mtwara, November 2014. Regarding the increase in collections over past five years, TRA stated that, the increase was attributed to increased exploration activities for gas and oil in the region. However, the records did not specify specific revenue contributions from oil and gas.

139 A copy of ‘*Historia Fupi ya Makusanyo (ya Kodi) 2005-2015*’ (brief history of tax collections 2005-2015) of Manyara region, given to LHRC’s study team in November 2014 by TRA Regional Office.

140 URT, Speech by the Minister for Finance Hon. Saada Mkuya Salum (MP) Introducing to the National Assembly, the Estimates of Government Revenue and Expenditure for Fiscal Year 2014/2015, Paragraph 20, Page 9.

by a similar report, TRA and other revenue collectors have a long way to promote voluntary tax compliance to the highest degree possible as it is expected due to two factors as found out by this study.

One, some of the corporate (and non-corporate) tax payers consider taxes imposed by the government as unaffordable to pay.

Table 40: Business Taxpayers’ Opinion on Affordability of Tax Rates Imposed

Q’n: Whether taxes imposed by the government are affordable			
N=116 [Individual respondents representing their companies]		Yes	No
Nature of the Business Sector	Exploration, extraction/ mining	60.0%	40.0%
	Hunting and tourism (including hotels)	20.0%	80.0%
	Manufacturing and processing	45.5%	54.5% ⁹
	Services (education and health)	53.8%	46.2%
	Agriculture (Plantation, timber and other forms)	88.9%	11.1%
	Communication (mobile phone, media, and others)	47.6%	51.4%
	Transportation(marine, air, road and commuters)	28.9%	71.1%

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

The percentage of ‘YES’ and ‘NO’ varies amongst business sectors because of the number of factors, the main one being the extent of tax exemptions granted from one sector and another. For instance, those who engage in agriculture, mining, education and health subsectors enjoy massive exemptions compared to others. What matters most in this kind of response is that, so many taxpayers still consider paying tax as a ‘burden.’ LHRC suggests that, more public education on the importance of taxation is needed.

Secondly, despite self-compliance improving, majority of taxpayers – small and large still find it unnecessary to comply. TRA and other tax or levy collection authorities have to use extra efforts as a way of compelling taxpayers to fulfil their obligations including submission of tax returns. For instance, the Babati District Council, Manyara had to file a dozen of criminal cases in June 2014 against several companies which refused to avail financial information to the council as Section 28(2) of the Local Government Finances Act, Cap. 290 and Regulation 16(1) of the Babati District Council Service Levy By-laws require. The companies charged included Minjingu Mines and Fertilizer Company Limited; Lake View Campsite; Acacia Lodge; Miombo Estate; Un En Afrique (Chemchem Safari Lodge); Sinyati (T) Limited; Roika Hotel; Andbeyond Travel (Lake Manyara Tree Lodge); Sopa Management (T) Limited;



Osupuko Lodges.¹⁴¹

Factors attributing to non-self-compliance can be; one, many taxpayers do not see tangible benefit in return. Presence of grand corruption incidents such the ‘Tegeta Escrow Account’ illustrated in this report, tend to anguish the people’s mood and readiness to pay the dues. For instance, while responding on the question regarding EFD machines, a business lady at Kariakoo remarked that:-

I can’t bother with this tax thing ... I can’t pay for them (government leaders) to educate their children abroad ... you hear ‘escrow’ ‘escrow’ ‘escrow’ everywhere, it’s all about embezzling public money, they have been squeezing us to pay (as taxes or levies). Now every single cent falls in the hands of *Singasinga*¹⁴² and few leaders To hell with their machines, no one helps me when I am sick or at least pay for my child’s school fees. Everything is personal efforts and I struggle a lot. They cannot even collect this rubbish around here ... tax? For what then?!

TRA and other revenue collectors in Tanzania can borrow a lead from other countries which are said to have done well in voluntary tax compliance. One of such countries is Japan. According to the sources,¹⁴³ in order to enhance tax compliance, the Japanese tax administration provides its taxpayers with various services such as guidance, education, consultations, and so on. The tax return forms are sent free of cost during the filing time, and the taxpayer’s details are pre-printed on the forms in order to encourage timely and accurate filing. Public relation activities are carried out using the media, and tax education is also provided to schoolchildren.

Moreover, Taxpayers in Japan are also able to obtain consultation services via the telephone, facsimile, and so on. The Japanese tax return has also been designed so that it can be used in an electronic format, and to contain the minimum information required to enable verification of the taxpayer’s income. The Japanese tax system is backed by effective tax management and utilization, whereby each taxpayer sees how the money paid is working for the whole nation

141 Criminal Cases numbers 157, 163, 158, 160, 165, 162, 159, 166, 164 and 161 respectively. Both of 2014 filed on the Resident Magistrate’s Court of Manyara at Babati.

142 An Indian business tycoon alleged to have engineered a scooping of the money for the BOT’s Tegeta Escrow Account. More information about this matter could simply be searched through www.google.com. There are so many stories about it, which are not relevant to this context here.

143 Tapan K. Sarker ‘Improving Tax Compliance in Developing Countries via Self-Assessment Systems - What Could Bangladesh Learn from Japan?’ In, *Asia-Pacific Tax Bulletin* Vol. 9, No. 6 June 2003, Pages 1-34.

4.4 Taxation and Quest for More Investments: Trends of Tax Incentives For 2014

Tanzania introduced a number of tax incentives¹⁴⁴ to local and foreign investors in a bid to stimulate economic growth and development in the country.¹⁴⁵ The investment policy was introduced in 1990 when the government enacted the National Investment Promotion and Protection Act, 1990 to enforce this mission. The law was later on repealed and replaced by the current Tanzania Investment Act, 1997.¹⁴⁶ The newly enacted investment law upholds the same spirit - to offer tax incentives as ways of creating conducive and attractive environment to investors.

Tax incentives are embedded in some tax statutes mentioned above, particularly; the East African Community Customs Management Act, 2004; VAT Act, 2014; and Income Tax Act, 2004. Moreover, such incentives are also stated in other sectoral laws including the Mining Act, 2010; Investment Act, 1997; Export Processing Zone (EPZ) Act, 2002; and on part of Zanzibar, there is Zanzibar Investment Promotion and Protection Act, 2004.¹⁴⁷

Under the customs law, which harmonizes East African tariff, all importers of raw materials, computers, capital goods, and replacement parts, inputs for agriculture, animal husbandry, and fishing do not pay customs duty on their importation. That is, they are levied 0% import duty. Moreover, under EPZA, which is an autonomous government agency that operates under the Ministry of Industry and Trade (MoIT),¹⁴⁸ investment incentives include:-

- a) Remission of customs duty, VAT and any other tax charged on raw materials and goods of capital nature related to the production in the EPZ;

144 Section 3 of the Tanzania Investment Act, 1997 defines 'incentives' to mean tax reliefs and concessional tax rates which may be accessed by an investor under the laws on income tax, customs tariff, sales or any other laws. Sub-section 2 of Section 19 of the investment law guarantee perpetual enjoyment of the incentives. It provides that, for the purpose of creating a predictable investment climate, the benefits (incentives) shall not be amended or modified to the detriment of the investors enjoying those benefits. Moreover, the law allows more specific benefit to be allowed under Section 20(1). The safeguard of 'all kinds' of investments is indicated further under provisions of Section 22 of the investment law. Subsection 1 prohibits nationalization or expropriation of business enterprise by the government; Subsection 2 restricts acquisition of the enterprise by the government. Apparently, this is why the President hesitated to confiscate IPTL plants as advised by the Parliament following the 'Tegeta Escrow Account' saga. The discussion about this saga is covered in other parts of this report.

145 TRA 'Tax Incentives in Tanzania.' December, 2012. Page 1. Note that, this is a booklet.

146 Act No. 26 of 1997.

147 Act No. 11 of 2004.

148 Source: www.epza.go.tz accessed on 28th December, 2014. Note, EPZA is responsible for steering and implementing government policy for promoting export processing zones (EPZs) and special economic zones (SEZs) with the objectives of promoting investment in Tanzania.



- b) Exemption from payment of corporate tax for an initial period of 10 years;
- c) Exemption from payment of withholding tax on rent, dividends and interests for the first 10 years;
- d) Exemptions from payments of all taxes and levies imposed by the LGAs for 10 years;
- e) Exemption from pre-shipment or destination inspection requirements;
- f) Onsite customs inspections of goods in the special economic zones (SEZs);
- g) Provision of business visa at the point of entry to key technical, management and training staff for a maximum of two months;
- h) Exemption from VAT on utility and (to find meaning) charges;
- i) Unconditional transferability through any authorized dealer bank in freely convertible currency.

The Income Tax Act, 2004 grants massive incentives including:-

- a) 100% capital allowance for investors in agriculture sector in respect of expenditure incurred on plant and machinery used solely in agriculture;
- b) 50% initial capital allowance granted on expenditure of plant and machinery that is used in manufacturing and installed in the factory or providing services to tourists and fixed in a hotel;
- c) Reduced rate of corporate tax of 25% charged for three years to newly listed companies with the Dar es Salaam Stock Exchange (DSE), with at least 35% of equity share issued to the public;
- d) 100% deduction in mining operations. The whole expenditure incurred for the year – both capital and revenue expenditure, is deducted when calculating taxable income.

The Zanzibar's 2004 law on investment promotion also offer tremendous incentives including 10 years corporate tax holiday and 25% tax rate for subsequent ten years; 10 year withholding tax holiday on dividends to non-residents; stamp duty exemption; and 100% investment deduction on capital expenditure within 20 years for investments in Free Economic Zones (FEZ) in Zanzibar.

As for VAT, the study noted that, there are several organizations listed in the 3rd Schedule of the VAT Act, 1997 entitled to relief from VAT. Such organizations include; diplomats; donor funded projects; armed forces; medical and veterinary practitioners; charitable organizations; and mining operations.

TIC considers all such kinds of exemptions as '*well-balanced and competitive package*

*of fiscal in comparison with other African countries.*¹⁴⁹

The study noted that, all such exemptions are discretionally granted. For instance, the study found that, some of the exemptions granted between 2010 and September 2014 were irrationally as they did not relate to the actual production processes by the investment companies. Secondly, the exemptions were granted to quite generalized applications termed as ‘*service charges*’; ‘*provision of fire*’; ‘*maintenance services*’; ‘*personal costs*’; ‘*personnel costs*’; ‘*management services*’; ‘*electricity*’; ‘*mining equipment*’; and so on.

The following table shows **some** of the irregular or rather, weird VAT exemptions granted between 2010 and September 2014:-

Table 41: Some of the Weird VAT Exemptions Granted between 2010 and 2014 in Tanzania

Beneficiary Name	Description of Goods/Services	Years of VAT Exemptions
ABG Exploration Ltd	Car Hire, security and vehicle services, etc	2013
Diamond Trust Bank	Alarm system, generator, etc	2014
Bulyanhulu Gold Mine	Photocopy services, etc	2011
Mantra Tanzania Ltd	Legal services, etc	2013
Statoil Tanzania	Catering services, medical services, etc	2012, 2014
Ophir E. A Venture Ltd	Clothes for drilling team, etc	2014
Bank M Ltd	Tiles, toilet goods	2010, 2011
Barrick Exploration on Africa	Accommodation, advertisement, internet services, note books, office stationary, etc	2011, 2012
BG International Tanzania Branch	DSTV Installation & subscription fees, rent for house of country manager, etc	2011
Tanzania Pipelines	Box files, car services, chairs, papers, stand fans, etc	2014

Source: Extracted from the Public Records 2014/2015 at the Ministry of Finance.¹⁵⁰

While small local producers are really squeezed off to pay almost everything including municipal and district levies for just putting signboards indicating the direction of their businesses, ‘large tax payers’ enjoy VIP treatment in such a way that, they are allowed to get exemptions for almost everything including entertainments such as cable (DSTV) connections and subscription fees; accommodation; clothes; and toilet

149 TIC ‘Tanzania Investment Guide 2013-2014.’ Dar es Salaam: Tanzania. Page 21.

150 URT, ‘Exemptions Granted to Large Taxpayers January, 2010 To September, 2014’

<http://www.mof.go.tz/mofdocs/exemptions/Exemptions%20granted%20to%20large%20taxpayers%20%20January,%202010%20%20to%20September,%202014>, accessed on 9th February, 2015.



papers. The said companies virtually incur no cost in running of their businesses. Their profit is 100% earned.

The highlights of the Controller and Auditor General (CAG)'s report on tax exemption to the Parliamentary Accounting Committee (PAC)¹⁵¹ showed that, tax exemptions rose from Tshs. 1.48 trillion during the 2012/ 2013 financial year (FY) to Tshs. 1.82 trillion in 2013/ 2014 FY. That mean, a total of Tshs. 0.34 trillion (being 18.7%) of exemptions was just within a year. The VAT relief as stated above were estimated to claim nearly 50% of all exemptions. The relief had increased to Tshs. 676 billion from Tshs. 571 billion during the same period (2012/2013 to 2013/ 2014). Therefore, VAT exemptions were increased by Tshs. 105 billion, being 15.5% increase within a year.¹⁵²

The government promised to address it by amending or enacting a new VAT law after receiving a lot of critics of this fiscal policy on exemptions.¹⁵³ The VAT Act, 2014 was deliberated and approved in June, 2014. However, this law was not operationalized as of 31st of December, 2014.

LHRC is concerned that, what the government collects from such investment concessions as revenue, is basically a 'recycled public fund' generously offered to corporate companies by the government through stated massive exemptions. It is hereby emphasized once again that, there is a need to review all laws which offer exemptions – not only VAT. Otherwise, the country will continue having more investments with little return in terms of economic development while the non-renewable resources are diminishing rapidly in the hands of the investors.

- *Immigration Quota: Case of Flocking of Asians in Kariakoo Market, Dar es Salaam*

Apart from monetary incentives, investors enjoyed other favourable treatments granted under various laws and authorities in Tanzania. One of those other treatments is immigration quota, which is granted under the provisions of the Tanzania Investment Act, 1997.

151 Reported by: Sylvester Domasa, 'CAG to release Audit details on Tax Exemptions Thursday.' The Guardian (Tanzanian Newspaper), 20th January, 2015. ALSO, Gadosia Lamtey, 'TRA ordered to gazette VAT Act scrapping tax exemptions.' The Guardian (Tanzanian Newspaper), 20th January, 2015. A full copy the CAG report from National Audit Office could not immediately found as of February 28th 2015 when the final draft of this report was concluded.

152 Note that, the exchange rate of Tshs. against USD as of December 2014 was approximately USD 1 for Tshs. 1,800.

153 URT, Speech by the Minister for Finance Hon. Saada Mkuya Salum (MP) Introducing to the National Assembly, the Estimates of Government Revenue and Expenditure for Fiscal Year 2014/2015, Paragraph 9, Page 4.

Section 24(1) of the stated law provides that *'every business enterprise granted a certificate of incentives under this law, shall be entitled to an initial automatic immigration quota of up to five (5) persons during the start-up period.'* Sub-section 2 further states that, any application for an extra person within an immigration quota, shall be submitted to the TIC. The latter shall, in consultation with the Immigration Department, authorize any additional persons which it shall deem necessary taking into consideration of the availability of qualified Tanzanians, complexity of technology employed by the business enterprise and agreements reached with the investors.

The study found that, there was no sufficient mechanism in place to enforce this requirement by either the TIC or the immigration department. For instance, the enterprises are not compelled to submit workforce periodical returns to the TIC or immigration department - to indicate a number of foreign workers and their qualifications in their companies. Apparently, the immigration quota is used as one of the avenues through which Asians and other foreigners penetrate and preoccupy all strategic business ventures including the small ones which were previously occupied by local traders.

4.5 Tax Evasions and Illicit Financial Flows: Case of Mining Sector

The Global Financial Integrity on illicit financial flow, which was released in December 2014, found that, developing and emerging economies (including Tanzania) lost USD 6.6 trillion in illicit financial flows from 2003 through 2012. Further, it was stated in the report that, the illicit outflows increased at a staggering average rate of 9.4 percent per year—roughly twice as fast as global GDP.¹⁵⁴ Tanzania in particular, loses about Tshs. trillion (USD 1.87 billion) in tax revenue every year through cheating (evasion or avoidance of taxes and smuggling of minerals) by dishonest companies in import and export.¹⁵⁵

Other ways in which revenues are lost annually include tax exemptions and low charges on loyalty imposed by the law or administrative decisions. Taking a case study of mineral subsector, this study noted that, even after repealing and replacing the previous mining law,¹⁵⁶ the newly enacted Mining Act, 2010¹⁵⁷ still charges not more than 5% royalty rate (based on gross value). Section 87 of the Mining Act, 2010 stipulates various rates for the royalty payments on mineral as deduced below:-

154 Dev Kar and Joseph Spanjer, 'Illicit Financial Flows from Developing Countries: 2003-2012.' The Global Financial Integrity Report, released on 16 December 2014. Accessed through, <http://www.gfintegrity.org/report/2014>, on 22nd December, 2014.

155 Alawi Masawe, 'How Tanzania loses Sh3 trillion Annually.' The Citizen (Newspaper), 13 May, 2014.

156 Known as the Mining Act, 1998 (Act No. 5 of 1998).

157 Act No. 14 of 2010.

**Table 42: Tanzania's Royalty Rates on Mineral Sales**

Types of Minerals	Royalty Rate (on Gross Value)
Uranium, gemstone (rough) and diamond (rough)	5%
Metallic mineral (copper, gold, silver and platinum group metals)	4%
Gems (cut and polished gemstones and diamond)	1%
Other minerals Including building materials, salt, all minerals within the industrial mineral group.	3%

Source: Section 87 of the Mining Act, 2010, the table is copied from: URT 'Procedures for Exporting and Importing Minerals in Tanzania' (Undated), page 8.

Moreover, the mining sector still loses billions of money through tax evasion, tax avoidance and illegal exports (smuggling). For instance, in November 2014, the Commissioner for Mineral in the Ministry of Energy and Mineral, Engineer Paul Masanja, was quoted by media¹⁵⁸ 'lamenting' that, gemstones from Tanzania worth Tshs 635 billion (USD 352,777,778) were smuggled out of the country annually through illegal channels, ending up in either Kenya or India (among other countries).

The Commissioner was further quoted as saying that, Kenya imported tanzanite valued at USD 100 million while India documented annual imports of the tanzanite gemstone worth USD 300 million. The official export figures for tanzanite in Tanzania was only USD 38 million per annum which is equivalent to only 20% of the total tanzanite gemstones being mined from Mirerani, Manyara region.

Note that, Tanzania is also one of the most promising gemstone frontiers, with more than 50 varieties of gemstones having been identified to date. Significantly, it is also the world's only source of Tanzanite. Besides diamond and gold, Tanzania can boast of having classified rubies, nickel, marble, phosphates, lead, iron ore, soda ash, coal and kaolin. In addition to these, reports by petroleum dealers have revealed the presence of oil reserves too. In terms of gold production, Tanzania is located third in Africa, after South Africa and Ghana. Tanzania has, generally, had an experience of poor revenue collection, especially compared to other countries that possess natural resources - pointing to 'the paradox of plenty' (Ref.: Sanga, Sebastian Paschal (2007) *The Role of Poor Governance in the Tanzanite-Al Qaeda Link Controversy, and Policy Options for Tanzania Enabling it to Escape from 'Curses' in the Mining Industry*. Open Society Institute: Hungary. Pages 3 to 6).

158 Including: Marc Nkwame 'Tanzanite worth 635bn/- lost in Smuggling', Dailynews (Government's Newspaper), 19th November, 2014. Also available at <http://www.dailynews.co.tz/index.php/local-news/38420-tanzanite-worth-635bn-lost-in-smuggling>, accessed on 2nd December, 2014.

It is found from this study that, according to the current legal framework governing mining sector, revenue collections, auditing and control of export or imports of mineral are governed by several laws and institutions, including the police, TRA, the Immigration Department, the port and airport authorities, and the Tanzania Mineral Audit Agency (TMAA), which is the main watchdog in this respect. The establishment, functions and effectiveness of these other authorities have been covered in coming chapters of this report.

The TMAA was established in November 2009 under the Executive Agencies Act, Cap. 245.¹⁵⁹ One of the objectives of TMAA is to facilitate maximization of government revenue from the mining industry through effective monitoring and auditing of mining operations and ensuring sound environmental management in the mining areas.

Section 4 of the Mining Act, 2010 empowers TMAA to monitor and audit all mining operations in the country. Such monitoring includes **counteracting mineral smuggling** and **mineral royalty evasion** in collaboration with other government authorities mentioned above.

Other functions of TMAA include:-¹⁶⁰

- a) Monitoring and auditing of quality and quantity of minerals produced and exported by large, medium and small scale miners in order to determine revenue generated to facilitate collection of payable royalties;
- b) Monitoring and auditing environmental management, environmental budget and expenditure for progressive rehabilitation and mine closure;
- c) Assessing values of minerals produced by large, medium and small scale miners to facilitate collection of payable royalty.

Section 6 of the Mining Act, 2010 prohibits any person to process or mine minerals without a valid mineral right granted under the law. Sections 76 and 83 of the mining law permit holder of dealer licence and broker licence to buy, acquire, sell or dispose mineral. Furthermore, Regulations 16 and 17 of the Mining (Mineral Trading) Regulations, 2010 impliedly permit non-residents to acquire minerals from authorized miner, licensed dealer or from Gen Trade Fair in Tanzania. Export of the minerals by any persons is not allowed without fulfilling specified legal requirements of this law. For instance, Regulation 17 of the Mining (Mineral Trading) Regulations, 2010 require payment of fees for the special export permit. Moreover, buyers are also

159 Through: G.N No. 362 of 6th November, 2009.

160 TMAA 'TMAA Profile' (Undated). Page 2.



supposed to provide proof of payment of royalty for the minerals to be exported. Such payments have to be accompanied by authentic invoices and government exchequer receipt voucher (ERVs).

Despite such enormous legal mandates granted to TMAA and other authorities, billions of revenues are still lost recklessly as stated above. LHRC is concerned that, such huge losses occurs and no action is taken against irresponsible officials of agencies mentioned above. It is therefore advised that, the government should initiate special investigation on this matter and ultimately publish the results of the investigation to the public.

Moreover, Interpol can be used to detect such smuggling in India, Kenya and other countries where minerals are smuggled to. For instance, Regulation 18(1) of the Mining (Mineral Trading) Regulations, 2010 can be invoked as a basis of legal action against the smugglers. Such regulation clearly requires every export permit for Tanzanite to be accompanied by a Certificate of Origin (CO) issued by authorized officer. The CO, among others, requires inclusion of the name of the licence holder, net weight and value of Tanzanite to be exported, date of issue and name of issuing officer. Therefore, any person in possession of the stated gemstone without CO can be apprehended as a prime suspect of smuggling.

Furthermore, LHRC advises responsible agencies to invoke Section 101(5) of the Mining Act, 2010 which empowers the Commissioner for Minerals, Authorized Officers, TMA, police and others charged with responsibilities to control illegal exports of mineral to enter and search anywhere and anything including aircrafts in case there is a reasonable ground of commission of an offence. All unauthorized minerals can be forfeited under Section 6(4) of the said mining law.

4.6 Performance Indicators on Taxation

The following is the summary of key findings in a form of performance indicators on the enforcement of the responsibilities pertaining taxation in Tanzania. The summary depicts a comparative picture between taxation situation for the year of 2013 and 2014. It should be noted that, not all ‘performance indicators’ used in 2013 were reassessed in 2014. However, at least all main indicators have been compared in two years in order to measure progress of implementation of stated tax management.

Table 43: Comparison of Performance Indicators on Implementation of Taxation between 2013 and 2014 Years – LHRC Studies

Status of Taxation Rights – Corporate Sector in Tanzania			
S/ No.	Sub-Category of Right(s)	Performance Indicators	
		Year 2013 (Selected Hints)	Year 2014
i.	Revenue Contribution/ Trend of Collections	<ul style="list-style-type: none"> • Collections by TRA have steadily increased over past 7 years. For instance by 4% between 2010 and 2012. • However, under-collections still exist mostly involving large tax payers (corporate companies), which amounted to 14% under-collection in past two years. • Situation is attributed by tax evasion, avoidance and massive exemptions. 	<ul style="list-style-type: none"> • The revenue collection has been steadily expanding every year especially from 2008. E.g. the collection between 2008/2009 and 2012/2013 expanded by 91% (from 4.05% to 7.74% in 2008 and 2013 respectively). • On the other hand, the cost associated with such collections declined from 3.8% to 2.7% respectively during the same period (2008-2013). • LGAs collection of own source revenues reached Tshs. 252.5 billion during the financial year 2013/ 2014. Such collections were equivalent to 66% of the annual estimates of shillings 383.5 billion.
ii.	Tax Exemptions	<ul style="list-style-type: none"> • Exemptions amount to more than Tshs. 600 billion or 14.1% of the expected actual collections. • They are granted to large investors. • TIC and private companies alone scoop more than 50% of the stated exemptions. • Exemptions have negative impacts to GDP. For instance, between 2004 and 2013 the GDP has risen from 5.8% to 6.9%, being only 1.1% increase for over 10 years. • Exemptions' average to GDP rose from 2.1% in 2007/2008 to 4.3% in 2011/2012. 	<ul style="list-style-type: none"> • Large tax payers enjoy VIP treatment in such a way that, they are allowed to get exemptions of almost everything including entertainments such as cable (DSTV) connections and subscription fees; accommodation; clothes; and toilet papers. • Tax exemptions rose from Tshs. 1.48 trillion during the 2012/ 2013 financial year (FY) to Tshs. 1.82 trillion in 2013/2014 FY. That mean, a total of Tshs. 0.34 trillion (being 18.7%) of exemptions was just within a year. • The VAT relief as stated above were estimated to claim nearly 50% of all exemptions. The relief had increased to Tshs. 676 billion from Tshs. 571 billion during the same period (2012/2013 to 2013/ 2014). Therefore, VAT exemptions were increased by Tshs. 105 billion, being 15.5% increase within a year.



Status of Taxation Rights – Corporate Sector in Tanzania			
S/ No.	Sub- Category of Right(s)	Performance Indicators	
		Year 2013 (Selected Hints)	Year 2014
iii.	Illicit Financial Flow	<ul style="list-style-type: none"> Tanzania loses about USD 1 trillion a year through illicit financial flows. The illicit flows stem from corruption among politicians and officials; international crimes; and commercial transactions involving transfer pricing. 	<ul style="list-style-type: none"> Developing and emerging economies (including Tanzania) lost USD 6.6 trillion in illicit financial flows from 2003 through 2012. Further, the illicit outflows increased at a staggering average rate of 9.4 percent per year—roughly twice as fast as global GDP. Tanzania in particular, loses about Tshs. trillion (USD 1.87 billion) in tax revenue every year through cheating (evasion or avoidance of taxes and smuggling of minerals) by dishonest companies in import and export. Gemstones from Tanzania worth Tshs. 635 billion (USD 352,777,778) are smuggled out of the country annually through illegal channels, ending up in either Kenya or India (among other countries). Kenya imported tanzanite valued at USD 100 million while India documented annual imports of tanzanite gemstone worth USD 300 million, while the official export figures for tanzanite in Tanzania was only USD 38 million per annum which is equivalent to only 20% of the total tanzanite gemstones being mined from the Mirerani, Manyara region.
iv.	Use of Electronic Fiscal Device (EFD)	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> The use of Electronic Fiscal Device (EFD), was highly rejected by local traders in 2014 due to the following reasons given (by this study's respondents), namely: i) low awareness amongst traders on importance of EFD (30.8%); ii) some traders influenced others to reject EFD (10.3%); iii) EFD machines are very expensive to purchase (28.2%); iv) EFF system is exploitative of our businesses, reduces profits (20.5%); v) other reasons (10.3%).

Source: LHRC, Corporate and Human Rights Studies of 2013 and 2014.

CHAPTER FIVE

CORPORATE SOCIAL RESPONSIBILITIES

5.1 Introduction: Meaning and Essence of CSR

The international human rights treaties generally do not impose direct legal obligations on business enterprises. The legal liability and enforcement for the infringement by businesses of international human rights standards are therefore defined largely by national law (on land, environment, labour, and others as stated in other chapters of this report).¹⁶¹ However, on the face of it, human rights and business enterprises seem worlds apart, and like oil and water, an impossible mix, but in reality it proves otherwise. Every day brings more tangible and visible evidence of how closely rights and today's enterprises are linked, the key perspective being corporate social responsibility (CSR).¹⁶²

Principle 11 of the UN Guiding Principles on Business and Human Rights (GPBHR) of 2011 states that:-

[The] 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.

Principle 12 of GPBHR, 2011 further states that, 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 ILOs' Declaration on Fundamental Principles and Rights at Work. Therefore, CSR as a concept is embodied within national and international legal frameworks.

The current approach to CSR has evolved over period of time. In the past companies tended to approach social issues through their CSR programmes. However, many CSR initiatives are undertaken selectively, based on what the company voluntarily chooses to address. This is what mostly happened in Tanzania. That is, what to offer, when, where and how as CSR is wholly and exclusively within the discretion of the Company. This is due to the fact that, Tanzania still lacks policy or legal framework

161 OHCHR (2012) the Corporate Responsibility to Respect Human Rights: An Interpretive Guide. UN: Geneva. Page 10.

162 Lozano, J. M and Maria Prandi (Undated) Corporate Social Responsibility and Human Rights. Chapter Ten. Page 183.



on CSR.

A human rights approach to CSR requires companies to respect all human rights; they do not have the option of picking and choosing to deal with only those issues with which they feel comfortable.¹⁶³ As such, under the current approach, companies are duty bound to pay regards to the impacts of their activities on environment, consumers, employees, communities and other members in the public sphere.¹⁶⁴

The extent of compliance to each and every of these elements has been discussed under other parts of this report. Therefore, this chapter concentrates on the ‘social’ aspect of CSR, to consider the extent to which corporate companies have been ‘giving-back’ to the community by contributing directly and indirectly to the socio-economic activities in Tanzania.

5.2 Current Trends: CSR as Optional Liability

The literatures cited above generally state that, under current trend in which CSR is supposed to be implemented, corporate companies are no longer viewed as mere producers and suppliers of products and services; rather, as part of the communities in the globalized economy. Their roles extend to consider the needs of the surrounding communities.

Therefore, even if companies are operating within the law; and, even if the current legal framework on corporate sector is silent on CSR, what citizens need could justify what companies should offer for them. Otherwise, they could have legal but not social licence to operate in their areas. On this new approach, the study observed and ascertained that:

- *Discretionary powers to give-back to the community, makes some of the investors arrogant*

The ‘giving-back’ to the community by companies remained to be optional. It all depended on how members of the community or their leadership ‘paraded’ themselves to lure the company in order to support their developmental projects. In most cases, companies agree to pay it as a condition for acquiring land or social acceptance (social licensing); but, not as an affection to help out communities within which companies operate. Therefore, when they consider themselves as settled and operating well, they

163 Business and Human Rights Resource Centre, ‘Business & human rights - A brief introduction.’ <http://business-humanrights.org/en/business-human-rights-a-brief-introduction>, accessed on 23rd December, 2014.

164 LHRC (2013) Human Rights and Business Report in Tanzania – 2013: Taking Stock on Labour Rights, Land Rights, gender, Taxation, Corporate Accountability and Environmental Justice in Tanzania. LHRC: Dar es Salaam. Page 107.

can arrogantly refuse to support anything which communities would request. For instance, on 17th February 2014, the leadership of Ikuti Street, Iyunga Ward, Mbeya, wrote a letter with reference numbers MC/KT/JY/IK/VOL1/815 to the Plant Manager, CocaCola Kwanza Limited, Mbeya to request for the company's contribution in the construction of the Street office. The company did not support them.

- *Increasing social unjust instead of promoting social wellbeing*

Some of the investors have been using coercive measures to deal with some members of the communities who happen to be in conflict with them over certain issues instead of providing support to the said communities. For instance; Mr. Jilala Ngwesa, a resident of Mwanawala village, Imalo-Songwe, Rujewa Mbarali district, Mbeya, was allegedly shot by employers of Highland Estates Limited in 2009. The suspects, despite being known, have not been arrested by the police. On 19th January, 2014 a Member of the Parliamentary Committee ordered him to submit evidence to the police.¹⁶⁵ However, even after submission of the evidence, the fate of this case remained unknown according to the anonymous informer (not the victim). Obviously, the family or friends or other community members would not feel comfortable to have such kind of investors around.

Moreover, the Mwadui-based mining company came up with a project dubbed '*Kwa Pamoja Tunaweza*' ('together we can') where they support some of the villages surrounding the mines.¹⁶⁶ However, its relationship with the community members was reported to have been appalling. For instance, on 9th January, 2013 one of the villagers was shot on his leg by police officers and Zanet private guards who provided security services at the mine. There were also several other similar allegations reported by the media against the mining company. The team tried to balance the information by contacting the Relations Officer, Mr. Joseph Kulasa, on 9th November, 2014. However, the said officer refused to comment anything about the alleged killings and assaults.

165 A copy of the letter from Village Executive Officer with reference numbers MWL/UT/1, dated 20th January, 2014 to the police in-charge, Mbarali, Rujewa. The letter was availed to the study team by anonymous respondent (not the victim or any of the local government leadership).

166 A local government leader told the study team on 9th November, 2014 that, the mining company offers Tshs 4 million (USD 2,200) to each village after every three (3) months as its contribution to the community development.



LHRC is concerned that, in most cases, such incidents are not reported or are underreported because the media conceals information due to what was alleged to be bribes from mine owners. Some of the law enforcers were also facing same allegations. For instance, there was no follow up over the January 2013 incident as of December 2014 even after it had been reported to the regional police office in Shinyanga. The impunity seemed to be highly prevailing due to economic influence of some of the investors. Investors seemed not to be concerned with what happens on the ground as a result of their deeds.

The study also observed that, such nasty incidents happen in most of the investment areas with impunity because the existence of investors was backed by the central government (or LGAs at district level) and not local communities in which they operate. The gain influence because some of the government official receive bribes (commonly known as ‘10% deal’ in Tanzania).



Picture 14: A media cartoon depicts a government official receive 10% from the investor

As such, even if the local community were to reject them, they could still continue with business under full supports from law enforcers and political leaders. There is a need to conduct special investigation to cover all investment areas, which were claimed to be notorious in human rights violations.

Apparently, because of such incidents and other factors, majority (78%) of the villagers and urban dwellers interviewed during the study, were not seeing any tangible benefits of having investors in their areas. A resident of Mtwara, who was met with the lead researcher in Dar es Salaam in December 2014, said that:-

‘...[y]es, they have managed to silence us from demanding retention of gas in Mtwara. The whole thing now is militarized, if you dare to speak, you would be in trouble. Probably such benefits could be seen in future; but what we witness is destructions of our cashew nuts trees, digging up our farms, and other unacceptable things. If this is what we can call investment, then, we should consider it as a jinx rather than a blessing!

It should be noted that, Principle 13(a) of the GPBHR, 2011 clearly states that, the responsibility to respect human rights requires that business enterprises avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur.

Adverse effects of such incidents mentioned include increased in number or intensity of conflicts between investors and local communities in such a way that, the investor ‘gives-back’ to the community as part of its CSR and the value of his or her support is overshadowed by bad things which happen.

The following table indicates the nature and magnitude of investment-related conflicts which happened between the local communities and the investors in the sampled regions.

Table 44: Types and Magnitude of Investment Conflicts between Local Communities and Companies

N=447 [Members of the Communities]	Frequency	Percent
Torture by Companies’ Security Guards/ Police Officers	55	12.3
Alienated from Land in Favour of Investments	91	20.4
Environmental Pollutions	125	28.0
Assaults and Killings	17	3.8
Restricted to Access to Some of the Areas.	44	9.8
Other Reasons	100	22.4
No Type of Investment-related Conflicts	15	3.4
Total:	447	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Therefore, there are so many investment-related conflicts which occur in various areas main ones being; land alienation (20.4%); environmental pollutions (28.0%); and mistreatments by the companies’ security guards (12.3%). Furthermore, the situation could have been different in terms of creating a social accord (non-judicial grievance preventive mechanisms of possible conflicts) between investors and



local communities, if there was feedback mechanism to and from the investor and communities respectively. However, as the table below shows, only 10.1% of residents around investment areas stated that, such social accords were taking place between investors and community members.

Table 45: Presence of Non-Judicial Grievance Preventive Mechanisms – Public Responses

N=447 [Community Members Responses]	Frequency	Percent
Yes, the Investor Receives Complaints and Work on the Issues	45	10.1
Yes, the Investor Receives Complaints but does not Work on the Issues	103	23.0
No, there is no such Arrangement	169	37.8
Not Sure	130	29.1
Total:	447	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Therefore, 80% of investors either did not have the mechanism of engaging with the community to sort out social or legal disputes amicably; or their mechanisms were unknown or weak. Paragraph 2 of the commentary for GPBHR, 2011 clarifies that, *‘addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation.’*

Furthermore, Principle 13(b) of GPBHR, 2011 states that, *‘the responsibility to respect human rights requires that business enterprises 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.’* Principle 15(c) and (d) require the business enterprises to have ‘policies’ and ‘processes’ to ‘identify, prevent, mitigate and account for how they address their impacts on human rights’; and to ‘enable the remediation of any adverse human rights impacts they cause or to which they contribute.’

This is why this study ventured to assess the availability of such non-judicial grievances preventive mechanisms.

5.3 Status of Giving-Back to the Community: Affection or Advertising?

The study observed that, at least 98% of the companies visited, had contributed something to the community apart from employment opportunities. Some of the companies and the nature of their contributions were:-

Table 46: Examples of Companies and their CSR' Contributions

S/ No.	Kind/ Type of Support	Companies and Regions
1	Environmental Management	Cocacola/ Bonite (Arusha); Pepsi (Mwanza);
2	Public Facilities (e.g Roads; Bus Stand)	Mtibwa Sugar (Morogoro); ¹³ Cocacola (Mwanza); Mwatex (Mwanza);
3	Agriculture (e.g inputs)	TPF (Arusha);
4	Water	TANICA (Kagera); ¹⁴ Kilifrola (Arusha); TBL (Mwanza); DCMC (Dodoma);
5	Education	Vicfish (Mwanza); ICA Investment (Kagera); ¹⁵ Mtibwa Sugar (Morogoro); TANICA (Kagera); TANECU (Mtwara); ASAS (Iringa); Tanga Cement (Tanga); ¹⁶
6	Health and Food	Tanga Fresh (Tanga); Mamujee (Tanga); ¹⁷ Neilkant (Tanga); ¹⁸
7	Children, Women and Elderly	Kilifrola (Arusha); Dangote (Mtwara); Mamujee (Tanga);
8	Sports and Entertainment	Vodacom (National); TBL (National); Pepsi (Mwanza); Cocacola (National); Airtel (National); NMB (National); Serengeti Breweries (National);
9	Routine contributions	Kagera Tea (Kagera); ¹⁹

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

LHRC considers this as a very good and positive trend towards full realization of CSR especially on the aspect of social interactions as stated above. The study noted that, the practice of 'giving back' to the community had the following salient features, which were common to almost all companies:-

- a) Supports are directed more on education (36.3%), followed by health (27.7%), road infrastructures (19.2%), and water (16.3%) as the figure below shows (in frequencies and not percentages).



Figure 1: Frequency – Most Supported CSR’s Community Projects – Public Opinion



Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

- b) Supports were mostly directed to ‘conspicuous’ areas where the visibility was higher than areas which were considered as invisible.



Picture 15: Donations by the Coca-Cola Company in Mwanza and Arusha regions in November 2014.

- c) Giving to the community because the company has earned excessive or wants to clear some space for next production or reducing the ‘mess’ from the production sites.



Picture 16: Community members collect fertilizers from the TPF Factory in Arusha in 2014.

5.4 Performance Indicators on CSR

The following is the summary of key findings in a form of performance indicators on the enforcement of CSR in Tanzania. The summary depicts a comparative picture between CSRs’ rights situation for the years 2013 and 2014. It should be noted that, not all ‘performance indicators’ used in 2013 were reassessed in 2014. However, at least all main indicators have been compared between the two years in order to measure the progress of enforcing CSRs.

Table 47: Comparison of Performance Indicators on CRS between 2013 and 2014 Years – LHRC Studies

Status Enforcement of the CSR and Rights – Corporate Sector in Tanzania			
S/ No.	Sub- Category of Right(s)	Performance Indicators	
		Year 2013 (Selected Hints)	Year 2014
i.	Regulation	<ul style="list-style-type: none"> No law on CSR in Tanzania. Many CSRs were promises which are not documented. The way in which CSRs were made raise questions as to whether it is really for giving back to the community or merely making their companies visible. 	<ul style="list-style-type: none"> No law on CSR in Tanzania. The ‘giving-back’ to the community by the companies remained to be optional. It all depended on how members of the community or their leadership ‘paraded’ themselves to lure the company in order to support their developmental projects. In most cases, companies agree to pay it as a condition for acquiring land or social acceptance (social licensing); but, not as an affection to help out the communities within which the companies operate.



S/ No.	Status Enforcement of the CSR and Rights – Corporate Sector in Tanzania		
	Sub- Category of Right(s)	Performance Indicators	
		Year 2013 (Selected Hints)	Year 2014
ii.	Benefits	<ul style="list-style-type: none"> • Extent to which investors contribute through CSRs in Tanzania is unknown. • In most cases, CSR are social licenses. 	<ul style="list-style-type: none"> • Majority (78%) of the villagers and urban dwellers interviewed during the study, were not seeing any tangible benefits of having investors in their areas. • Majority of them (investors) have also been using coercive measures to deal with some members of the communities who happen to be in conflict with them over certain issues. • At least 80% of the investors did not have either the mechanism of engaging with the community to sort out social or legal disputes amicably; or their mechanisms were unknown or weak.
iii.	Trends and Essence	<ul style="list-style-type: none"> • CSR were not always positive. 	<ul style="list-style-type: none"> • At least 90% of the companies visited, had contributed something to the community apart from employment opportunities. • Nature and types of supports as CSR include; i) supports are directed more on education (36.3%), followed by health (27.7%), road infrastructures (19.2%), and water (16.3%) as the figure below shows (in frequencies and not percentages); ii) supports were directed mostly to the ‘conspicuous’ areas where the visibility was higher than areas which were not considered as not visible; iii) giving to the community because the company has earned excessive or wants to clear some space for next production or reducing the ‘mess’ from the production sites.

Source: LHRC, Corporate and Human Rights Studies of 2013 and 2014.

CHAPTER SIX

ENVIRONMENTAL JUSTICE AND PRIVATE BUSINESS ACTIVITIES

6.1 Introduction: Legal Framework on Environmental Justice

The environmental justice usually refers to the belief that all citizens, regardless of ethnicity or socio-economic class, should equally share the benefits of environmental amenities and the burdens of environmental health hazards.¹⁶⁷ It is the pursuit of equal justice and equal protection under the law for all environmental statutes and regulations without discrimination. This concept applies to governmental actions at all levels as well as private industry activities.

The principles governing environmental justice are enumerated under various international and national legal instruments. The international instruments regulating external environmental issues include; the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal, 1989; and the Rio Declaration on Environmental and Development, 1992.¹⁶⁸ Moreover, there are several instruments which regulate internal working environment (occupational health and safety). Such instruments include; the ILO's Occupational Safety and Health (OSH) Convention, 1981 (No. 155); the Occupational Health Services Convention, 1985 (No. 161); the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187); and the Occupational Safety and Health Recommendation, 2006 (No. 197). Other non-ILO conventions include, the Protocol on Health in the Southern Africa Development Corporation (SADC), 2009.

Article 4 of the OSH Convention, 1981 requires each Member to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment.¹⁶⁹ Article 16(1) of the same Convention requires employers to ensure machinery, equipment and processes are safe and without risk to health; and Article 16(3) requires employers to provide, where necessary, adequate

167 University of Washington, 'Environmental Justice.' Accessed on 29th December, 2014 via: <http://deohs.washington.edu/environmental-justice>

168 Other instruments which regulate external environment are; the Protocol on Liability and Compensation to the Basel Convention, 1999; the Convention on Persistent Organic Pollutants (Stockholm), 2001; the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam), 1998; the Vienna Convention for the Protection of the Ozone Layer, 1985; the Convention on Biological Diversity, 1992; the Cartagena Protocol on Biosafety, 2000; and the Convention on International Trade in Endangered Species, 1973.

169 Same as Article 3(1) of the Promotional Framework for OSH Convention, 2006.



protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects on health.

Moreover, regarding the environment-development nexus, Article 1 of the Rio Declaration, 1992 states that human beings are at the centre of concerns for sustainable development.¹⁷⁰ Article 3 calls for sustainable utilization of environmental resources. That is possible only if environmental protection is considered as an integral part of the development process (Article 4) such as having investments for national development.

Tanzania has enacted a number of laws; and has also formulated regulations and policies on environmental management as a way to domesticate and enforce international treaties on environmental justice. Such laws, regulations and policies include; the Environment Management Act (EMA), 2004;¹⁷¹ the regulations made under EMA, 2004;¹⁷² the National Environmental Policy of 1997; ; the Factories Act, 1950 (and its 2001 regulations¹⁷³; the Occupational Health and Safety (OHS) Act, 2003;¹⁷⁴ and the Occupational Health and Safety National Policy of 2009.¹⁷⁵

Generally, such instruments (international and national levels), lay down several principles on environmental justice.¹⁷⁶ Some of such principles are:-

- a) Sustainable development, integration and interdependence;
- b) Transparency, public participation and access to information and remedies;
- c) Prevention;

170 Moreover, Article 10 of the Rio Declaration states that, the environmental issues are best handled with the participation of all concerned citizens, 30 at the relevant level. Therefore, they are, therefore, entitled to a healthy and productive life in harmony with nature.

171 Act No. 20 of 2004.

172 Such regulations include; Environmental Impact Assessment (EIA) and Audit Regulations, 2005 (made under Sections 82(1) and 230(2)(h) and (q) of EMA, 2004; and the Environmental Management (Water Quality Standards) Regulations, 2007 (made under Sections 143, 144 and 230(2)(s) of EMA, 2004). Other regulations which appears on NEMC's website as draft regulations are; the Environmental Management (Solid Waste Management) Regulations, 2009; the Environmental Management (Hazardous Waste Control and Management) Regulations, 2008; and the Environmental Management (Solid Quality Standards) Regulations, 2007.

173 Known as Factories (Occupational Safety and Health Services Fees) Rules, 2001. G.N No. 111 of 15th June, 2001.

174 Act No. 5 of 2008.

175 The policy requires that all inspections have to be properly planned in considerations of OHS risks and compliance inspections are initiated and prioritized based on imminent danger of death or serious physical harm; Workers' Complaint; Programmed Inspections or Follow-up Inspection to determine if previous cited violations have been abated.

176 Quoted from: UNEP, Training Manual on International Law, (Undated). Pages 39 and 40. Accessible through, <http://www.unep.org/> viewed on 30th December, 2014.

- d) Polluter Pays Principle;
- e) Access and benefit sharing regarding natural resources;
- f) Common heritage and common concern of humankind;
- g) Good governance.

This chapter assesses the extent to which such instruments and principles were enforced by the law enforcers and adhered to by corporate companies' supervisors and workers in 2014. The basis of argument lays on the fact that, there is a relationship between environmental conservation, protection and human welfare. Therefore, the main interest of this chapter is to see how best law enforcers, corporate companies made efforts to protect human rights while they were interacting with the environment.

The chapter is divided into two main sections. Section one assesses enforcement of internal environmental standards within the corporate companies' workplaces; and the second section is on assessment of the enforcement of the external environment standards (between corporate companies and surrounding communities).

6.2 Occupational Health and Safety Rights: Internal Working Environment

6.2.1 OSHA in 'Shambling' Motion to Enforce Standards

Section 3 of the OHS Act, 2003 defines 'occupational health' to include occupational hygiene, medicine and biological monitoring. The occupational health deals with all aspects of health and safety at workplace and has a strong focus on primary prevention of hazards.¹⁷⁷ As such, occupational health is aimed at, *inter alia*, promoting and maintaining the highest degree of physical, mental and social well-being of workers in all occupations. The main custodian and enforcer of OHS issues in Tanzania are the Occupational Health and Safety Authority (OSHA).¹⁷⁸

As it has been further assessed under Chapter Eight of this report, an assessment of OSHA's efficiency and efficacy in managing OHS issues at workplaces all over the country is challenged by a number of factors, some being; institutional capacity which hinder OSHA from reaching out to all companies across the country; and lack of

177 World Health Organization, 'Occupational Health: Declaration on Occupational Health for all.' Available at: http://www.who.int/occupational_health/publications/declaration/en/, accessed on 3rd December 2014.

178 OSHA was established under the Executive Agencies Act, 1997 (Act No. 30 of 1997). The primary objective of OSHA is to ensure creation and maintenance of ideal work environments which are free from occupational hazards that may cause injuries or illness to all employees in work environment. This will be achieved by promoting occupational health and safety (OHS) practices in order to reduce accidents and occupational diseases, and ultimately achieve better productivity (Ref.: <http://www.osha.go.tz/>, accessed on 22nd December, 2014).



sufficient collaboration with other regulatory authorities.

With regards to institutional capacity, the latest available statistical information of 2013 published by the National Audit Office (NAO)¹⁷⁹ revealed that, OSHA had only 53 workplace inspectors for the whole country and only 11 vehicles as the table below shows:-

Table 48: Number of Staff and Vehicles – OSHA

Financial Year	Number of Staff		Number of Vehicle
	Inspectors	Supporting	
2008/9	35	19	5
2009/10	34	22	6
2010/11	53	31	11

Source: NAO Report, 2013. Page 16.

As of June 2014, the workplaces (companies) were estimated to be more than 27,500.¹⁸⁰ Therefore, based on this (un-updated figure), 1 OSHA Inspector monitored at least 520 workplaces. The law requires these inspectors to inspect ‘all’ workplaces in order to assess whether they are complying with the law. Obviously, that is a heavy workload which could not guarantee any efficiency and total coverage. For instance, the Minister for Labour stated in June 2014 that, OSHA managed to visit only 3,626 (being 24.1%) out of planned 15,000 workplaces for ‘general workplace inspections’ during unidentified period of time. However, OSHA managed to visit 90.2% of the 13,565 targeted workplaces for special investigations.¹⁸¹

The low capacity, which is attributed to the few number of inspectors and facilities, has also a direct implication to other performance indicators of OSHA. As it was reported by a similar report of 2013 by the LHRC, so far OSHA was able to register only or slightly above 24% of all workplaces in Tanzania. Therefore, at least 75% of workplaces across the country were currently operating without being registered. That reality also suggests that, OSHA has not been able to strategically encourage

179 NAO, A Performance Audit Report on the Management of Occupational Health and Safety In Tanzania, January 2013.

180 Source: Hotuba ya Mheshimiwa Cecilia Daniel Paresso (MB) Msemaji Mkuu wa Kambi Rasmi ya Upinzani Wizara ya Kazi na Ajira Kuhusu Makadirio ya Mapato na Matumizi kwa Mwaka wa Fedha 2014/2015 [Shadow Minister, Labour Ministry’s Budgetary Speech of the 2014/2015 FY]. Accessed on 23rd December, 2014 from: <http://chadema.or.tz/hotuba-ya-msemaji-mkuu-wa-kambi-rasmi-ya-upinzani-wizara-ya-kazi-na-ajira/>

181 See: Hotuba ya Waziri wa Kazi na Ajira Mheshimiwa Gaudentia M. Kabaka (MB) Akiwasili-sha Bungeni Makadirio ya Mapato na Matumizi ya Fedha kwa Mwaka 2014/2015 (the Budget Speech of the Minister for Labour, Hon. Gaudentia M. Kabapa (MP) for the Financial Year 2014/2015). 24 June, 2014, Dodoma Tanzania. Paragraph 37(a) (not paged).

voluntary compliancy – for employers in workplaces to volunteer registration rather than to be coerced by the agency.

6.2.2 Some Reflections of Compliance Standards in 2014

The ILO report (undated)¹⁸² showed that, every 15 seconds, a worker dies from a work-related accident or disease; and that, every 15 seconds, 153 workers have a work-related accident worldwide. Furthermore, according to the same report, an estimated 2.3 million people die every year from work-related accidents and diseases. More than 160 million people suffer from occupational and work-related diseases, and there are 313 million non-fatal accidents per year.¹⁸³ In economic terms, the ILO has estimated that, more than 4% of the world's annual GDP is lost as a consequence of occupational accidents and diseases.

The report further stated that, deaths and injuries at workplaces, take a particularly heavy toll in developing countries, where a large part of the population is engaged in hazardous activities, such as agriculture, fishing and mining.

Indeed, when accidents or diseases occur at workplace, normally the responsibility shifts from the employer to the victim family members. The Tshs. 108,000 (USD 60) paid as compensation for injury under the current laws, could not sustain an injured person even for a month. In most cases, it (that money) is spent for medical services and runs out even before the injured worker gets well, to his or her normal health.

Regarding compliance of OHS at national level, most of the companies visited during the study had OHS policies which were formulated between 2013 (30%) and 2014 (70%) probably in response to the legal requirements or recommendations made by LHRC last year via similar report to this one. Such companies included; the Nyakato Steel Millis Limited (Mwanza); the New Dodoma Rock Hotel (Dodoma); the Tanzania Poultry Farms Limited (Arusha); and the Mamujee Products Limited (Tanga). Some of them had their policies published in English and others Kiswahili or both languages. Moreover, it was noted that:-

- a) The reviewed 'policies' are generally one page documents made as 'instructions' to the workers on what to do in order to protect themselves from hazards;¹⁸⁴
- b) Almost all those 'policies' did not specify employers' responsibilities on OSHA

182 ILO, 'Safety and Health at Work', <http://ilo.org/global/topics/safety-and-health-at-work/lang-en/index.htm>, accessed on 21st December, 2014.

183 Note, most of the suffering caused by such accidents and illnesses to workers and their families is incalculable.

184 For instance, the TPM (1998) Limited's policy, which was approved for use in May 2004, is a single page document detailing what the company plans to do regarding enforcement of OHS rights and responsibilities.



- issues as the law requires;
- c) All these ‘policies’ reviewed did not incorporate implementation strategies and definite timeframe for accomplishment of the policy statements or objectives or plans; and
 - d) Some of the ‘policies stated employers’ implementation strategies but not safeguard rules for workers to adhere to.

LHRC advises OSHA and regulatory authority of OHS issues to devise standard minimum rules to guide policy formulation according to the economic sub-sector, due to inconsistencies of enforcing OHS rights and duties at workplaces.

More than 60% of employers interviewed stated that they have documented OHS policies or rules at their workplaces in 2014. The remaining 40% did not have the same as the table below shows.

Table 49: Whether the Employer has Documented OHS Policies/ Rules -

N=58 [Employers’ Responses]	Frequency	Percent
Yes	35	60.3
No	12	20.7
Not Sure	11	19.0
Total:	58	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

The employers were asked to produce policies of the OHS policies to the study team and less than 10% were able to do so. Moreover, less than 15% had displayed such policies at conspicuous areas at workplaces.

Having such policies in place is just an initial step towards reinforcing the OHS standards at workplaces. What matters the most is ‘how’ such standards are enforced and to ‘what’ extent. This issue was assessed by considering workers’ sentiments on various OHS indicators, mainly; presence of first aid facility; having protection gears; presence of ventilations at workplaces; light; water flow; washrooms (hygiene); and fire control. The following were workers’ responses:-

Table 50: Workers’ Sentiments on OHS Standards at their Workplaces

N=429 [Workers]	First Aid Facility	Tools/ Gears	Presence of Ventilation	Light	Water Flow	Wash-Rooms	Fire Control
Very bad (0 - 25%)	17.9	12.1	6.3	8.4	8.9	8.9	14.5
Bad (25 - 50%)	28.7	33.6	23.5	20.5	21.4	26.8	24.9
Average (51 - 75%)	27.0	31.0	36.4	33.3	32.9	31.7	31.5
Very good (76 - 100%)	26.3	23.3	33.8	37.8	36.8	32.6	29.1
Total:	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

The trend of responses as the table above shows suggests an improvement in compliance of OHS standards at workplaces. However, this fact should be taken with precautions that, majority of workers were not aware of the exact OHS standards under the law. For instance, the fact that there is a window it could not necessarily mean that there is ‘ventilation’ or ‘light.’ Having seen this as a challenge, TPWAU prepared and published the training manual on OHS at workplaces¹⁸⁵ for its members. The said manual explains in details all legal requirements, workers’ rights and somehow, responsibilities of employers.



Picture 17: Employees of Mtibwa Sugar in action with proper protection gears in November 2014.

¹⁸⁵ Known as ‘*Kitabu cha Mafunzo Juu ya Afya na Usalama Sehemu za Kazi.*’ It is undated. It covers a lot of things including definitions of key terms and issues to insist on during OHS trainings.



The study came across a number of incidents whereby, some of the workers got injured or died due to poor OHS conditions at their workplaces. Some of the injury incidents, which are already covered in chapter two of this report,¹⁸⁶ included

- i) Ms. Maria Patasi Tarimo of Allience One Tobacco Limited (Morogoro), who had part of her hand chopped off by the machine at workplace;
- ii) Ms. Edna Hamisi Danga a lady who sustained injury to the right hand while operating a machines as an operator at Mamujee Products Limited (Tanga);
- iii) Mr. Ali, whose finger was chopped off by the machine he was operating in one of the Arusha-based companies; and
- iv) A lady worker at Mamujee Products Limited (Tanga), who had her skin severely grooved due to chemical intrusion into her body caused by lack of protection gears.

Apart from injuries, some of the workers died due to severe injuries sustained at workplaces. The A-to-Z Industries, Kisongo, Arusha, could be taken as an illustration. It was reported by the media that, at least two workers of this industry died between January and October 2014 due to ‘accidents’ in their workstations. The media mentioned Mr. Elius Nditi, who was found dead inside a water pit within the industry on 13th August, 2014 and Mr. Eric Mathayo (25 years), who died after he was knocked by a heavy machine (at Sterlinger department) on 11th October, 2014.¹⁸⁷

The death of Mr. Mathayo was clarified by the management of the industry as an ‘*unfortunate accident*. The employer issued a press statement and said that, ‘*Mr. Mathayo died during an accident that involved the top plate of a baling machine which snapped and fell on him as he was working near it.*’¹⁸⁸

LHRC is concerned that, while all these incidents were occurring across the country, there was no record on legal measures taken by OSHA apart from inspecting and conduction trainings at workplaces. It is therefore suggested that, OSHA inspectors should conduct special inquiries under Section 8 of the Occupational Health and Safety Act, 2008 and proceed on taking appropriate measures against those who will be found in breach of OHS standards in all regions where workplaces incidents of injury, illness or death have been reported.

186 Covered under Paragraph 2.5 titled, ‘Workmen Compensations and Social Securities.’

187 Jamii-Forum, ‘Kiwanda cha Vyandarua A to Z Arusha Chakithiri kwa Mauaji ya Wafanyakazi Wake.’ <http://www.jamiiforums.com>, posted on 14th Ocotber, 2014 at 18:55, accessed 23rd December, 2014.

188 Marc Nkwame, ‘Arusha Firm Clears Air on Worker’s Death.’ Daily news (Government Newspaper), 16th October, 2014. Accessed online through <http://www.dailynews.co.tz/index.php/local-news/37171-arusha-firm-clears-air-on-worker-s-death>, on 23rd December, 2014.

There is a need to strengthen OSHA's capacity to ensure that, all workplaces in Tanzania are registered as soon as possible.

6.3 Protection of Surrounding Environment

The Environmental Management Act (EMA), 2004 is the main law which governs environment in Tanzania. The law is supported by a number of regulations mentioned above. Section 3 of EMA, 2004 among other things, defines 'environment.'¹⁸⁹

Section 4(1) provides the right to clean, safe and healthy environment to all. Section 6 requires every person (including corporate companies) living in Tanzania to take a duty to safeguard and enhance the environment. Sections 81 and 101 require conducting of Environmental Impact Assessment (EIA) and Environmental Audit (EA) prior to the commencement or financing of the project. Sections 106, 109, 110 and others make it an offence to pollute environment for instance by emitting pollutants, rubbish, waste putrid solid, hazardous substance, chemicals, and others to the environment including water streams.

The overall manager of environmental issues in Tanzania is the National Environmental Management Council (NEMC). It was established under Section 16(1) of EMA, 2004. Section 18 provides for the functions of NEMC, which include reviewing and recommending approval of EIA; and to carry on EA.

According to the UN Economic Commission for Africa (UN-ECA),¹⁹⁰ environmental pollution, in particular, land degradation, is a serious problem in Eastern Africa, Tanzania inclusive. Focusing mainly on land degradation, UN-ECA mentioned over-cultivation and deforestation as amongst several attributing factors to degradation in the region.

This study concurs with UN-ECA findings that environmental degradation is a reality in Tanzania. Apart from land degradation, environment is polluted through other ways, in particular, air and water pollutants. As explained below, such pollutions occur in different ways, including deforestation (search of firewood for operating factors); and discharging of waste substances without being treated. Such factors are illustrated below.

189 Section 3 of EMA, 2004 defines 'environment' to include, '*physical factors of the surroundings of human beings including air, land, water, climate, sound, light, odour, taste, micro-organism, the biological factors of animals and plants, cultural resources and the social economic factor of aesthetics and includes both the natural and the built environment and the way they interact.*'

190 UN-ECA, 'Natural Resources and Conflict Management: The Case of Land.' Ad-Hoc Expert Group Meeting (AEGM), Study, Dar es Salaam Tanzania, February 2012. Page 38.



- *Deforestations*

The study observed that, some of the investors were found to use firewood as sources of energy in their factories. It was not immediately established whether such tendencies were caused by insufficient electricity supply in their investment areas or nature of their production needed firewood or they used woods as way of mitigating production costs. One of the industries found in use of firewood was the Siera Industry, in Babati district, Manyara region.¹⁹¹



Picture 18: A pile of firewood outside the Siera Industry in Babati on November 2014.

The Mtwara – Dar es Salaam natural gas pipeline construction project has claimed several hectares of natural trees and farmers plantations. The ‘cost-benefit’ analysis or consideration did not consider it as vital to pay attention to the forests and trees which would be destructed along the way. What seemed to matter the most was to see the pipeline arrives in Dar es Salaam.

191 Corporate Human Rights Compliance Assessment, Manyara Field Report of 2014 (LHRC’s Report I), Page 16.



Picture 19: Traditional coconut trees cleared to pave way for gas pipelines from Mtwara in November 2014.

Some of the places affected in Mtwara due to natural gas pipeline project were Likonde, Mangamba, Ziwani, Namindondi, Madimba, and Msimbati.¹⁹² Moreover, Mdenga area in Mtwara was also among places observed to have been polluted. It was observed that there was an industrial waste dump by the Ophir Company. The water from this dam was used by the community for domestic works but farmers from this area used it for irrigation and for their livestock. Children from the area were most of the time found playing and swimming at the dam.¹⁹³



Picture 20: A fenced dam at Mdenga improvement

192 Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2014 (LHRC's Report I). Page 28.

193 MRENGO 'Monitoring and Evaluation Report on Impact of the Discovery of Oil and Natural Gas with the Extractive Industry to Societies of Mtwara.' Pages 1 to 10. Note, 'MRENGO' stands for 'Mtwara Region NGOs Network.'



- *Overuse of Water and Water Pollution*

Moreover, the study observed that, the Lake Manyara was about to ‘disappear’ if appropriate measures are not taken to limit overuse of its water. The over-consumption of this water source was attributed to a constant quest for food and water for domestic and commercial activities.¹⁹⁴ Lack of better options forced residents around the Lake to make trade-off between immediate household needs (water and food) and environmental sustainability. This study did not manage to get the population trend around this Lake, yet it could appear that, new ‘migrants’ were moving there after being alienated from their lands due to increased land pressure.



Picture 21: A Researcher from the LHRC looks at a dried part of Lake Manyara in November 2014 with fish carcasses scattered around.

The Nyamongo village, in Tarime district in Mara region was yet to be released from the ‘yoke of pollutions’ from the in-village North Mara Gold Mines Limited (NMG). This was despite of the so many follow-ups, public outcries and evidences in support of villagers’ claims of being polluted by harmful chemicals from the mines. The study found that, artificial hills created by mining activities still existed to signify continuity of extraction of minerals. The hills emitted dusts that enter into the villagers’ houses and water sources. For instance, a lady told the team that, their only water source was contaminated with ‘*Madini Tembo*’ - kinds of chemicals from mines in such a way that, its (water) turned brownish¹⁹⁵ as the picture below shows:-

194 Corporate Human Rights Compliance Assessment, Manyara Field Report of 2014 (LHRC’s Report I), Page 17.

195 Corporate Human Rights Compliance Assessment, Mara Field Report of 2014 (Report I), Page 16.



Picture 22: Polluted water at Nyamogo stream as captured in November 2014.

The contaminated water stream flows as far as to other neighbouring places at Matongo and other wards and villages. The study team observed that such water emitted foul smell. This effect has extended from environmental to economic and social concerns; since, before the establishment of the mine, villagers around used the water from the stream for domestic and commercial activities. However, at the time of this study, it was no longer the case.

It was realized from the field that, responsible authorities were quite aware of what was going on in this and other areas. One of the environmental officers in Musoma municipality said that, *'more than 99% of companies in this region adhere to the legal requirements including EIA.'* That is the case even for government companies such as MUWASA, which allegedly launched its water projects at Bwire village (lakeshore) without undertaking EIA.

LHRC strongly urges NEMC and other authorities to use their legal mandate to address this long overdue challenge once and for all. It is astonishing to note that, the mining company was not doing enough to rectify the situation despite repeated reminders to address the situation as stated above. On the other hand, all responsible authorities were and are also hesitant to take legal actions against polluters. Such hesitation continues to cost the welfare of thousands of people in Mara region.

Other investment activities (apart from mining) were also found to be notorious in air and water pollutions. For instance, the Kagera Fish Limited was allegedly directing its sewage stems to a water stream flowing towards the Lake Victoria. It was further stated, such waste water contained some poisonous substances which could affect



human being or resources in the lake in particular fish.¹⁹⁶



Picture 23: Waste water allegedly flowing from a fisheries company to Lake Victoria (L); and Pollution of Lake Victoria, Kirumba Mwanza (polluted by different companies/individuals, Nov. 2014 (R)).

The ICA Investment Limited in Kagera was also alleged to have been emitting air and water pollutions to residential places surrounding it.

- *Pollutions as Wilful Tendencies: Total Disregard of the Surrounding Communities*

Furthermore, it was observed that, some of the companies were yet to install waste-management systems especially in areas where production activities were taking place close to residential areas. For example, the Tanzania Breweries Limited in Arusha, was found to have been discharging waste water into a stream used for human consumption as depicted in the picture hereunder:-



Picture 24: Waste water from a brewery plant (L); (R) Children around the vicinity bathing within the same stream.

196 Human Rights Corporate Compliance Assessment Kagera Field Report of 2014 (LHRC's Report I). Page 66.

- *Land Degradation*

Plantations, large and small scale miners were found to be notorious of land degradation caused by their investment activities. Laws mentioned above require investors to redeem the exhausted land after their production so that such could be used for other activities. It seems however that NEMC and TMAA have not been able to enforce such requirements in a way that most of the miners left open mining pits and piles of sand-hills without redeeming (levelling) the land. In most cases, the degraded land becomes useless once mines are closed as depicted in pictures below:-



Picture 25: Open pits at the Merelani mines left without leverage in November 2014.

Articles 13, 35 and 36 of the Rio Declaration, 1992 (cited above) require States to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. Indeed, Tanzania has responded to that directive by enacting EMA, 2004. For instance, Sections 7(3) provides for ‘polluter-pay-principle’ (PPP), whereby, a person (or company) causing adverse effects on the environment is obliged to pay for in full social and environmental costs of avoiding, mitigating, and/or remedying those adverse effects.



LHRC is concerned that, PPP has not been effectively enforced. Taking an example of mining sites as illustrated above, the adversely affected people have never been compensated in Mara, Geita or elsewhere in Tanzania. Moreover, despite repeatedly demand to stop pollutions caused by the mining activities especially in Tarime and Geita, nothing tangible has been done as yet. As such, LHRC reminds NEMC, TMAA and other authorities to use their huge legal mandates given under the laws to address these long overdue challenges. Apart from closing down textile industries every time they pollute environment, it is time also to take stern measures against these (mining) economically powerful companies.

According to the field data, at least 53% of the companies visited during the study admitted that, they did not have any arrangement for compensating residents adversely affected due to their production processes.

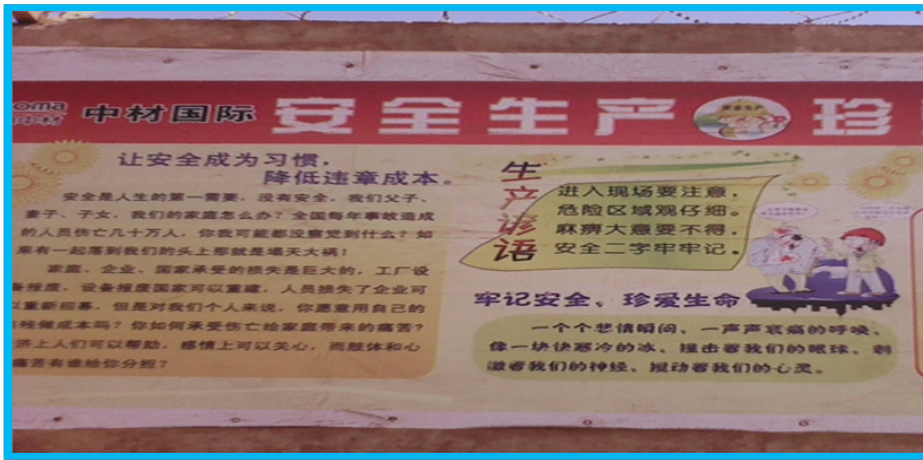
Table 51: Presence of Arrangements to Compensate Residents for Pollution Caused

N=58 [Employers' Responses]	Frequency	Percent
Yes	27	46.6
No	31	53.4
Total:	58	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

On the other hand, the study noted that, majority of the companies did not put in place preventive measures such as safety caution signs (SCS) as an alert for the general public for any adverse effect which might be caused by using contaminated water or approaching nearby dangerous production places. Therefore, it could appear that, some of the people used contaminated water simply because they did not have any notification of the adverse effects.

The Dangote Industry, Mtwara, seemed to have SCS. However, such warning instructions were in an 'alien' language to most ordinary Tanzanian to grasp the meaning of the same as the picture below shows.



Picture 26: Purported instructions in Chinese outside a fence-wall of the Dangote Industries (T) in Mtwara.

The majority of Tanzanians are Swahili speakers. A few of them could speak English but definitely not the language depicted above. This could only be applicable if all workers belonged to that ethnicity or were persons knowledgeable of the same. The OHS rules be it as it may, require all safety instructions to be placed in conspicuous places and to be in popular language or languages which workers or visitors of workplace could easily understand and take precautions.



Picture 27: Purported Instructions in Chinese language inside the Dangote Plant in Mtwara in 2014.

- *Awareness and People's Involvement in Environmental Issues*

Section 7(3) (e) of EMA, 2004 requires involvement of the people in the development of policies, plans and processes for the management of the environment. Paragraph



(f) of the same section gives the general public the right to information on all matters pertaining to environment.

Part of this study ventured to assess the extent to which the general public was involved in environmental management, in particular, in relation to investments in their respective vicinities. The field data revealed that, only 6.5% of members of the public were involved in EIA when the investment projects were established in their areas in recent years.

Table 52: Level of Participation to EIA – General Public Responses

N=447 [Public Responses]	Frequency	Percent
Yes	29	6.5
No	363	81.2
Not Sure	55	12.3
Total:	447	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

On their parts, only 12.6% of workers interviewed stated that, they were involved in the monitoring or inspection of the working conditions of the companies they were working with.

Table 53 :Level of Participation to Environmental Inspections – Workers Responses

N=429 [Workers' Responses]	Frequency	Percent
Yes	54	12.6
No	375	87.4
Total:	429	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Therefore, the majority (87.4%) have not been involved. Lack of involvement of the general public and workers in the environmental management issues has a direct implication to the enforcement of the law. A person, who is unaware of his or her rights, could not demand for it. This is why, only a few complaints were lodged to NEMC and other regulatory authorities despite the prevalent of pollution incidents across the country. Statistics in Mwanza show this reality:-

Table 54: Status of Reported Environmental Incidences in Mwanza Region

Year	Number of Reported Incidents
2009	3
2010	3
2011	01
2012	3
2013	4
2014	4

Source: NEMC, Mwanza, November 2014.

Therefore, only 18 complaints were lodged at NEMC in Mwanza between 2009 and 2014 –an average of only 3 cases per year. The trend, as stated above, does not correspond with the current situation whereby Lake Victoria shoreline and other places in the region were found to have had different forms of pollutions from fishing and other industries.

6.4 Public Benefits to Natural Resources: Case of Wildlife in Tanzania

Endowment of unique biodiversity and natural resources in Tanzania is unparalleled. The natural ecosystems of forests, savannah, pastures and rangelands, wetlands, rivers, lakes and the Ocean with which Tanzania is endowed, form the basis of the natural resource wealthy. Measures of biodiversity in terms of ecosystem types, species richness and endemism show that the country is very rich biologically and is one of the fourteen-biodiversity hotspots in the world.¹⁹⁷

The single most pressing challenge facing Tanzania and other Africa’s governments is to harness the continent’s increasing wealth and use it to improve people’s lives. As stated in chapter one of this report, majority of Tanzanians are extremely poor including those living in or around the natural resources such as minerals, forestry and wildlife.

¹⁹⁷ URT, Fourth National Report on Implementation of Convention on Biological Diversity (CBD), July 2009. Pages 1 to 17. Furthermore, the reports states that, out of 25 globally known biodiversity hotspots, Tanzania harbours six: the Eastern Arc old Block-Mountain Forests (Usambara, Nguru, Uluguru, Ukaguru and Udzungwa Mountains); the Coastal forests (e.g. Pugu, Rondo); the Great Lakes for Cichlid fishes (lakes Victoria, Tanganyika and Nyasa); the marine coral reef ecosystems; the ecosystems of the alkaline Rift-Valley Lakes (e.g. Natron and Eyasi); and the grassland savannas for large mammals, for example, harboring the famous Serengeti National Park. About a quarter of Tanzania’s land area is covered by unique ecosystems in form of forest reserves, national parks and game reserves.



The Africa Progress Panel's report¹⁹⁸ on natural resources highlighted challenges for managing African resources to include:-

- a) Illegal and unethical practices: The report states that, in the case of oil and minerals, much of the illegality is centred on the enrichment of national elites and their interaction with multinational companies engaging in practices, such as transfer pricing that facilitate tax evasion, opaque concession trading and the under-reporting of profits;¹⁹⁹
- b) The political failure on the part of African governments: That is, many African governments have not put in place policies needed to harness resource wealth to development. More broadly, the governments have failed to develop accountable and transparent institutions, to share resource wealth equitably, and to publish the terms agreements – opening the door to corruption, opaque deals and large revenue losses;
- c) Capacity constraints: On this report says that, to manage revenue wealth and curtail plunder, governments require institutional capacity. The resources have to be identified and valued. Most of the companies' activities operating on a global basis have to be monitored. Furthermore, the terms of concessions and the allocation of permits have to be framed in the light of national priorities.

As such, Africa loses billions of money each year through poor management of natural resources, money which could be an answer to the continent's food shortages and dire poverty levels.²⁰⁰

As for Tanzania in particular, the wildlife sector was named to be critically important to the country's economy. According to the study report,²⁰¹ the legal trophy hunting industry alone was worth more than USD 50 million in 2013. However, weaknesses in regulatory institutions in the country and oversight mechanisms have resulted in a very different outcome from that of other jurisdictions, such as Botswana and Namibia. For instance, the elephant populations were currently being devastated by intensive poaching.

198 Africa Progress Panel (2014) Grain Fish Money: Financing African Green and Blue Revolutions, African Progress Report of 2014. Pages 86 and 87 Accessed from: http://www.africanprogresspanel.org/wp-content/uploads/2014/05/APP_APR2014_24june.pdf, on 22nd December, 2014.

199 Note the opaque company operations managed through tax havens are at the centre of the system. The fisheries equivalent is the plunder of Africa's oceans through opaque and illegal fishing practices.

200 Mail Guardian, 'Africa Loses \$50bn a Year in Plundered Resources' May 2014. Accessed from: <http://mg.co.za/article/2014-05-07-africa-loses-50bn-a-year-in-plundered-resources>, on 22nd December, 2014.

201 Varun Vira and Thomas Ewing, 'Ivory Curse: The Militarization & Professionalization of Poaching in Africa. April 2014. BORN-FREE, USA & C4ADS. Pages 3, 92 and 93.

Moreover, according to the same report (cited above), in 1976, the Selous-Mikumi ecosystem had 109,419 elephants, by 2009 but the number had dropped to 38,975, and today, an aerial survey conducted by the Frankfurt Zoological Society in late 2013, estimated a remainder of 13,084.6.²⁰² This represents a 66% decline over the last four years and a decline of nearly 90% from the seventies. The declines have also been registered by other elephant populations in Tanzania with a fall in Ruaha-Rungwa from 35,461 to 20,090, a decline of 36.5%, from 1990 to the present day. Therefore, it is unfortunate that, Tanzania is no longer home to one of the largest elephant populations in Africa.



Picture 28: Elephants killed by poachers

Political elites in Tanzania were named to have been aiding the industrial-scale depletion of elephant population.²⁰³

Moreover, the World Bank²⁰⁴ and other analysis articles²⁰⁵ showed that, Tanzania was gaining relatively little from tourism sector despite its many wildlife protected areas which is more than any other country in Africa. For instance, the average tourist spends approximately USD 290 per day for an average stay of 11 days. However,

202 Also see: Boniface Meena, 'Poaching: New report puts Tanzania on 'list of shame.' The Citizen (Tanzania), 24th April, 2014.

203 This was stated in the report titled: '*The Ivory's Curse: The Militarization and Professionalisation of Poaching in Africa Report of 2014*', accessed on 23rd December, 2014 through: http://www.bornfreeusa.org/a9_ivorys_curse.php.

204 World Bank (WB), Tanzania Economic Update: The Elephant in the Room - Unlocking the Potential of the Tourism Industry for Tanzanians. WB. The report can be accessible as full version through, <http://www.worldbank.org/en/country/tanzania/publication/tanzania-economic-update-increasing-tourism-for-economic-growth>, accessed on 17th December, 2014.

205 Daniel Semberya, 'Why Tourism Fails to Generate Optimal Benefit for Tanzanians?', The Guardian (Tanzania), 16th February, 2015. Page 7.



all these payments do not go to local operators and suppliers. Approximately 80% of tourists in Tanzania arrive from either Europe or the United States of America with about 64% subscribing to package tours organised through travel agencies located abroad. Therefore, only a portion of the spending remains in the host country.

6.5 Performance Indicators on Enforcement of Environmental Justice

The following is the summary of key findings in a form of performance indicators on the enforcement of the environmental justice in Tanzania. The summary depicts a comparative picture between environmental justice situation for the years 2013 and 2014. It should be noted that, not all ‘performance indicators’ used in 2013 were reassessed in 2014. However, at least all main indicators have been compared between the two years in order to measure the progress of implementation of stated environmental justice.

Table 55: Comparison of Performance Indicators on Implementation of Environmental Justice between 2013 and 2014 Years – LHRC Studies

Status of Enforcement of Environmental Justice – Corporate Sector in Tanzania			
S/ No.	Sub-Category of Right(s)	Performance Indicators	
		Year 2013 (Selected Hints)	Year 2014
i.	Occupational Health and Safety (OHS)	<ul style="list-style-type: none"> • OHS issues still affect workers daily to a very large extent. • Occupational diseases continue to be a leading cause of work-related deaths at global level. A total of 2.02 million deaths are caused by various types of work related diseases every year which corresponds to a daily average of more than 5,500 deaths. • Only 24% of existing workplaces in Tanzania are currently registered by OSHA; and that, no effective strategies have been put in place to identify unregistered ones. 	<ul style="list-style-type: none"> • According to ILO, every 15 seconds, a worker dies from a work-related accident or disease; and that, every 15 seconds, 153 workers have a work-related accident worldwide. Furthermore, an estimated 2.3 million people die every year from work-related accidents and diseases. More than 160 million people suffer from occupational and work-related diseases, and there are 313 million non-fatal accidents per year. In economic terms, the ILO has estimated that, more than 4% of the world’s annual GDP is lost as a consequence of occupational accidents and diseases.



	Occupational Health and Safety (OHS)	<ul style="list-style-type: none"> • More than 75% of corporate companies operate without assurance of workplace OHS regulations for their workers. • Only 34% of workers in private companies undergo periodic medical examinations. 	<ul style="list-style-type: none"> • At least 75% of workplaces across the country were currently operating without being registered for OHS. That reality also suggests the fact that, OSHA has not been able to strategically encourage voluntary compliancy – for the workplaces themselves to volunteer registration rather than wait to be coerced by OSHA. • OSHA had inadequate workers and facilities. E.g. had only 53 workplace inspectors and 11 vehicles for the whole country (in 2013). • As of June 2014, workplaces (companies) were estimated to be more than 27,500. Therefore, based on the number of inspectors, 1 OSHA Inspector monitored at least 520 workplaces. • OSHA managed to visit only 3,626 (being 24.1%) out of the planned 15,000 workplaces for ‘general workplace inspections’ during unidentified period of time. However, OSHA managed to visit 90.2% of the 13,565 targeted workplaces for special investigations. • Most of the companies visited during the study had OHS policies which were formulated between 2013 (30%) and 2014 (70%) - probably in response to the legal requirements or recommendations made by LHRC last year via a similar report to this one.
ii.	Environmental Pollutions, EIA and SIA	<ul style="list-style-type: none"> • Depends on the nature of investments. • Mining companies and plantations are number one for land degradation. Textile and food processors/factories 	<ul style="list-style-type: none"> • Environmental pollution, land degradation, is a serious problem. The land degradation, over-cultivation and deforestation were amongst several attributing factors to degradation in the region.



	Environmental Pollutions, EIA and SIA	<p>are leading in water pollutions.</p> <ul style="list-style-type: none"> At least 85% of community members where investments have been established were not involved (EIA/SIA) and 8.3% were not aware of what was going on during the establishment of the projects. 	<ul style="list-style-type: none"> Some of the investors were found using firewood as sources of energy in their factories. The Mtwara – Dar es Salaam natural gas pipeline construction project has claimed several hectares of natural trees and farmers plantations. Lake Manyara is bound to ‘disappear’ if appropriate measures are not taken to limit overuse of its water. Some of the companies have not been able to install waste-management systems. Only 6.5% of members of the public were involved in the EIA/SIA when investment projects were established in their areas. Only 12.6% of workers interviewed stated that, they were involved in the monitoring or inspection of the working conditions of the companies they were working with.
iii.	Control of Natural Resources	<ul style="list-style-type: none"> Local communities have limited or have no access to natural resources but have been constantly blamed for polluting them. No strong control of sustainable utilization of natural resources such water, fish, forest, wildlife, etc which are steadily depleting. 	<ul style="list-style-type: none"> In 1976, the Selous-Mikumi ecosystem had 109,419 elephants, but by 2009 the number had dropped to 38,975, and today, an aerial survey conducted by the Frankfurt Zoological Society in late 2013, estimated a remainder of 13,084.6. This represents a 66% decline over the last four years and a decline of nearly 90% from the seventies.
	Control of Natural Resources	<ul style="list-style-type: none"> Effects of climate change are vivid; caused by huge investments such as irrigational farming which drains a lot of water; tobacco and tea plantations which demand a lot of landmass for cultivation and forest for firewood. Policy and legal frameworks are very weak to control Tanzanian resources. 	<ul style="list-style-type: none"> Declines have also been registered in Tanzania’s other elephant populations, with a fall in Ruaha-Rungwa from 35,461 to 20,090, a decline of 36.5%, from 1990 to the present day. Therefore, Tanzania is no longer a home to one of the largest elephant populations in Africa.

Source: LHRC, Corporate and Human Rights Studies of 2013 and 2014.

CHAPTER SEVEN

PROMOTION AND PROTECTION OF GENDER-RELATED RIGHTS IN CORPORATE SECTOR

7.1 Introduction: Gender Patterns In Corporate Business Sector

The practical relationship between gender²⁰⁶ and trade (business sector) is normally very complex. The gender relations intervene in all economic activities and processes, and are apparent in aspects such as conditions of work, wage and employment levels, productivity, innovation, consumption patterns, control over assets and knowledge.²⁰⁷ Therefore, who to employ and under what conditions or treatments at business places (workplaces) are gender issues which happen every day in Tanzania and, may be, elsewhere around the world.

As for type of gender groups in business sector, existing data suggests that, majority of active gender economic groups in developing countries were women and youths. Most of them were engaged in the informal sector (as employees or self-employees). In some countries in Sub-Saharan African Country (Tanzania inclusive), virtually all of the female non-agricultural labour force is in the informal sector. Cultural barriers as further discussed below force women to opt for informalities including unpaid home-based works as way of running their families²⁰⁸ and subjecting themselves into low-paid casual works or informal employments.²⁰⁹

206 The term 'gender' refers to the social relationship or roles and responsibilities of men and women, the expectations held about the characteristics, aptitudes and likely behaviours of both women and men (femininity and masculinity) that are learnt change over time and vary within and between cultures (Ref.: TGNP (2006) Gender Mainstreaming in Development Policies and Programmes. Presentation Made During Policy Dialogue Seminar At ESRF on 11th May, 2006. <http://www.africapay.org/tanzania/home/labour-law/fair-treatment/discrimination>, accessed on 30th December, 2014.

207 Tran-Nguyen, Anh-Nga and Americo Beviglia Zampetti (Editors) 'Trade and Gender: Opportunities and Challenges for Developing Countries. UN/ UNCTAD, 2004. Page 335.

208 Verick, Sher 'The Impact of Globalization on the Informal Sector in Africa.' Economic and Social Policy Division, United Nations Economic Commission for Africa (Undated). Page 9.

209 Kipobota, Clarence (2015) Constraints and Opportunities of Mainstreaming Extra-Legal Practices into Policy Framework: Case Study of Women Food Vendors, Ilala Municipality. Msc. PPA Thesis, Ardhi University: Dar es Salaam. Page 13.



The gender differences between gender groups involve both physical and emotional factors. They are essentially characteristics that influence male and female behaviour at workplace. These influences may stem from psychological factors, such as upbringing, or physical factors, like an employee's capability to perform job duties. Differences may also stem from gender stereotypes related to men and women, for instance, a stereotypical assessment is that women belong at home while men work and provide support. This often leads to sex discrimination at workplace.

Moreover, the stated cultural barriers or negative attitude and belief about women's traditional role have some significant impact on women entrepreneurs and workers as follows:

- i) Not being able to access appropriate resources;
- ii) Being especially vulnerable to harassment from male officials at workplaces and business men;
- iii) Lack of adequate education;
- iv) Limited or no experience of formal employment; and
- v) Limited network especially business related networks.²¹⁰

As this study has confirmed, due to stated cultural and other factors, majority of women (and other vulnerable groups) in business sector discriminately engaged in inferior positions such as feeders of raw materials into machines; receptionists; cleaners; stage dancers; and hotel or bar attendants to entertain male customers sexually as the comic strip 'picture' below illustrates.

210 UNCTAD and UNDP 'Mainstreaming Gender into Trade and Development Strategies: Case of East Africa.' Series No. 5 of 2008 (UNCTAD/DITC/TNCD/2007/14). Pages 18-20; Jagero, N and Ikandilo Kushoka 'Challenges Facing Women Micro Entrepreneurs in Dar es Salaam, Tanzania.' International Journal of Human Resource Studies. 2011, Vol. 1, No. 2. Page 2; Joekes, Susan 'Gender, Property Rights and Trade: Constraints to Africa Growth', In, Keneth King and Simon Mcgrath (Eds.) (1999) Enterprise in Africa – Between Poverty and Growth. IT Publications: London. Page 51; AND; Chijoriga, M and D. Cassimon (1999) Micro Enterprises Financing: Is there a Best Model?, in Rutashobya L. K and Olomi, D. R (eds), African Entrepreneurship and Small Business Development, Dar es Salaam, DUP (1996) Ltd. Page 2.



Figure 2: Comic Strip: The ‘disgrace’ of being a bar employee

The gender issues at workplaces, in particular against discriminations are enumerated quite extensively by a number of international legal instruments. Such instruments include; the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111); UN Convention on the Rights of Persons with Disability (UNCPRWD), 2006;²¹¹ Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 1979; and the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (Maputo Protocol), 2003; and SADC Protocol on Gender and Development of 2008.

Article 27 of UNCPRWD, 2006 provides for the right of persons with disabilities (PWDs) to work, on an equal basis with others.²¹² Article 11(1) of CEDAW, 1979 requires States to take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights.²¹³ Sub-Article 2 of Article 11 of CEDAW, 1979 enlists some practices for women at workplaces including; non-dismissal of an employed

211 Article 2 of this Convention defines ‘discrimination on the basis of disability’ to mean, any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, and including, denial of reasonable accommodation.

212 That includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

213 Such rights, according to Article 11(1)(f) include the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.



woman on the grounds of pregnancy or marital status; and having special protection to employed women during pregnancy.

Article 1(1)(a) of the ILO Convention (1958) cited above defines ‘discrimination at workplace’ to include ‘*any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.*’ However, any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.²¹⁴

Article 2 of the same 1958’s ILO Convention No. 111, requires each to adopt policy measures appropriate to national conditions and practice in order to enforce equality of opportunity and treatment in respect of employment and occupation, with a view to eliminate any discrimination at workplaces.

Indeed, Tanzania has responded to all those international requirements by incorporating anti-discrimination provisions in various laws, including; the Constitution of the United Republic of Tanzania of 1977; ELRA, 2004; the Persons with Disabilities Act, 2010;²¹⁵ and the HIV and AIDS (Prevention and Control) Act, 2008.²¹⁶ Section 7 of ELRA, 2004 prohibits all forms of discriminations at work places including the gender-related ones (sex and disability).

This chapter makes a practical assessment on employers’ compliance to international and national gender-rights standards. It also addresses some issues relating to child labour as it was gathered from the field. Some empirical studies covering experiences of other countries have also been considered as a way of making comparative analysis of the situation across East African countries.

7.2 Situation of Women Engagement in Corporate Business Sector

Article 1 of CEDAW, 1979 defines discrimination against women.²¹⁷ Article 13 of the Maputo Protocol, 2003 requires States to make provisions which, *inter alia*, enforce and guarantee women equal opportunities in work and career advancement and other economic opportunities.

214 Article 1(2) of the same ILO Convention (No. 111 of 1958).

215 Act No. 2 of 2010.

216 Act No. 28 of 2008.

217 According to this provision, ‘discrimination against women’ shall mean ‘*any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*’

Such entitlements (under Article 13 of the Maputo Protocol, 2003), should include, access to employment; right to equal remuneration for jobs of equal value for women and men; transparency in recruitment, promotion and dismissal of women; and combat and punish sexual harassment at workplace.

Field data for this study suggests that, female workers face a number of challenges in the corporate business sector. Some of the challenges and reasons behind are already indicated at the first paragraph of this chapter. Generally, challenges can be grouped into two folds; one, those related to ‘entrance’ or gaining access to employment; and two, harsh working conditions once a few of them are employed. This study focused more on the second fold.

Regarding presence of harsh working condition, this study observed that, workplace gender based violence (WGBV) were still rampant in most of the companies visited. The nature, types and magnitude of WGBV varied from one workplace to the other. Despite the fact that 50% of the employers stated that they had some working policies or practical norms which prohibited WGBV, it seemed that such policies or norms (if any) were not working favourably for women.

As the table below shows, sexual violence were named to be the most common WGBV (scored 53.4%), followed by physical assaults (24.1%); and threats (22.4%).

Table 56: Kinds of Workplace Violence Occurring Between Workers and Management

N=58 [Employers Responses]	Frequency	Percent
Physical Assaults	14	24.1
Sexual Harassments	31	53.4
Threats (including bullying and intimidations)	13	22.4
Total:	58	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

For their part, the workers of some of the companies visited during the study, said that, there were numerous forms of GBV between workers themselves or workers and employers, including; physical assaults (6.8%); sexual harassment (21.7%); bullying (67.7%); and sexual assault (1.2%) as the table below shows:-

**Table 57: Kinds of Workplace Violence Occurring Between Workers and**

N=429 [Workers Responses]	Frequency	Percent
Physical Assaults	29	6.8
Sexual Harassments (e.g. touching bottoms, insults)	93	21.7
Bullying and Threats (non-physical)	290	67.6
Sexual Assaults (including rape and sodomy)	5	1.2
Other Types	12	2.8
Total:	429	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Based from the figures above, it seems that the most common GBV are non-physical ones. This fact could suggest that workers and employers were becoming aware of the repercussion of committing GBV. However, there are so many incidents which go unreported due to threats, fear of losing jobs or lack of awareness of due legal process.

For instance, an anonymous respondent from Morogoro region who works for a tobacco company near the subway to Mazimbu campus told the research team in November 2014 that GBV takes different forms in their workplace. She alleged that:²¹⁸

We have three bosses at our working place who have been deliberately transmitting HIV to employees. The first one is a tall and white skinned guy. This person speaks openly that he ‘must die with dozens here’ (as he is apparently HIV positive). A woman who refuses to have a sexual conduct with him is fired on the spot. Thus, most women are forced to have a sexual conduct with him in order to protect their employment. Denying him means losing your job on spot. There is also another white skinned guy but a bit shorter than the other one. This is a shift ‘B’ officer. He has the same mannerism as those of the other officer. The third one is tall and black. He is a supervisor for the shift ‘B’ [T]hey have all vowed to ensure that, ‘*lazima tufe nao*’ (we must die with them). I really suggest that, these bosses should be immediately expelled or else they will continue to kill others. We may not be sure on whether they are HIV positive or not, all in all it is better that the company sacks them ..., as they still harass others sexually.

²¹⁸ The respondent put this story in writing and shared the same to the research team in November, 2014.

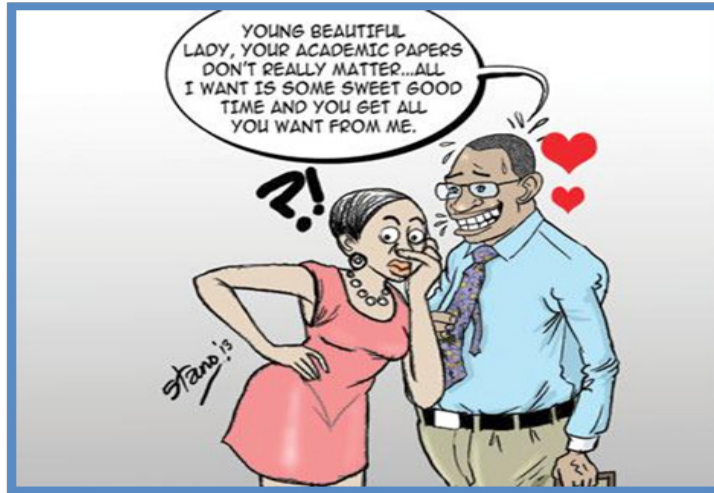


Figure 3: Comic Strip: Sextortion as way to get and retain Employment opportunity was stated to be common

Moreover, there are some organizations which welcome gender diversity and encourage the inclusion of both sex when making company decisions and offering promotional opportunities. However, other organizations discourage gender inclusion and promote bias at workplace.

In Mwanza, the study team heard a lot of GBV cases from some of the workers of the *Kiwanda cha Magodoro* (an industry which manufactures mattresses) and the Nile Perch Fisheries. The main gender-rights violations was discrimination of pregnant women where it was regarded that being so would mean production process slowing down and thus lowering the profit margin. Indeed, the Assistant Regional Secretary of TUICO Mwanza, confirmed to have intervened on this issue whereby, TUICO had already set a meeting with the management of the factory. The management of the company promised to rectify the situation.²¹⁹ However, the trend was reported to be the same as of November 2014 when this study was conducted.

Contrary to that illusion, some scholars have argued that, presence of gender differences normally add value and varying perspectives to an organization²²⁰ than those which discriminate some of the gender groups.

219 Corporate Human Rights Compliance Assessment, Mwanza Field Report of 2014 (LHRC) (Report I). Page 5.

220 Samantha Gluck & Demand Media (Undated) 'The Effect of Gender Discrimination in the Work Places.' Available at: <http://smallbusiness.chron.com/effects-gender-discrimination-workplace-2860.html>, accessed on 17th December, 2014.



7.3 Persons With Disability in Corporate Sector

Article 1 of UNCRPWD, 2006 and Section 3 of PWDA, 2010 define PWDs to include persons who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Section 7(1) of ELRA, 2004 requires every employer ‘to ensure that he or she promotes an equal opportunity in employment and strives to eliminate discrimination in any employment policy or practice.’ Moreover, Section 7(4)(l) of ELRA, 2004 specifically prohibits discrimination at workplace on basis of disability.

To ensure that all those ELRA, 2004 requirements on disability are specifically enforced, Section 31(1) of PWDA, 2010 directs that that every employer, public or private, shall, where there is a vacant post fit for a PWD and the person applies for the vacancy, give the employment to persons with disabilities who meet the minimum qualification for such an employment. Furthermore, Section 31(4) of PWDA, 2010 directs that, every employer shall submit an annual report to the Commissioner (for Social Welfare) on the employment status of PWDs employed in his or her office, workplace, institution or organisation. Section 43 of the disability law,²²¹ as it was extensively covered in chapter six of this report, requires employers to set a working environment, which; i) prevents disability to occur; and ii) universally and friendly accessible²²² for PWDs.

Regarding the prevalence of disability, ILO Report of 202 estimated that around 470 million of the world’s working age people have some form of disability. In Tanzania, it is estimated between 3.5 million people (7.6%) and 4.5 million people (9.8%) live with disability.²²³ The prevalence of disability rises with age with a sharp increase for

221 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 work 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 and advancement.

222 Section 3 of PWDA, 2010 defines ‘accessibility’ to mean enabling or allowing a PWD to have access directly or indirectly to benefits of public social services in all spheres of society and it includes access to information, communication and physical environment such as tactile and sign language, interpretation for deaf and deaf blind persons, .audio tapes, braille, large print, low I vision facilities, computerized information and programmes and making physical environment in buildings, public transport, roads and streets accessible for persons with disabilities.

223 Note that, the NBS (2009) Tanzania Disability Survey Key Results and Last Year GBS Review of 2008. NBS: Dar es Salaam, estimates PWDs to be 4.5 million, while the CCBRT Information ‘Why Disability’ available at <http://www.ccbtr.or.tz/disability/> (accessed 28th February, 2015) showed 3.5 million of Tanzanians are estimated to be PWDs.

persons aged 45 years and above; 46% of the population aged 80 years and above had activity limitation compared to only 3% for those below ten years of age. Low prevalence of disability among the population below 10 years may also be associated with the problem of identification as it is not very easy to identify disability status among young children. This requires further investigation within Tanzania as well as internationally.

This study has noted that, discrimination of PWDs at workplace is a challenge relevant to both developed and developing countries. For instance, according to the ILO sources, a survey carried out in France showed that less than 2% of those who had mentioned their disability in their curriculum vitae (CVs) were called for an interview. Therefore, PWDs are mainly recruited through temporary job agencies to ‘minimize risks’ for employers. A similar study conducted in 2013 by the LHRC on business and human rights revealed that, only 1% of the workers interviewed were actually PWDs employed in private sector by corporate companies.²²⁴

Discrimination of PWDs in workplace faces even those who are well educated. For instance, Mr. Fredrick Msigallah (43 year) pictured below, is a holder of a Master’s Degree but was quoted by other sources as saying that, he one day went for an interview in an office in Dar es Salaam only to be told at the reception that he had picked the wrong day to beg as no one was giving alms on that particular day. It was not until he told her that he was called for an interview, that the receptionist allowed him with apology.²²⁵



Picture 29: Mr. Fredrick Msigallah, a well-educated PWD who was also a Member of the Constituent Assembly in 2014.

224 LHRC (2013) Human Rights and Business Report in Tanzania – 2013: Taking Stock of Labour Rights, Land Rights, Gender, Taxation, Corporate Accountability, and Environmental Justice in Tanzania. LHRC: Dar es Salaam.

225 Quoted by: Stella Jimmy, ‘Challenges for People with Disabilities.’ The Guardian (Tanzania), 18th February, 2015.



A recent study conducted by CCBRT, the Radar Recruitment and Disability Aid Abroad,²²⁶ assessed the proportion of employed PWDs in education, health and private sectors and revealed that among all 24,552 teachers surveyed from all learning institutions (private and public alike) in Dar es Salaam, Mara, Lindi, Mbeya, Singida and Tabora only 519 equivalent to 2.1% were PWDs. The report showed further that, the exclusion of PWDs from the workplace, either through discrimination or inaccessible work environments, costs Tanzania USD 480 million every year, which is 3.76% of the country’s GDP.²²⁷

Apart from being discriminated, PWDs experience harsh working conditions. Most of the employers, including the government agencies, have failed to adopt friendly working environment. For instance, a field question to PWDs and non-PWDs workers on the presence of disability sensitive working environment at workplaces, received the following responses:-

Table 58: Presence of Disability Sensitive Working Environment – Workers’ Responses

N=429 [Workers’ Responses]	Frequency	Percent
Very Bad or Very Insensitive on Disability (0 - 25%)	137	31.9
Bad or Insensitive (25 - 50%)	119	27.7
Fairly Good or Fairly Sensitive (51 - 75%)	96	22.4
Very Good or Very Sensitive (76 - 100%)	77	17.9
Total:	429	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Therefore, at least 50% of t workers were of the views that, their working environment were either very insensitive (31.9%) or insensitive (27.7%) to disability rights as stipulated above. Note that, the majority (more than 95%) of those who were interviewed were workers who were not PWDs because there were only a few of them who were found working in private companies during the study. Therefore, the

226 CCBRT, Radar Recruitment & Disability Aid Abroad, ‘Employment of Persons with Disabilities in Dar es Salaam Tanzania: An Assessment of the Proportion of PWDs in the Workplace, 2010. CCBRT: Dar es Salaam. Accessed on 18th February, 2015 via: http://www.ccbt.or.tz/fileadmin/downloads/02_reports_publications/CCBRT_Disability_Employment_Survey.pdf

This survey found further that, the employment rate amongst persons with disabilities was as low as 0.7% of the total number of employees of the companies surveyed. The majority of the companies (54%) had not employed any PWD. Management responses revealed that one of the factors leading to this low rate of employment is lack of knowledge on where to recruit qualified PWDs.

227 CCBRT, ‘Why Disability?’ Accessed from: <http://www.ccbt.or.tz/disability> accessed on 18th February, 2015.

responses could have been different if the question was to be responded solely by PWDs. This is due to the fact that PWDs are more clued-up and feel the pinch of the situation they currently face.

There are only a few companies which have been able to depart from the odds, of discrimination against PWDs in recruitment and workplaces. One such employer is NAKUMMAT Supermarket, at Mlimani City, Dar es Salaam where the study team observed a person with albinism (PWA) serve in the supermarket as a fulltime employee.



Picture 30: PWAs (far left) who is also an employee at NAKUMMAT supermarket as captured in November 2014.

LHRC encourages other companies to emulate the trend and a good gesture shown by this company because disability is not inability.

7.4 Child Labour in Corporate Business Sector

The elimination of child labour has for a long time been a longstanding human rights discourse at international level. For instance, the ILO Minimum Age Convention, 1973 (No. 138) recites in its preamble, existence of child rights related conventions formulated from 1919 onwards.²²⁸ Apart from the 1973 convention, there are several other treaties which address child labour. The said treaties include, the Worst Forms of

228 Such conventions included: Minimum Age (Industry) Convention, 1919; the Minimum Age (Sea) Convention, 1920; the Minimum Age (Agriculture) Convention, 1921; the Minimum Age (Trimmers and Stokers) Convention, 1921; the Minimum Age (Non-Industrial Employment) Convention, 1932; the Minimum Age (Sea) Convention (Revised), 1936; the Minimum Age (Industry) Convention (Revised), 1937; the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937; the Minimum Age (Fishermen) Convention, 1959; and the Minimum Age (Underground Work) Convention, 1965.



Child Labour Convention, 1999 (No. 182); the Convention on the Rights of the Child (CRC), 1989; the African Charter on the Rights and Welfare of the Child (ACRWC), 1999; and their several protocols.

Article 15(1) of CRWC, 1999 states that, every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s physical, mental, spiritual, moral, or social development. Article 32(1) of CRC, 1989 states exactly the same. Article 1 of the 1973 ILO Convention requires States to design and apply national policies to ensure effective abolition of all forms of child labour and set the minimum age for employment.

Tanzania responded to the international call on child labour by adopting legislative and policy measures. Section 5 of ELRA, 2004; and Sections 78 and 79 of the Law of the Child Act (LCA), 2009 prohibit child labour or exploitative labour. The child is defined by the Law of the Child Act, 2009 to be a person who is under 18 years of age. Section 78(3) of LCA, 2009 clarifies what constitutes ‘exploitative labour.’ According to this provision, labour shall be construed as exploitative if:

- (a) It deprives the child of his health or development;
- (b) It exceeds six hours a day;
- (c) It is inappropriate to his age; or
- (d) The child receives inadequate remuneration.

This study has noted that, despite such comprehensive international and national legal framework on child or exploitative labour, cases of child labour still persist all over the world, especially in the investment areas. Ending or reducing such incidents has proven to be a tough task because it confronts much resistance, mostly, vested commercial interests as well as cultural or family attitudes.²²⁹



Picture 31: Young casual labourers (left and centre) at work, along Engira Road in Arusha. CRJE (EA) Co. Ltd hired the two boys allegedly said to be 17 years on November 2014.

²²⁹ For instance: ILO ‘The New ILO Convention and Recommendation: A Brief Guide’ (Undated), Page 5.

Most of the parents and guardians interviewed during this study stated that persistence of child labour was attributed to family's income poverty whereby, each member of the family was obliged to struggle for the daily 'family bread. However, LHRC believes that, presence of child labour is more connected to weakness in law enforcement than income poverty. For instance, based on qualitative data collected, Mbeya, Kilimanjaro and Manyara had few incidents of child labour due to the law enforcement being relatively effective compared to other regions.

Moreover, this challenge has to do with public awareness and consciousness of the rights of the child. Children will be saved from child labour bondage if corporate companies reject to employ them in their plantations or factories. The study observed that, a good number of companies were in the move to reject it through various initiatives including the adoption of internal policies and guidelines on child labour. For instance, 69% of the companies stated that, their human resource policies included a component on minimum age for employment (to be 18 years).

Table 59: Presence of Workplace Policies which Address Minimum Age – Employers' Responses

N=58 [Employers' Responses]	Frequency	Percent
Yes	40	69.0
No	10	17.2
Not Sure	8	13.8
Total:	58	100.0

Source: LHRC, Corporate and Human Rights Study, December 2014.

In that regard, all blames are now shifted to the parents, who wilfully go with their children to the plantations, mining sites and factories. Localization of enforcement of laws which prohibit child labour down to the grassroots level could be one of the viable solutions. The formulation of by- laws by villages or wards to prohibit child labour will be more practical than labour inspectors (sitting at district or regional level) to monitor a company in the rural setting.

During the year, the Minister responsible for Labour said that, some of the civil society groups, including the Plan International and WEKEZA were implementing projects on child labour. The latter managed to prevent a total of 3,016 children aging between 5 and 13 years from entering into hazardous work. A total of 1,611 (53.4%) were boys; and the remaining 1,495 (46.6%) were girls. Moreover, a total of 2,232 were rescued from hazardous work; out of whom, 1,137 (50.4%) were boys, and the remaining



1,095 (49.6%) were girls.²³⁰

Figures above suggest that child labour is still rampant in Tanzania. The fact that three (3) regions have more than 2,230 children working in hazardous areas means child labour in Tanzania is a serious case which needs a vigorous approach to address.

It is estimated that there were about 215 million children under 18 works full-time around the world in 2014. In Sub-Saharan Africa, Tanzania inclusive, 1 among every 4 children aged 5-17 work compared to other countries like Latin America, where 1 among every 10 children are engaged with work.²³¹

There have been no effective measures by the government of Tanzania to eradicate or reduce child labour in Tanzania. Most of what were seen on the ground as anti-child labour efforts, were actually done by CSOs in trying to complement what the government was supposed to be doing – without systematic national approach. It takes a real government commitment, including budgetary plans, in order to eradicate child labour in Tanzania.

7.5 Persons Living With HIV/AIDS In Corporate Sector

It is estimated that, 33 million people are affected with Human Immunodeficiency Virus (HIV) worldwide and that, Sub-Saharan Africa (including Tanzania), is the most heavily affected, accounting for around 70% of HIV and AIDS cases in the world.²³² Over two million (more than 72%) of the three million deaths in the world occur in this region.²³³ These two references mentioned that, most of the infections are occurring to those aged 15-49 years – the most productive age group as chapter one of this reports has clearly indicated. .

An estimated 1,411,829 million people in Tanzania Mainland live with HIV, of whom approximately 28% are children (0-14 years) and 11.2% are young people aged 15-

230 See: *Hotuba ya Waziri wa Kazi na Ajira Mheshimiwa Gaudentia M. Kabaka (MB) Akiwasili-sha Bungeni Makadirio ya Mapato na Matumizi ya Fedha kwa Mwaka 2014/2015* (the Budget Speech of the Minister for Labour, Hon. Gaudentia M. Kabapa (MP) for the Financial Year 2014/2015). 24 June, 2014, Dodoma Tanzania. Paragraph 23 (not paged).

231 Loveness J. Tendwa (2014) Child Labour, an on-going challenge for Tanzania. St. Augustine University of Tanzania, accessed from: <https://wewriteforrights.wordpress.com/2013/08/10/child-labour-an-ongoing-challenge-for-tanzanians/>, on 23rd February, 2015.

232 Atugonza, Erick Josiah (2009) Effectiveness of Workplace HIV Intervention Programme Among Private Companies in Dar es Salaam, Tanzania: MPH Thesis, Muhimbili University of Health and Allied Science: Dar es Salaam. Pages 1-3.

233 Nyblade, Laura et al (2003) Disentangling HIV and AIDS Stigma in Ethiopia, Tanzania and Zambia: ICRW: Zambia. Page 5.

24 years.²³⁴ According to the same report (TACAIDS, 2014), HIV prevalence generally remained disproportionately higher among women of all age groups than their men counterparts (6% among women and 4% among men). Moreover, an estimated 78,843 new HIV infections were occurring annually as of December 2013, whereby, approximately 45.1% of whom were men and 54.9% were women. Table 51 gives an overall summary of the national HIV/ AIDS trends.

Table 60: HIV and AIDS Prevalent Trend (Summary) - Tanzania Mainland

	2005	2006	2007	2008	2009	2010	2011	2012	2013
HIV Population									
Total	1,474,965	1,455,112	1,446,954	1,452,597	1,452,095	1,448,358	1,436,403	1,422,265	1,411,829
Male	641,807	633,879	630,696	633,319	633,391	630,868	618,283	605,945	596,180
Female	833,158	821,233	816,258	819,278	818,705	817,490	818,120	816,320	815,649
Prevalence ²⁰	7	6	6	6	6	6	5	5	5
New HIV Infections									
Total	133,176	127,899	120,793	112,250	107,047	97,428	83,787	83,801	78,843
Male	60,680	58,237	54,884	50,983	48,508	43,950	37,443	37,305	35,564
Female	72,496	69,662	65,909	61,266	58,539	53,478	46,344	46,496	43,279
Annual AIDS Deaths									
Total	140,013	133,128	115,306	93,779	95,388	89,987	85,175	87,801	79,338
Male	61,966	59,026	51,383	42,058	42,451	40,954	44,812	44,691	40,523
Female	78,048	74,102	63,922	51,720	52,937	49,033	40,362	43,110	38,815

Source: Tanzania Commission for AIDS, April 2014.²³⁵

Some literatures²³⁶ have shown that, stigma around HIV and AIDS persists so tenaciously because it is deeply enmeshed with

234 TACAIDS, National HIV and AIDS Response Report of 2014. April 2014. TACAIDS: Dar es Salaam. Pages 2-4.

235 TACAIDS, National HIV and AIDS Response Report of 2014. April 2014. TACAIDS: Dar es Salaam. Page 4.

236 In particular: Nyblade, Laura et al (2003) Disentangling HIV and AIDS Stigma in Ethiopia, Tanzania and Zambia: ICRW: Zambia. Page 15.



social and personal views, beliefs, fears and taboos around sex and death. Incomplete and contradictory knowledge of HIV fuels some of these beliefs and contributes to stigma.

At workplaces, as this study at hand could find out, apart from stigma, other most common HIV/AIDS related challenges included; i) discrimination; and ii) lack of HIV programmes at the workplace. These three factors (that is, stigma, discrimination and lack of workplace HIV programmes), have led to high silence level of one's HIV status. For instance, out of 450 workers interviewed during this study, none of them (0%) volunteered to reveal his or her health status, and that, none of the companies visited (0%) had a record of such persons.

Section 9 of the HIV and AIDS (Prevention and Control) Act, 2008²³⁷ requires every employer in consultation with the Ministry of Health and Social Welfare to establish and coordinate a workplace programme on HIV/ AIDS for employees under his or her control. Such programme should include a provision of gender response HIV and AIDS education, distribution of condoms and support of people living with HIV/ AIDS. The programme and policy should comply with the generality of Section 28 of the HIV/AIDS Act, 2008.²³⁸

LHRC suggests a need to review ELRA, 2004 in order to incorporate wider employers' responsibilities to HIV/ AIDS issues. For instance, the Act should ensure that, employees are provided with required services including voluntary counselling and testing (VCT); provision of peer education; condoms distribution; and awareness sessions at workplaces. LHRC itself has been a good example on this.

Addressing HIV/AIDS at workplaces as this report suggests, has a lot of meaning to the business of the company. For instance, it is estimated that, about 68% of the companies (in Tanzania) have lost staff because of HIV/AIDS related problems. This can be minimized by proper prevention of new infections and by treating PLWHA with respect and provision of medical care for them. In so doing, infected persons will remain productive while leading a normal life.²³⁹

Otherwise, awareness raising programmes on HIV/AIDS-labour associated rights is still highly needed. Those discriminated or stigmatized were not coming out for help to seek redress in judicial organs. For instance, it is now 7 years (in 2014) since the

²³⁷ Act No. 28 of 2008.

²³⁸ That provision states that, 'a person shall not formulate a policy, enact any law or act in a manner that discriminates directly or by its implication people living with HIV/ AIDS, orphans or their families.'

²³⁹ Atugonza, Erick Josiah (2009) Effectiveness of Workplace HIV Intervention Programme Among Private Companies in Dar es Salaam, Tanzania: MPH Thesis, Muhimbili University of Health and Allied Science: Dar es Salaam. Pages 1-3.

HIV/AIDS Act, 2008 came into being; but, there have not been even a single case which has been instituted in Court to claim for any of the plentiful rights enlisted in the law. Other judicial jurisdictions, in particular India and South Africa, have been approached several times to determine HIV/AIDS – labour related cases even though they did not have specific and comprehensive laws on HIV/AIDS as is the case in Tanzania.

For instance, the Court of India in 2002 determined a case of a *Petitioner vs. State Bank of India*,²⁴⁰ where the claimant alleged to have been denied of the employment opportunity. The Court held that, the petitioner could not be denied opportunity of employment on the basis of his HIV status. Moreover, it was held in the case of *Gary Shane Allpass Vs. Moikloof Estate (Pty) Limited t/a Moikloof Equistran Centre*²⁴¹ that denial of employment to the appellant because of living with HIV impaired his dignity and constituted unfair discrimination. Similar test cases are supposed to happen in Tanzania.

7.6 Protection of Local Small Producers and Traders

• Case of Kariakoo Market and Machinga Complex, Dar es Salaam

It took a century for current developed countries of Europe and Asia to develop economically in terms of macro and micro stances. They transformed from rudimentary economies to modern economic growth or industrialization. This systematic shift from a formerly dominant informal economy was attributed mainly by investments.²⁴² In 1980, poor countries were obliged to undergo some economic reforms in order to enhance their investments. The move meant to open up markets and services from abroad. This was the beginning of liberalization of an economy era.

As it has been argued further in chapter eight of this report, the liberalized market economy puts private sector in a driver's seat of economic management. Moreover, the liberal market has increased competition amongst the actors regardless of their sizes. Such situation appears to be very turbulent for small and medium enterprises (SME),²⁴³ which could not easily compete with multinational companies because of their financial capacity, lack of skills and support or legal protection from the government.²⁴⁴

240 Petition No. 1856 of 2002 X of Mumbai India Inhabitant.

241 The Labour Court of South Africa in Johannesburg, Case No. JS1 178/09.

242 Dervis, Kemal; Jaime de Melo and Sherman Robinson (1982) General Equilibrium Models for Development Policy. The World Bank: Washington, D.C. Page 2.

243 Nangu, Shilla, "Tanzania Economy: Structural Adjustment to What?" in The IFM Journal of Finance and Management, Volume 6, Number 2, January 1998, at pages 1, 2 and 3.

244 Kipobota, Clarence 'Unmerited Economic Competition Between Local SMEs and Foreign Investors: Reflection of Legal Protection in Tanzania' in, The Law Reformer, Law Reform



The SMEs which were predominantly occupied by the so called ‘the informal actors’, account for a large share of output and employment with estimates ranging between 40% and 60% of non-agricultural GDP. The sector (SME) makes up 48% of non-agricultural employment in North Africa, 51% in Latin America, 65% in Asia, and 72% in the Sub-Saharan Africa (SSA), which include Tanzania. Should the agricultural employment be included, the percentages in some countries like India and many SSA countries will shoot beyond 90%. The estimates for developed countries are around 15%.²⁴⁵

Despite that reality, LHRC is concerned that, the sector (SME) is not adequately supported or protected by the government or the current legal framework in the same way in which ‘multinational’ and ‘big’ investments are treated. As indicated in chapter three of this report, foreign or ‘big’ companies enjoy massive tax exemptions and other incentives including security, legal fees, accommodation of their managers, purchase of toilet papers, etc. Ironically, incentives which foreign companies enjoy are not granted to small producers and traders in Kariakoo Market or elsewhere in the country.

Article 1(1) of the UN Declaration on the Right to Development, 1986 *inter alia*, states that, the right to development is an inalienable human right and that, everyone is entitled to participate in, contribute to, and enjoy economic, development, in which all human rights and fundamental freedoms can be fully realised. Article 2 of the Declaration of 1986 states that a human person is the central subject of development and therefore, is the active participant and beneficiary of the right to development. Articles 3 and 10 require States to create conditions favourable to the realization of this right. Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 is similar to Article 1 of the 1986 Declaration.

At the national level, Article 22 of the Constitution of the United Republic of Tanzania of 1977 provides for the right to work. There is also the Fair Competition Act, 2003,²⁴⁶ where Section 10(1) states that a person with a dominant position in a market shall not use his or her position of dominance if the object, effect or likely effect of the conduct

Commission of Tanzania, Vol. 2, No. 1, April 2009. Page 70.

245 UNRISD (2010) Gender Inequalities at Home and in the Market. UNRISD: Geneva. Pages 5-33; Chen, M (2004) Rethinking the Informal Economy: Linkages with Formal Economic and Formal Regulatory Environment. EGDI and UNU-UNDER Conference. Helsinki. Page 21; ILO, UNIDO and UNDP ‘Roadmap Study of the Informal Sector in Mainland Tanzania.’ April 2004. Emmanuel Andy, Critical Analysis of Poverty Theories, Pages 1-6. http://www.academia.edu/1116707/Critical_Analysis_of_Poverty_Theories re-accessed on 27th December, 2014; WB ‘Uganda Urban Informal Sector - 2005’ www.worldbank.org, accessed on 17th January 2015.

246 Act No. 8 of 2003. This law is enacted to promote and protect effective competition in trade and commerce, to protect consumers from unfair and misleading market conduct (among other reasons).

is to appreciably prevent, restrict or distort competition.²⁴⁷

While an introduction of liberal economy in Tanzania could be regarded as an ‘economic booster’, more discussions can be still be floated to assess the extent in which the liberalized economy has contributed to the country’s economic development; particularly, in regards to the amount of resources exhausted by ‘investors’ against the benefits which have been gained.

Moreover, this study found out that lack of effective protection of local producers and traders have led ‘investors’ to displace or overshadow local small producers from their ventures by; i) doing the same ‘very normal’ business which local traders were doing; ii) introducing high technology which facilitate them to exhaust resources more swiftly that locals who use rudimentary tools due to lack of capital support (do not have sufficient surplus as table 52 below shows); iii) import cheaply (through waiver of tariffs and taxes) and therefore, sell at lower prices; and iv) manipulation of local business structures. For instance, local civil engineering companies complain a lot about Chinese companies, which virtually win almost all construction tenders that floated by procurement entities.

Table 61: Monthly Business Earning of an Ordinary/Local Kariakoo Trader

N=89 [Kariakoo Traders’ Responses]	Frequency	Percent
Earning between Tshs 1000 - 50,000	23	33.3
Earning between Tshs 50,000 - 100,000	16	15.4
Earning between Tshs 100,000 - 200,000	19	23.1
Earning between Tshs 200,000 - 500,000	17	17.9
Earning More than Tshs 500,000	14	10.3
Total:	89	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

The study observed in November 2014 that, supermarkets were selling, among other things, consumable goods in their shops. Such goods were exactly the same as those sold by petty traders at the Kariakoo Market, Dar es Salaam as shown by comparative pictures below.

²⁴⁷ Section 5(2) of the same law defines ‘market competition’ (or ‘competition in a market’) to mean a process whereby two or more persons; a) supply or attempt to supply the same or substitutable goods or services to the persons in the same relevant geographical market; or b) acquire or attempt to acquire the same or substitutable goods or services from the persons in the same relevant geographical market.



Picture 32: Vegetables sold at NAKUMMAT Supermarket (left) and Kariakoo Open Market (Right) in November 2014.

The presence of such goods from within the country could be argued in either way – as an opportunity for local farmers and producers; but also, as a grabbing of business opportunity from local traders. One of the main issues here is that, large market traders regarded as ‘investors’ enjoy massive tax exemptions discussed in chapter three of this report. On the other hand, small market traders are regarded as ‘locals’ and do not enjoy any incentive.

Moreover, while the large market traders could secure bank loans, hire a track and travel to rural areas to purchase onion and tomatoes directly from the farmers (primary market), Kariakoo petty traders could not do that. The large market traders can import from abroad packing materials (to add value of the onion and tomatoes) under VAT exemptions, while local traders could not do so.

A question on challenges brought about by the presence of the foreign investors in local traders’ areas (Kariakoo Market, Dar es Salaam), received the following responses from ordinary traders as shown in the Table below.

Table 62: Challenges brought about by Foreign Traders in Kariakoo Market – Local Traders’ Responses

N=89 [Kariakoo Traders’ Responses]	Frequency	Percent
Competition has enhanced local traders’ business ventures	18	20.5
Competition has weakened local traders’ business ventures	30	51.3
Competition has increased profitability to local traders	16	15.4

N=89 [Kariakoo Traders' Responses]	Frequency	Percent
Competition has lowered profit margins of local traders	12	5.1
Other challenges	13	7.7
Total:	89	100.0

Source: LHRC, Corporate and Human Rights Study, December 2014.

The unbalanced treatment between the two sides is what raises an alarm and a call for protection of local traders (unfair competition). A policy to protect local small producers, which LHRC suggests to be formulated, will have to address all these economic dilemmas.

Non-control of local producers adversely affected not only small-scale producers, but also medium and large scale producers. For instance, the local sugar manufacturing companies complained a lot throughout the year 2014 about cheaply imported sugar from abroad as it lowered their production and profit margins.

The former Chief Economist of the World Bank, Joseph Stiglitz,²⁴⁸ once observed, while the advanced industrial countries require developing nations like Tanzania to lower their tariffs (including taxes), such developed countries were still maintaining tariffs that are four times higher against the poor countries. In fact, their whole tariff structure was directed against trade with poor economies.

Moreover, according to Mr. Stiglitz, the subsidies that the advanced countries introduced had the effect of lowering the price of the export goods of the developing countries. The vice hurt these countries and made them worse off by an amount that is far larger than all the foreign aid the advanced industrial countries give. Tanzania needs to have own ways of protecting its producers, suppliers and traders, instead of embracing policies which do not have a direct effect to the welfare of its citizens.

7.7 Performance Indicators On Gender-Related Rights In Corporate Sector

The following is the summary of key findings in a form of performance indicators on the enforcement of gender-related rights in the corporate sector in Tanzania. The summary depicts a comparative picture between stated gender rights situation for the years 2013 and 2014. It should be noted that, not all 'Gender- Related Rights performance indicators' used in 2013 were reassessed in 2014. However, at least all main indicators have been compared between the two years in order to measure the progress of implementation of gender rights as shown in the table below.

²⁴⁸ Stiglitz, Joseph, 'Making Globalization Work – The 2006 Geary Lecture.' In, *The Economic and Social Review*, Vol. 39, No. 3, Winter, 2008. Pages 171-190.



Table 63: Comparison of Performance Indicators on Gender Rights between 2013 and 2014 Years – LHRC Studies

S/ No.	Status of Gender Rights – Corporate Sector in Tanzania		
	Sub- Category of Right(s)	Status of Gender Related Rights Performance Indicators	
		Year 2013 (Selected Hints)	Year 2014
i.	Women	<ul style="list-style-type: none"> • Less than 25% of women are employed in corporate companies. • 57.2% of women in corporate companies felt existence of GBV in their workplaces compared to 42.8% of men. • Only 10.0% women workers in corporate companies are given maternity leave; and only 1.7% men are given paternity leave. 	<ul style="list-style-type: none"> • Same situation on status of employment of women in corporate sector. Women predominantly occupy junior positions and most of them in tourism and hotel business sectors. • Despite the fact that 50% of the employers stated that they had some working policies or practical norms which prohibited WGBV, it seemed that such policies or norms (if any) were not working favourably for women. • Sexual violence were named to be the most common WBGV (scored 53.4%), followed by physical assaults (24.1%); and threats (22.4%). • There were numerous forms of WGBV between workers themselves or workers and employers, including; physical assaults (6.8%); sexual harassment (21.7%); bullying (67.7%); and sexual assault (1.2%). • There are so many incidents occurring without being reported due to threats, fear of losing jobs or lack of awareness of due legal process.
ii.	Persons with Disability (PWDs)	<ul style="list-style-type: none"> • Most investors are reluctant to employ PWDs due to costs associated with such employment including a need to have in place special facilities. • Employment of PWDs in corporate sector ranges between 0.06% and not more than 1%; 	<ul style="list-style-type: none"> • Discrimination of PWDs at the workplace is a challenge relevant in both developed and developing countries. For instance, according to the ILO sources, a survey carried out in France showed that less than 2% of those who mentioned their disability in their curriculum vitae (CVs) were called for an interview. • PWDs are mainly recruited through temporary job agencies to ‘minimize risks’ for employers.

S/ No.	Status of Gender Rights – Corporate Sector in Tanzania		
	Sub- Category of Right(s)	Status of Gender Related Rights Performance Indicators	
		Year 2013 (Selected Hints)	Year 2014
	Persons with Disability (PWDs)	<ul style="list-style-type: none"> Presence of some investments such as mining in Geita has fuelled violence against PWDs. E.g. killings of persons with albinism due to witchcraft beliefs. 	<ul style="list-style-type: none"> Among all 24,552 teachers surveyed by CCBRT from all learning institutions (private and public alike) in Tanzania, only 519 (equivalent to 2.1%) were PWDs. The exclusion of PWDs from the workplace, either through discrimination or inaccessible work environments, costs Tanzania USD 480 million every year, which is 3.76% of the country's GDP. At least 50% of workers (interviewed by LHRC 2014 study) were of the views that, their working environment were either very insensitive (31.9%) or insensitive (27.7%) to disability rights as stipulated above.²¹ The PWDs law of 2010 (cited above) is yet to be effectively enforced.
iii.	Children of Minimum Age	<ul style="list-style-type: none"> 55.6% of the corporate companies claimed to have clear policies on child labour. However, there is serious misinterpretation of 'child labour' and 'light work'. Mining and plantations are still notorious economic subsectors in harmful child labour. 	<ul style="list-style-type: none"> It is estimated that there were about 215 million children under 18 who work full-time around the world in 2014. In SSA, which includes Tanzania, 1 among every 4 children aged 5-17 work compared to other countries like Latin America, where 1 among every 10 children are engaged with work. Most of parents and guardians stated that persistence of child labour is attributed to family's income poverty. A good number of companies were in the move to reject child labour through various initiatives including the adoption of internal policies and guidelines on child labour. 69% of the companies stated that, their human resource policies included a component on minimum age for employment (to be 18 years).



S/ No.	Status of Gender Rights – Corporate Sector in Tanzania		
	Sub- Category of Right(s)	Status of Gender Related Rights Performance Indicators	
		Year 2013 (Selected Hints)	Year 2014
iv.	Persons Living with HIV/ AIDS (PLWHA)	<ul style="list-style-type: none"> • Only few companies have mainstreamed HIV/AIDS in their operational policies. • Status of employment of PLWHA is unknown because the companies do not keep records and/or PLWHA are not declaring themselves. • Some of the companies' contracts terms contain discriminative clauses. 	<ul style="list-style-type: none"> • At workplaces, apart from stigma, other most common HIV/AIDS related challenges included; i) discrimination; and ii) lack of HIV workplace programmes. • These three factors (that is, stigma, discrimination and lack of workplace HIV programmes), has led to high silence level of one's HIV status. For instance, out of about 450 workers interviewed during this study, none of them (0%) volunteered to reveal his or her health status, and that, none of the companies visited (0%) had a record of such persons. • About 68% of the companies (in Tanzania) have lost staff because of HIV/AIDS related problems, while this can be minimized by proper prevention of new infections and by treating PLWHA with respect and provision of medical care for them.
v.	(Protection of) Local Small Scale Producers and Traders	<ul style="list-style-type: none"> • N/A² 	<ul style="list-style-type: none"> • Small producers (SMEs) make up 72% in SSA, which include Tanzania. If agricultural employment is included, the percentages rise beyond 90%. • Due to lack of effective protection of local producers and traders, 'investors' have been able to displace or overshadow the local small producers from their ventures by; i) doing the same 'very normal' business which the local traders were doing; ii) introducing high technology which facilitate them to exhaust resources more swiftly that the locals who use rudimentary tools due to lack of capital support; iii) import cheaply (through waiver of tariffs and taxes) and therefore, sell at lower prices; and iv) manipulation of local business structures.

Source: LHRC, Corporate and Human Rights Studies of 2013 and 2014.

CHAPTER EIGHT

EFFECTIVENESS AND EFFICIENCY OF CORPORATE SECTOR'S REGULATORY AUTHORITIES

8.1 Regulation of Business Sector as Part of Human Rights Protection

In 1960, the Tanzanian economy performed well, despite its dependence on subsistence agriculture, small industrial base and limited number of educated and trained personnel. Overall growth in the real domestic product (GDP) from mid 1960s and early 1970s was around 5% per annum²⁴⁹ (and today, 2014, it still stands at around 7%). Therefore, GDP has improved to relatively 2% within 50 years despite the many economic reforms, including adoption of liberal economy in 1980s.

Some of the stated reforms in 1980s were adoption of the Structural Adjustment Programme (SAP); and the Economic Recovery Programmes (1986-1992). The impacts of the reforms included the privatization of parastatal and liberalization of trade as well as provision of social services. It was through such reforms that the private sector; including, corporate companies (local and international ones) were fully allowed to conduct business in Tanzania.

The government remained with regulatory responsibility – to set and monitor standards as well as creating serene environment for private sectors' investments to flourish. Such and other responsibilities were delegated to various regulatory authorities (RAs), which are subject matter to this assessment at hand. At least 15 RAs have been established from Mid 1990s to the present.²⁵⁰ This part discusses some of these authorities.

LHRC wishes to point out from this outset at legal standpoint that the current Tanzanian RAs' mechanisms laid down by various laws which establish them are more of 'procedural' than 'substantive.' That is, they are predominantly establishing standards for the corporate companies to adhere without addressing the question on 'why' such standards should be adhered to. For instance, apart from the telecommunication law (cited below), other laws or regulations reviewed (43 in total) during this study had covered 'consumer protection' as one of the end results of regularizing the business sector in the country.

249 Nangu, Shilla 'Tanzania Economy: Structural Adjustment to What?' In, The African Journal of Finance and Management, Volume 6, Number 2, January 1998. Pages 1-13.

250 Others have remained in existence from 1970s to the present.



The human rights concern in the liberal economy, particularly, the business investments are gaining popular attention all over the world. Over the past years, the United Nations (UN) human rights machinery has been considering the scope of business' human rights responsibilities and finding ways for corporate sector to be accountable for the impact of their operations on human rights. For instance, Article 11 of the UN Guiding Principles of Business and Human Rights, 2011 states that:-

[The] 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.

That is to say, the responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. Business companies are required under this provision to take adequate measures for their prevention, mitigation and, where appropriate, remediation. Article 12 of the UN Guiding Principles, 2011 states that all human rights standards addressed in various human rights instruments are applicable 'standards' in all business practices. Article 13 unveils some of the responsibilities for the companies to follow to include:

- a) Avoid causing or contributing to adverse human rights impacts through their own activities; and
- b) Prevent or mitigate adverse human rights impacts that are directly linked to companies' operations, products or services.

Moreover, Article 15 of the UN Guiding Principles, 2011 requires corporate companies to have some form of internal policies which address human rights. Other provisions of this UN Guiding Principles, 2011 require governments all over the world to ensure that, all human rights principles in business are mainstreamed in the policy and legal frameworks on corporate sector and investment. As such, laws which establish RAs in Tanzania were expected to embody explicitly human right principles, so that they can monitor compliances.

This chapter explores the extent to which RAs have been able to reinforce and protect human rights principles in business sector in Tanzania. The assessment on this matter is done by considering the nature, mandate, effectiveness and efficacy of sampled RAs. The extent of this analysis has considered the fact that, the Tanzanian legal framework on RA does not explicitly unveil human rights standards; but, by implications, some of the elements of promotion and protection of the same could be noted.

8.2 Assessment Standards Of Regulatory Authorities (RAS)

The assessment of RAs adopted some elements of OECD and Delgado models of evaluation RAs. According to the Organisation for Economic Cooperation and

Development (OECD),²⁵¹ the assessment of any RA can consider a range of the results at different levels basing on the following minimum administrative, democratic (including human rights), technocratic and economic performance indicators (here not arranged in any orderly manner) presented in the form of broad questions, namely:-

- a) How much does it cost the government to implement regulations (monetary costs, proportion of budget, number of staff, proportion of staff, etc.)?
- b) How many members of the public participate in regulatory decision making?
- c) How meaningful is that participation (for instance, quality of comments, impact of comments)?
- d) What is the level of public support for or perceived legitimacy of the regulation?
- e) How effective is the regulation in solving the problem it was designed to address (such as health, environment, education, water, land, etc.)?
- f) What is the quality of the scientific analysis underlying the regulation/
- g) To what extent do regulated entities comply with the regulation?
- h) How cost-effective is the regulation?
- i) How efficient is the regulation (that is, what are its net benefits)?
- j) What are the impacts of the regulation on the overall economy (such as jobs, competitiveness, innovation, and economic development)?

The two important assessment tools are ‘effectiveness’ and ‘efficiency’ of RA in undertaking business activities for the economic benefits of Tanzania as well as in promotion and protection of human rights norms as it was explained above in this report.

In the context of this report, ‘effectiveness’ means RAs’ ability to ‘do the right work’ under their legal mandate; and ‘efficiency’ means the RAs’ ways of ‘doing their work right.’²⁵²

251 The OECD is a European-based forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD member countries include: Canada, Chile, Denmark, France, Germany, Israel, Italy, Japan, Korea, Norway, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of OECD (Ref.: Coglianesi, Cary (2012) *Measuring Regulatory Performance: Evaluating the Impact of Regulation and Regulatory Policy*. Expert Paper No. 1, August 2012. OECD: UK. Pages 34 and 35).

252 These definitions have been adopted, with modifications, from: Delgado, José Luis (Undated Source) *Effectiveness and Efficiency of Regulatory Bodies. A Mexican Perspective*. Comisión Nacional de Seguridad Nuclear y Salvaguardias. Mexico. Pages 1- 4.



The assessment on **effectiveness** considers structural arrangement of the RA including accessibility throughout Tanzania; operational experiences especially incidents which improve outstanding performances; and ability to engage with various stakeholders including the ordinary citizens. On the other hand, the assessment of **efficiency** has simply considered performance of the regulatory functions in a timely and cost effective manner - responsibilities against regulatory laws, rules and regulations.

8.3 Types and Nature of Tanzanian Regulatory Authorities on Corporate Sector

Almost all economic sectors and subsectors have the authority or government agency to regulate them at international and national levels. This part focuses on the national regulations. The main sectors which were regulated by various RAs are; telecommunication; construction and engineering; food and drugs; energy; education; health; transportation; manufacturing; and trading generally.



Picture 33: Logos of Some of the Regulatory Authorities in Tanzania (Source: Copied from their Websites, December 2014).

The legal and institutional frameworks of these sectors are briefly explained below:-

8.3.1 Telecommunication Sector

The telecommunication sector, which involves electronic media, telephone companies and postal services, is regulated by several laws, the main ones being the Tanzania Communications Regulatory Authority (TCRA) Act, 2003.²⁵³ The law establishes

²⁵³ Act No. 12 of 2003. Other laws on regulation telecommunication business in Tanzania are; the Electronic and Postal Communications Act, 2010 (Act NO. 3 of 2010); Universal Communication Services Access Act, 2006 (Act No. 11 of 2006); Tanzania Communications Act, 1993 (Act No. 18 of 1993); Tanzania Broadcasting Services Act, 1993 (Act No. 6 of 1993). Their regulations include, the Electronic and Postal Communications (Consumer Protection) Regulations, 2011; the Electronic and Postal Communications (Electronic Communications Equipment Standards) Regulations, 2014; the Electronic and Postal Communications (Digital and Other Broadcasting Networks) Regulations, 2011; the Electronic and Postal Communications (Tariffs) Regulations, 2011; the Electronic and Postal Communications (Mobile Number Portability) Regulations, 2011; the Electronic and Postal Communications (Licensing) Regula-

TCRA as the watchdog of this economic subsector. The TCRA became operational on 1st November, 2003. Specifically the Authority is responsible for licensing and enforcing license conditions of broadcasting; postal and telecommunications operators; and establishing standards for regulated goods and services and regulating rates and charges (tariffs).

8.3.2 Construction and Engineering

The main regulatory authority of this economic sub sector is the Contractors Registration Board (CRB), which was established in 1997 by an Act of Parliament.²⁵⁴ The CRB is charged with responsibility for registration, regulation and development of all contractors.

8.3.3 Food, Drugs and Cosmetics

All business activities relating to manufacturing and supply or use of food, drugs, cosmetics, medical devices, and poisons are regulated by the Tanzania Food, Drugs and Cosmetics Act, 2003.²⁵⁵ The main RA of all businesses relating to food and drugs (being human, veterinary and herbal) is the Tanzania Food and Drugs Authority (TFDA), established under Section 4 of the said 2003 legislation. The functions of TFDAs are listed under Section 5 of the law which include quality control and clinical trials of named items.

8.3.4 Exploration and Extraction of Minerals, Oil and Natural Gas

The main authority which monitors exploration and extraction of minerals is the Tanzania Mineral Audit Agency (TMAA). This is a semi-autonomous institution established in November 2009 under the Executive Agencies Act, Cap. 245.²⁵⁶ The aim of TMAA is to facilitate maximization of government revenue from the mining industry through effective monitoring and auditing of mining operations and ensuring sound environmental management in the mining areas. The main mining sites or companies which TMAA audits were:-

tions, 2011; and the Tanzania Broadcasting (Content) Regulations, 2005 [Copied from: <https://www.tkra.go.tz/index.php/regulations>, accessed 13th February, 2015].

254 The Contractors Registration Board Act, 1997 (Act No. 17 of 1997, as amended in 2008).

255 Act No. 1 of 2003. Prior to this law, there was the Pharmaceuticals & Poisons Act, 1978 and Food (Control of Quality) Act, 1988 which is now repealed and replaced by 2003 law.

256 Through G.N No. 362 of 6th November, 2009.

**Table 64: Main Mining Companies under TMAA**

Name of the Mine	Type of Mineral	Location
Bulyanhulu Gold Mine	Gold	Kahama
Golden Pride Mine	Gold	Nzega
Geita Gold Mine	Gold	Geita
North Mara Gold Mine	Gold	Tarime
Tulawaka Gold Mine	Gold	Biharamulo
Buzwagi Gold Mine	Gold	Kahama
TanzaniteOne	Tanzanite	Simanjiro
Williamson	Diamond	Kishapu

Source: TMAA, 2013.

On the other hand, the exploration and extraction of oil, natural gas and mineral in Tanzania are regulated by the Tanzania Petroleum Development Corporation (TPDC), established in 1969 with the mandate to undertake petroleum development.²⁵⁷ Its main governing laws are the Petroleum (Exploration and Production) Act, 1980;²⁵⁸ and the Petroleum Act, 2008.²⁵⁹

8.3.5 Social Security Services and Insurance

Each one of these services has its own laws. The social security schemes or services are regulated by the Social Security Regulatory Authority (SSA), established by Social Security Regulatory Authority, 2008.²⁶⁰ The SSA regulates six (6) mandatory schemes²⁶¹ and seven (7) supplementary schemes. The schemes' services have, to a large extent, been harmonized under the Social Security Schemes (Pension Benefit

257 In the interim, TPDC undertook the function of the sole importer of both white and crude petroleum products and marketing. With the onset of economic liberalization (as already discussed above in this chapter), the oil marketing operations ceased in the year 2000. The mandate of the corporation has remained essentially the same, to spearhead, facilitate and undertake oil exploration and development in Tanzania [Ref.: TPDC 'Historical Background' in, http://www.tpdcc-tz.com/tpdc/Historical_background.php, accessed on 30th December, 2014].

258 Act No. 27 of 1980.

259 Act No. 4 of 2008. Note that, there *National Petroleum Policy of Tanzania, 2014* was still in draft form as of July 2014 (a more updated information of this policy was not immediately obtained up to the end of this study in December 2014).

260 Act No. 8 of 2008. Note that, this law was amended in 2010 by Social Security Laws (Amendments) Act, 2010 (Act No. 5 of 2010).

261 Namely; National Social Security Fund (NSSF); PPF Pensions Fund (PPF); Local Government Provident Fund (LAPF); Government Employees Provident Fund (GEPF); National Health Insurance Fund (NHIF); and Public Service Pension Fund (PSPF). Such funds are respectively established by the NSSF Act, 1997 (Act No. 28); PPF Act, 2001 (Act No. 25 of 2001); LAPF Act, 2006 (Act No. 9 of 2006).; GEPF Retirement Benefit Fund Act, 2013; NHIF Act, 1999 (Act No. 8 of 1999); and Public Service Retirement Benefits Act, 1999 (Act No. 2 of 1999).

Harmonization) Rules, 2014 which are made under Sections 6, 25 and 36 of the said SSRA law of 2008. The GEPF scheme also covers workers in informal sector²⁶² including self- employed persons. The schemes investments are regulated by the Social Security Schemes Investment Guidelines, 2012.²⁶³

As for insurance, this business is regulated by the Insurance Act, 2009,²⁶⁴ which under Section 5 establishes the Tanzania Insurance Regulatory Authority (TIRA). The functions or objectives of TIRA are stated under Section 6 of the law, which include the *'promotion and maintenance of efficient, fair, safe and stable insurance market for the benefit and protection of insurance policyholders.'* The 2009 law also establishes a special insurance tribunal (Ombudsman Services) under Sections 122 onwards. Such tribunal will function as a quasi-court.

8.3.6 Transportation (Air, Road and Marine) – SUMATRA and TAA

The road and marine transports are regulated by the Surface and Marine Transport Regulatory Authority (SUMATRA); while the air transportation is regulated by the Tanzania Civil Aviation Authority (TCAA). The SUMATRA was established by SUMATRA Act, 2001²⁶⁵ to regulate all surface and marine transport services. Sections 5 and 6 cover the duties and functions of this authority.²⁶⁶ Transportation sector is also governed by several other laws, including the Shipping Agency Act, 2002;²⁶⁷ the TAZARA Act, 1995;²⁶⁸ the Road Traffic Act, 1973;²⁶⁹ and the Railways Act, 2002.²⁷⁰

262 'Informal Sector' is defined under Section 3 of the GEPF Retirement Benefit Fund Act, 2013 (which was gazetted on 3rd January, 2014) to mean *'sector which includes workers who work informally and who do not work in terms of an employment contract or any other contract contemplated in the definition of employee'* (under the ELRA, 2004). Section 19(1) of the same law makes informal sector workers eligible to GEPF membership.

263 Made under Section 26(2) of the SSRA Act, 2008.

264 Act No. 10 of 2009.

265 Act No. 9 of 2001. Note that, SUMATRA law came into force on 15th August, 2004 after being gazetted by G.N No. 297 of 20th August, 2004. Regulations made under this law include: The SUMATRA (Complaints and Review Procedure) Rules, 2008 (G.N No. 15 of 2008); the SUMATRA (Procedures for Settling Claims for Late Delivery of Cargo) Rules, 2009 (G.N No. 359 of 2009); and the SUMATRA (Tariff) Regulations, 2009 (G.N No. 92 of 2010).

266 Such roles according to that provision include; promoting effective competition and economic efficiency; protecting the interests of consumers; protecting the financial viability of efficient suppliers; promoting the availability of regulated services to all consumers including low income, rural and disadvantaged consumers; to generally ensure safety and security in the transport sector.

267 Act No. 11 of 2002.

268 Cap. 143.

269 Act No. 30 of 1973.

270 Act No. 4 of 2002.



The TCAA is established under Section 5 of the TCAA Act, 2003.²⁷¹ There are also other laws and regulations to govern TCAA.²⁷² The functions of TCAA include; issuing, renewing, varying and cancelling air service licences; to establish standards for regulated goods and services; and to regulate rates and charges.

8.3.7 Utility Services: Water and Energy

Public utility services such as water, electricity, and (refined) gas are mainly regulated by the Energy and Water Utility Regulatory Authority (EWURA), which is established by EWURA Act, 2003.²⁷³ Such services were generally still centralized in the hands of the government. For instance, the Tanzania Electrical Supply Company (TANESCO) is the sole supply of electricity connections in Tanzania.²⁷⁴ However, generation of power is, to a large extent, outsourced to private companies such as IPTL. Piped water supply is also under government agencies such as DAWASCO. However, such agencies are at liberty to lease management of business to private companies.

8.3.8 Financial Authorities (TRA, PPRA, BOT)

There are several laws enacted to regulate banking and financial corporate companies as well as management of public funds relating to, among others, provision of goods and services by private service providers. Such laws include the Bank of Tanzania (BOT) Act, 2006;²⁷⁵ Banking and Financial Institutions Act, 2006;²⁷⁶ Foreign Exchange (Bureau de Change) Act, 2006;²⁷⁷ Tanzania Revenue Authority (TRA) Act, 2005; and Public Procurement Act, 2011.²⁷⁸ The procurement law establishes the Public Procurement Regulatory Authority (PPRA), which among other things, regulates procurements of goods and services in all public departments. Most of such services are currently offered by private business companies. The mandate of TRA is extensively covered in a separate chapter of this report.

271 Act No. 10 of 2003.

272 Including the Tanzania Civil Aviation (Economic Regulation) Regulations, 2006 made under Section 40(1) of the 2003 aviation authority law.

273 Cap. 414.

274 But now there was rural electrification project under the Rural Energy Agency (REA). Moreover, there are other entities which were actively carrying out downstream natural gas regulatory activities, namely; TPDC (discussed above in this report); the Songas Limited (Songas); the PanAfrican Energy Tanzania Limited (PAT); and the Maurel et Prom (M&P).

275 Act No. 4 of 2006.

276 Act No. 5 of 2006. Some of the regulations made under this law include: Banking and Financial Institutions (Financial Leasing) Regulations, 2011 (G.N No. 151 of 2011); and Banking and Financial Institutions (Licensing) Regulations, 2008 (G.N No. 377 of 2008);

277 Act No. 5 of 2006.

278 Act No. 7 of 2011.

8.3.9 Crosscutting Regulatory Authorities

There are few regulatory authorities with general or rather, crosscutting mandates across all economic sub sectors. Such authorities include the Business Registration and Licensing Agency (BRELA); National Environmental Management Council (NEMC); and the Occupational Health and Safety Authority (OSHA). The NEMC²⁷⁹ came into being in 1983.²⁸⁰ Two decades later, its mandates were revisited and strengthened through the National Environmental Management Act, 2004.²⁸¹ The OSHA was established under Executive Agencies Act, 1997.²⁸² It is the main custodian of Occupational Health and Safety Act (OHS), 2003.²⁸³ The OHS law requires all workplaces to secure registration in order to facilitate OSHA to monitor OHS issues at all workplaces. Moreover, there is the Tanzania Bureau of Standards (TBS).²⁸⁴



Picture 34: A TBS Expert Conducts Experiments in the Laboratory

279 The council was established with a broad mandate in response to the national need for such an institution to oversee environmental management issues and also implement the resolutions of the Stockholm Conference on Environment of 1972, which called upon all nations to establish and strengthen national environmental Councils to advise governments and the international community on environmental.

280 Under the former National Environment Management Act, 1983 (Act No. 19 of 1983).

281 Act No. 20 of 2004. This law has repealed and replaces the National Environment Management Act, 1983.

282 Act No. 30 of 1997.

283 Act No.5 of 2003.

284 The TBS was established in 1975. However, 33 years later, the 1975 legislation (Standards Act, Cap. 130) was repealed and replaced by the Standards Act, 2009 (Act No. 2 of 2009) to re-establish the TBS in order to improve efficiency. TBS is the custodian and overseer of standards in Tanzania (Section 3(2) of Act No. 2 of 2009). Its functions include undertaking measures for quality control of commodities, services and environment of all descriptions plus promotion of standardization in industry and trade (Section 4(1)(a)); and approve, register and control the use of standard marks (Section 4(1)(d) of the said 2009 legislation)



The BRELA is a government executive agency established under the Executive Agency Act, 1997²⁸⁵ via the Government Notice Number 294 of 1999. It is charged with responsibility of registering and incorporating all business ventures in Tanzania mainly under the Companies Act, Cap. 212; and the Business Names Registration Act, Cap. 213. BRELA works closely with other regulatory authorities in particular the Tanzania Investment Centre (TIC). The TIC is established under the Tanzania Investment Centre Act, 1997.²⁸⁶ Its main responsibility is to attract and coordinate all investment in Tanzania. One of the ways used by TIC to attract more foreign investments in Tanzania is the use of incentives in terms of tax exemptions and creation of land banks. Relating to TBS and TFDA is the Tanzania Fair Competition Commission (TFCC), which is established by the 2003 legislation.²⁸⁷ Apart from regulating fair rules in the markets, the commission also inspects the quality of goods and services in the market.

8.4 Overall Progress Made By RAS as Overseers of Activities of Corporate Sectors

Generally, the regulatory authorities seemed to improve their performance every year by looking at some of the outputs and outcome performance indicators deduced above, mainly; a number of business companies registered as part of compliance; number of orders proclaimed by RAs and extent of implementation of such orders; number of actions taken against unscrupulous corporate companies; reduced in number of illegal incidents by the companies; improved service delivery by looking at, among other factors, number of service seekers of a particular business sector who are interested to apply for a particular service; improved innovations; and extent of RAs' contributions to national development.

For instance, a TCRA official told the study team in November 2014 that, TCRA has played a pivotal role of not only 'regulating' but also enhancing the capacity of the telecommunication business companies. He gave an example that millions of Tanzanians and others enjoy massive services offered by mobile phone companies including the electronic transfer of monies. Moreover, Tanzania became the first country in East Africa to transform television companies from analogue to digital broadcasting system.²⁸⁸

TIC on its part, has managed to induce a number of companies to come and invest in Tanzania in almost all priority areas of investments, including natural resources; agriculture and livestock development; tourism; manufacturing; petroleum and

285 Act No. 30 of 1997.

286 Act No. 26 of 1997.

287 The Fair Competition Act, 2003 (Act No. 8 of 2003).

288 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2014 (LHRC's Report II, Page 4.

mining; real estate; transportation; services; and ICT.²⁸⁹ Moreover, BOT has managed to register 35 banks and more than 50 financial institutions as of 2013. However, the challenge remains to be accessibility of the banks in rural settings. Most of them are grounded in major cities and other levels of urban areas.

Apparently, as a result of such incentives, a number of registered project (investments) increases every year as the table below shows:-

Table 65: TIC's Registered Projects, Employment and Project Value Records 2011-October 2014

Year	Projects	New	Expansion/ Rehabilitation	Local Projects	Foreign Projects	Joint Venture	Value (USD Mil).
2014 ²³	595	530	65	282	142	171	11,307.51
2013	885	749	136	417	184	284	88,236.20
2012	869	718	151	469	195	195	19,659.61
2011	826	689	136	462	191	191	7,177.24
Total:	3,175	2,686	488	1,630	841	841	126,380.561

Source: TIC Statistics, 2014 (Availed during the November, 2014 Interview).

However, as argued elsewhere in this report, LHRC is concerned of the reality that, little revenues are collected from the investments due to massive tax exemptions; evasions and avoidances as well as financial illicitness. Therefore, it is almost meaningless to have such huge investment concessions while the country's pace of development is still relatively low to address socio-economic and other human rights concerns in Tanzania.

8.5 RAS' Effectiveness to Enforce Compliance of Standards

Based on the RAs' own assessments while responding to the study's questionnaires, it appeared that, almost all of them consider their performance as ranging between 40% and 50% of the expected levels. When asked on their opinions or a particular assessment report on how they could rank their capacity to enforce compliance by the business companies under their mandates, the following were the responses:-

²⁸⁹ TIC 'Tanzania Investment Guide 2013-2014. Dar es Salaam: Tanzania. Page 15. Other priority areas include financial institutions; telecommunications; energy; human resources; economic infrastructure; and broadcasting.



Table 66: Rating RAs' Effectiveness to Enforce Compliance by Business Companies

N=43 [Responses of Individual Officers within RAs]²⁴	Frequency	Percent
Excellent (100%)	3	7.0
Good (75%)	17	39.5
Average (50%)	17	39.5
Somehow (below 50%)	4	9.3
Very Low (below 25)	2	4.7
Total:	43	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

As briefly stated above, all RAs are vested with powers to penalize individuals or companies which do not comply with given standards. Indeed, some of these authorities used disciplinary or penal measures against those who violated the laws. For instance, a media company namely the Clouds TV was penalized in 2014 for broadcasting programs which appeared to be against public morals. According to the TCRA official,²⁹⁰ on 16th May, 2014 between 2100 and 2200 hours, this TV station broadcasted an audition program in order to get one of the contestants as a winner of the 'Bibi Bomba' competition, involving elderly women. During the audition, the host used some words which were interpreted by TCRA as immoral against Broadcasting Regulations. Therefore, the media station was ordered to pay a fine of Tshs. 1,000,000 on 22nd August, 2014.

Moreover, the number of Environmental Impact Assessment (EIA) and Environmental Audit (EA) certificates issued by NEMC to business companies has been on increase at least by comparing records for the past three years as the table below shows:-

Table 67: An Increase in Number of EIA Certificates Granted by NEMC (2011-2013)

S/No.	Year	Issued EIA/EA Certificates
i	June to December 2011	157
ii	June to December 2012	290
iii	June to 31 October 2013	317

Source: NEMC Reports, 2013.

290 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2014 (LHRC's Report II), Pages 5 and 6.

Section 5 of the SSRA Act, 2008 gives responsibility to SSRA to protect and safeguard interest of members. During the year 2014, the authority received a total of 392 complaints of which, only 9 (being 4%) were yet to be resolved.²⁹¹ Moreover, SSRA's latest audited report for 2012 and provisional figures for 2013 of the sector performance indicated, among others, that contributions to social security schemes have grown from Tshs. 1.4 trillion in 2012 to Tshs. 1.7 trillion in 2013 (being a growth of 21%).²⁹² Additionally, the benefits payments have grown from Tshs. 733 billion in 2012 to Tshs. 1.04 trillion in 2013. Such increases could be linked with efficiency in regulation of this sub sector by SSRA.

Regulation 57 of the Public Procurement (Selection and Employment of Consultants) Regulation made under the procurement law stated above mandates PPRA to blacklist any individual or company which has not complied with regulations. According to PPRA at least 37 individuals and companies were blacklisted between June 2012 and October 2013. Currently (2014) there were 19 companies which were blacklisted for failure to adhere to the procurement standards. Probably, more of such culprits could have been netted by PPRA if it was functioning more effectively as argued below.

The TFDA's publication,²⁹³ which details a decade of success (2003-2013) shows, *inter alia*, that the authority has been able to control quality of drugs, food and cosmetics in Tanzania in such a way that, several drugs, foods and cosmetics which were found unfit for human consumptions, have been destroyed or denied of registration by the authority. For instance, between those years, a total of 10,271 applications for registration of use of drugs were received whereby 9,548 applications were processed and that, only 4,782 of the applications were allowed registration. Moreover, a total of 11,689 applications for registration of food stuff were received by TFDA. However, only 5,918 of the applications were considered for registration.

The TFCC has managed to inspect and forfeit number counterfeited items in the markets since its establishment on 2003.

291 Most of those complaints are said to be in regards to the delay of payment of benefits, unfair benefits formula, poor customer services from the scheme and wrong calculation of benefits [Ref.: Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2014 (LHRC's Report II), Page 12].

292 NSSF with highest level of contribution followed by PSPF and PPF the third.

293 TFDA 'Mafanikio Katika Udhubiti wa Chakula, Dawa, Vipodozi na Vifaa Tiba 2003-2013.' Dar es Salaam: Tanzania.



Picture 35: A Police Officer and an Inspector with TFCC inspect goods in one of the shops in 2014.

Increased air traffic movements, flow of passengers and cargo. For instance, according to the Tanzania Aviation Authority (TAA)'s, the trend of traffic movements of passengers, aircrafts and cargoes (2007 to 2013), seems to fluctuate but generally improving if compared with previous years as the table below shows:-

Table 68: TAA Traffic Movements per Category for the Past Seven Years (2007-2013)

Traffic Movement	Category	Year 2007	Year 2008	Year 2009	Year 2010	Year 2011	Year 2012	Year 2013
Air Movements	Dom.	100,023	107,874	101,428	108,725	121,933	133,635	134,172
	Int.	14,922	15,620	14,192	15,631	17,087	18,398	19,991
	% Dom.		7.8	-6.0	7.2	12.1	9.6	0.4
	% Int.		4.7	-9.1	10.1	9.3	7.7	8.7
TOTAL		114,945	123,494	115,620	124,356	139,020	152,033	154,163
Number of Passengers	Dom.	1,138,163	1,185,072	1,108,169	1,172,435	1,366,933	1,658,912	1,986,697
	Int.	857,623	933,622	862,487	964,818	1,115,690	1,236,957	1,285,922
	% Dom.		4.1	-6.5	5.8	16.6	21.4	19.8
	% Int.		8.9	-7.6	11.9	15.6	10.9	4.0
TOTAL		1,995,786	2,118,694	1,970,656	2,137,253	2,482,623	2,895,869	3,272,619
Cargo	Dom.	4,363	4,412	3,213	3,197	2,989	3,198	2,216
	Int.	23,971	27,183	20,865	20,257	23,844	25,151	22,383
	% Dom.		1.1	-27.2	-0.5	-6.5	7.0	-30.7
	% Int.		13.4	-23.2	-2.9	17.7	5.5	-11.0
TOTAL		28,334	31,595	24,078	23,454	26,833	28,349	24,599

Source: TAA Annual Report for the Year 2013, Page 13.

Unfortunately, all RAs' reports did not state to what extent did their oversight work managed to improve consumers' protection. LHRC suggests that, in coming years, all RA should incorporate some assessments on how they have been able to enforce consumers' protection despite the fact that their laws are generally silent on this matter.

Secondly, RAs are advised to have a set of performance indicators including corporate strategic plans which will encompass their work to be more strategic than routine. For instance, less than half of the individual officers interviewed believed that their RAs had 'specific performance assessment tools for evaluating extent of compliance' as the table below shows. In most cases, they measure improvements of their work based on numerical incidents such as number of companies registered.

Table 69: Presence of Specific Performance Assessment Tools of their (RAs') Work

N=43 [Responses of Individual Officers within RAs]	Frequency	Percent
Yes	18	41.9
No	25	58.1
Total:	43	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Using numerical trends is fine; but, it only measures performance at output and not outcome or impact levels. This is why LHRC urges all RAs to adopt corporate strategic plans from now onwards. Human rights ethical considerations should form part of the proposed plans.

Thirdly, LHRC urges the government to act on the recommendations by the regulatory authorities regarding law reform. About half of the officers of RAs interviewed as the table below shows, thought that the current legislation governing their work did not give them sufficient mandate to enhance their performances.

Table 70: RAs Officers' Sentiments on Legal Mandates of their RAs (Whether Sufficient)

N=43 [Responses of Individual Officers within RAs]	Frequency	Percent
Yes	25	58.3
No	18	41.7
Total:	43	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.



The common recommendation from all RAs which thought that their governing law or laws needed reforms was on investigation and prosecution of cases involving their mandates. Most of them were of the opinion that if the law would allow them to have prosecutorial powers, it would be easier for them to take into Court all those who are in violation of the regulatory standards. Currently, legal actions seemed to go through long or complicated procedures and that, most of the prosecutors did not have specialized skills of the nature of legal actions they were prosecuting. Some of the compliance issues such as clinical trials and measurement standards are technical for an ordinary lawyer to understand and prosecute.

8.6 Proximity, Accessibility and Reliability of RAs' Services

The proximity, accessibility and reliability of RAs' services are part of the performance assessment indicators as mentioned earlier on. The trio has a direct effect to the monitoring of compliance. For instance, this study ascertained that, most of the investments projects are taking place in remote areas with no physical offices of regulatory authorities. This has been found to be one of the factors relating to poor monitoring of business practices. Coupled with low awareness amongst members of the community on their rights and duties as consumers of goods and services, business companies could virtually devise any 'standard' which suits their profit-making courses.

The following are just some of the proximity facts of RAs in terms of physical location of their offices to upcountry regions:-

- a) TCRA has only 6 branches countrywide located in Dar es Salaam, Dodoma, Arusha, Zanzibar, Mbeya and Mwanza regions. Such coverage in terms of physical accessibility of its services per all regions of Tanzania Mainland is only 20.0%. That means, 80.0% of all other regions have to travel to nearby regions to access services physically;
- b) NEMC has only 5 branches known as 'zonal offices' located in Mwanza, Arusha, Mbeya and Mtwara. The Dar es Salaam one is also regarded as the head office. That means, only 16.7% of the Tanzanian Mainland regions are physically covered by NEMC in terms of having stationed offices;
- c) TBS has only 1 office (being 3.3% physical coverage of all regions in Tanzania). However, it has outsourced quality assurance works to other private companies especially in overseas to inspect quality before shipment of items in Tanzania. Moreover, TBS has adopted a mobile laboratory carried by a special van;
- d) TFDA has also 5 zonal offices countrywide. Such offices are being 13.3% of total physical coverage in Tanzania Mainland. Therefore, just like a case in other

regulatory authorities, applicants for registrations of their foods and drugs have to travel to its five zonal offices which are available to some of the regions designated as zonal centres.²⁹⁴ There are some regions such as Lindi and Mtwara and Kigoma which did not have any zone. The study team coincidentally met one applicant right at the TFDA's main office in Dar es Salaam in November, 2014. The lady stated that she has been following up progress of her application since August 2014; and that, she has gone there more than 10 times. She lamented:-

Tangu mwezi wa nane kila mara nimeshakuja hapa ... Nikiuliza kuhusu suala langu naambiwa niendeleo kusubiri kwa kuwa wapo wengi walionitangulia hawajakaguliwa bidhaa zao bado ...

(I have been paying several visits to this place since August ... whenever I make an inquiry over my pending request they keep telling me that there are several others whose requests have come before mine and are yet to have their goods inspected).

It means, the lady would spend almost half a year seeking services. In response to the lady's complaint, an officer at the registration desk stated that '*... the lady has to endure with the situation because the same facility serves the whole of Eastern Zone*' (Dar es Salaam, Coastal, and Morogoro). LHRC is concerned that, this tendency could contribute to flocking of unregistered foods, drugs and cosmetics in the market; and then, cause unnecessary costs to control the same.

Apart from the branches, TPDF has custom centres found in 32 places countrywide.²⁹⁵ Apparently, it is very tricky to monitor all food stuffs and drugs throughout the country. There are so many *Panya* dubious-routes or (illegal entrances) used to penetrate counterfeited and other stuff along the coastal areas and borders.

- e) The TFCC does not have any upcountry branch. Therefore its physical accessibility in other regions is 0%. That means, officers have to travel all over the country to enforce the law.
- f) The CRB has only 3 upcountry offices in Arusha, Mwanza and Mbeya regions.

294 The Eastern Zone (Dar es Salaam, Morogoro and Coastal regions); Northern Zone (Arusha, Manyara, Kilimanjaro and Tanga); Lake Zone (Mwanza, Shinyanga, Mara and Kagera); Central Zone (Dodoma and Singida); and Southern Highland Zone (Mbeya, Iringa, Rukwa and Ruvuma).

295 Such centres are located at Namanga; Sirari; Tunduma; Holili; Horohoro; Tarakea; Rusumo; Mutukula; Isaka; Kabanga; Kasumulu; Mabamba; Manyovu; Mafia; Airports of Mwanza, Kigoma, Kilimanjaro and Dar es Salaam; the ports of Kipili, Lindi, Mtwara, Mbamba Bay, Mwanza, Musoma, Bukoba, Dar es Salaam, Tanga, Itungi, Kasesya, Kemondo and Kigoma (TFDA 'Mafanikio Katika Udhhibiti wa Chakula, Dawa, Vipodozi na Vifaa Tiba 2003-2013.' Dar es Salaam: Tanzania. Page 20).



That means, only 13.3% of the Tanzania Mainland regions had stationed offices of CRB. Therefore, 86.7% of the regions have to trek to the nearby offices for required services which need physical presence;

- g) The SSRA has only one office located in Dar es Salaam region. Due to this situation a client needs to embark into a long trip to submit his/her complaints. Therefore, its coverage in terms of having stationed upcountry office is only 3.3%. That means, persons (97.3%) from other regions in Tanzania will have to travel long distances to Dar es Salaam for assistance. Most of the clients are normally retirees who are old persons. Therefore, centralization of office to Dar es Salaam obviously poses a challenge of accessibility of its services;
- h) The BRELA has no branches in other regions apart from Dar es Salaam. Therefore, its coverage in terms of stationed office per Tanzania Mainland's regions is only 3.3%. Therefore, 96.7% of the regions have to travel to Dar es Salaam for its service. The BRELA has undergone tremendous improvement in terms of doing name search and accessing all forms online. However, the registration process is still conducted manually and in hard copies of forms and other registration documents;
- i) The TIC has only 3 upcountry branches (being 10% of all regions of Tanzania Mainland). Such branches are located in Mbeya, Kilimanjaro and Mwanza regions. Again, service seekers across the country have to visit those branches or Dar es Salaam based main office. Despite having a website with a lot of information, person has to visit the offices physically to obtain some of the services. The importance of TIC to open up upcountry offices in all regions cannot be over-emphasized. It also needs to extend horizons beyond Tanzania as other countries like Kenya and South Africa are doing;
- j) It is the same situation for TMAA. It has only 3 upcountry branches (10% of all regions) located in Mbeya, Mwanza and Arusha. However, it has designated field officers to almost all mining sites across the country.

8.7 Efficiency of Services Offered by RAs

As it was stated above under paragraph 8.2 of this chapter, 'efficiency' is an institutional performance tool which considers performance of the regulatory functions in a timely and cost effective manner - responsibilities against regulatory laws, rules and regulations. That is 'doing work right.'

A large part of efficiency factors have already been discussed with illustrations under effectiveness. As such, this section presents primary response to some of the questions

posed to assess efficiency. The first question was a general one, which wanted to gather RAs' opinion on main reasons of the malpractices which were commonly done by the business companies. The table below summarizes the responses by individual officers of the sampled RAs:-

Table 71: Attributing Factors to Malpractices in Business Sector – RAs' Perceptions

N=43 [Responses of Individual Officers within RAs]	Frequency	Percent
Lack of regulatory authorities' branch close to business companies.	3	7.0
Lack of awareness on laws.	16	37.2
Lack of sensitization on the needs to comply with laws.	10	23.3
Corruption or other form of inducement.	4	9.3
(Other) Wilful tendencies.	10	23.3
Total:	43	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

The study question on RAs' scope of mandates based on the current nature and types of business activities in Tanzania meant to assess whether existing RAs are capable or are sufficient to enforce the business corporate sector's contribution to the national economic development. The following were the responses:-

Table 72: Whether Current RAs are Sufficient to Enforce Contribution to the National Economy (RAs' Responses)

N=43 [Responses of Individual Officers within RAs]	Frequency	Percent
Yes	21	48.8
No	12	27.9
Not Sure	10	23.3
Total:	43	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Therefore, less than 50% of the RAs officers believed that, current mandates of their and others' regulatory authorities were capable of ensuring business corporate sector's contribution to the national economic development. This is due to the fact that the framing of their mandates is mainly focused on licensing and controlling rather than essence behind regulatory activities.



Secondly, the scope of coverage as stated earlier on is still very low. It is also around 46% of the RAs who were not aware of the magnitude of their activities in terms of the number of corporate companies to be monitored. This is due to the fact that, most of RAs were static-based rather than mobile-based in their work approach.

Table 73: Awareness Level of Number of Corporate Companies to be monitored by Respective RAs (RAs' Responses)

N=43 [Responses of Individual Officers within RAs]	Frequency	Percent
Yes	23	53.5
No	20	46.5
Total:	43	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

The above finding could suggest two observations. One, there is lack of collaboration between authorities in Tanzania. For instance, an authority can simply consult BRELA in order to get a total number of registered companies in Tanzania. The current legal framework does not create a proper forum where all these RAs could meet and address some common challenges. At least there would have been a ministry or unit to coordinate networking activities of these authorities. Lack of this mechanism usually causes collision of mandates or neglect of the same.

Second, poor intervention approaches – to wait for the companies in their (RAs) offices instead of visiting them on the streets. This one is attributed to a number of factors some being, lack of field or regional offices as stated earlier on; and insufficiency budget as the RAs' officers claimed.

8.8 Capacity to Monitor Compliance: Resource and Other Factors

Low coverage of the regulatory services to the regions has direct implication to the monitoring of their statutory mandates. As it has been stated above, almost all RAs did not have branch offices in many regions of Mainland Tanzania and that, the distribution of the few existed branches were not evenly done. Most of the branches were commonly placed in Dar es Salaam, Arusha, Mwanza and Mbeya regions.

The RAs' themselves felt uncomfortable with this situation. For instance, less than 40% of the RAs' officers interviewed were of the opinion that, their current coverage had enabled them to monitor all business activities across the country.

Table 74: RAs’ Current Monitoring Capacity – Whether Reaching Out Companies across the Country

N=43 [Responses of Individual Officers within RAs]	Frequency	Percent
Yes	17	39.5
No	17	39.5
Not Sure	9	20.9
Total:	43	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

A TCRA official in Dar es Salaam told the study team in November 2014 that, currently, their monitoring capacity is around 75% of all companies regulated by TCRA partly due to lack of offices in every region and insufficient human resource.

Moreover, according to the SSRA 2012/2013 report, there were 27 employees during that year to serve for the whole country. Such a number is only 35.5% of the required staffing (at least 76 staff needed). Therefore, the shortage is very critical and amounts to more than 64% of the expected staffing level.²⁹⁶

As for TFDA, it seems that more capacity is needed for this authority to prevent unauthorized drugs and food from entering in the market for public consumption. For instance, according to TFDA’s statistics, at least 18% of unauthorized drugs were found in use in the markets between 2009 and 2013. Such drugs were:-

Table 75: Percentage of Unauthorized Drugs Found in Use in the Markets - TFDA

Year	Type of Drug	Number of Samples			
		Sampled	Assessed	Qualified	Unqualified
2009/10	Cloxacillin	138	60	30 (50%)	30 (50%)
	Quinine	143	70	70 (100%)	0 (0%)
2010/11	Artemether + Lumefantrine	59	9	9 (100%)	0 (0%)
2011/12	Stavudine + Lamivudine + Nevirapine	58	22	20 (90.9%)	2 (9.10%)
2012/13	Zidovudine + Lamivudine + Nevirapine	25	12	12 (100%)	0 (0%)
	Total:	423	173	141(81%)	32 (18%)

Source: TFDA 2013 Publication (cited), Page 29.

²⁹⁶ Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2014 (LHRC’s Report II), Pages 12 and 13.



The sample was taken from eleven regions and that, less than ten drugs were tested. This could imply the fact that, the use of unauthorized drugs in Tanzania is bigger than what it has been ascertained so far. Secondly, a good number of Tanzanians use such drugs to the detriment of their health.

LHRC urges the government and TFDA to strengthen their capacity to focus more on prevention than control of such drugs. Secondly, LHRC urges TFDA to take actions against those who make or import such drugs. The study could not find a single case in Court filed by TFDA against the culprits despite the fact that both the Penal Code, Cap. 16 and the Tanzania Food, Drugs and Cosmetics Act, 2003 make such act as criminal offences.

On its side, NEMC has delegated some of its monitoring and quality assurance powers to private individuals and firms. The Government Notice Number 349 of 2005 allows NEMC to register and publish environment experts to work as Environmental Impact Assessment (EIA) Experts and Environmental Audits (EA). A total of 163 and 74 EIA and EA experts were registered in 2014. A total number of such experts in Tanzania could not immediately be obtained during the study. But the situation on the ground suggested that, more of them are needed to strengthen EIA and auditing as well as monitoring of standards and follow-up of NEMC orders because so many industries reached out during the study seemed to have not been visited for a while.

As regards to the transport sector, increased traffic congestion in major cities of Dar es Salaam, Arusha and Mwanza coupled with frequent road accidents in the cities and highways poses capacity challenges to SUMATRA and continuously weakening its core mandate to ensure safe, reliable and efficient transport services. An official at SUMATRA pointed a finger to the presence of commuter motorcycles (*'Bodaboda'*) as being one of the most challenging situation ever happened in Tanzania. Indeed, the Bodaboda are atrocious attributors of many accidents in Tanzania. However, issues associated to poor urban planning; poor roads; and corruption on the part of some of individual traffic officers could also be cited as serious attributing factors to SUMATRA's current poor capacity to regulate the transport sector.

PPRA which is mandated to oversee procurement entities (PE) of all public authorities as stated above was supposed to have 142 staff in 2013 (2014). However, due to resource constrains the authority operated with a staff complement of only 53 (being 37.3% of the expected staffing level). Therefore, the deficit is as wide as above 62%. Apparently, such a shortage could be one of the reasons which rendered it impossible for PPRA to open up upcountry offices apart from the Dar es Salaam's based main office.²⁹⁷

297 An interview between a Researcher from LHRC and PPRA Officials in Dar es Salaam in November 2014.

LHRC suggests that, same arrangement of off-loading responsibilities to qualified private entities should be extended to routine inspections or monitoring of standards by various facilities because this is the most critical challenge which happens on the ground. Probably the environment and natural resource departments of municipal and district councils could be empowered to supplement monitoring efforts and such departments all over the country.

The same suggestion is applicable to all other authorities. Instead of ‘waiting’ for more funds to be made available, they could just decentralize some of their responsibilities to the stated municipal or district councils or even professional CSOs which operate at the grassroots levels. Almost all councils have already devised some rules (by-laws) to reinforce some standards relating to business practices based on their particular contexts. But, there is no clear relationship between national regulatory authorities and the arrangements devised by the councils.

Apart from statutory and administrative capacity issues, enforcement of standards by the regulatory authorities is challenged by corruptions and other forms of malpractices. For instance, according to the recently released REPOA study report titled ‘*After More than a Decade in the Fight against Corruption, How Much Progress?*’, 67% of the respondents to that study said that corruption increased between 2013 and 2014 (in all governance spheres including business executives).

A separate study on the prevalence of corruption practices in regulatory authorities is needed to give a specific picture. However, basing on empirical studies on corruption, limited or uncertainty or bureaucratic service delivery tends to create corruption loopholes because those with financial muscles are likely to ‘jump the queue’ in order to get a quick service.

On this one, LHRC argues all authorities to publish and disseminate Client Service Charters (CSC) which normally give a customer an assurance of obtaining the service he or she seeks.

Another illustration of malpractices which captured the attention of the media and general public during the year 2014 was the ‘Tegeta Escrow Account’ which emerged from BOT as part of the agreement between TANESCO and Independent Power Supply (IPTL) Company concerning the tariff charges’ disputes between the two. The IPTL is a private company which sells electricity to TANESCO, a public company responsible for power supply countrywide. More than Tshs 300 billion was allegedly transferred from BOT without proper authorizations.²⁹⁸ The money was later on alleged to have been deposited to Stanbic Bank (Tanzania) where billions of them were withdrawn without following the withdraw limits or procedure as provided for under financial laws mentioned above. This was the second time in ten years whereby BOT, as main

298 Various media reports.



financial regulator, was implicated in such kinds of scandals.

Thirdly, enforcement of compliance by authorities is also hindered by presence of weak legal frameworks, in particular, lack of enforcement mechanisms and nature of penal sanctions against wrongdoers. For instance, the regulations proposed to be made pursuant to the PPA Act, 2011 were not yet formulated or gazetted. This situation has affected further reform efforts and implementation of some important intervention aiming at improving the procurement system in Tanzania.²⁹⁹

As regards to penal sanctions, some of the authorities complained that the amount of fines and other punishments imposed by the respective laws are relatively minimal. For instance, the TMAA research officer stated that, illegal exportation of minerals (regardless of the value) is punishable for a fine of Tshs 10 Million for an individual person and Tshs 50 Million if the party is a company or imprisonment to exceeding three years.³⁰⁰ To his opinion, such kinds of punishments are easily tolerated and that is why such incidents are not regarded as serious offences.

Moreover, TMAA does not have direct powers ('teeth') to arrest or forfeit illegally obtained minerals or deal with other offences connected to mining activities. The TMAA has to contact police, TRA, NEMC and other law enforcement agencies, before it can arrest anyone, a situation which unnecessarily prolongs legal actions even for obvious cases. Sometimes cases are lost along the way due to such bureaucracy.

Same line of argument was heard from TFDA during the study. It complained that, information about special inspections in the market to identify counterfeited items sometime leaks in the hands of other law enforcers to whom they depend on for carrying out a joint mission in order to corner the culprits.³⁰¹ As such, they proposed to be vested with 'policing powers' so that they could have total control of inspection, arrest and investigations of cases associated with food, drugs and cosmetics.

299 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2014 (LHRC's Report II), Page 16. quoted the opinion of the PPRA official in November 2014.

300 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2014 (LHRC's Report I), Page 14.

301 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2014 (LHRC's Report I), Page 17.

Much as LHRC concurs with the opinions of these authorities on how to improve monitoring and inspections of the items and services falling within their mandates, however, the viability side of it would not be possible at least for the time being. Such arrangements need major reforms of the criminal justice system – to widen the scope of investigation and prosecutorial responsibilities. Probably, one of the feasible solutions for now should be identification of some police officers, equip them with specialized skills and facilities relevant to the work of the authorities and then, devise periodical capacity building programs for them. Otherwise, the government should facilitate TFDA with more laboratory equipments and technicians in order to relieve them from their heavy workload and increase efficiency.

Lastly, the authorities' capacity or efficiency to monitor and enforce standards is weighed down by the general public consumption behaviour. Due to low income and awareness on quality goods and services to be consumed, most of the local residents tend to prefer low-cost items or services. There is common language in the market such as '*bidhaa za kichina*' (Chinese goods), some of which are allegedly to be of low quality. A customer at the shop has a liberty to choose between low costed '*bidhaa ya kichina*' or high quality product which is sold at higher price.

LHRC questions why it has been difficult to apprehend the counterfeiters because most of them tend to include contact information including phone numbers and physical address of their 'factories.' Moreover, there are advertisements placed on the streets and gossip newspapers which call on people to use the uncertified products or services.

The '*Bidhaa za kichina*' are of different types and nature including the ones which are believed to enlarge women's hips within a day or two or '*karolaiti*' medicine, which could turn one's skin colour within a week. A TBS official stated that, the so many media awareness programmes on the importance of using certified product, most of the common citizens still prefer using cheap and uncertified products. He gave an example of '*viroba*' (plastic bagged local spirit), that '*... people are still unaware of the danger of hiding the culprits, who manufacture fake products such as 'viroba'. Such local spirit ('viroba') severely impairs eyes because of its high level of ethanol used in this spirit.*'³⁰²

The RAs themselves had different reasons pointed out as capacity gaps. A total of 42.3% mentioned lack of specialized skills as main attributing factors to all these 'messes.' A financial constraint has 38.5% of the responses. Lack of equipments was regarded as immaterial factor compared with others, whereby only 3.8% of the respondent RAs' workers viewed it as could be one of the causes of incapacity.

302 Corporate Human Rights Compliance Assessment, Dar es Saalam Field Report of 2014 (LHRC's Report I). Page 27.



**Table 76: Kinds of Capacity Gaps to Monitor Compliance –
RAs Workers' Responses**

N=43 [Responses of Individual Officers within RAs]	Frequency	Valid Percent
Lack of Sufficient Skilled/ Specialized Officers	11	42.3
Lack of Sufficient Financial Resources	10	38.5
Poor Technology in your Authority	3	11.5
Lack of Equipments and Other Facilities	1	3.8
Other Reasons	1	3.8
Total:	26	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

8.9 Overlapping of Responsibilities and Interests Amongst the Regulatory Authorities

While TRA wants to collect as many revenues as possible, TIC considers it imperative to introduce more incentives especially tax exemptions in order to lure more investors to come in Tanzania. For instance a senior official at TIC³⁰³ told the study team that:-

The exemption of taxes on importation of investor's equipment should not be regarded as a problem because they are actually regarded as investors' capital! But, TRA does not understand this concept and I am telling you, this issue repeals investors in Tanzania. TRA was supposed to exempt tax payments for a few years so that they could collect more in future ... this is a point which we (TIC) normally differ with TRA.

Moreover, while TIC wants less bureaucratic procedures to acquire land for investments, land authorities at national and village level maintain such stiff procedures in order to, *inter alia*, safeguard the interest of local land users.

LHRC is of the opinion that, too much leniency in tax collection or land acquisition could be exercised to the detriments of national economic development. As it was argued in a similar report in 2013, there is a need to consider other factors which could attract investments in Tanzania apart from tax exemptions and holidays.

8.10 Human Rights Aspects in Regulatory Activities

The human rights norms are not vividly addressed in the current business sector regulatory frameworks. One could only sense such norms by implications. For 303 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2014 (LHRC's Report I). Page 8.

instance, the EIA and Social Impact Assessment (SIA) incorporate some of the said norms though not in a direct way.³⁰⁴ Only 60.5% of the RAs’ officers who participated in this study were of the opinion that human rights norms were either incorporated in the regulatory laws or such norms were promoted through practices.

Table 77: Whether Laws and Practice Mainstreamed Human Rights Norms – RAs’ Perceptions

N=43 [Responses of Individual Officers within RAs]	Frequency	Percent
Yes	26	60.5
No	5	11.6
Not Sure	12	27.9
Total:	43	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

One of the general human rights which cuts across all over business sectors is the right to receive quality service from the service provider; and that, poor service or goods is an infringement of one’s rights. But to the contrary, the 2014 experience showed that, Tanzania continued to be a dumping space of low quality goods from Asian and other countries. Virtually, so many people are hurt by poor services or goods offered by the companies but just keep quiet due to lack of awareness of where and how to seek legal redress. The consumer could complain informally (and not through formal legal channel) about the quality, delay, quantity, or tariff (charges) imposed with regard to the nature of services or goods received.

The dilatory or failure to lodge complaints against poor services and goods is not only attributed to low awareness among the general public; but also, lack of sufficient policy and legal frameworks to protect consumers. Tanzania lacks comprehensive and specific legal and policy frameworks on consumer protection.

As such, LHRC urges the government to consider having such frameworks in place due to increased flow of goods and services from within and outside the country caused by the liberal market economy as stated in chapter one of this report. Secondly, LHRC argues the government and its regulatory authorities to hasten their plans of opening up upcountry branches in all regions of Tanzania. There are a good number of consumers who fail to pursue their rights due to lack of proximity to regulatory services.

³⁰⁴ An official from NEMC as quoted in: the Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2014’ (LHRC’s Report II). Page 9.



Moreover, there is a need for the regulatory authorities to establish and reinforce administrative ways of addressing people's grievances against investors' poor services or other conflicts relating to investments. Most laws do not allow such arrangements. Depending on due legal process alone sometimes elongates dispute settlements between investors and members of the community. For instance, TIC would have allowed having kind of adjudicating committee to sort out disputes relating to its land banks. That is, it is better to have such kinds of platforms.

8.11 Public Awareness of the Existence and Functions of the Regulatory Authorities

It was found that a good number of people in the community, including workers, do not know the existence and functions of RAs including those which directly engage with them on daily basis such as TBS, EWURA and SUMATRA. For instance, out of 429 respondent workers of the corporate companies who were interviewed on the knowledge of existence of any regulatory authority, only 22.4% stated that, they knew some of them as the table below shows.

Table 78: Awareness Level of Existence of RAs – Workers Response

N=429 [Responses of the Workers of Companies]	Frequency	Percent
Yes	96	22.4
No	333	77.6
Total:	429	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Out of those 96 (22.4%) workers who said 'YES' they know RAs, only 9.8% of them had used such an authority to address certain challenges they had once faced as employees of the corporate companies.

The low awareness among the workers of the existence of RAs was noticed by this study to be virtually the same as of the general members of the public. As the table below shows, out of 447 members of the public, only 19.5% of them stated that they had little knowledge of the existence of regulatory authorities.

Table 79: Awareness Level of Existence of RAs – General Public Response

N=429 [Responses of the Public Members]	Frequency	Percent
Yes	87	19.5
No	360	80.5
Total:	447	100.0

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

Out of those who said ‘YES’ to the knowledge of existence (and may be functions) of RAs, only 4.9% of the members of public claimed to have used RA’s services to sort out certain challenges. Moreover, only 1.8% of the ordinary members of the community had ever participated in the work of RAs such as research, evidence collection, and monitoring generally.

8.12 Performance Indicators on Effectiveness Of RAs

The following is the summary of the key findings in a form of performance indicators on the effectiveness of the Regulatory Authorities (RAs), which regulate business sector in Tanzania. Note that, this is a new chapter of the report. Therefore, unlike other chapters, there is no comparative analysis between 2013 and 2014 situations.

Table 80: Performance Indicators Regulatory Authorities

Effectiveness of RAs – Corporate Sector in Tanzania			
S/ No.	Sub-Category of Right(s)	Performance Indicators	
		Year 2013	Year 2014
i.	Overall Performance (self-assessment by RAs themselves)	N/A	<ul style="list-style-type: none"> It appeared that, almost all of them consider their performance as ranging between 40% and 50% of the expected levels. Only 41.9% of RAs had in place specific performance assessment tools (to measure the outputs and outcomes or impacts) of their work.
ii.	Effectiveness and Efficiency of RAs’ Performances	N/A	<ul style="list-style-type: none"> 58.3% of the RAs considered that their legal mandates were sufficient for them to perform their specific duties as RAs of the corporate business sector in Tanzania. At least 75% of RAs had physical accessibility of their services which was limited to less than 15% of the total regions of Tanzania Mainland.



Effectiveness of RAs – Corporate Sector in Tanzania			
S/ No.	Sub-Category of Right(s)	Performance Indicators	
		Year 2013	Year 2014
iii.	Awareness of RAs’ Services	N/A	<ul style="list-style-type: none"> • Out of 429 respondent workers of the corporate companies who were interviewed on the knowledge of existence of any RA, only 22.4% stated that, they knew some of them. Out of those 96 (22.4%) workers who said ‘YES’ they know RAs, only 9.8% of them had used such an authority to address certain challenges they had once faced as employees of the corporate companies. • Out of 447 members of the public, only 19.5% of them stated that they had little knowledge of the existence of RAs. Out of those who said ‘YES’ to the knowledge of existence (and may be functions) of RAs, only 4.9% of the members of public claimed to have used RA’s services to sort out certain challenges. • Moreover, only 1.8% of the ordinary members of the community had ever participated in the work of RAs such as research, evidence collection, and monitoring generally.

Source: LHRC, Corporate and Human Rights Study (Primary Data), December 2014.

CHAPTER NINE

GENERAL RECOMMENDATIONS AND CONCLUSION

This chapter covers general recommendations and conclusion. Specific recommendations have been indicated in each chapter and paragraphs of this report. Therefore, the recommendations presented below are general ones, which mainly focus on policy and legal reforms. It should also be noted that, some of the recommendations were made last year (2013) but have been reiterated here because no action was taken to rectify the situation in 2014.

9.1 General Recommendations

9.1.1 Labour Rights

There is a need to:-

- a) Strengthening law enforcement mechanism to ensure that all employers and workers adhere with current legal standards governing employment and labour relations;
- b) Amending or enacting a new law in order to regulate employment of foreign workers in Tanzania;
- c) Operationalizing the Workmen Compensation Act, 2008 and its regulations (if any);
- d) Civil rights groups (including trade unions and their branches) should initiate more practical ways to raise workers' awareness on employment and related laws; and
- e) Labour rights should be incorporated in the Proposed New Constitution.

9.1.2 Land Rights

- a) The government should hasten issuance of Certificate of Land Titles to all citizens who possess land in order to protect its tenures;
- b) The government should facilitate enactment of the law which limits investors land size; and retrieve dormant land from investors in favour of majority citizens who are increasingly becoming landless;



- c) There is a need to centralize land-bank management, preferably to TIC only, unlike the current situation, whereby several other investment agencies are empowered to create land banks for (foreign) investments;
- d) The responsible Ministry should hasten initiation of Land Tribunals all over the country in order to speed up adjudication of land disputes.

9.1.3 Taxation

- a) The government should facilitate amendment of all laws and rules in order to control massive tax exemptions. Such exemptions should not exceed 1% of GDP;
- b) There is a need to reconsider the institutional capacity of the Tanzania Intelligence Agency, especially in regards to control of financial and non-financial illicit, which cause loss of billions of money.

9.1.4 Corporate Accountability

- c) There is a need to have a specific law on corporate accountability in Tanzania. To begin with, the government should list down development priority areas which corporate companies can be encouraged to support.
- d) There is a need to have a monitoring system which will be used to assess the extent in which corporate companies contribute to the community (to monitor types and nature of support). Companies which do not ‘pay-back’ to the community should not be given tax exemptions.

9.1.5 Environmental Justice

- a) There is a need to improve institutional capacity of OSHA, TMAA and NEMC for them to work more efficiently in order to, *inter alia*, control pollutions caused by investment activities.
- b) Law enforcement needs should be improved to safeguard unlawful utilization of natural resources including killings of elephants. Members of the public should be encouraged to take an active role towards protection of the natural resources.

9.1.6 Gender Related Rights

- a) The government should encourage corporate companies to adopt affirmative

measures to ensure that, women, PWDs and PLWHA are not discriminated from employment by the private sector.

- b) Community development officers of each district or municipalities should ensure that, gender-related rights are mainstreamed within corporate companies' plans and activities.

9.1.7 Regulatory Authorities (RAs)

- a) There is a need to harmonize the current legal framework on corporate business practices to eradicate overlapping of responsibilities amongst RAs or scaling up of activities or mandates of some of the RAs (complementing to each other to improve physical accessibility of their (RAs) services across the country.
- b) Regulatory authorities should be supported to expand throughout Tanzania by establishing branches, increase number of workers and facilities.
- c) Observance of human rights standards in business sector should be one of the criteria or points of consideration for the RAs to monitor or assess.

9.2 Conclusion

A quest for national economic development has necessitated economic policies, which encourage business enterprises in Tanzania. The liberalized economy has forced the government to lessen its tariffs and other regulations in order to create 'conducive' environments for the enterprises (corporate companies) to flourish. Moreover, such kind of economy allowed companies to adopt a number of business strategies which facilitate them to acquire more profit. The State is no longer producer or supplier or trader. Its role has been reduced to being regulator of the economy through regulatory authorities (RAs); taxation; imposition of laws and creation of business environments. In most cases, success in business sector has been counted by looking at the number of foreign companies which have been lured to come and invest in Tanzania; amount of revenue collection (as taxes or development levies); and other indicators based on the reports of the World Bank and other international institution. Certainly, compliance to human rights norms has not been one of the criteria.

As such, LHRC finds it necessary to assess to what extent the corporate business sector complies with the national and international human rights standards, particular in respect of labour rights; land rights; environmental justice; taxation; and gender related rights. Moreover, the assessment is made on effectiveness of RAs to enforce business regulatory standards.



It was generally found that, law enforcers were not effective enough to enforce legal standards. Secondly, majority of workers and other members of the public were not aware of the rights associated to business practices. Thirdly, there were legal gaps in the areas of controlling influx of foreign workers; protection of small scale producers or traders; abiding with corporate social responsibility; and control of chunks of lands given to investors which were currently dormant while villagers suffered acute shortage of land. Fourthly, legal reforms are also needed to control massive tax exemptions; to mainstream human rights standards in business practices; and widening the scope of operation of the RAs in Tanzania.

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(Footnotes)

- 1 The plan was to visit at least 45 RAs in 15 regions (being an average of 3 RAs per region), plus 20 RAs in Dar es Salaam – because almost all RAs had their headquarters (HQ) situated in Dar es Salaam. That number (43) represents number of individual officers interviewed and not a total number of RAs. In some of the RAs, more than 1 officer was interviewed (in upcountry and HQ).
- 2 Note, more corporate companies were consulted in Kilimanjaro region during this study. These four are just a few of them sub-sampled randomly to illustrate the issue at hand.
- 3 Interviewed on various labour issues, contract being one of them. Workers were picked randomly depending on their availability for the study's interviews.
- 4 Also, Mass Media, Postal and Courier Services.
- 5 Others than those employed by diplomats and potential businessmen and entitled officers who are not residing in the household of the employer.
- 6 Means shops, petrol (filling) stations, general logistics, and all other forms of direct selling of items.
- 7 Particularly water, agriculture and trade union sectors.
- 8 The increase of level of unawareness of the labour law was linked to the fact that; i) the 2014 study explored a number of new rural-based companies; and ii) changed the samples of some of the regions as stated in chapter one of this report.
- 9 Note that, this percentage is assumed by the report writer on the ground that, at about 40% (that is 17 Million) of total Tanzanian population (44.9 Million) are adults who are eligible to apply for land ownership. Therefore, the percentage is calculated out of assumed 17 Million Tanzanians who could apply for CRO. The government will need to issue more accurate figures.
- 10 The promise which was not honoured anyway.
- 11 Summation of available (2013) cases and new cases filed from July 2013 to April 2014.
- 12 The 2014 records are extracted from the Speech by the Minister for Finance Hon. Saada Mkuya Salum (MP) introducing to the National Assembly, the Estimates of Government Revenue and Expenditure for Fiscal Year 2014/2015, Paragraph 18, Page 8. The 93% performance level indicated was a projection to be attained as of June 2014. The rest of the information was not immediately obtained up to the end of this study in December 2014.
- 13 The Mtibwa Sugar Estate Company's Human Resource Manager stated that, his company has managed to contribute to the community: USD 150,000 for education; USD 20,000 for health services; USD 500,000 for roads maintenance; and USD 45,000 for religious matters.
- 14 For instance, according to the Management, TANICA has contributed Tshs. 100,000,000 (USD 55,500) over past five years in education and water sector.
- 15 According to the Management, the company was currently contributing to the construction of Mjire Secondary School's laboratory.
- 16 According to the Management, Tanga Cement, contributed in education sector by supporting construction of 5 classrooms plus their facilities of the Pande and Maweni Secondary Schools.
- 17 The Mamujee Podoa (Tanga) offered foodstuff to the Mabanda Maskini's Centre of Elderly, Tanga.
- 18 Neilkant (Tanga) offered milk to students.



- 19 For instance, according to the Management, Kagera Tea Limited was contributing Tshs 200,000 (USD 110) every month over the past five years (making a total of Tshs 6,467, 626.6 [USD 3,593.1]) to villages surrounding the business.
- 20 Prevalence of person aging 15 to 49.
- 21 Note that, majority (more than 95%) of those interviewed were workers who were not PWDs as there were only a few PDWs who were found working in private companies during the study. Therefore, the responses could have been different if that question was to be responded solely by PWDs.
- 22 Note, this is a newly introduced gender group under this Part of the Report.
- 23 This was between January and October 2014 (not whole year).
- 24 Note that, in each RA, at least two individual officers were interviewed. Therefore, the responses are based on officers' individual opinions (according to their experiences). The officers interviewed were the one who the RAs' management allocated to the study team. All interviews were conducted between 3rd November and 20th November, 2014.

