

Njombe



Mbeya



Dodoma

# HUMAN RIGHTS AND BUSINESS REPORT 2017

*"Industrialization Drive and Workers' Rights in Tanzania"*



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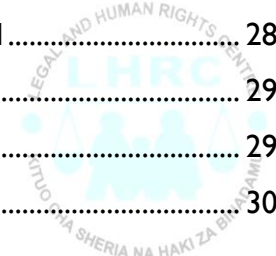
## Abbreviations

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



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## About LHRC

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

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

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

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

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

**Prof. Geoffrey Mmari**  
**Chairperson - LHRC Board**





## Executive Summary

### Introduction

LHRC has been preparing an annual report on the situation human rights and business in Tanzania since 2012. This is therefore the sixth report, assessing corporate compliance with labour laws and standards, corporate responsibility to respect human rights, state duty to protect human rights and remedy for violation of human rights in the business sector in Tanzania Mainland for the year 2017.

The main objective of this report is to highlight the situation of human rights and business in Tanzania Mainland, focusing on: labour standards and practices; land acquisition for investment; tax obligations of companies and other businesses; issues of discrimination in the business sector; corporate social responsibility; corporate environmental responsibility; corporate respect for human rights; and performance of regulatory authorities in the business sector as part of the State's duty to protect human rights. The report provides an assessment of these key issues in the business sector and shows how they impact, whether negatively or positively, labour, environmental, land and human rights. The report also touches on the issue of awareness of rights, laws and duties in the business sector among workers, employers and community members.

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

### Methodology

Data used to prepare this report were obtained from both primary and secondary sources. Methods used to collect data were questionnaire, interview (including key informant interviews), focus group discussion (FGD), observation and document review. These methods were used to collect data from a total of 1,067 respondents, including workers, corporate management officials, trade union officials, officials at regulatory authorities, market traders (Dar es Salaam), service users (Dar es Salaam) and community members. A total of 55 companies were visited during the study. The main source of primary data was the business and human rights study conducted by LHRC research teams in 15 regions of Tanzania Mainland, which aimed at assessing compliance of businesses with labour laws and standards; corporate social responsibility; environmental responsibility; tax obligations; and land laws.

## Key Findings

### Business compliance with labour laws and standards

#### 1. Employment Contracts

- Majority of workers (74%) claimed to have employment contracts. Most of them (84%) also claimed to have written employment contracts.
- Ready-made contracts continued to be a problem in 2017, mainly due to lack of collective bargaining.
- Some workers had contracts written in a language they do not understand, particularly English Language.
- Some workers decide against pushing for an employment contract for fear of losing their jobs. This claim was especially made during interviews with workers in Dodoma, Mara and Morogoro Regions.

#### 2. Working Hours

- Majority of interviewed workers (95%) stated that they usually work within the working hours limit as per Employment and Labour Relations Act 2004.
- Some workers who were interviewed complained about overtime work without pay or fair pay. 33% of the respondents claimed they were not paid for overtime work, while 67% claimed they are paid when they are required to work overtime.
- Some employers are not aware that they are not supposed to allow employees to work beyond 12 hours in case of overtime work, even if they volunteer to do so.

#### 3. Remuneration

- Complaints of inadequate wages were levelled against employers across all regions that were studied, especially Mbeya, Morogoro and Tanga.
- Those who push for increased wages are usually told to quit if they are not satisfied with pay or threatened with termination of employment.
- The Wage Order that is being used is that of 2013, while the law requires review every 3 years.
- When a worker misses work due to illness or other reasons their wages are usually cut. This issue was especially raised in Mtwara and Mbeya Regions.

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

- The overall situation of working environment has improved at most companies that were visited. Majority of respondents (73%) rated their overall working environment as good, average and very good.
- However, the issue of protective equipment such as masks, boots and gloves is still a major challenge for most workers, especially in Mtwara, Morogoro, and regions in which there are mining operations. Lack of gloves is a major concern for women working in the cashew nut industry as it was observed in Mtwara Region, putting them at risk of occupational hazards (illness).

- Labour inspection is not regularly conducted and is a major concern in promotion and protection of labour rights. There are still question marks over the capacity of Occupational Health and Safety Authority (OSHA) to conduct regular labour inspections given the human and financial resources constraints it faces.
- Almost 50% of the workers that were engaged during the study stated that they had not received any training on occupational health and safety, despite claims by corporate management officials that regular training is provided.

##### **5. Compensation for injury sustained at workplace**

- Majority of employees (45%) were of the view that compensation is provided in case of injury sustained during work. However, 32% of them noted that there is no compensation, save for costs of medical care, while 23% claimed they were not sure. Complaints about lack of fair compensation were especially made in Iringa, Manyara, Mbeya, Mtwara, Mwanza and Njombe Regions.

##### **6. Freedom of association and collective bargaining**

- Freedom of association for workers continues to be restricted as employers see trade unions as a nuisance. Most of the employees that were interviewed claimed that their employers discourage them from joining trade unions. This was revealed in Morogoro, Mbeya, Mwanza and Njombe Regions.
- Workers fear engaging, joining or being active in trade unions for different reasons, including threats from employers, monthly contributions to trade unions, negative perception towards trade unions (corruption/colluding with employers) and lack of awareness on freedom of association and collective bargaining.
- Majority of respondents (66%) indicated that there are trade union branches at their workplaces. However, only 17.6% of the employees felt that the trade unions are very active, while majority of them, 34.1% felt they are not effective or effective a little and 29% felt they are effective.

##### **7. Child and forced labour**

- Fewer incidents of child labour were observed or reported in regions and companies that were visited, but child labour still persists, especially in mining areas, where children were found to engage in work considered hazardous under labour regulations.
- 30% of companies visited did not have a policy on minimum age for employment.
- 95% of employees stated that they were not forced to work beyond the stipulated working hours.

##### **8. Leaves and social security**

- Over 90% of employees claimed they take annual leave and over 60% took it in the past year.
- At some companies there were complaints about lack of payment for annual leave.
- Some employers tend to 'buy' or 'substitute' leave, which is against the law. This issue was especially raised in Morogoro and Mwanza Regions. However, some workers are

actually happy to 'sell' their leave to employers, not knowing that they are actually entitled to paid leave.

- Some workers are afraid of taking or demanding leave for fear of losing their jobs.
- Social security coverage is still a huge concern as most workers are not covered.

## 9. Employment termination

- Some of the employees complained about receiving threats of termination of employment from supervisors and employers when they question violation of their labour rights.
- One of the major grievances of legal aid clients attended by LHRC's Kinondoni Legal Aid Clinic, based in Dar es Salaam, was unfair termination. The legal aid clinic received 107 cases of unfair termination and 362 cases of violation of employee rights, whereby most of the clients stated that they had been threatened with termination of employment.

## 10. Access to Remedy

- Access to remedy for violations of labour and human rights by businesses is still a challenge. Corruption, lack of effective internal grievance mechanisms and shortage of resources at the Commission for Mediation and Arbitration (CMA) are among the factors contributing to the situation.

## 11. Awareness of labour laws, rights and duties

- Awareness of labour laws, rights and duties is generally very low, especially among workers. Only 23% of respondents in this year's study were aware of the labour laws, rights and duties and could clearly mention some of them.
- Majority of employers do not comply with labour law requirement of displaying a statement of rights of employees at a conspicuous place within a workplace. Less than 50% of the companies were found to display such statement.

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

- The study found that human rights that were violated as a result of businesses not complying with labour laws and standards include: right to work, which includes right to gain living by work and right to just and favourable working conditions; right to fair remuneration; right to freedom of association; right to adequate standard of living; right to family life; right to health; and right to form and join trade union.

## Land Acquisition for Investment

- Disputes relating to land acquisition and compensation are still common.
- Community members do not effectively participate in land acquisition for investment, usually lacking the requisite knowledge about land rights and proposed investment and receiving empty promises.

- 67% of respondents claimed they were not engaged in land acquisition for investment process.
- 42% of respondents were not sure whether compensation for land acquisition is fair and timely, while 30% felt that it is fair but not timely.
- Corruption in the land sector plays a big part in unfair land acquisition for investment.
- Most investment/business companies do not allow local community members access to unutilized land acquired for investment.
- 64% of respondents stated that investors in their areas do not allow community members access to unutilized land, while 28% stated they were not sure and 8% stated they are given access.
- Most investment companies (66%) that were engaged acknowledged that they do not provide access to unutilized land to local community members.
- Lack of effective participation of community members in large scale land acquisition and unfair compensation contribute to conflicts between investors and community members.
- Unfair land acquisition and compensation may lead to violation of fundamental human rights such as right to health, right to property, right to benefit from natural resources and right to clean, safe and healthy environment.

### **Business Compliance with Tax Obligations**

- Trends of past 10 years indicate an increase of tax revenues. However, a lot of revenue is lost through tax avoidance and evasion in the business sector.
- In the mining sector, CAG's assessment of mineral development agreements (MDAs) revealed loopholes used to avoid tax.
- As part of reform of mineral law regime, the Government introduced two new laws in 2017, the Natural Wealth and Resource Contracts (Review and Renegotiations of Unconscionable Terms) Act; and the Natural Wealth and Resources (Permanent Sovereignty) Act.
- 84% of companies visited during the study showed concern about increasing taxes and 51% felt that the tax imposed on their companies is not affordable.
- Majority of small businesses in Kariakoo-Dar es Salaam (34.5%) felt they do not benefit at all from tax payment, followed by those who felt they benefit a little (27.3%) and those who felt they benefit or somewhat benefit (36.4%). Only 1.8% felt they benefit a lot from tax payment.
- 41.1% of traders in Kariakoo Market – Dar es Salaam mentioned high tax rates as a major reason for tax avoidance/evasion, followed by low awareness on tax importance at 28.6%.
- Tanzania is still losing a lot of revenue due to tax incentives and other exemptions. The CAG report for the financial year 2015/2016, released in March 2017, indicated that mining development agreements (MDAs) include provisions with “unreasonable tax incentives.” The CAG also showed concern about exemption of fuel levy and excise duty on fuel for mining companies.

- Tax avoidance and evasion hinder the Government's ability to ensure progressive realization of economic, social and cultural rights, especially right to health, right to education and right to water.

### **Corporate Social Responsibility**

- Corporate social responsibility (CSR) is now a legal requirement in the mining sector, following amendment of the Mining Act 2010 in 2017.
- Companies improved their CSR practices in 2017. However, there is limited understanding of CSR among companies and community members. Most of them understand CSR in terms of philanthropy, not knowing other economic, social and environmental aspects of CSR.
- Almost half of the community members engaged by LHRC during the study on business and human rights were not satisfied with CSR activities.
- Most CSR practices for the year 2017 concentrated on education.

### **Environmental Responsibility**

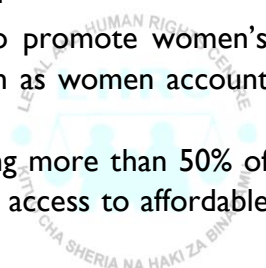
- Environmental concerns are not effectively addressed by companies and most of them do not provide remedy for environmental pollution.
- There is little involvement of community members in social impact assessment. 74% of respondents during the business and human rights study stated that they had not participated in social impact assessment before investor started operations in their areas.

### **Corporate Respect for Human Rights**

- Environmental pollution was mentioned by respondents as the biggest human rights abuse in 2017 (33%), followed by unfair land acquisition or eviction (19.1%).
- Access to remedy is a big challenge for victims of human rights abuses by businesses. Majority of community members engaged for the study (50.7%) stated that companies have no mechanism to address grievances of community members or have the mechanisms but do not address such grievances.
- In 2017, local and international human rights organizations, including LHRC, showed concern over human rights violations at Acacia's North Mara Mine and wrote an open letter to the President of the United Republic of Tanzania. Hon. John P. Magufuli, seeking his intervention into the matter.

### **Gender and Other Forms of Discrimination in the Business Sector**

- In the formal sector of employment, despite the efforts made to promote women's economic rights, there is still need to increase female participation as women account for less than 40% of employees;
- Women dominate the informal sector in terms of numbers, owning more than 50% of microenterprises, but face a number of challenges including lack of access to affordable loans, gender-based violence and negative cultural attitudes.



- LHRC study on business and human rights revealed that most of the employees at visited companies were male and there were very few persons with disability (PWDs) employed at the companies.
- Majority of respondents who were interviewed indicated that they had not experienced or witnessed gender-based violence at their workplaces. However, this may be due to their limited understanding of GBV issues.
- Common forms of violence at workplace that were mentioned include physical assault, sexual harassment and threats (including bullying and intimidation).

### **Performance and Effectiveness of Regulatory Authorities**

- Most regulatory authorities are not easily accessible due to limited coverage and low awareness of community members and employees on them.
- While the legal framework on regulatory authorities is considered to be adequate, enforcement of laws remains a big challenge, contributed by factors such as shortage of human and financial resources, corruption among officials and lack of coordination among regulatory authorities.
- Majority of regulatory authority officials engaged in the study mentioned lack of sufficient skilled officers (42%) and lack of sufficient financial resources (27%) as major capacity gaps in their regulatory authorities.

### **Key Recommendations**

#### ***Compliance with labour laws and standards***

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

#### ***Land acquisition for investment***

- The Government, through the Ministry of Lands, Housing and Human Settlements to ensure that community members effectively participate in the process of land acquisition

for investment, including having the relevant legal knowledge and be fully informed about the impact of proposed investment in order to make free prior informed consent.

- The Government should facilitate amendment of land laws to limit the size of land that can be acquired by investors in order to cure the problem of unutilized land and community members not having enough land to conduct their economic activities.
- The Ministry of Lands, Housing and Human Settlements to collaborate with the Ministry of Constitutional and Legal Affairs and the Judiciary to effectively address land-related conflicts between community members and investors in order to guarantee realization of land-related rights.
- The Ministry of Lands, Housing and Human Settlements to ensure land acquisition process is fair and the affected community members are fairly remedied, including fair and timely compensation.

### ***Business Compliance with tax obligations***

- The Government, through the Tanzania Revenue Authority (TRA) to continue closely monitoring companies to ensure they comply with their tax obligations, especially those in the mining sector – which have been mainly implicated in tax evasion and avoidance.
- The Government should reduce tax exemptions and other tax incentives discussed in this report in order to increase revenue collection.
- Companies and other businesses should refrain from tax evasion and avoidance in line with their responsibility to respect human rights and corporate social responsibility.

### ***Corporate social responsibility, Environmental responsibility and Corporate Respect for Human Rights***

- The Government, through the Ministry of Constitutional and Legal Affairs should enact a comprehensive law on corporate social responsibility (CSR) to supplement the changes in the mining law, which makes CSR a legal requirement for mining companies. This will ensure all businesses, not just mining companies, comply with their CSR.
- Environmental impact assessment (EIA) and social impact assessment (SIA) are very important for ensuring environmental responsibility and protecting the interests and welfare of community members before investment is made. As such, the Government, through the ministries responsible for investment, land and environment, should ensure compliance with these requirements in line with the laws, including the Environmental Management Act.
- Companies should refrain from causing adverse human rights impact or participate in human rights abuses; and when they are implicated in human rights abuses they should provide effective remedy.

### ***Gender and other forms of discrimination***

- The Government should ensure companies adopt affirmative measures to protect PWDs, women and PLHIVs from any form of discrimination at workplace, including when accessing employment.



- Community development officers and other stakeholders should ensure that rights relating to gender and non-discrimination are mainstreamed in all plans and activities of companies.

**Regulatory authorities**

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



## CHAPTER ONE: INTRODUCTION

### 1.1. Overview of Tanzania

#### **Historical Overview**

By 10<sup>th</sup> Century, Tanganyika (now known as Tanzania Mainland), had interacted with other parts of the world. The Bantu-speaking people of Tanganyika were then living with traders from Asia and the Arab world, before the Portuguese came in the 15<sup>th</sup> Century. In 1880s there was scramble for and partition of Africa in Berlin, Germany. Following this scramble and partition, Tanganyika was placed under the German colonial rule in 1885, but was later taken over by the British after the First World War. After the Second World War, Tanganyika was declared by the United Nations as a trust territory, with the British maintaining control until 1961 when Tanganyika gained its independence. It was the British who named the territory Tanganyika in 1920. It was during the interaction between the natives of Tanganyika (especially along the coast) and Zanzibar with the Arab traders who settled among the natives of the coast that the Swahili culture was developed. Slave trade, to cater for workers in Sultan's plantations in Zanzibar and labour in Europe and America, was prevalent during the reigns and presence of the Arabs and the Portuguese, most notably the East African Long Distance Trade.

The German colonial rule, which blatantly disregarded human rights of the natives, was met with stiff resistance, leading to uprisings, most notably from the chiefdoms under Chief Mirambo of the Nyamwezi Tribe, Chief Mkwawa of the Hehe, Mangi Meli of the Chagga and Abushiri of Pangani. In 1905, the German colonial administration faced another uprising, popularly known as the *Majimaji* Uprising, led by a traditional and spiritual leader called Kinjekitile Ngwale. The uprising involved different tribes in southern and eastern Tanganyika. It was believed that Kinjekitile Ngwale could turn bullets into water, hence the phrase "Majimaji Uprising" (*maji* is a Swahili word meaning water). The British did not fare much better in terms of protection and respect of human rights of the natives, hence the struggle for independence began, seeking to realize the right to self-determination.

Struggle for independence was led by the Tanganyika African National Union (TANU) party, born in 1954; and formerly known as Tanganyika African Association (TAA), established in 1929. The struggle intensified in 1950s and during this time there were other parties, such as the United Tanganyika Party (UTP) and the African National Congress (ANC). TANU's Julius Kambarage Nyerere, who became the father of the nation, peacefully led Tanganyika to independence in 1961, with Nyerere as its first Prime Minister and the Independence Constitution adopted as first constitution. The Governor General was still representing the Queen of England as Head of State until 1962 when Tanganyika became a republic and Nyerere her first president. The second constitution, the Republican Constitution, was adopted, making the President the head of state, head of government, commander in chief of the army and part of parliament, without whose assent a bill could not become law. In 1964, Tanganyika merged

with the neighbouring Zanzibar to form Tanzania. Zanzibar had gained her independence from Britain in 1963 and overthrown the Sultan of Zanzibar (from Oman) in January 1964. The third constitution, the Union Constitution, was adopted, establishing a two-government union led by TANU in Tanzania Mainland (Tanganyika) and Afro-Shirazi Party (ASP) in Zanzibar. In 1965, the Interim Constitution was adopted, bringing an end to multiparty system and declaring TANU as the sole political party in Tanzania Mainland and ASP for Zanzibar. The Constitution was enacted by an ordinary Act of Parliament, contrary to principles of constitutionalism and people participation. In 1977, TANU and ASP merged to form Chama cha Mapinduzi (CCM), which proposed and enacted the Permanent Constitution, which we still use to date, the Constitution of the United Republic of Tanzania 1977. Tanzania remained a one-party state until 1992 when multi-party political system was re-introduced through constitutional amendments.

Like many African States, post-colonial Tanzania did not prioritize human rights, seeing them as 'delaying' economic development. Process of economic development was considered to be one that did not necessarily promote or respect human rights. But the constitutional amendments of 1984, which saw incorporation of the Bill of Human Rights into the Constitution of Tanzania, gave a new hope of human right-based approach to development and increased protection of human rights in Tanzania. This was a remarkable achievement, a long struggle demanding for its inclusion.

### **Geography and Population**

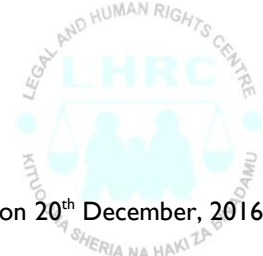
Tanzania is located in Eastern part of Africa between longitudes 29<sup>0</sup> and 41<sup>0</sup> East, and Latitude 1<sup>0</sup> and 12<sup>0</sup> South.<sup>2</sup> Topographically, the country is endowed with beautiful scenery, with mountain ranges and valleys. Tanzania is home to Mount Kilimanjaro, the highest free standing mountain in the world and the highest mountain in Africa (referred as the roof of Africa).

Tanzania has beautiful natural vegetation, with the exception of the semi-arid central region of the country. The natural vegetation cover includes the Kitulo Natural Garden in Makete District in Njombe Region, which has 350 different flora species.<sup>3</sup> The Kitulo Garden is famously known as the *Garden of God* and others have dubbed it "Serengeti of Flowers". It occupies an area of 2,600 meters between the peaks of Kipengere, Poroto and Mt. Livingstone.<sup>4</sup> The Great Rift Valley cuts across the country from the western and central parts of the country running through to Mozambique. The Great Rift Valley provides ground for pastoralist activities and agriculture due to its fertile soil that supports growth of different crops. The Usangu Valley, famous for rice production in Mbeya Region lies within the path of the Great Rift Valley.

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

<sup>3</sup> See <http://www.tanzaniatourism.com/en/destination/kitulo-national-park/PIO>, accessed on 20<sup>th</sup> December, 2016.

<sup>4</sup> Ibid.





**Picture 1: Kitulo Plateau (The Garden of God)**

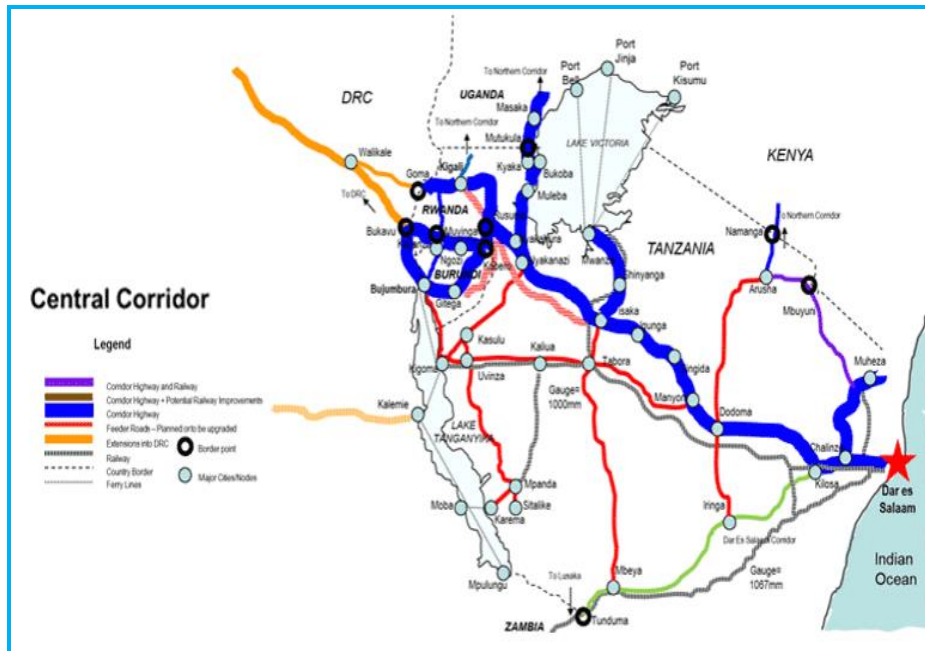
Tanzania is blessed with sufficient natural water sources. On the Western part there is Lake Tanganyika (the deepest lake in Africa), bordering Zambia, Democratic Republic of Congo (DRC) and Burundi; while Lake Victoria (the largest lake in Africa and the source of the Great Nile River) lies in the northern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

The Indian Ocean forms the Eastern border of the country with four major ports of Dar es Salaam; Mtwara; Tanga; and Bagamoyo (Mbegani area). These ports have been vital in boosting the country's economic growth as well as those of the landlocked neighbouring countries which depend on Tanzania for exportation and importation of goods.<sup>5</sup> In 2016, Tanzania entered into agreement with Uganda to construct an oil pipeline which will run from Uganda to the Tanga Port.<sup>6</sup> The pipeline will be vital in transporting oil form from Uganda to overseas through the Tanga port. Tanzania is also planning to construct a standard gauge railway line which will connect the landlocked neighbouring countries of Uganda, Rwanda, Burundi and the Democratic Republic of Congo.<sup>7</sup>

<sup>5</sup> These countries include Uganda, Rwanda, Burundi, DRC, Zambia and Malawi.

<sup>6</sup> See <http://af.reuters.com/article/investingNews/idAFKBNI360KP>, accessed on 11<sup>th</sup> November, 2016.

<sup>7</sup> See <http://www.tanzaniainvest.com/transport/central-corridor-railway-construction>, accessed on 20<sup>th</sup> January, 2017.



Picture 2: Map of proposed central corridor for Standard Gauge Railway

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

Rainfall distribution is divided into unimodal and bimodal areas.<sup>8</sup> The unimodal areas experience rainfall once per year whereas the bimodal areas experience rainfall two times a year.<sup>9</sup> The bimodal regions experience short rainfall (*vuli*) in the months of October to December and heavy rainfall season starts around the end of March to early June.<sup>10</sup> Unimodal regions experience heavy rainfall around November to April. Therefore, due to availability of sufficient rainfall, food security and availability have been satisfactory in recent years. Food crops produced in Tanzania are sold to the neighbouring countries as the internal market cannot absorb all available food crops.

<sup>8</sup> See [www.meteo.go.tz](http://www.meteo.go.tz), accessed on 10<sup>th</sup> December, 2017.

<sup>9</sup> Unimodal areas include the following localities: Western regions (Rukwa, Katavi, Tabora and Kigoma); Central regions (Dodoma and Singida); Southern highlands (Mbeya, Iringa, Njombe and Southern Morogoro); and Southern regions and Southern Coast regions (Ruvuma, Mtwara and Lindi). The bi-modal areas include the following: Lake Victoria basin (Kagera, Mara, Mwanza, Geita, Simiyu and Shinyanga); Northern coast and hinterlands (Dar es Salaam, Tanga, Coast, Extreme Northern Morogoro areas, and isles of Unguja and Pemba); and North-eastern highlands (Kilimanjaro, Arusha and Manyara).

<sup>10</sup> Ibid.

The country's climatic condition further attracts generation of alternative energy such as solar energy and wind energy. There is reliable sunshine and speed wind that can generate energy throughout the year. For instance, wind resource is encouraging energy generation throughout the Rift Valley, in the highland plains and along the coast of the Indian Ocean.<sup>11</sup> However, there is minimum investment conducted in these areas to further tourism, agriculture and semi-processing industries especially in much needed rural Tanzania.

Further, Tanzania is endowed with abundant natural resources (living and non-living), with minerals such as Tanzanite, Gold, Diamond, Copper and Iron are found in abundant. Large reserves of natural gas have been discovered in southern regions of Mtwara and Lindi. It is estimated that there is a reserve of 1 trillion Cubic metres of natural gas in coastal regions.<sup>12</sup> Further explorations for gas and oil are ongoing in different parts of the country attracting heavy foreign direct investment through exploration and manufacturing industry. A good example is the commission of the Dangote Cement plant in Mtwara in 2015, capable of producing high quality grade cement.<sup>13</sup> The plant utilises natural gas as the main source of power generation. The discovered natural gas is aiming at generating power, with a major project of the Kinyerezi Power Plant.<sup>14</sup>

**The Population** of the country is rapidly growing, at the rate of 2.7 per annum. The National Population and Housing Census of 2012 estimated the population at 43,625,354 in Mainland Tanzania and 1,303,569 in Zanzibar, with women making the majority at 51.3% and male at 48.7%.<sup>15</sup> In 2016 the population projection was at a total of 50,144,175, with 24,412,889 males and 25,731,286 females.<sup>16</sup> Majority of the country's population resides in rural areas, where the number of households found is high compared to urban areas. The number of households in rural areas is 6,192,303, which is equivalent to 66.6 percent of the total number of households, and that in urban areas is 3,098,792 households, which is only 33.4 percent. The average household is occupied by 4.7 persons.

<sup>11</sup> German Federal Ministry of Economics and Technology (2009), *Target Market Analysis: Tanzania's Wind Energy Market*, p. 1, available at <http://docslide.us/documents/gtz2010-en-target-market-analysis-wind-tanzania.html>, accessed on 1<sup>st</sup> December 2015.

<sup>12</sup> United Republic of Tanzania, *The National Natural Gas Policy of Tanzania 2013*, p. 2.

<sup>13</sup> See <http://www.dangotecement.com/operations/tanzania/> accessed on December 2016.

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

<sup>15</sup> URT 2012, the National Population and Housing Census.

<sup>16</sup> See National Bureau of Statistics (NBS), *Sub-Divisional Population Projection for Year 2016 and 2017 based on 2012 Population and Housing Census*, available at [http://www.nbs.go.tz/nbs/takwimu/census2012/Tanzania\\_Total\\_Population\\_by\\_District-Regions-2016\\_2017r.pdf](http://www.nbs.go.tz/nbs/takwimu/census2012/Tanzania_Total_Population_by_District-Regions-2016_2017r.pdf), accessed 18<sup>th</sup> December 2017.

There are estimated 662,287 non-citizens living and working in Tanzania.<sup>17</sup> The number has grown as a result of an increased foreign direct investments and corporations. On the other hand, the number of Tanzanians living and working abroad (Diaspora) is estimated at 421,456.<sup>18</sup>

The country's literacy rate is 71 percent, which suggests that education has improved in terms of provision and accessibility in line with the Millennium Development Goals (MDG) on education and the Development Vision 2025. The country has attained gross enrolment in Primary Schools, 94.6 percent, whereby the number of girls enrolled in primary schools has vastly increased compared to the situation in early 1960s up to 1990s.

### **Economic Situation**

Currently, the country's economic growth rate is mainly driven by transport, communication, manufacturing, construction and agriculture sectors, which accounts for 70% of the Gross Domestic Product (GDP).<sup>19</sup> Therefore such initiatives have reduced donor dependency from 42% in 2005 to 15% in 2015.<sup>20</sup>

There are different initiatives that have been taken by the Government to engineer the economy of the country. Such initiatives include the Big Results Now (BIG) model, adopted in 2013-2014 in order to further initiatives of the country in transition from lower to middle income.<sup>21</sup> The Government also plays a vital role in implementing the Five Year Development Plan 2016/17 - 2020/21, the National Strategy for Growth and Poverty Reduction Phase II and the ruling party (CCM) election manifesto 2015-2020.

### **Political and Governance Systems**

#### Political Background

Since 1964, Tanzania has been governed by five presidents, namely: the late Julius Kambarage Nyerere (1962-1985), Ali Hassan Mwinyi (1985-1995), Benjamin William Mkapa (1995-2005), Dr. Jakaya Mrisho Kikwete (2005-2015) and Dr. John Pombe Magufuli (2015-to date). Tanzania is a two-government state.

#### Governance System

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Deloitte (2015), *Tanzania Budget Insight 2015: Diving Deep*, p. 1, available at [http://www2.deloitte.com/content/dam/Deloitte/tz/Documents/tax/Tax\\_Budget%20Insight%202015\\_TZ.pdf](http://www2.deloitte.com/content/dam/Deloitte/tz/Documents/tax/Tax_Budget%20Insight%202015_TZ.pdf), accessed on 15<sup>th</sup> December 2015.

<sup>20</sup> See Speech by Hon. Dr. Jakaya Mrisho Kikwete, President of the United Republic of Tanzania when bidding farewell and dissolving the 10<sup>th</sup> Parliament of the United Republic of Tanzania, Parliament House, Dodoma on 9<sup>th</sup> July, 2015, p. 23.

<sup>21</sup> <http://www.pmoralg.go.tz/quick-menu/brn/>. BRN is Malaysian development model that helped to transform the economy of Malaysia.

The Tanzanian governing structure comprises of the Executive, the Legislature and the Judiciary, established under Article 4 of the Constitution of the United Republic of Tanzania of 1977.

### The Executive

The Executive arm of the state is composed of the President, who is the Head of State, Head of Government and the Commander in Chief of the Armed Forces and the cabinet.<sup>22</sup> The Government of the United Republic of Tanzania is in charge of all union matters and all matters of Tanzania Mainland.<sup>23</sup> The Cabinet includes the Vice-President, the Prime Minister, the President of Zanzibar and all ministers. The Vice-President assists the President with all union matters. Zanzibar has a semi-autonomous government that has the power over non-union matters in the Isles. Details on Zanzibar are provided in Part Two of this report.

### The Legislature

The Parliament of the United Republic of Tanzania consists of two parts; the President and the National Assembly. The National Assembly consists of Members of Parliament (MPs). The President as part of the Parliament performs his authority for that purpose as vested by the Constitution of the United Republic of Tanzania. The National Assembly is the principle organ of the United Republic with the authority to oversee and advise the Government and all its institutions/agencies in discharging their respective duties or responsibilities.

The Parliament is vested with Legislative powers in relation to all Union Matters and also in relation to all other matters concerning Mainland Tanzania. Legislative powers on matters which are not Union Matters are vested in the House of Representative (please refer to Part Two of this report for detailed information on Zanzibar). The laws passed by the National Assembly shall apply also in Zanzibar if they address specifically-designated union matters and have been presented to the Zanzibar House of Representatives by the responsible minister.<sup>24</sup>

The majority of the MPs are elected members from their constituencies.<sup>25</sup> Other members are of the special seat category, appointed by political parties depending on basis of proportion of votes won on Parliamentary election.<sup>26</sup> The President also has power to appoint 10 members of his choice, while five members come from elected members of the House of Representative.<sup>27</sup> The Attorney General of Tanzania is a Member of Parliament by virtue of his/her office.<sup>28</sup> The term of office for members of Parliament is five (5) years.

<sup>22</sup> Article 33 of the Constitution of the United Republic of Tanzania 1977.

<sup>23</sup> Ibid, Article 34.

<sup>24</sup> Ibid, Article 64; and Article 132 (1) and (2) of the Constitution of the Revolutionary Government of Zanzibar 1984,

<sup>25</sup> Article 68(1) (a) of the Constitution of the United Republic of Tanzania 1977.

<sup>26</sup> Ibid, Article 68 (1) (b).

<sup>27</sup> Ibid, Article 68(1) (c).

<sup>28</sup> Ibid. Article 68(1) (d).



The Zanzibar House of Representatives has jurisdiction over all non-union matters, that is, matters that do not pertain to foreign affairs, citizenship, higher education, and other matters set out by the Constitution as under the power of the entire Union.<sup>29</sup> The House has powers to enact laws for Zanzibar on non-union matters without the approval of the union government. The term of office for the Zanzibar President and House of Representatives is also five (5) years. The relationship between Zanzibar and the Mainland Tanzania is a relatively unique system of government. More information about Zanzibar can be found in Part Two of this report.

### The Judiciary

The Judiciary is a constitutional organ and an arm of the State. The Judiciary is the authority with final decision in dispensation of justice in the United Republic of Tanzania.<sup>30</sup> Tanzania's legal system is based on English common law, whereby judicial functions are administered by various courts established in accordance with the law.<sup>31</sup> The judicial hierarchy in Tanzania Mainland (in descending order) consists of the following courts: the Court of Appeal, which is the highest court in the country; the High Court of Tanzania; Resident Magistrates Courts; District Courts; and Primary Courts. The adjudicators in the Court of Appeal and High Court are Judges while in other courts are magistrates.

Judges are appointed by the President, in consultation with the Judicial Service Commission of Tanzania.<sup>32</sup> Magistrates are appointed directly by the Commission.<sup>33</sup> The High Court of Tanzania has divisions dealing with land, labour and commercial matters. In 2016, the Economic and Organised Crime Act was amended to establish the Economic, Corruption and Organised Crime Court (*Mahakama ya Mafisadi*).<sup>34</sup>

Tanzania also has military courts/tribunals, which deal with cases related to armed forces personnel.<sup>35</sup> There is also a special Constitutional Court, which is an *ad hoc* court with a sole function of interpretation of the *Constitution of the United Republic of Tanzania, 1977* over dispute between the Government of the United Republic of Tanzania and the Revolutionary Government of Zanzibar.<sup>36</sup> The Constitutional Court is composed of members, half of which

<sup>29</sup> The House of Representatives is established under Section 63 and 64 of the Constitution of Zanzibar of 1984. It consists of: elected members from the Constituents; nominated members by the President of Zanzibar, female members (special seats 30% of all elected members) appointed by political parties and represented in the House of Representatives, Regional Commissioners; and the Attorney General of Zanzibar. The matters that are considered to be union matters are set out in the Constitution of the United Republic of Tanzania, 1977 at the 1<sup>st</sup> Schedule.

<sup>30</sup> Article 107(A) of the Constitution of United Republic of Tanzania, 1977.

<sup>31</sup> See Articles 108, 114 and 117 of the Constitution of the United Republic of Tanzania of 1977; provisions of the *Magistrates Court Act*, Cap 11, [R.E. 2002].

<sup>32</sup> Articles 109 and 118 of the Constitution of the United Republic of Tanzania of 1977.

<sup>33</sup> *Ibid*, Article 113(1).

<sup>34</sup> Section 3 of the Economic and Organized Crimes Act.

<sup>35</sup> Court Martial, including general court martial, disciplinary court martial and standing court martial, are governed by the provisions of the *National Defence Act*, Cap. 192, [R.E. 2002].

<sup>36</sup> Article 125 and 126 of the Constitution of the United Republic of Tanzania, 1977.

appointed by the Government of the United Republic of Tanzania and the other half by the Revolutionary Government of Zanzibar. Tribunals have also been established under various laws to adjudicate on other matters, including labour, taxes and land issues.<sup>37</sup>

Zanzibar has its own judicial system consisting of (in descending order): the Court of Appeal of Tanzania; the High Court of Zanzibar; Regional and District Magistrate Courts; Primary Courts; *Kadhi* Appeal Courts; and *Kadhi* Courts. These courts have jurisdiction over cases arising in Zanzibar that involve non-union matters.<sup>38</sup> The High Court of Zanzibar is the highest court for matters originating from *Kadhi* Courts and the interpretation of the Constitution of Zanzibar. However, the appeal process for a case originating from a magistrate court is slightly different, as some of the cases may be appealed to the High Court of Zanzibar and then appealed again to the Court of Appeal of Tanzania.

LHRC is of the view that in order for the Judiciary to protect and promote human rights, it must be fully independent, free from any form of interference or influence. The current setting jeopardizes judicial independence as members of the Judiciary, the Chief Justice and all other judges, are presidential appointees, with no subsequent approval of the National Assembly. This leaves a loop hole that can be abused by the President during appointments. Judges and should be as members of the Judiciary should be independent from any influence in order “to do justice without fear or favour, affection or ill will”.<sup>39</sup>

### ***The industrialization drive of the fifth phase Government***

The fifth phase government under Hon. President John Pombe Magufuli has adopted industrialization as its main policy, seeking more economic growth, the popular theme being “*Tanzania ya Viwanda*.”<sup>40</sup> Several measures have been undertaken so far towards achieving this, including reducing the cost of doing business to attract more investors. The Government has also removed barriers of transportation of goods from the Dar es Salaam port to neighbouring landlocked countries and improve the situation at the port itself. Other measures include amending the Capital Markets and Securities (Foreign Investors) Regulations so as to allow foreign investors to purchase securities of listed companies and digitalizing business registration at the Business Registration and Licensing Agency (BRELA). The Government is working to

<sup>37</sup> Labour Institutions Act 2004 provides for establishment of institutions to adjudicate labour disputes in Tanzania. The Tax Revenue Appeals Act, Cap 408 of [R.E 2006] provides for establishment of Tax Revenue Appeals Board and the Tax Revenue Tribunal to adjudicate tax issues. Land matters are adjudicated by tribunals established under the Court (Land Disputes Settlements) Act, 2002.

<sup>38</sup> There are 22 union matters. The Court of Appeal is one of the union matters listed in the First Schedule of the Constitution of Tanzania 1977. Other union matters include foreign affairs, security, police, citizenship, immigration, foreign trade, higher education, aviation and statistics.

<sup>39</sup> Chris Maina Peter, “Independence of the Judiciary in Tanzania: Many Rivers to Cross” in Frederick Juuko, [e.d.] *The Independence of Judiciary and Rule of Law: Strengthening Constitutional Activism in East Africa* (Kampala: Kitucha Katiba, 2005) 58 at 2.

<sup>40</sup> This literally translates to “Industrialized Tanzania.”

boost investment in key areas such as manufacturing, agriculture, mining, tourism, infrastructure, fisheries and ICT.

LHRC supports the government's industrialization drive and believes if done correctly will help not only to increase economic growth of the country but also ensure realization of the right to development for Tanzanians, including human development. However, caution must be taken not to forsake labour and human rights in the business sector in favour of boosting industrialization. LHRC believes industrial development can better be achieved if the labour and human rights in the business sector are respected by the businesses and protected by the Government. Human and labour rights should not be seen as obstacles to industrial development.

## 1.2. Overview of Business and Human Rights: International Standards

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

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

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

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

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

### The Ten Principles of the UN Global Compact

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

#### Human Rights

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

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

#### Labour

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

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

**Principle 5:** The effective abolition of child labour; and

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

#### Environment

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

**Principle 8:** Undertake initiatives to promote greater environmental responsibility; and

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

#### Anti-Corruption

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

Guiding principles on Business and Human Rights (GPs), 31 in total, sought to clarify responsibilities of duty bearers in the business sector and fall under three main pillars **PROTECT, RESPECT & REMEDY**.



### 1.3. Business and Human Rights in Tanzania and Major Developments in 2017

#### Business and Human Rights Approach in Tanzania



Human rights and business is still a relatively new concept in Tanzania. Given the increased investment in the business sector in Tanzania, violations of labour and human rights in the sector are bound to occur and increase. In response to this, different stakeholders, led by the civil society, have been on the forefront to increase awareness on business and human rights in Tanzania, helping rights holders and duty bearers understand what it entails and exposing the applicable national, regional and international standards on the subject. All these efforts are geared towards ensuring that the Government understands its duty to protect human rights, including in the business sector; businesses adhere to their responsibility to respect human rights; and the Government and companies ensure that victims of human rights abuse by businesses have access to remedy.

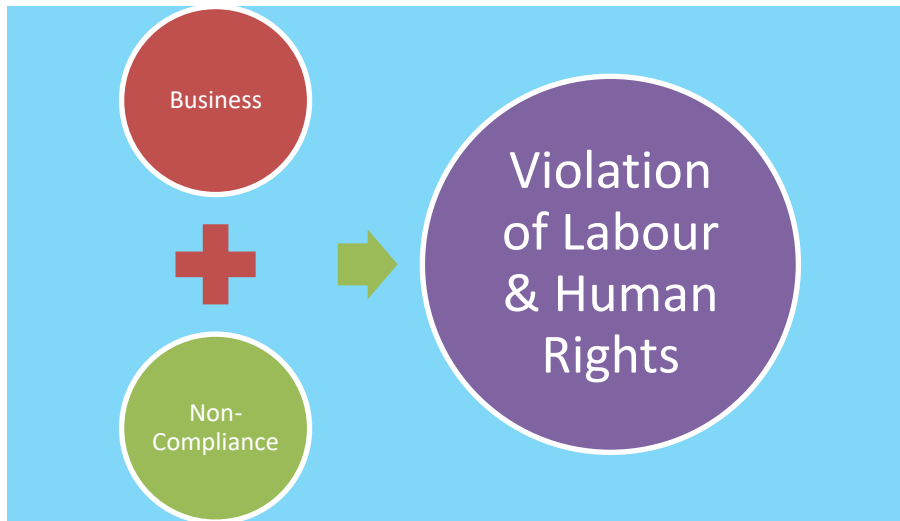
On its part, LHRC has been working hard to increase awareness about human rights and business in Tanzania through engaging different groups, including government officials and institutions. For instance, it been working closely with the Commission for Human Rights and Good Governance (CHRAGG) to promote human rights and business, including understanding of the UN Guiding Principles on Business and Human Rights. Collaboration with CHRAGG and other stakeholders enabled incorporation of human rights and business activities in the National Human Rights Action Plan of 2013-2017. LHRC has also been preparing this report as a way of advocating for and promoting human rights and business in Tanzania. Another key player in promotion of human rights and business in Tanzania is a local organization called the Business and Human Rights Tanzania (BHRT).

### ***How businesses in Tanzania can impact human rights***

Businesses in Tanzania and other parts of the world can impact human rights both positively and negatively. Positive action by businesses include enhancing economic development, creating job opportunities, generate revenue and supporting provision of social services. Negatively, businesses may violate various labor and human rights, such as right to favourable working conditions, right to life, right to non-discrimination, right to adequate standard of living, right to form and join trade unions and right to just and favourable remuneration. For instance, if a business fails to provide a safe working environment it may violate right to health, jeopardize right to life and violate right to just and favourable working conditions. If the operations of a business/company pose environmental and health risk such as release of chemicals into water sources, it threatens right to life. Another example is when a business employs child labour, leading to violation of right to education.

When businesses/companies fail to comply with the relevant national, regional and international labour and human rights standards, they cause labour and human rights violations. They must therefore abide by these standards and avoid causing or contributing to adverse human rights impacts related to **business operations, products made and services provided**. But when they are complicit in human rights abuses, they should ensure the **victims have access to**

**remedy.** Chapter Five of this report highlights how businesses fared in their responsibility to respect human rights in the year 2017.



### **Major Developments in 2017**

- Amendment of the Mining Act 2010 to make CSR in the mining sector mandatory
- Enactment of new natural resources legislations, the Natural Wealth and Resource Contracts (Review and Renegotiations of Unconscionable Terms) Act and the Natural Wealth and Resources (Permanent Sovereignty) Act
- Huge concern over grave human rights abuses at Acacia's North Mara Mine
- Government crackdown on tax evasion and avoidance: the case of Acacia and other companies
- Major reforms in the mining sector: Newly-formed Mining Commission takes over the functions of TMAA as the President sacks its officials
- Development of national action plan on business and human rights: conducting national baseline assessment on business and human rights and launching assessment report<sup>41</sup>

## **1.4. Report Preparation, Objectives and Structure**

### **1.4.1. Sources of Data**

Preparation of this report relied on both primary and secondary sources of data. Major source of data was primary data obtained through a study on business and human rights for the year 2017, conducted in selected 15 regions of Tanzania Mainland. Fieldwork involved visiting businesses/companies, community members, regulatory authorities, local NGOs and trade unions. Primary data obtained during fieldwork in those regions is contained in field reports prepared by research assistants, which are the main references in this report.

Secondary data were obtained through desktop research and review of various reports, laws, policies, regulations and other documents on labour laws, rights and standards produced by

<sup>41</sup> Process is coordinated by the Commission for Human Rights and Governance.

domestic and international actors. The data were used to further explain or supplement field findings.

#### ***1.4.2. Research Study Objectives, Areas and Sampling***

##### **Research Study Objectives**

The main objective of the study on human rights and business for the year 2017 was to check compliance with labour and human rights laws and standards by businesses/companies in Tanzania Mainland and examine laws, policies and practices related to labour, land, environment, tax and corporate social responsibility in the business sector. The focus was on the following key issues in the business sector:

- Labour standards and practices;
- Land acquisition for investment;
- Tax obligations of companies and other businesses;
- Issues of discrimination in the business sector, including gender discrimination;
- Corporate social responsibility;
- Corporate environmental responsibility;
- Corporate respect for human rights; and
- State duty to protect human rights in the business sector through access to remedy and regulatory authorities.

Specific objectives of the study were:

- To determine to what extent businesses observed labour/employment and human rights standards in the year 2017 as part of their responsibility to respect human rights;
- To examine how compliance or non-compliance of labour laws and standards by businesses promoted or violated labour and human rights;
- To examine land acquisition by businesses for investment purposes if it is in line with land laws and human rights standards;
- To assess compliance of businesses with tax obligations, corporate social responsibility and environmental responsibility in the year 2017;
- To assess effectiveness and efficiency of regulatory authorities in the business sector as part of the State's duty to protect human rights;
- To assess awareness of labour and human rights laws among labourers/employees and community members;
- To provide relevant recommendations to promote human rights in the business sector through formulation of new policies or reform of existing laws and policies in the sector; and
- To use the data collected to prepare this report.

##### **Areas where the study was conducted**

The study was conducted in 15 regions of Tanzania Mainland namely:

- Dodoma: Dodoma Urban, Kongwa, Bahi and Chamwino
- Dar es Salaam: Ilala, Kigamboni, Ubungo and Kinondoni



- Geita: Geita Urban and Nyang’wale
- Iringa: Iringa Town, Kilolo, Mafinga and Mufindi
- Manyara: Babati Urban, Babati Rural and Hanang
- Mara: Tarime and Musoma Rural
- Mbeya: Mbeya Urban; Chunya and Mbarali
- Morogoro: Kilombero and Morogoro Urban
- Kimanjaro: Moshi Rural, Moshi Urban, Siha and Hai
- Mtwara: Mtwara Rural and Mtwara Urban
- Mwanza: Nyamagana, Ilemela and Magu
- Njombe: Makete, Makambako and Ludewa
- Pwani: Kibaha, Chalinze and Kisarawe
- Shinyanga: Kishapu, Shinyanga Town and Kahama
- Tanga: Tanga Urban and Korogwe

### Sampling

A total of 1,067 respondents were involved in the study across the 15 regions listed above. The respondents were randomly and purposively picked and categorized into 7 groups, namely: **employees/workers; corporate management officials; community members; regulatory authority officials; trade union officials; service users and market traders.** Services users and market traders were only involved in the study conducted in Dar es Salaam Region, while other groups were reached in each of the remaining 14 regions. Companies and other businesses that were visited were randomly picked for the study.

Regarding the companies that were visited during the study, over half of them were manufacturing and processing (56%), followed by agriculture (21.8%). The nature of business of other companies was mining/extractive at 10.9%, construction at 1.8% and others at 9.1%.

#### 1.4.3. Methods and Tools of Data Collection

Methods of data collection employed in this study were: questionnaires, interviews, focus group discussion (FGD), observation and documentary review. These methods produced primary data, save for documentary review, which produced secondary data. The study approaches were both qualitative and quantitative. The table below indicates the tools used to collect primary data.

**Table 1: Tools used to collect primary data in 15 regions targeted for the study**

Method [Tool]	# Respondents	Targeted Group
<b>Questionnaires</b> [Structured Questionnaires]	902	<ul style="list-style-type: none"> <li>• Employees/workers</li> <li>• Corporate management officials</li> <li>• Community members</li> <li>• Regulatory authority officials</li> </ul>



		<ul style="list-style-type: none"> <li>• Market traders</li> <li>• Service Users</li> </ul>
<b>Interviews</b> [Interview Guide]	75	<ul style="list-style-type: none"> <li>• Employees/workers</li> <li>• Trade union officials</li> </ul>
<b>Focus Group Discussion</b> [Focus Group Discussion Guide]	90	<ul style="list-style-type: none"> <li>• Employees/workers</li> </ul>
<b>Observation</b> [Eyes]	-	Businesses/Companies

Source: Field data



Picture 3: Respondents filling in questionnaires in Mtwara (left) and Manyara (right) Regions





Picture 4: Participants of focus group discussion in Geita Region

Table 2: # Questionnaire respondents by sex

Respondent Group	#Respondents		Total
	Male	Female	
Employees	202 (61.2%)	128(38.8%)	338
Community members	239(60%)	161(39%)	400
Regulatory authority officials	32 (57.1%)	24(42.9%)	56
Market traders (Dar es Salaam)	33 (58%)	34(42%)	57
Service users(Dar es Salaam)	45(88.2%)	6(11.8%)	51

Source: Field data (n=902)

Table 3: % Questionnaire respondents (employees & community members) by age

Respondent Group	18-25	26-35	36-60	61+
Employees	20.7%	46.1%	30.8%	2.4%
Community members	29%	36.1%	32.6%	2.3%

Source: Field data (n=738)

Majority of employee respondents (36.7%) had been working with the current employer for 2-5

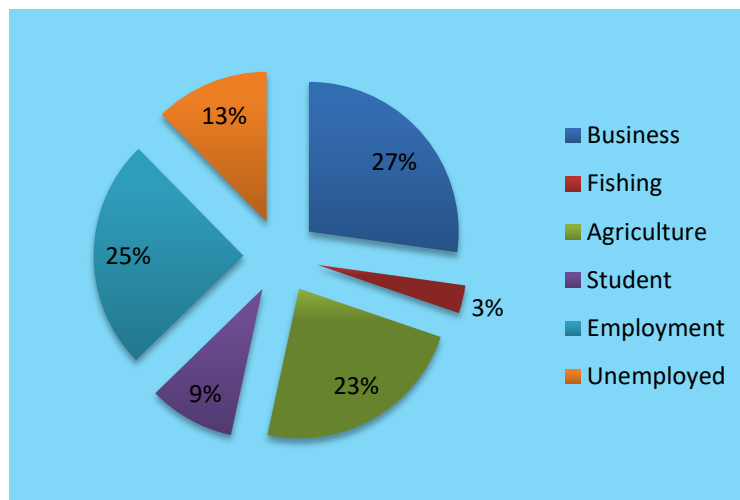
years, followed by those who had worked with employer for less than a year at 16.9%.<sup>42</sup> 16% and 16.3% of the employees had worked with the current employer for 5 to 10 years and 10+ years respectively, while 14.2% had one year at workplace.<sup>43</sup>

**Table 4: % Questionnaire respondents (employees & community members) by education**

Respondent Group	None	Primary education	Secondary O-level education	Secondary A-level education	College/university education
Employees	0.3%	31.3%	34.6%	4.8%	28.9%
Community members	5.8%	33.7%	31.4%	6.6%	22.5%

Source: Field data (n=724)

Majority of community members who filled out questionnaires (27%) were business persons, followed by those who are employed at 25% and engaged in agriculture at 23%.



**Figure 1: % Questionnaire respondents (community members) by occupation**

<sup>42</sup> LHRC Human Rights and Business Study 2017, Field Data.

<sup>43</sup> Ibid.





**Picture 5: LHRC research assistant(left) assisting a community member to fill out a questionnaire in Dodoma Region**

#### ***1.4.4. Data Quality and Ethical Considerations***

As a measure of enhancing data quality, all research assistants attended a two-day training on data collection and human rights and business at LHRC Headquarters, facilitated by Adv. Clarence Kipobota, who is an experienced researcher and expert in business and human rights. The research assistants (university graduates) were also taken through the data collection tools and informed about research ethics that must be observed, including confidentiality. The research coordinators were in contact with the research assistants throughout the fieldwork. Informed consent of the respondents was obtained. The tools for community members and employees were in Swahili Language to facilitate easy flow of information and the interviews and focus group discussions were also conducted in Swahili Language.

#### ***1.4.5. Data Analysis***

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

#### ***1.4.6. Limitations***

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



- *Not reaching all targeted respondents:* This was mainly caused by fear among some of the workers/employees who were approached for the study. They were afraid their employers or supervisors would see them with researchers, complaining about their workplace problems. This was observed across all studied regions;
- *Difficulty in reaching some of the respondents:* Some of the areas, such as Lushoto in Tanga, could not be reached due to different reasons, including damage in road infrastructure caused by rainfall. A budgetary constraint was also a key factor affecting sample size.
- *Limited time:* In some places like Mbeya and Geita, engaged respondents had a lot to discuss with respondents, but time was not on the side of the research assistants.
- *Limited information from the regulatory authorities that were visited:* Some of the regulatory authorities, such as TRA, did not disclose much information that was need for the study on the grounds of ‘confidentiality.’ In Mtwara, Mtwara Cashewnut Board was also not very cooperative.
- *Lack of/poor cooperation from some companies approached for the study:* Some companies showed no or little cooperation to the research assistants, refusing to disclose the information required or allowing workers to participate in the study.
- *Lack of or low awareness about labour standards and rights:* This means the research assistants had to spend more time with some of the respondents, thus reducing the time to reach others.

#### 1.4.7. Report Objectives

The main objective of this report is to shed light on the situation of human rights and business in Tanzania in the year 2017. The report also provides some comparisons of business compliance with labour and human rights with the previous years to determine if there have been any improvements. The report is meant to be used as an advocacy tool to advocate for and promote human rights and business in Tanzania. Furthermore, the report provides some useful information on human rights and business in Tanzania and can be used for academic purposes.

#### 1.4.8. Report Structure

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

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

### 2.1. Introduction: Overview of Labour Laws, Rights and Standards applicable in Tanzania

Employment and labour issues in Tanzania are governed by domestic, regional and international laws, which provide for labour rights and standards. At the international level, labour rights and standards are stipulated in the conventions and other instruments of the International Labour Organization (ILO), the Universal Declaration of Human Rights (UDHR) of 1948, and International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. Tanzania is a member of ILO since 1962, working with the organization in different programmes, including labour law compliance. So far, Tanzania has ratified 36 ILO conventions relating to labour rights and standards, including all 8 fundamental conventions, namely:<sup>44</sup>

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

Other key conventions ratified by Tanzania include the Workmen's Compensation (Accidents) Convention, 1925 (No. 17), the Minimum Age (Industry) Convention (Revised), 1937 (No. 59), the Collective Bargaining Convention, 1981 (No. 154) and the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148).<sup>45</sup> These conventions protect fundamental labour rights of workers or employees, rights of employers and duties of both employees and employers. These rights include the **right to freedom of association, right to non-discrimination, right to strike, right to collective bargaining, right to fair remuneration, right to just and favourable working conditions and right to compensation**. They are connected to the right to work, which is a fundamental human right protected under UDHR, ICESCR and Convention on the Elimination of all forms of Discrimination Against Women (CEDAW),<sup>46</sup> which also provide for the right to freedom of association,<sup>47</sup> right to non-discrimination,<sup>48</sup> right to fair remuneration,<sup>49</sup> right to just and

<sup>44</sup> See ILO website at

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::PI1200\\_COUNTRY\\_ID:103476](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::PI1200_COUNTRY_ID:103476), accessed 19<sup>th</sup> June 2018.

<sup>45</sup> Ibid. Note: the Working Environment (Air Pollution, Noise and Vibration) Convention was ratified with reservations.

<sup>46</sup> UDHR, Article 23(1); ICESCR, Article 6(1); CEDAW, Article 11(1)(a).

<sup>47</sup> UDHR, Article 23(4); ICESCR, Article 8(1)(a).

favourable working conditions,<sup>50</sup> right to equal pay for equal work<sup>51</sup> and right to strike.<sup>52</sup> Key continental/regional conventions ratified by Tanzania such as the African Charter on Human and Peoples' Rights (ACHPR) and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), also provide for these labour and human rights.<sup>53</sup>

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

At domestic level, labour and employment relations are governed by the Employment and Labour Relations Act of 2004 (ELRA), which provides for fundamental labour rights and standards, incorporating international labour standards. It applies to all employees in Tanzania Mainland, except to members of the Tanzania People's Defence Forces, the Police Force, Prisons Service and the National Service.<sup>54</sup> Among other things, it seeks to: provide the legal framework for effective and fair employment relations and minimum standards regarding conditions of work; provide a framework for voluntary collective bargaining; give effect to constitutional provisions relating to labour and work; provide a framework for resolution of labour disputes; and give effect to the core ILO and other conventions relating to labour or work as ratified by Tanzania.<sup>55</sup> Fundamental rights and protections provided under ELRA are prohibition of child labour, prohibition of forced labour, prohibition of discrimination in the workplace, prohibition of discrimination in trade unions and employer associations, employees' right to freedom of association, employers' right to freedom of association and rights of trade unions and employer associations. Other domestic laws governing relations between employees/workers and employers in Tanzania include:

### Core Labour Standards

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

<sup>48</sup> UDHR, Article 23(2); CEDAW, Article 11(2).

<sup>49</sup> UDHR, Article 23(3); ICESCR, Article 7(a).

<sup>50</sup> UDHR, Article 23(1); ICESCR, Article 7(b); CEDAW, Article 11(1)(f).

<sup>51</sup> UDHR, Article 23(2); CEDAW, Article 11(1)(d)

<sup>52</sup> ICESCR, Article 8(1)(d).

<sup>53</sup> See ACHPR, Articles 10 & 15; Maputo Protocol, Articles 2 & 13.

<sup>54</sup> Section 2(1) of ELRA.

<sup>55</sup> Ibid, Section 3.

- Constitution of the United Republic of Tanzania of 1977;<sup>56</sup>
- Law of Contract Act, CAP 345;<sup>57</sup>
- Labour Institutions Act, No 7 of 2004;<sup>58</sup>
- Workers' Compensation Act, CAP 263, R.E. 2015;<sup>59</sup>
- Non-Citizen (Employment Regulations) Act, 2014;<sup>60</sup> and
- Occupational Health and Safety Act, 2003.<sup>61</sup>

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

Non-compliance with the labour laws and standards mentioned above leads to violations of labour and human rights. This chapter examines to what extent businesses complied with the relevant labour laws and key labour standards on employment contracts, working hours, remuneration, working conditions, compensation for injury sustained at work, employment termination, leaves and social security in the year 2017. It also looks at realization of fundamental labour rights of freedom of association and collective bargaining, situation of forced and child labour, situation of access to remedy in case of violation of labour and human rights, and awareness of labour laws, rights and duties. The Chapter concludes by summarizing human rights violations resulting from non-compliance with labour laws and standards.

## 2.2. Employment contracts

The Law of Contract Act (LCA)<sup>62</sup> defines a contract as an agreement made by free consent of parties competent to contract, for a lawful consideration and with a lawful object.<sup>63</sup> In the context of employment, there are employment contracts, which simply put, are legally-binding agreements between employers and employees, creating rights and duties of both parties. The Employment and Labour Relations Act (ELRA) provides for three types of contract with an employee, namely:

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

<sup>56</sup> The Constitution provides for the right to work under Article 22(1), right to fair remuneration under Article 23 and freedom of association under Article 20.

<sup>57</sup> Employment contracts must comply with the Law of Contract Act.

<sup>58</sup> Establishes institutions and mechanisms for resolution of labour disputes. Institutions include the High Court Labour Division and the Commission for Mediation and Arbitration.

<sup>59</sup> Establishes the compensation fund in case of injury at work.

<sup>60</sup> Governs employment of non-Tanzanians.

<sup>61</sup> Provides for protection of workers' working conditions to ensure their safety and protect their health.

<sup>62</sup> Law of Contract Act, CAP 345, R.E 2002.

<sup>63</sup> Ibid, Section 10.



Both oral and written employment contracts are permissible under the ELRA. However, where there is no written employment contract an employer must supply an employee with Written Statement of Particulars, containing:<sup>64</sup>

- name, age, permanent address and sex of the employee;
- place of recruitment;
- job description;
- date of commencement;
- form and duration of the contract;
- place of work;
- hours of work;
- remuneration, the method of its calculation, and details of any benefits or payments in kind; and
- any other prescribed matter.

Employer has a duty to explain the written particulars above to employee if they do not understand and keep the particulars for at least five years after termination.<sup>65</sup> If employer fails to produce a written contract or written particulars in case of labour dispute, such dispute may be decided against them.<sup>66</sup> Moreover, an employee must work for more than 6 days in a month in order to be qualified for any rights stipulated in the employment contract.

Payment of remuneration must be done on a monthly basis, or any other period agreed between employer and employee, but an employee must be provided with a written statement of particulars supporting remuneration paid.<sup>67</sup> The statement must contain: name of employee; date, month and year of payment; name of employer or logo; employment or check number; statutory deductions; other deductions; gross or basic salary; and net salary.<sup>68</sup>

In 2017, the business and human rights study revealed that:

- Majority of workers claimed to have employment contracts;
- Majority of workers claimed to have written employment contracts;
- Ready-made contracts continued to be a problem in 2017, mainly due to lack of collective bargaining;
- Some workers had contracts written in a language they do not understand; and
- Some workers decide against pushing for an employment contract for fear of losing their jobs.

<sup>64</sup> Ibid, Section 15(1) & (2).

<sup>65</sup> Ibid, Section 15(3) & (5).

<sup>66</sup> Ibid, Section 15(6).

<sup>67</sup> Regulation 13(1) & (2) of the Employment and Labour Relations General Regulations, GN. 47 of 2017.

<sup>68</sup> Ibid, Regulation 13(3).



### 2.2.1. Improved situation of employment contracts

Previous LHRC reports show that lack of employment contracts is a big challenge for workers. However, the 2017 study findings project an improved situation of employment contracts. Majority of respondents reached by LHRC (74.2%) indicated that they have employment contracts, while 25.8% claimed they did not have employment contracts.

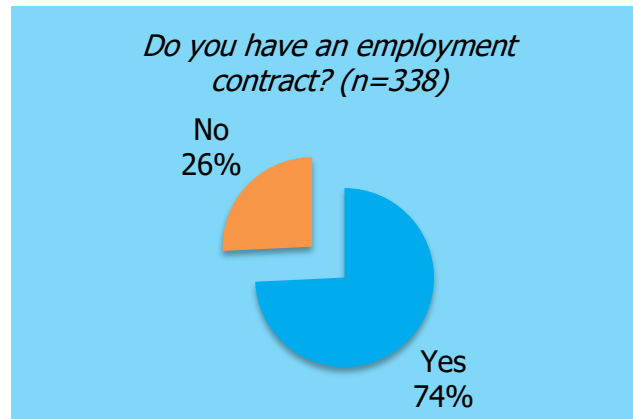


Figure 2: Percentage of respondents with employment contract

Majority of workers who had employment contracts (84%) also indicated that they had written employment contract. This is a significant improvement compared to the findings of the previous human rights and business studies such as those of 2015 and 2016, whereby majority of respondents stated they were not given written employment contracts. 62.9% of workers who participated in the study, a significant majority, also noted that they discussed terms of contract with their employers before signing the contract.



Figure 3: Percentage of respondents who discussed terms of contract with employer before signing contract



Complaints about lack of employment contracts were mainly made in Geita, Iringa, Morogoro, Mtwara, Njombe and Pwani Regions.<sup>69</sup> For instance, one worker at Farm Africa Agrofocus (T) Ltd in Morogoro Region said, “They lie to us about employment contracts every now and then. It is my sixth year here and still no contract.”<sup>70</sup> Another employee added, “Every year they say they are preparing the contracts but it has been more than five years now, nothing has been done.”<sup>71</sup> Some of the workers are instead given a ‘certification note’, provided upon request. However, the employees at the company noted that they negotiated their salaries with the employer.<sup>72</sup>



**Picture 6: A certificate provided in place of contract, granted upon request, at Farm Africa Agrofocus (Tanzania) Ltd**

In Mtwara Region, employees who were interviewed at *HAWTE Investment Ltd* and *Changjiang Investment Ltd* complained about most workers not being provided with employment contracts.<sup>73</sup> Similar grievances were leveled by employees against *Proyasha Industry Ltd*, located in Pwani Region.<sup>74</sup> One employee of the company stated that the management indicated that the employment contracts are there but written in English, hence the employees would be provided with them once they are translated into Swahili.<sup>75</sup>

<sup>69</sup> LHRC Human Rights and Business Study 2017, Geita, Iringa, Morogoro, Mtwara, Njombe, Pwani and Tanga Field Reports.

<sup>70</sup> LHRC Human Rights and Business Study 2017, Morogoro Field Report.

<sup>71</sup> Ibid.


<sup>72</sup> Ibid.

<sup>73</sup> LHRC Human Rights and Business Study 2017, Mtwara Field Report.

<sup>74</sup> LHRC Human Rights and Business Study 2017, Pwani Field Report.

<sup>75</sup> Ibid.

09<sup>th</sup> May, 2018

  
**ANGLOGOLDASHANTI**  
**Geita Gold Mining Limited**  
 PO Box 532, Geita, Tanzania  
 Tel: +255 222 740 100  
 Fax: +255 222 740 104  
 Email: [hr@anglogoldashanti.com](mailto:hr@anglogoldashanti.com)  
 PO Box 532, Geita, Tanzania  
 Tel: +255 222 740 100  
 Fax: +255 222 740 104  
 Website: [www.anglogoldashanti.com](http://www.anglogoldashanti.com)

Name: .....

P.O. BOX: .....

**Tanzania.**

Dear .....

**RE: CONTRACT OF EMPLOYMENT AS** .....

We are pleased to offer you contract of employment with AngloGold Ashanti Limited – Geita Gold Mining Ltd as an ..... in our site at Geita.

..... role is graded at ..... in our Company Job Grading System.

Your terms and conditions of employment will be as follows:

**1. CONTRACT SPECIFICATIONS:**

This contract is for ..... will commence on ..... and will end up on .....

Your appointment will be for a specified period of employment and subject to GGM terms and conditions of employment. This offer is subject to the issue of a medical fitness certificate from a company designated healthy facility.

Your place of recruitment is .....

**2. ROLE DESCRIPTION:**

The basic duties and accountabilities you are required to fulfill include, but not limited to, what was discussed with you during interview. For further reference role description is hereby attached. Please sign acknowledging the duties and accountabilities attached to this role.

You will be reporting to ..... who will specify your duties and accountabilities attached to your role.

You will be on probation for a period of three (03) months. On completion of the probationary period and depending on your job performance and personal conduct, management will consider confirmation of your appointment to contract terms of service.

**3.0 SALARY:**

You will be paid a Gross Salary of Tshs. ....- per month which is taxable in line with Tanzanian Tax laws; the salary make up is as follows:

Basic Salary:	Tshs. ....- per month
Housing Allowance (15% of the Basic):	Tshs. ....- per month
<b>Gross Salary:</b>	<b>Tshs: ....- per month</b>

Directors: \*Saidi Nusi (Chairman) \*\*R. Mushi (Director) \*\*\*Parasram (Director) \*\*\*\*L. Mawoko (Director) \*\*\*\*\*R. Jordan \*\*\*\*\*P. Masi \*\*\*\*\*E. Amara  
 \*South African \*\*Tanzanian \*\*\*British \*\*\*\*Ghanaian \*\*\*\*\*Kenyan

Picture 7: A sample of employment contract provided by GGM Mining Company

While security of employment is enhanced by having a written contract, some workers at *Salaman's Transport Co. Ltd* in Dodoma Region had a different point of view. When asked whether they have a written employment contract during an interview with the research assistant, one of the workers at the company stated that he did not have, but added that he and some other workers feel that it is not such a bad thing not having an employment contract as it means they are not subjected to deductions such as PAYE and contributions to social security schemes.<sup>76</sup> This attests to lack of knowledge about significance of such deductions, especial for social security purposes, among workers.

Workers at a mining company called Kipalamazuli in Katoro Wardi-Geita Region were also more relaxed about not having employment contracts. One of the 15 employees approached for the study, all without employment contracts, said:

*“We are yet to be provided with employment contracts as this is only the first year since the company started operations. But there is no problem as we are paid on a monthly basis without delay.”*

<sup>76</sup> LHRC Human Rights and Business Study 2017, Dodoma Field Report.

### 2.2.2. Ready-made contracts, no collective bargaining

Ready-made made contracts featured in the 2015 and 2016 human rights and business reports produced by LHRC. These contracts leave no room for collective bargaining, leaving workers at risk of unfair terms of contract. In 2017, the research study conducted in 15 regions of Tanzania Mainland also revealed the practice of ready-made contracts. This was revealed in regions such as Iringa, Kilimanjaro, Dodoma and Njombe.<sup>77</sup> This situation leaves the employees very vulnerable to unfair terms of contract, given the low level of awareness about labour laws, rights and standards among them, as indicated below.

### 2.2.3. Contracts written in language employee does not understand

Among the complaints of workers that have consistently featured in LHRC human rights and business reports is that of contracts being written in language not clearly understood by an employee, as required under the Employment and Labour Relations Act 2004. This was also one of the findings in the 2017 study. For instance, one employee at Ngano Ltd located in Manyara Region said, “We have signed employment contracts, but the contracts are written in English and we have not received copies.”<sup>78</sup>

**NGANO LIMITED**  
P.O BOX 208, KATESH, HANANG DISTRIC, MANYARA REGION  
TANZANIA.  
**CONTRACT OF EMPLOYMENT**

This agreement is made  
**BETWEEN**  
.....  
Physical postal address of the employer: Ngano Ltd P.o. Box 208,Katesh,Manyara, Tanzania.

**AND**

Name .....  
Physical postal address of the employee.....  
Age : ..... Sex: .....

**Employment**  
The contract shall commence on dated; ..... 20....

**1. TYPE OF CONTRACT**  
1.1 Permanent .....

**2.PLACE OF RECRUITMENT;**  
**3.PLACE OF WORK ;**  
**4.JOB DESCRIPTION;**  
4.1- Job Title .....  
4.2- Nature of Duties .....

**5 PROBATION PERIOD**  
the contract is subject to a probationary period of .....weeks/months starting from the

*copy*

Picture 8: Sample of employment contract provided at Ngano Ltd Company

<sup>77</sup> LHRC Human Rights and Business Study 2017, Iringa, Kilimanjaro, Njombe and Dodoma Field Reports.

<sup>78</sup> LHRC Human Rights and Business Study 2017, Manyara Field Report.

#### 2.2.4. Fear of losing job for demanding a contract

Previous LHRC reports have indicated that even where workers are aware of their rights and are legally entitled to a contract, they decide not to push the matter too much for fear of losing their jobs.<sup>79</sup> In 2017, the LHRC study shows that this problem still persists. This was especially revealed during interviews with respondents in Dodoma, Mara and Morogoro.<sup>80</sup>

### 2.3. Working hours

Working hours or working time has been an issue of concern across the world since 19<sup>th</sup> Century, with excessive working hours seeming to pose danger on workers' health and harming family life. This prompted the international community, through the ILO, to agree on international standards on working time, which are set out in different ILO conventions.<sup>81</sup> The international standard is now 8 hours per day.<sup>82</sup> The Employment and Labour Relations Act (ELRA) conforms to the international standard, providing for a maximum number of 45 hours in a week, 6 days in a week and 9 hours in a day permitted to work.<sup>83</sup> ELRA also prohibits an employer to require or allow an employee to work for more than 12 hours in a day.<sup>84</sup> Overtime work is allowed under the law, but should not exceed 50 hours in any four week cycle<sup>85</sup> and is subject to an agreement between employer and employee<sup>86</sup> as well as additional pay (overtime pay).<sup>87</sup> However, a written agreement may be entered between employer and employee to work for up to 12 hours in a day without overtime pay.<sup>88</sup> Employer is also required to give employee working continuously for more than 5 hours a break of at least 60 minutes and pay them if they work on a public holiday.<sup>89</sup>

The issue of overtime work without pay or fair pay has been of major concern in Tanzania, as highlighted in LHRC's previous human rights and business reports.<sup>90</sup> In 2017, the following findings were revealed in relation to labour standards on working time in the business sector:

<sup>79</sup> See LHRC (2016), *Human Rights and Business Report 2015*; LHRC (2017), *Human Rights and Business Report 2016*. Both reports are available at LHRC website at [www.humanrights.or.tz](http://www.humanrights.or.tz)

<sup>80</sup> LHRC Human Rights and Business Study 2017, Dodoma, Mara and Morogoro Field Reports.

<sup>81</sup> See for example the Hours of Work (Industry) Convention, 1919 (No. 1); Hours of Work (Commerce and Offices) Convention, 1930 (No. 30); Forty-Hour Week Convention, 1935 (No. 47); Reduction of Hours of Work Recommendation, 1962 (No. 116); Weekly Rest (Industry) Convention, 1921 (No. 14); Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106); and Night Work Convention, 1990 (No. 171).

<sup>82</sup> See ILO, *Q&As on business and working time*, at [http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS\\_DOC\\_ENT\\_HLP\\_TIM\\_FAQ\\_EN/lang--en/index.htm](http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_TIM_FAQ_EN/lang--en/index.htm), accessed 20<sup>th</sup> May 2018; LHRC (2016), *Human Rights and Business Report 2015*, p. 87.

<sup>83</sup> Section 19(2) of the Employment and Labour Relations Act 2004.

<sup>84</sup> *Ibid*, Section 19(1).

<sup>85</sup> *Ibid*, Section 19(3) (b).

<sup>86</sup> *Ibid*, Section 19(3) (a).

<sup>87</sup> *Ibid*, Section 19(5).

<sup>88</sup> *Ibid*, Section 21.

<sup>89</sup> *Ibid*, Sections 23 and 25 respectively.

<sup>90</sup> See for example LHRC (2017), *Human Rights and Business Report 2016*; and LHRC (2016), *Human Rights and Business Report 2015*.



- Some workers who participated in the study complained about being required to work overtime but not receiving pay or fair pay; and
- Some workers, especially in Mbeya, felt that they were not afforded adequate time for rest as required by law.

### 2.3.1. Compliance with working hours limit

Majority of workers who were engaged for the human rights and business study indicated that they worked within the stipulated time limit of nine hours per day or 45 hours per week, as required by law. They also stated they sometimes work beyond these hours as overtime, but not beyond the required 12-hour limit. Survey findings also show that overwhelming majority of workers stated that they were free to leave work after stipulated working hours.

**Table 5: Workers' responses on working within stipulated working hours**

Are you free to leave work after stipulated working hours?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	304	89.9	95.0	95.0
	No	16	4.7	5.0	100.0
	Total	320	94.7	100.0	
Missing	99	18	5.3		
Total		338	100.0		

Source: Human Rights and Business Study 2017

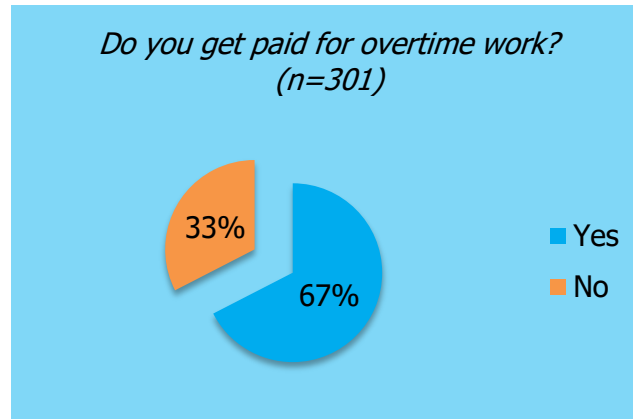
In Mwanza, a security guard from *Shark Security Ltd* informed LHRC research assistant conducting the human rights and business study in the region that their employer does not care if a worker stays and works overtime, but does not compel workers to do so. However, it should be remembered that an employer is prohibited under the ELRA to even allow, not just require, an employee to work for more than 12 hours in a day.<sup>91</sup> This shows that some employers do not have a clear understanding of labour laws, particularly in terms of their duties as employers.

### 2.3.2. Complaints of overtime work without pay or fair pay

LHRC research assistants received complaints of overtime work without pay or fair pay during the 2017 human rights and business study across 15 regions of Tanzania Mainland. However, a significant majority of respondents who filled out questionnaires stated that they were paid when they worked overtime, as indicated in the figure below.

<sup>91</sup> See Section 19(1) of the Employment and Labour Relations Act 2004.





**Figure 4: % Respondents who get paid for overtime work**

As indicated in the figure above, over 60% of workers who filled out questionnaires during the study stated they are paid when they work beyond the daily working time, which is limited to 8 hours, they get additional pay as required by labour law. This is a significant improvement compared to the finding of the 2016 study regarding overtime work pay, whereby only 45% of workers stated they were paid for working overtime.

Complaints about not being paid for working overtime were made to the research assistants at companies such as *Salaman Transport Co. Ltd* in Dodoma; *Royal Oven Company* in Mbeya; *Bondeni Flowers Company* in Kilimanjaro; and *Coca-cola Company* in Mwanza. One employee of *Royal Oven* said:<sup>92</sup>

*“Our boss does not treat us with respect, insulting us when we do something wrong and daring us to quit if we cannot work as she wants. We work overtime, including weekends and holidays, but no additional payment is provided.”*

In Mwanza, a security guard from *Shark Security Ltd* informed LHRC research assistants that their employer do not care if a worker stays and works overtime, but most security companies do not provide overtime pay.<sup>93</sup> However, it should be remembered that an employer is prohibited under the ELRA to even allow, not just require, an employee to work for more than 12 hours in a day.

### 2.3.3. Work without adequate rest

As stated in the introduction section above, labour standards on working hours require employers to afford employees adequate time for rest or break, including one hour for lunch each day. Indeed, most of the contracts reviewed by research assistants in studied regions contained this requirement. However, in practice some of the terms of contract are usually

<sup>92</sup> LHRC Human Rights and Business Study 2017, Mbeya Field Report. [The employee also noted that her boss tells them there is nothing they can do to her because she has some very good ‘connections’ everywhere.]

<sup>93</sup> LHRC Human Rights and Business Study 2017, Mwanza Field Report.



disregarded, including the issue of rest. For instance, one employee at *Sunshine Mining Company* in Mbeya Region complained about not being afforded adequate time to rest, had this to say:<sup>94</sup>

*“We have been provided with contracts which indicate that we are only required to work six out of seven days of the week for eight hours in a day, but we have been working without adequate rest every day. If you miss work your wages are deducted. There is no leave and when we fall sick we just have to come to work for fear of our wages being cut.”*

## 2.4. Remuneration

Right to just and favourable remuneration is a fundamental human and labour right, protected under the Constitution of the United Republic of Tanzania of 1977, the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, the African Charter on Human and

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

*Article 15 of African Human Rights Charter*

Peoples’ Act (ACHPR), the ILO Equal Remuneration Convention, 1951 (No. 100) and the ELRA, among other instruments. The ELRA provides for the right to remuneration under Section 27(1), which is defined as ‘total value of all payments, in money or in kind, made or owing to an employee arising from the employment of that employee,’<sup>95</sup> including wage or salary. In Tanzania, wage rates are calculated by the wage boards which are formed in line with the Labour Institutions Act 2004.<sup>96</sup> The wage order is reviewed within 3 years from date of issue, seeking to provide more favourable wage, allowances, terms and conditions of employment to be negotiated annually between employers and employees.<sup>97</sup>

The 2017 LHRC study on human rights and business found that:

- Wages paid to most workers are not adequate to sustain themselves and their families, and some are even below the minimum wage requirements;
- Workers who complain about low wages face threats from employers; and
- Employers tend to cut wages if workers miss work due to illness or other valid reasons.

### 2.4.1. Inadequate wages, unjust and unfair remuneration

Complaints of inadequate wages were leveled against employers in regions such as Mbeya, Morogoro, Manyara and Tanga during interviews conducted by research assistants with some

<sup>94</sup> LHRC Human Rights and Business Study 2017, Mbeya Field Report.

<sup>95</sup>Section 4 of the ELRA.

<sup>96</sup> Section 35 of the Labour Institutions Act 2004.

<sup>97</sup> Regulation 8 of the Labour Institutions (General) Regulations 2017 (GN 45 2017).



workers. This is one of the common complaints amongst workers, as revealed in previous LHRC human rights and business studies.<sup>98</sup>

An employee at *Minjingu Mines and Fertilizers Ltd* in Manyara had this to say regarding wages paid by employer:<sup>99</sup>

*“Our outcry as employees is the low wages paid by the employer, which is not adequate to enable us to sustain ourselves and our families.”*

A worker at *New Kimamba Fibre Ltd* in Morogoro also complained about low wages, noting that when he pushed for wage increase he was told to quit if not satisfied with the wages.<sup>100</sup> In Mbeya, officials at TUICO, TPAWU and CHODAWU trade unions who were interviewed noted that the minimum wages stipulated in the Wage Order 2013 are not sufficient given the ever-changing economic situation, with costs of living increasing each year.<sup>101</sup>

In its 2015 edition of Human Rights and Business Report, LHRC raised this concern of low wages, which when set failed to take into account inflation and the rising costs of living, including increased food prices.<sup>102</sup> **LHRC would like to remind the wage boards to seriously consider these important factors when setting minimum wages, as many employers have been taking advantage of them, usually providing the lowest wages possible in line with the Wage Order.**

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

Sector	Area	Minimum Wage Rates (Tshs.)				
		Per Hour	Per Day	Per Week	Per Fortnight	Per Month
Domestic and Hospitality Services	Domestic Workers employed by diplomats and potential businessmen	769.30	5769.65	34,618.05	69,236.10	150,000.00
	Domestic workers employed by entitled officers	666.70	5000.40	30,002.30	60,004.60	130,000.00
	Domestic workers, other than those employed by diplomats	410.30	3077.15	18,463.00	36,925.90	80,000.00
	Other domestic workers not specified					40,000.00

<sup>98</sup> See for example LHRC(2016), *Human Rights and Business Report 2015*.

<sup>99</sup> LHRC Human Rights and Business Study 2017, Manyara Field Report.

<sup>100</sup> LHRC Human Rights and Business Study 2017, Morogoro Field Report.

<sup>101</sup> LHRC Human Rights and Business Study 2017, Mbeya Field Report.

<sup>102</sup> See LHRC(2016), *Human Rights and Business Report 2015*.



Sector	Area	Minimum Wage Rates (Tshs.)				
		Per Hour	Per Day	Per Week	Per Fortnight	Per Month
	in (a), (b) and (c) above.					
	Potential and tourist hotels	1282.15	9616.10	57,696.75	115,393.50	250,000.00
	Medium hotels	769.30	5769.85	34,618.05	69,236.10	150,000.00
	Restaurants, guest house and bars	666.70	5000.40	30,002.30	115,393.50	130,000.00
Private Security Services	International and potential companies	769.30	5769.65	34,618.05	69,236.10	150,000.00
	Small companies	615.45	4615.75	27,694.45	55,388.85	120,000.00
Construction Services	Contractors class I	1666.80	12,500.95	75,005.75	150,011.55	325,000.00
	Contractors class II-IV	1436.05	10,770.05	64,620.35	129,240.35	280,000.00
	Contractors class V-VII	128.15	9616.10	5769.75 <sup>103</sup>	115,393.50	250,000.00
Mining	Mining and prospecting licenses	2051.45	15,385.80	92,314.80	184,629.60	400,000.00
	Primary mining licenses	1025.80	7692.90	46,157.40	92,314.80	200,000.00
	Dealers' licenses	1538.55	11,539.35	69,236.10	138,472.20	300,000.00
	Brokers licenses	1025.80	7692.90	46,157.40	92,314.80	200,000.00
Trade, industries and commercial services	Trade, industries and commerce	589.80	4423.40	26,540.40	53,081.00	115,000.00
	Financial institutions	2051.45	15,385.80	92,314.80	184,629.60	400,000.00

Source: Wage Order of 2013

The table above indicates the minimum wage rates in a number of sectors currently in use in Tanzania. As shown above, most wage rates are not sufficient to sustain a worker and their family. These rates have also been used since 2013, and as highlighted above, each year the costs of living rise. During the study across 15 regions of Tanzania Mainland it was also observed that most employers take advantage of the minimum wage rates by paying exactly the minimum rate.

As indicated above, the wage order is reviewed every 3 years. Since the last wage order was that of 2013, review was supposed to be conducted in 2016, but that has not been done as we are still using the 2013 Wage Order. This by itself poses a problem in protection of labour rights, particularly right to just and favourable remuneration. LHRC proposes a more regular

<sup>103</sup> This rate appears to be incorrect as it is lower than the daily wage rate.

review of the wage order to anticipate and counter the rising costs of living each year. A review could be conducted at least every two years.

#### 2.4.2. Employer not paying the salary agreed in the contract

Failure to deliberately abide by terms of contract on the part of employers has been one of the common issues highlighted by LHRC in its reports on the situation of human rights and business in Tanzania Mainland. Among these issues is failure to pay salary or wages as agreed in the contract, taking advantage of low awareness of labour laws and rights among workers and difficulty in obtaining jobs. A good example is that provided by one employee at *Salman's Transport Co. Ltd* located in Dodoma who alleged that he only gets 89% of the salary agreed in the employment contract.<sup>104</sup> However, when he complained to the company management he was told to quit the job if he is not satisfied with what he is getting out of it.<sup>105</sup>

#### 2.4.3. Workers threatened if complain about low wages

As indicated above, when workers complain about low wages they are usually threatened and told to quit and look for another job. This shows that employment security is still an issue of great concern in Tanzania. Most employers are aware of the fact that unemployment is big problem in Tanzania, which means the job market is over-saturated; and since jobs are hard to find, they can get away with paying inadequate wages and mistreating workers.

#### 2.4.4. Wages cut if worker misses work due to illness or other reasons

In at least half of the regions visited by LHRC during the human rights and business study for the year 2017, the research assistants were met with complaints about wage cuts. Workers who were interviewed in these regions claimed that their employers usually cut their wages if they miss work due to illness or other reasons.<sup>106</sup> For instance, such claims were made by employees at *Changjiang Investment Ltd* in Mtwara Region and *Sunshine Mining Company Ltd* in Mbeya Region. At the latter company, one employer had this to say regarding wage cuts he perceived to be unfair:

*“In October 2017 our wages were deducted to cover for costs of protective equipment/gear. Tshs. 20,000 was deducted to buy clothing and another Tshs. 20,000 was deducted to buy boots.”*

Based on the claims made above, the labour standards relating to remuneration and occupational health and safety were violated. The Occupational Health and Safety Act of 2003 lays the burden of provision on protective equipment on the employer, clearly stating that “Where in any factory or workplace, workers are employed in any process involving exposure to any

<sup>104</sup> LHRC Human Rights and Business Study 2017, Dodoma Field Report.

<sup>105</sup> Ibid.

<sup>106</sup> LHRC Human Rights and Business Study 2017, Mara Field Report.



*injurious or offensive substance or environment, effective protective equipment shall be provided and maintained by employer for the use of the persons employed.”<sup>107</sup>*

LHRC calls upon employers to refrain from the unfair and illegal labour practice of deducting salaries or wages of their workers for reasons such as missing work for being sick or to contribute for protective equipment. This practice violates the right of workers to just and favourable remuneration, which is a fundamental labour and human right protected under the Employment and Labour Relations Act 2004, the Constitution of the United Republic of Tanzania of 1977 and international labour and human rights instruments, including the ILO Equal Remuneration Convention, 1951 (No. 100) and the International Covenant on Economic, Social and Cultural Rights (ICCPR) of 1966.

## 2.5. Working environment: Occupational health and safety in the workplace

According to the joint ILO/WHO Committee on Occupational Health, occupational health ‘should aim at: the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations; the prevention amongst workers of departures from health caused by their working conditions; the protection of workers in their employment from risks resulting from factors adverse to health; the placing and maintenance of the worker in an occupational environment adapted to his physiological and psychological capabilities; and, to summarize: the adaptation of work to man and of each man to his job.’<sup>108</sup>

### Right to safety and health at work – a fundamental human right

This right is enshrined in key human rights instruments, such as the Universal Declaration of Human Rights (UDHR) of 1948, under Article 23, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, under Article 7. So it is not just contained in ILO labour instruments, but rather a fundamental human right that is closely connected to right to health and right to life.

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

<sup>107</sup> Section 62 of the Occupational Health and safety Act No. 5 of 2003

<sup>108</sup> Benjamin O. Alli (2008), *Fundamental Principles of Occupational Health and Safety*, International Labour Office-General: ILO, Second Edition, available at [http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_093550.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_093550.pdf), accessed 20<sup>th</sup> May 2018; International Commission on Occupational Health (ICOH), *International Code of Ethics for Occupational Health Professionals*, available at [http://www.icohweb.org/site\\_new/multimedia/core\\_documents/pdf/code\\_ethics\\_eng\\_2012.pdf](http://www.icohweb.org/site_new/multimedia/core_documents/pdf/code_ethics_eng_2012.pdf), accessed 20<sup>th</sup> May 2018.

related accidents or diseases, while more than 300 million people suffer from work-related diseases and another 300 plus million people experience fatal and non-fatal accidents.<sup>109</sup> This has prompted the international community, through ILO, to develop more than 40 international labour standards on occupational health and safety, as contained in various ILO instruments.<sup>110</sup> Key among the instruments providing for labour standards on occupational health and safety is the Occupational Safety and Health Convention, 1981 (No. 155), which is not yet ratified by Tanzania.<sup>111</sup>

In Tanzania, issues relating to occupational health and safety are mainly governed by the Occupational Health and Safety Act, 2003 and the Employment and Labour Relations Act 2004. The Occupational Health and Safety Act contains provisions seeking to protect the health and welfare of workers and improve working environment, including supply of drinking water, washing facilities, first aid facilities, protective equipment and medical examination.<sup>112</sup> The Act also prohibits work that is not adapted to workers and provides for workers to be protected from toxic materials and employers to provide occupational health and safety services. Among the key aspects of the Act is **inspection** of workplaces, whereby inspectors are empowered to enter a workplace and inspect or examine it without notice.<sup>113</sup> The Employment and Labour Relations Act empowers the Minister responsible for labour to make regulations in respect of matters of occupational health and safety standards and working environment.<sup>114</sup> Employers must ensure safe working environment and report occupational hazards, accidents or diseases occurring at workplace to authorities, promoting the culture of health and safety at work. They must also train their workers on occupational health and safety.

<sup>109</sup> See ILO, *International Labour Standards on Occupational Safety and Health*, at <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm>, accessed 20<sup>th</sup> May 2018.

<sup>110</sup> *Ibid.*

<sup>111</sup> Other instruments include the Occupational Health Services Convention, 1985 (No. 161), which provides for enterprise-level occupational health services, focusing on prevention; Occupational Safety and Health Recommendation, 2006 (No. 197); Safety and Health in Construction Convention, 1988 (No. 167); Safety and Health in Mines Convention, 1995 (No. 176); and Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148).

<sup>112</sup> Sections 24, 54, 56, 58 & 62 of the Occupational Health and Safety Act, 2003.

<sup>113</sup> *Ibid.*, Section 6(1).

<sup>114</sup> Section 98(1) of the Employment and Labour Relations Act, 2004.

### ***Selected Key Principles in Occupational Health and Safety***

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

Source: Benjamin O. Alli (2008), ILO

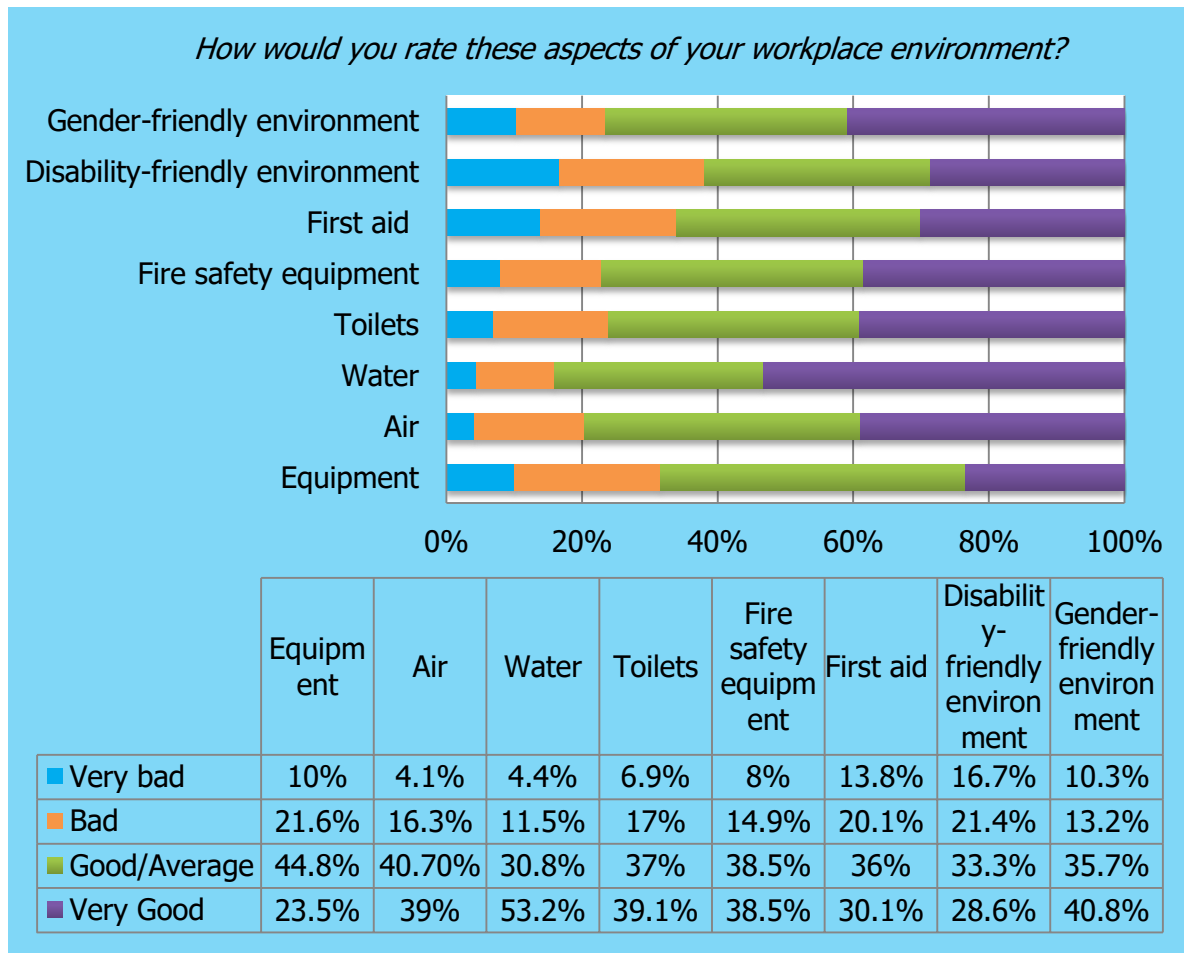
In 2017, LHRC human rights and business study revealed that:

- the overall situation of working environment has improved at most companies that were visited;
- labour inspection is not regularly conducted and is a major concern in promotion and protection of labour rights; and
- a significant percentage of workers do not receive regular training on occupational health and safety.

#### ***2.5.1. Improved situation of working environment at most industries/companies visited***

The LHRC study on human rights and business in selected regions of Tanzania Mainland revealed that the situation of working environment was generally good at most companies that were visited. This improvement is in terms of provision of relevant work equipment to protect against injuries and diseases, provision of sufficient fresh air in enclosed sections of the workplace, availability of water and availability of clean toilets. Other factors affecting working environment that were looked at during the study are fire safety equipment, first aid, disability friendliness and gender-friendly working environment.





**Figure 5: Workers' responses on different aspects of working environment**

Source: Human Rights and Business Study 2017

As indicated in the figure above, a significant majority of respondents indicated that the working environment was either good/average or very good. This equals to an average of 73% of the respondents. The remaining 27% were not satisfied with the overall working environment. Complaints about inadequate working tools were received by research assistants from some of the employees who participated in the study in Mtwara and a few in Morogoro.<sup>115</sup> In Shinyanga, women were observed crushing stones to extract gold at Mwime Mine without wearing any protecting equipment.

### **Challenges facing women working in the cashew nut industry in Tanzania: A reflection based on experiences from India**

A number of studies relating to cashew nuts in have been conducted in India, indicate that most of the workers in the industry are women, contributing to up to 90% of the total labor force. Most of the cashew nuts industries in India are located in rural areas, providing employment

<sup>115</sup> LHRC Human Rights and Business Study 2017, Mtwara and Morogoro Field Reports.



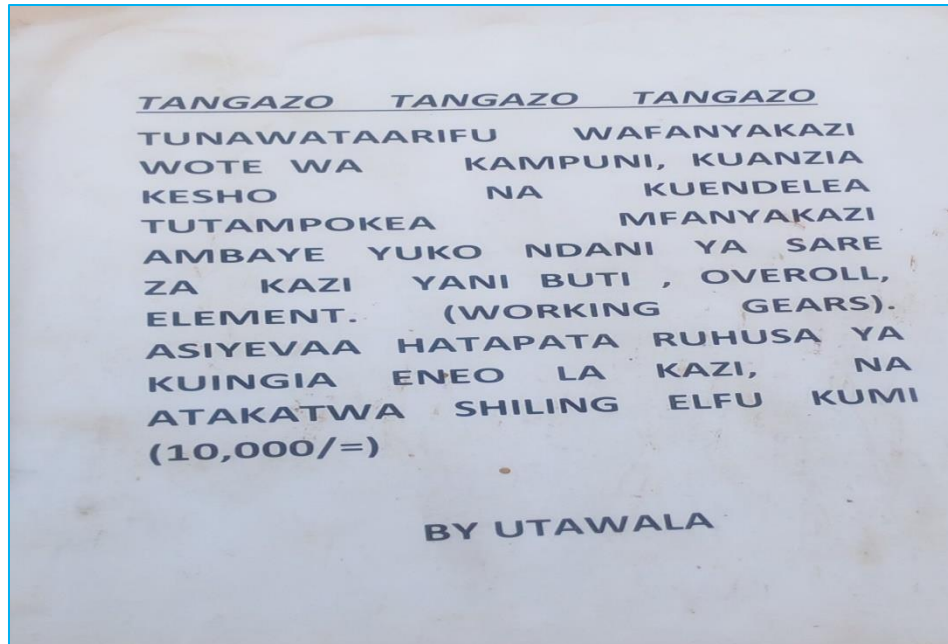
opportunities to rural women. The law governing cashew nut industries in India provides that workers must be provided with gloves to protect their hands, although most industries do not provide them. This is because when the workers are deshelling the nuts (removing the shells), the nuts produce a liquid that burns their skins (corrosive liquid).<sup>116</sup> As a result, many women working in the industry are said to have sustained permanent damage on their hands.<sup>117</sup> These women end up with industrial skin diseases, which cause morbidity and disability. Due to repeated pressure on skin the workers may also experience temporary or permanent skin damage or bruises. The study about cashew nut workers in India also indicates that they are susceptible to posture and postural stress due to standing or sitting at one place, sometimes without back support, for a long time and not having a good working posture.



Picture 9: Cashew nut workers at Micronix System Ltd in Mtwara working without gloves

<sup>116</sup> See Bee Wilson “‘Blood cashews’: the toxic truth about your favourite nut” The Telegraph Newspaper (online), available at <https://www.telegraph.co.uk/foodanddrink/foodanddrinknews/11577928/Blood-cashews-the-toxic-truth-about-your-favourite-nut.html>, accessed on 2<sup>nd</sup> April 2018.

<sup>117</sup> Ibid.



Picture 10: A warning for workers at Changjiang Invest Ltd in Mtwara prohibiting workers who do not wear protective gear from entering workplace premises



Picture 11: Workers at Hawte Investment Ltd, a cashew nut processing industry in Mtwara, working without gloves

In case of Tanzania, cashew nut production is also very important, mainly done in Mtwara Region. The LHRC research team managed to visit two cashew nut industries in the region, namely *Micronix System Ltd* and *Hawte Investment Ltd*. As indicated in the pictures above, majority of employees appear to be women, as is the case in India. Both sets of women appear

to be deshelling (removing the outer shell of cashew nut) without wearing gloves. Their hands are thus not protected from repeated skin pressure and corrosive liquid coming out of a cashew nut, putting them at risk of suffering from occupational-related diseases and damaging their skins. The pictures also show that the working postures are not very good due to lack of back support. The research team, however, could not establish the length of time these women spend working in such condition. A specific study on women engaged in cashew nut processing is needed to further look into the challenges faced by women in this industry in Tanzania Mainland and make comparisons with their counterparts in India.

### **2.5.2. Lack of regular labour inspection still an issue of great concern**

Inspection of labour is a very important part of regulation of companies in the business sector, to ensure they comply with the relevant labour laws and standards, which in turn promotes protection of labour and human rights of both employees and their employers. As discussed in Chapter Seven of this report, on regulatory authorities, major capacity gaps within regulatory authorities are lack of sufficient skilled officers and lack of sufficient financial resources and over 40% of respondents working at the authorities feel the authorities do not have the necessary capacity to fulfil their mandates. The regulatory authority responsible for labour inspection in terms of occupational health and safety is the Occupational Health and Safety Authority (OSHA).

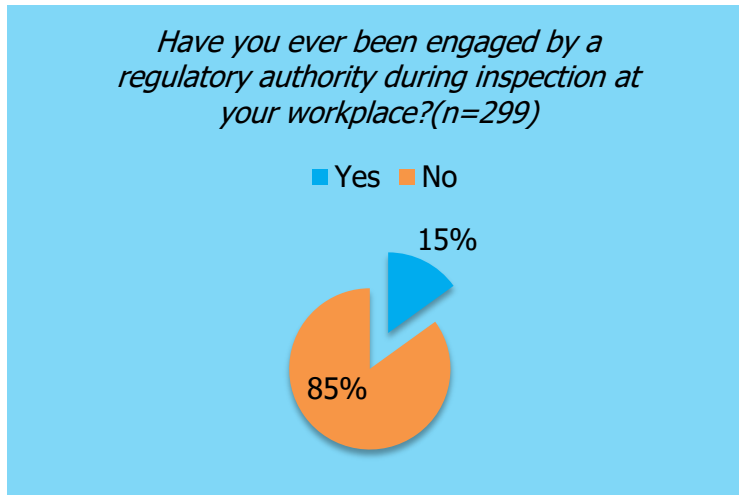
Previous LHRC reports on human rights and business, particularly the 2015 edition, have discussed in-depth the challenges that prevent OSHA to effectively and regularly carry out labour inspection.<sup>118</sup> Trends indicate that due to insufficient resources, both human and financial, OSHA has only been able to fulfil its mandate regarding labour inspection by an average of 50%, rate of labour inspection rapidly declining from over 80% in 2011/2012 to 40% in 2014/2015.<sup>119</sup>

During the study on human rights and business in 15 regions of Tanzania Mainland, respondents were asked whether they have ever been engaged by regulatory authorities during inspection at their workplaces. Less than 20% of the respondents indicated that they have been engaged by them during labour inspection.

<sup>118</sup> LHRC (2016), *Human Rights and Business Report 2015*, p. 186.

<sup>119</sup> *Ibid.*

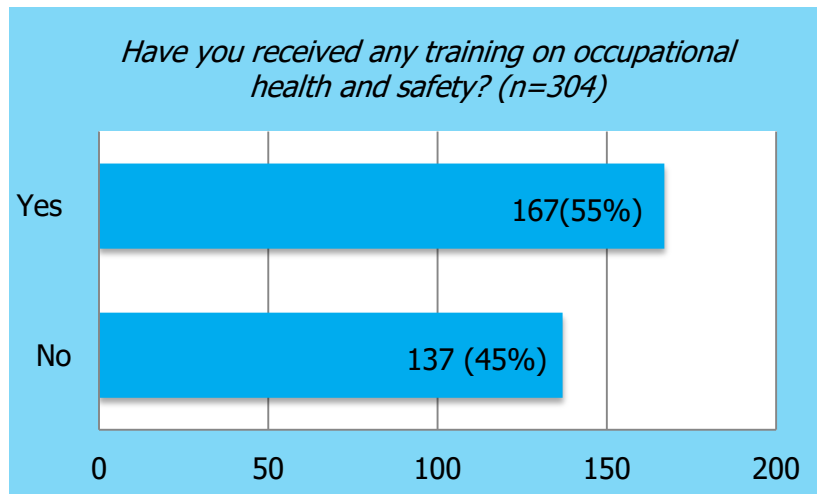




**Figure 6: %Responses on workers engaged by regulatory authority**

### 2.5.3. Concern over training on occupational health and safety

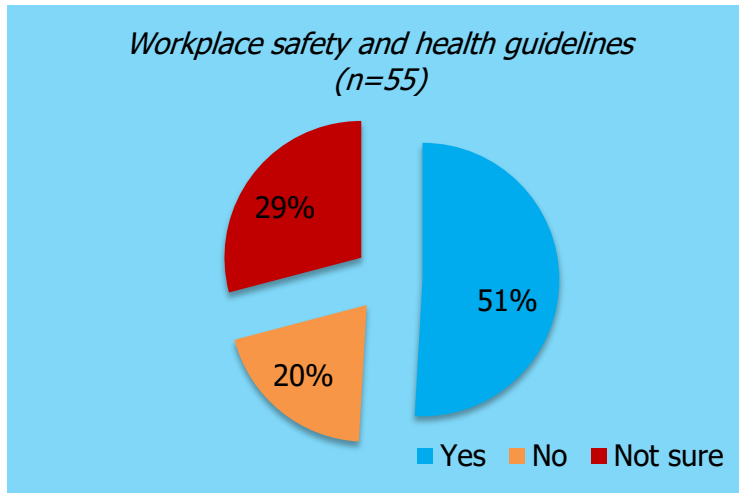
The human rights and business study for the year 2017 also revealed a concern among workers over training on occupational health and safety. As indicated in the figure below, almost 50% of the workers stated that they had not received any training on occupational health and safety.



**Figure 7: Responses on receiving occupational health and safety training among workers**

Majority of corporate management officials that were engaged during the human rights and business study across 15 regions of Tanzania Mainland had workplace safety and health guidelines, as indicated in the figure below. Surprisingly, almost 30% of them stated that they were not sure if such guidelines exist.





**Figure 8: Availability of workplace safety and health guidelines at studied companies**

Moreover, contrary to claims made by significant number of workers that they had not received any training on occupational health and safety, as indicated above, the corporate management officials claimed that they do provide such trainings. Overwhelming majority of these officials (90%) claimed that they provide regular on-job trainings on workplace safety and health.



**Figure 9: Provision of regular on-job trainings on workplace safety and health**

#### **2.5.4. Challenges of Occupational Health and Safety in Tanzania**

In 2015, a group of experts on occupational health and safety published findings on their study on “Status of Occupational Health and Safety and Related Challenges in Expanding Economy of



Tanzania.”<sup>120</sup> They indicated the following as challenges faced by Tanzania in promotion and provision of occupational health and safety services:<sup>121</sup>

- Fast technological development, globalization, and expanding economy.
- Inadequate effective institutional framework to enhance OHS in formal and informal sectors.
- Low OHS skills among health care service providers.
- Lack of resources (human, technical, and financial) to carry out OHS.
- Low awareness of OHS matters among the general public, workers, and employers.
- Low compliance to OHS standards.
- Poor working environment in the informal sector.
- Inadequate OHS training and skills development.
- Lack of financial commitment by government and social partners to enhance occupational safety and health activities.
- Government officers who are not fully committed or motivated to enforce health and safety law
- Corruption.
- Lack of employer interest in providing a safe working environment.
- Inadequate OHS information.
- Inadequate programs to address cross-cutting and sectoral issues related to gender, HIV and AIDS

Most of the challenges mentioned above still exist, compounded by lack of regular training on OHS and sufficient human and financial resources to enable OSHA to carry out labour inspections effectively and regularly. LHRC is worried that given the economic growth of Tanzania and the fifth government’s intensification of the industrialization process, human and labour rights in the business sector may not be given adequate protection and priority. At the moment, occupational and health services remain inaccessible for majority of workers.<sup>122</sup>

## 2.6. Compensation for injury sustained at work

As indicated in the subchapter above, the primary duty of employer in relation to occupational health and safety is to prevent accidents, hazards and diseases at workplace by providing a safe and health working environment. However, where occupational accidents or hazards occur, they are required to provide compensation. This is an international standard as provided for

<sup>120</sup> Ezra J. Mrema (BSc Ed, MSc, PhD), Aiwerasia V. Ngowi (BSc, MSc, PhD) and Simon H.D. Mamuya (BSc, MPhil, PhD)

<sup>121</sup> See Ezra J. Mrema *et al* “Status of Occupational Health and Safety and Related Challenges in Expanding Economy of Tanzania” *Annals of Global Health*, Vol. 81, No. 4, 2015, at [https://www.researchgate.net/publication/288117523\\_Status\\_of\\_Occupational\\_Health\\_and\\_Safety\\_and\\_Related\\_Challenges\\_in\\_Expanding\\_Economy\\_of\\_Tanzania](https://www.researchgate.net/publication/288117523_Status_of_Occupational_Health_and_Safety_and_Related_Challenges_in_Expanding_Economy_of_Tanzania), accessed 20<sup>th</sup> February 2018.

<sup>122</sup> *Ibid.*

under the ILO Workmen's Compensation (Accidents) Convention, 1925 (No. 17), which has been ratified by Tanzania.<sup>123</sup>

Other ILO compensation conventions include the Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18), Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) and the

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19). Right to compensation in case of injury also forms part of social protection, thus covered under the International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides for the right to social security.

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

Domestically, there is the Workers' Compensation Act,<sup>124</sup> which provides for the right to right to compensation for occupational injury (resulting in disablement or death)<sup>125</sup> and right to compensation for occupational diseases.<sup>126</sup> It also establishes the Workers Compensation Fund<sup>127</sup> and creates an obligation for an employer to contribute to it.

LHRC's human rights and business study covering the year 2017 revealed that:

- There is little or no compensation for workers when in case of workplace injury.

### **2.6.1. Little or no compensation, apart from medical care**

During the study on human rights and business across 15 regions of Tanzania Mainland, one of the questions posed to respondents was "Do employees receive compensation in case of injury at work?" As indicated below, less than 50% said they do, while 23% said they do not. 32% of the respondents stated that they were not sure, which raises the issue of awareness of labour laws, rights and standards among workers. In Iringa, 8 out of 10 employees who were interviewed about compensation revealed that they do not know if and how they are compensated in case of injury sustained at workplace.<sup>128</sup>

<sup>123</sup> Article I of the Convention states that "Each Member of the International Labour Organisation which ratifies this Convention undertakes to ensure that workmen who suffer personal injury due to an industrial accident, or their dependants, shall be compensated on terms at least equal to those provided by this Convention."

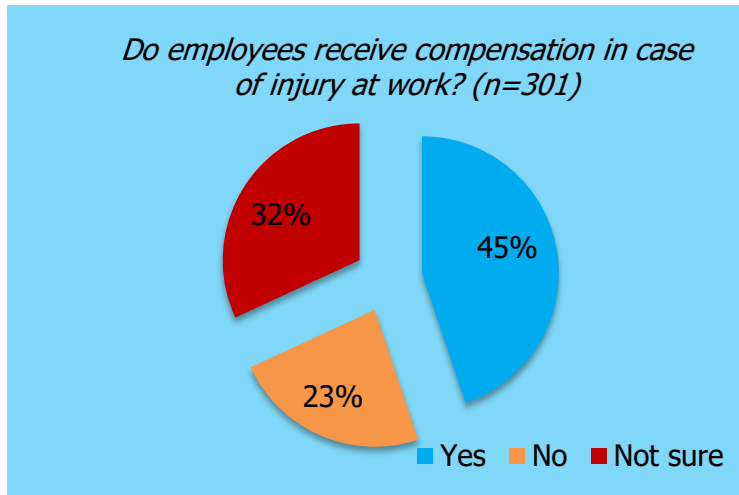
<sup>124</sup> CAP 263, R.E. 2015.

<sup>125</sup> Section 19(1) of the Workers' Compensation Act.

<sup>126</sup> Ibid, Section 22(1).

<sup>127</sup> Ibid, Section 5(1).

<sup>128</sup> LHRC Human Rights and Business Study 2017, Iringa Field Report.



**Figure 10: %Responses on whether employees receive compensation in case of injury at workplace**

Most of the complaints about lack of compensation or fair compensation were made in 6 out of the 15 regions that were visited during the study on human rights and business. These regions are Iringa, Manyara, Mbeya, Mtwara, Mwanza, and Njombe. In Manyara, an interview was conducted with one employee at *Ngano Ltd*, who claimed that his employer does not have a tendency of fairly compensating a worker who has sustained an injury during work.<sup>129</sup> Similar remarks were made during an interview with some of the workers at *TANWATT Co. Ltd* in Njombe Region<sup>130</sup> and a focus-group discussion with workers in Mwanza Region.<sup>131</sup> In Mbeya, one employee said to the research assistant, “I broke my leg while working at the mine. After 10 days I was paid Tshs. 100,000, but my salary was not paid since I was at home most of the time recovering.”<sup>132</sup>

<sup>129</sup> LHRC Human Rights and Business Study 2017, Manyara Field Report.

<sup>130</sup> LHRC Human Rights and Business Study 2017, Njombe Field Report.

<sup>131</sup> LHRC Human Rights and Business Study 2017, Mwanza Field Report.

<sup>132</sup> LHRC Human Rights and Business Study 2017, Mbeya Field Report.





Picture 12: One of the employees at TANWATT Co. Ltd who sustained injury at workplace

### Good labour practices on compensation

Dodoma: “Our fellow employee fell from the mattresses lined upwards and injured his leg. The company took care of and compensated him, his salary was not deducted.” – Employee at MMML Company.

Morogoro: An employee at TPM (1998) Ltd mentioned that the employer adheres to the compensation requirement under the Workers’ Compensation Act.

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

Freedom of association is a fundamental human right, provided for under various regional and international human rights instruments, including the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples’ Right (ACHPR).<sup>133</sup> ICCPR states that everyone has the right to freedom of association with others, which **includes right to form and join trade unions for the protection of**

<sup>133</sup> Articles 20(1) & 23(4) of UDHR; Article 22(1) of ICCPR; Article 8(1)(a) of ICESCR; and Article 10 of ACHPR.

**his interests.** This right is thus also a labour right and it provides a platform for enjoyment of another fundamental labour rights, the right to collective bargaining. It is protected under several ILO labour conventions, including the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Collective Bargaining Convention, 1981 (No. 154). Domestically, this right is incorporated in the Employment and Labour Relations Act (ELRA), providing for the right of workers to form or join trade unions and employers to form or join employers' association.<sup>134</sup>

ILO defines collective bargaining as '**a voluntary process through which employers and workers discuss and negotiate their relations, in particular terms and conditions of work**' and recognizes it as an essential part of freedom of association.<sup>135</sup> It is important for employer-employee relations as it ensures that both parties have a say and fairly negotiate their employment relation, concluding what we call collective bargaining agreement (CBA). Section 68 of ELRA imposes a duty upon an employer or his association to bargain in good faith.

Closely associated with freedom of association and collective bargaining is the **right to strike**. This right has been upheld at ILO, whereby the ILO's Government Group now recognizes that 'without protecting a right to strike, freedom of association, in particular the right to organize activities for the purpose of promoting and protecting workers' interests, cannot be fully realized.'<sup>136</sup> ELRA also recognizes the right of employees to strike under Section 75.

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

### 2.7.1. Restrictions on freedom of association, employers seeing trade unions as a nuisance

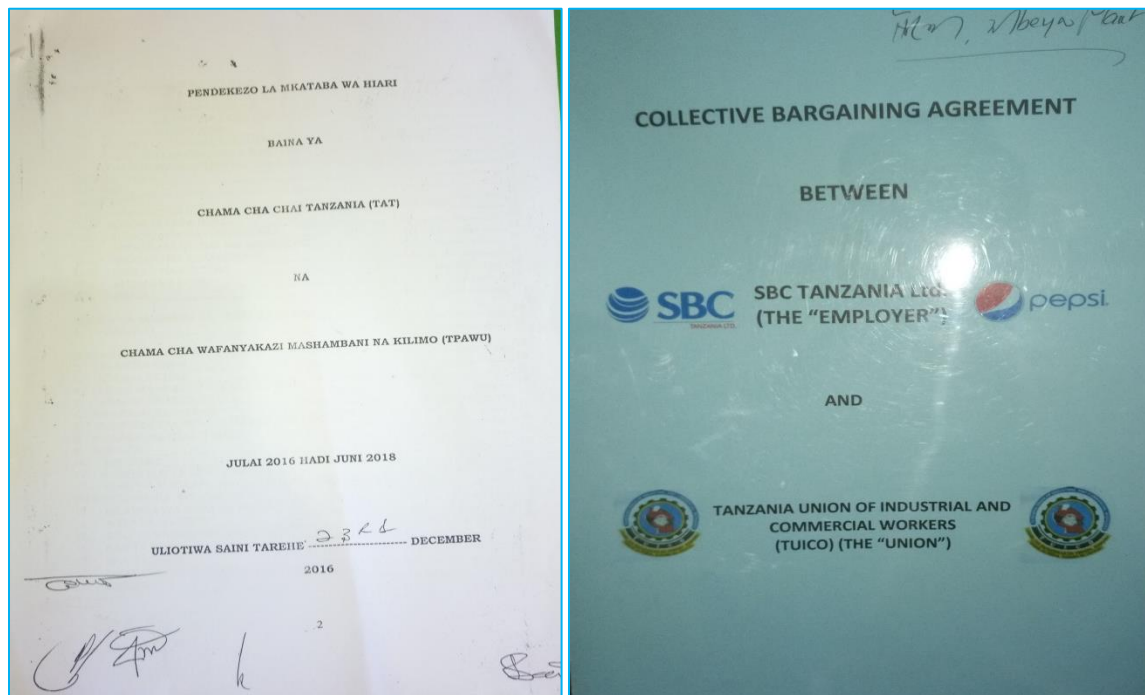
Interviews conducted by LHRC research assistants with employees/workers in surveyed regions generally indicate that most employers see trade unions as a nuisance and source of disputes. This finding is similar to that made by the Commission for Human Rights and Good

<sup>134</sup> Sections 9(1) & 10(1) of ELRA.

<sup>135</sup> See ILO, *Right to collective bargaining* at [http://www.ilo.org/empent/areas/business-helpdesk/WCMS\\_DOC\\_ENT\\_HLP\\_CB\\_EN/lang--en/index.htm](http://www.ilo.org/empent/areas/business-helpdesk/WCMS_DOC_ENT_HLP_CB_EN/lang--en/index.htm), accessed 20<sup>th</sup> May 2018.

<sup>136</sup> United Nations Human Rights Office of the High Commissioner, *UN rights expert: "Fundamental right to strike must be preserved"* at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21328&LangID=E>, accessed 20<sup>th</sup> May 2018; "Right to Strike upheld at ILO" at <http://www.industriall-union.org/right-to-strike-upheld-at-ilo>, accessed 20<sup>th</sup> May 2018.

Governance (CHRAGG) in its study conducted in 2015.<sup>137</sup> Although 87% of all companies that were visited indicated that they recognize employees' freedom of association and allow trade unions,<sup>138</sup> most of the employees that were interviewed stated that the employers are not very happy with trade unions and tend to restrict or discourage workers from joining them. In Mbeya it was found out that although employers are forced to comply with the law by allowing trade unions, most of them are reluctant to comply with collective bargaining agreements (CBAs).<sup>139</sup>



Picture 13: CBAs between Tanzania Tea Association and TPWU (left) and between Pepsi Co. Ltd and TUICO (right) in Mbeya

A worker at *Royal Oven* in Mbeya told the research team that the employer does not like it when they engage with the trade union they have joined, TUICO, accusing them of sending 'false information' and 'lies.' She said, "We joined TUICO following constant harassment and abuse at our workplace. We endure insults and threats of termination of employment because our director says we send false information/accusations to TUICO's Mbeya branch. The boss is not happy to see the workers being motivated to join TUICO."<sup>140</sup> In Morogoro, it was revealed that employers restrict employees' freedom of association because they do not want them to 'gain too much knowledge of their labour rights.' During an interview with the LHRC research team, a

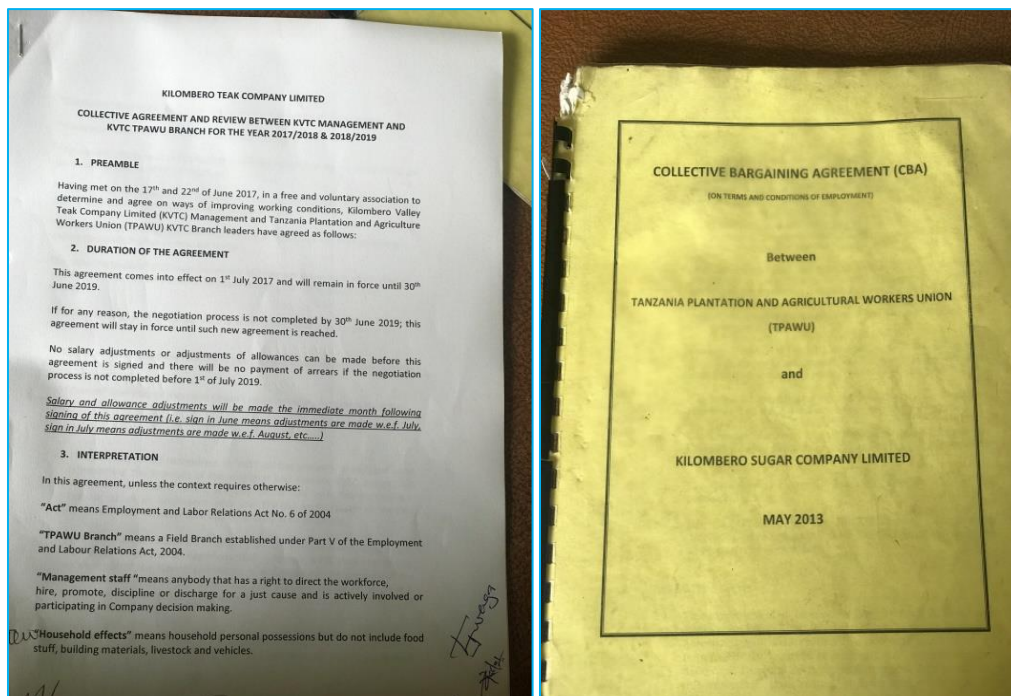
<sup>137</sup> See The Commission for Human Rights and Good Governance (CHRAGG), *Training Report on Compliance of Labour Laws in the Industries Under EPZA*, January 2015, available at [http://www.chragg.go.tz/docs/REP/Training%20Report%20on%20labour%20law%20compliance%20in%20EPZ%20industries\(1\).pdf](http://www.chragg.go.tz/docs/REP/Training%20Report%20on%20labour%20law%20compliance%20in%20EPZ%20industries(1).pdf), accessed 25<sup>th</sup> April, 2018.

<sup>138</sup> LHRC Human Rights and Business Study 2017, Questionnaire Findings.

<sup>139</sup> LHRC Human Rights and Business Study 2017, Mbeya Field Report.

<sup>140</sup> Ibid.

TPAWU official in Kilombero District-Morogoro Region stated that employers do not like to be told what they are doing wrong and employees who appear to be in the forefront of demanding certain labour rights become ‘targets.’<sup>141</sup> He further stated, “...No employer in the world accepts trade unions a hundred percent, but because it is a statutory requirement employees will then join. Most employers are reluctant to bargain when discussing and concluding collective bargaining agreements.”<sup>142</sup> TPAWU Zonal Secretary in the region, Mr. Nicholas Ngowi, informed the study team that both sides, employers and employees, have problems. He noted that employees in the region tend not to fully participate in union activities, including meetings, instead preferring to attend personal issues when they have some time off work.<sup>143</sup> On the part of employers, he added, they tend to skip meetings when needed because ‘they are busy and have no time.’<sup>144</sup> He also mentioned the challenge the union faces in reaching members who are in remote areas, working in plantations, which affects some of the union activities.<sup>145</sup>



Picture 14: CBAs entered between TPWU and Kilombero Teak Company Limited and Kilombero Sugar Company Limited in Morogoro

In Mwanza Region, an interview with TUICO Regional Secretary, Ms. Njela Tupilike, revealed that the situation of collective bargaining is improving, having entered into CBAs with companies like Coca-Cola, Serengeti Breweries Limited, Golila Security, Unity Security, VITAFOAM and DAYAXU.<sup>146</sup> She noted, however, that there is need to continue raising awareness about

<sup>141</sup> LHRC Human Rights and Business Study 2017, Morogoro Field Report.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

<sup>146</sup> LHRC Human Rights and Business Study 2017, Mwanza Field Report.

freedom of association and right to collective bargaining among employees and employers in order to spread the presence of trade unions at more companies in the region.<sup>147</sup> On the other hand, interviews with workers at *Nile Perch Fisheries*, *Ahead Security Company* and other a few other security companies and hotels revealed that some employers tend to discourage workers from joining trade unions by telling them that once they join the trade unions there will be some ‘deductions in their salaries’ to cater for administrative costs of the unions.<sup>148</sup> Concerned with such deductions, some of the workers decide against joining the unions. A lawyer at CHODAWU’s Mwanza branch told the research team during an interview that knowledge about labour rights is a challenge in the region, especially the right to join trade unions, which would make it easier for workers to enjoy other rights, under the guidance of such unions.<sup>149</sup>

In Njombe Region, employees who were interviewed generally revealed that they were not free to join trade unions, as they were either threatened or discouraged by employers.<sup>150</sup> However, they also claimed that some workers in the region just decide against joining trade unions because they do not trust them.<sup>151</sup> In Shinyanga Region, out of the four companies that were visited, only one - *Williamson Diamonds Limited* – had a trade union.<sup>152</sup> Management official at *Jambo Food Products* claimed that employees at the company refused to join trade unions because of the 2% deduction from their salaries each month as contribution to trade unions.<sup>153</sup> At *Jielong Holding Company* and *Fang Hua Investments*, it was observed that most employees lack awareness about existence and importance of trade unions.<sup>154</sup> An official from the Tanzania Mines, Energy, Construction and Allied Workers Union (TAMICO) complained about poor cooperation received from companies.<sup>155</sup> For instance, the official claimed that *Jielong Holding Company* management refused to allow the union labour officer to meet with its employees, although when confronted with the complaint, management denied the allegation.<sup>156</sup>

On the positive note, employees at *Agro Agriculture Co. Ltd* and *Alko Vintage Company* in Dodoma indicated that they have not faced any restrictions in joining trade unions.<sup>157</sup> The research team observed that the rights of employees, including right to join trade union, were displayed on notice boards.

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<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.

<sup>150</sup> LHRC Human Rights and Business Study 2017, Njombe Field Report.

<sup>151</sup> Ibid.

<sup>152</sup> LHRC Human Rights and Business Study 2017, Shinyanga Field Report.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid.

<sup>157</sup> LHRC Human Rights and Business Study 2017, Dodoma Field Report.



### 2.7.2. Fear of engaging, joining or being active in trade unions

Different reasons for fear of engaging, joining or being active in trade unions were revealed during the study on human rights and business across 15 regions of Tanzania Mainland. These include threats from employers and the contributions made to trade unions. For instance, in Mbeya Region some workers complained about being threatened when they show intention of joining trade unions. A worker at *Royal Oven* claimed that although they eventually managed to join TUICO (a trade union), they received threats from their boss, who accused them of levelling false accusations against the company at TUICO.<sup>158</sup> During an interview with LHRC research team in Dodoma, an employee at *Salman's Transport Co. Ltd* said:

*“They (the management of the company) do not like it when we join trade unions. Usually, those who decide to join them are called to the office and interrogated.”*

In Shinyanga, a management official at *Jambo Food Products* claimed that employees at the company refused to join trade unions because of the 2% deduction from their salaries each month as contribution to trade unions.<sup>159</sup>

### 2.7.3. Bold claims: some union representatives/leaders siding with employers, being corrupt

Complaints against trade unions were made during interviews with workers in at least half of the regions that were surveyed. These regions are Dodoma, Geita, Iringa, Manyara, Mara, Njombe and Mwanza. Over 50% of employees who were interviewed in Dodoma indicated that there is mistrust between employees and trade unions, as trade union representatives are perceived or observed to side with employers in most cases.<sup>160</sup> Some of the employees who were interviewed in Geita Regions levelled a complaint against Mines and Construction Workers Union (TAMICO), accusing its officials of siding with employers.<sup>161</sup> Similar views were expressed by interviewees in Iringa, who accused trade unions of ‘not doing much to help them.’<sup>162</sup> In Manyara Region, an employee at *Ngano Ltd* said, “We used to be members of TASIWU, but we decided to leave the union after seeing that the union secretary usually meets with members of Indian origin and ignores us.”<sup>163</sup> Distrust of trade unions was also expressed by workers of *Mara Milk Company* and *Musoma Fish Processors Ltd* who were interviewed, noting that they are usually not there when they need them.<sup>164</sup> Because of this, they added, some workers decided not to join trade unions or leave them.<sup>165</sup> An employee of *Njombe Milk Factory* in Iringa said:

<sup>158</sup> LHRC Human Rights and Business Study 2017, Mbeya Field Report.

<sup>159</sup> LHRC Human Rights and Business Study 2017, Shinyanga Field Report.

<sup>160</sup> LHRC Human Rights and Business Study 2017, Dodoma Field Report.

<sup>161</sup> LHRC Human Rights and Business Study 2017, Geita Field Report.

<sup>162</sup> LHRC Human Rights and Business Study 2017, Iringa Field Report.

<sup>163</sup> LHRC Human Rights and Business Study 2017, Manyara Field Report.

<sup>164</sup> LHRC Human Rights and Business Study 2017, Mara Field Report.

<sup>165</sup> Ibid.



“Viongozi wetu wa chama tunawaona wanafika mara chache hapa kiwandani na wakifika huishia ofisini na kuondoka hawajawahi kukutanana sisi kujua changamoto zetu”

*“Our trade union leaders rarely visit our workplace and when they do they do not meet with us to learn/hear about the challenges we face.”*

Another employee in the region from TANWAT Company Ltd. had this to say about trade unions:

“Vyama hivi vya wafanyakazi ni kwa manufaa ya waajiri maana hata tukikaa na kuongea changamoto zetu hapa kesho yake tunaitwa ofisini na wakubwa wetu wa kazi tunaambiwa naskia mnaongea ongea na mara nyingi yule mwenye kulalamika hufanyiwa mbinu za kufukuzwa kazi. Sasa hatuna imani na vyama hivi maana tunaona ni kama shushu wa waajiri na sio kutututea sisi maana wanatoa siri na malalamiko yetu kwa waajiri”

*“These trade unions are just there to protect the interests of employers, as when we meet with them and discuss our challenges/grievances our bosses call us to their offices the following day and tell us that they hear were complaining about them; and in most cases the person who complains the most finds themselves at risk of employment termination. We therefore do not trust trade unions as they are like informers for the employers and not there to protect us.”*

In Mwanza Region, focus group discussion and interviews with employees of companies that were studied revealed corruption within trade unions as a key issue affecting effectiveness of trade unions.<sup>166</sup>

#### 2.7.4. Effectiveness of trade unions questioned

One of the questions that was asked during the 2017 study on business and human rights in Tanzania Mainland was about effectiveness of trade unions, featuring in both the structured questionnaire and the interview guide. 66.3% of employee respondents who filled out the questionnaires stated that there is a trade union at their workplaces, while the remaining 33.7% stated there are no such unions at theirs.<sup>167</sup> When asked how effective these trade unions are, majority of them (34.1%) indicated that they are not effective or effective a little, while 29% felt they are effective and 17.6% felt they are very active, as indicated in the figure below.

<sup>166</sup> LHRC Human Rights and Business Study 2017, Mwanza Field Report.

<sup>167</sup> LHRC Human Rights and Business Study 2017, Questionnaire Findings.



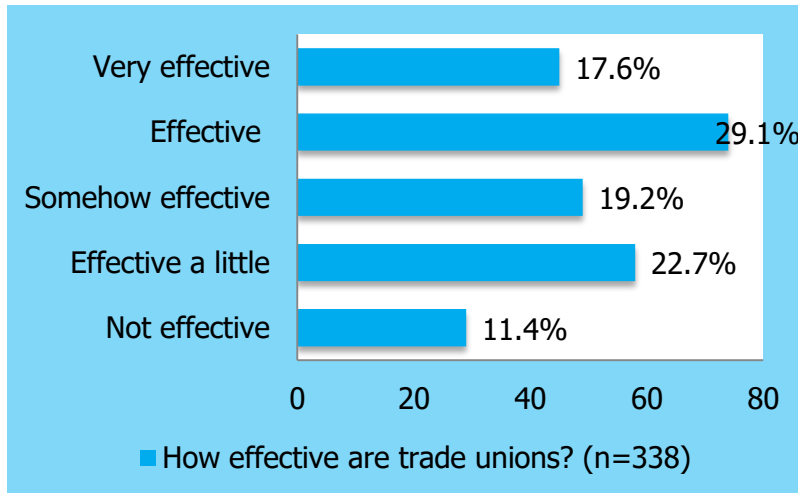


Figure 11: Employees' responses on effectiveness of trade unions

Dissatisfaction with operational performance of trade unions was aired during interviews in Kilimanjaro, Mtwara, Njombe, Mwanza, Manyara and Geita Regions.<sup>168</sup> In Kilimanjaro Region, Mr. Malekela Thomas, who is a CMA arbitrator, pointed out to the research team that most trade unions do not put the interests of members first and only try to pacify them so that they do not leave the unions.<sup>169</sup> As indicated above, corruption among trade union officials was raised an issue affecting performance of trade unions in Mwanza.<sup>170</sup> In Mtwara Region, an employee at a cement company questioned the effectiveness of TUICO as a trade union, saying:

“Ni sawa na hatuna chama cha wafanyakazi, tunakisikia tu na uongozi wake hauji kuongea na kusikiliza changamoto tunazozikumba. Wafanyakazi tunanyanyasika, tunakosa haki zetu na kuonewa sana lakini hakuna wa kututetea. Ukisema tu unafukuzwa kazi na kwa kuwa watu hawana mbadala wanaamua kukaa kimya na kujifanyia kazi ili wapate chochote”

*“It is like we do not have any trade union here. The union representatives and leaders do not want to come and hear our challenges. We face harassment, our rights are not respected and we face intimidation, but there is no one to protect us. If you complain about anything you are at risk of termination of employment, thus people decide to keep quiet and keep working to gain a living.”*

## 2.8. Child and forced labour

Child labour and forced labour are universally condemned and prohibited as violations of human rights. Regional and international human rights and labour instruments prohibit child and forced labour. These include the Forced Labour Convention, 1930 (No. 29), Abolition of

<sup>168</sup> LHRC Human Rights and Business Study 2017, Kilimanjaro, Mtwara, Njombe, Mwanza, Manyara and Geita Field Reports.

<sup>169</sup> LHRC Human Rights and Business Study 2017, Kilimanjaro Field Report.

<sup>170</sup> LHRC Human Rights and Business Study 2017, Mwanza Field Report.



Forced Labour Convention, 1957 (No. 105), Worst Forms of Child Labour Convention, 1999 (No. 182) and Minimum Age Convention, 1973 (No. 138).

Forced labour contravenes fundamental human rights, including right to economic development, freedom of movement and right to just and favourable working conditions. The Forced Labour Convention defines forced labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."<sup>171</sup>

Child labour denies a child their fundamental human rights, including right to education and freedom from all forms of violence. It also hinders children's development.<sup>172</sup> The Minimum Age Convention provides for the minimum age of employment or work at 15 years for light work (after completing compulsory schooling) and 18 years for hazardous work (work that could jeopardise health, safety or morals).<sup>173</sup>

Domestically, labour standards on child and forced labour are provided under the Employment and Labour Relations Act 2004 (ELRA). It prohibits employment of a child under the age of 14 years, providing an exception of light work for a 14-year-old, provided it is not harmful to their health and development or does not hinder school or training attendance.<sup>174</sup> Child labour is defined as "work or employment situation where children are engaged on a more or less regular basis to earn a livelihood for themselves or their families."<sup>175</sup> Child labour is said to be exploitative labour as a child is used as cheap labour, paid less than the labour provided (unequal payment) and exposed to various hazards.<sup>176</sup> Child labour may lead to impairment of a child's physical, mental, moral, spiritual and social development.<sup>177</sup> Poverty remains the major cause of child labour in Tanzania, hindering a child's basic social and economic rights, such as the right to education and right to protection.

A person under 18 years of age is also not allowed to be employed in a mine, factory or any other worksite in conditions the **minister responsible for labour considers hazardous**.<sup>178</sup> Forced labour is prohibited and amounts to an offence under the ELRA.<sup>179</sup> It includes bonded

<sup>171</sup> Article 2 of the Forced Labour Convention, 1930 (No. 29).

<sup>172</sup> ILO, *International Labour Standards on Child labour* at <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/child-labour/lang--en/index.htm>, accessed 21<sup>st</sup> May 2018.

<sup>173</sup> Articles 2(3) & 3(1) of Minimum Age Convention, 1973 (No. 138).

<sup>174</sup> Section 5(1) & (2) of ELRA.

<sup>175</sup> Law Reform Commission of Tanzania, *Report on Labour Law*, presented to the Minister of Justice and Constitutional Affairs, Ministry of Justice and Constitutional Affairs, 2001.

<sup>176</sup> *Ibid*, pp 63-76.

<sup>177</sup> *Ibid*.

<sup>178</sup> *Ibid*, Section 5(3).

<sup>179</sup> *Ibid*, Section 6(1).

labour or any work exacted from a person under the threat of a penalty and to which that person has not consented.<sup>180</sup>

The first schedule of the Employment and Labour Relations (General) Regulations of 2017 provides a list of work considered hazardous for children.<sup>181</sup> The list includes hazardous works in the sectors such as agriculture, fishery, mining, construction, service, trade and transport. Examples include: fetching and carrying fire wood, feeding farm animals, crushing ore, drilling and blasting, cement mixing, painting, brick making, carpentry, welding, stone crushing, water vending, masonry, cleaning toilets and electrical repair.

Regarding the situation of child and forced labour in 2017, LHRC found that while incidents of child labour were not observed or reported at most of the companies and other businesses that were visited, child labour is still a big challenge in Tanzania, owing to the situation of poverty and preference of cheap labour among businesses.

### **2.8.1. Fewer reports of child and forced labour at companies visited, but child labour still persists**

During the study on human rights and business across 15 regions of Tanzania Mainland child labour was mainly observed in Shinyanga. For instance, children were observed processing gold at Mwime Mine in Shinyanga, as shown in the picture below. The children were not even wearing gloves and were barefooted.



**Picture 15: Children processing gold at Mwime Mine in Shinyanga**

<sup>180</sup> Ibid Section 6(2).

<sup>181</sup> Employment and Labour Relations (General) Regulations, GN. 47 of 2017.

Although incidents of child labour were not reported or observed at most companies that were visited, the study found that 30% of the companies did not have a policy on minimum age for employment.<sup>182</sup> 23% of the corporate management officials who filled out questionnaires indicated that they were not sure if such policy exists.<sup>183</sup>

### 2.8.2. No incidents of forced labour reported at companies that were studied

Forced labour was not reported at the companies and other businesses that were visited during the study. Overwhelming majority of questionnaire respondents (95%) also revealed that they were free to leave work after working hours, as indicated in the figure below. About 30% of the companies that were visited during the study, however, had no policy prohibiting forced labour in place.<sup>184</sup>



**Figure 12: %Responses on whether workers are free to leave workplace after working hours**

As indicated above, the ELRA only provides an exception for child labour if it is light work and is not harmful to their health and development or does not hinder school or training attendance. At a rice milling factory in Magugu area, Manyara Region, children around the age of 8 to 15 were found working in the morning at a time they were supposed to be at school.<sup>185</sup>

<sup>182</sup> LHRC Human Rights and Business Study 2017, Questionnaire Data.

<sup>183</sup> Ibid.

<sup>184</sup> Ibid.

<sup>185</sup> LHRC Human Rights and Business Study 2017, Manyara Field Report.

## 2.9. Leaves and social security

There are no international standards on leaves in general, except for maternity leave. Recognizing the need for special protection for expectant and nursing mothers, the international community, through ILO, developed some international labour standards on maternity protection, stipulated under various ILO conventions - including the Maternity Protection Convention, 2000 (No. 183),<sup>186</sup> which has not been ratified by Tanzania.

Domestically, labour standards on leaves are adequately covered under the Employment and Labour Relations Act 2004 (ELRA). It provides for different types of leaves, including four main leaves, which are **annual leave, maternity leave, paternity leave** and **sick leave**.<sup>187</sup>

An employee with less than six months of service is not entitled to paid leave.<sup>188</sup> However, if an employee with less than six months service has worked more than once in a year for the same employer, then he or she is entitled to paid leave if the total period of work exceeds six months in that year.<sup>189</sup> An employee employed on seasonal basis is also entitled to paid leave.<sup>190</sup>

### Leaves under ELRA 2004

#### *Annual leave*

- 28 consecutive days
- Paid leave
- Inclusive of public holiday
- No work during leave

#### *Maternity leave*

- For expectant/nursing mothers
- Provide 3-month notice to employer
- From 4 weeks before expected date of confinement
- 84-day paid leave if gives birth to 1 child
- 100-day paid leave if gives birth to more than 1 child

#### *Paternity leave*

- For fathers
- 3-day leave
- Taken within 7 days of child birth

#### *Sick leave*

- 126 days
- Full salary in first 63 days
- Half salary in remaining 63 days

#### *Other leaves*

- Compassionate leaves
- Paid leave
- Death or sickness of child leave
- Death of spouse, parent, grandparent, grandchild or sibling leave

<sup>186</sup> Provides for maternity leave of not less than 14 weeks and cash benefits 'at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.'

<sup>187</sup> Sections 31(1), 32(1), 33(1) & 34(1) of ELRA.

<sup>188</sup> Ibid, Section 29(1).

<sup>189</sup> Ibid, Section 29(b).

<sup>190</sup> Ibid, Section 29(a).

Employer has a duty of ensuring that no employee is continuously working in any leave cycle without applying for annual leave.<sup>191</sup> The employer also has a duty to allow a female employee to leave the office for a maximum of two hours during working hours for breast feeding of her baby for a period of not less than six consecutive months after maternity leave.<sup>192</sup>

**The right to social security** is a fundamental human right, protected under various human and labour rights instruments. Core international human rights instruments protecting this right include the Universal Declaration of Human Rights (UDHR),<sup>193</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>194</sup> and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).<sup>195</sup> Key international labour rights instruments providing for the right to social security are Social Security (Minimum Standards) Convention, 1952 (No. 102) and Equality of Treatment (Social Security) Convention, 1962 (No. 118).<sup>196</sup> The essence of social security is to address ‘insecurities related to making a living through work.’<sup>197</sup>

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

With respect to the situation of rights to leaves and social security in Tanzania for the year 2017, LHRC found that:

- Majority of employees are granted their right to annual leave;
- Some employers tend to ‘buy’ leave to keep employees at a workplace;
- Some workers are afraid of pushing for leave for fear of losing their jobs; and
- Most workers are not covered by social security.

### **2.9.1. Improved situation of annual leave, but complaints about payment and duration**

The study on human rights and business for the year 2017 generally indicated that most workers are granted annual leave. Over 90% of questionnaire respondents at the companies

<sup>191</sup> Regulation 14(2) of Employment and Labour Relations (General) Regulations, GN. 47 of 2017.

<sup>192</sup> Ibid, Regulation 15.

<sup>193</sup> Article 22 of UDHR.

<sup>194</sup> Article 9 of ICESCR.

<sup>195</sup> Article 11(1) (e) of CEDAW.

<sup>196</sup> Note: These two conventions have not been ratified by Tanzania.

<sup>197</sup> ILO, *International Labour Standards on Social security* at <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/social-security/lang--en/index.htm>, accessed 21<sup>st</sup> May 2018.

that were visited stated they take annual leave and over 60% of them stated they had done so in the past year.

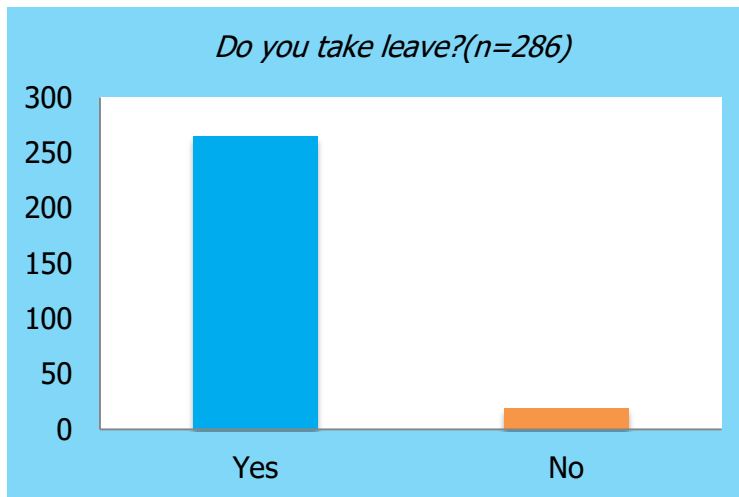


Figure 13:%Responses on whether employees are granted leave

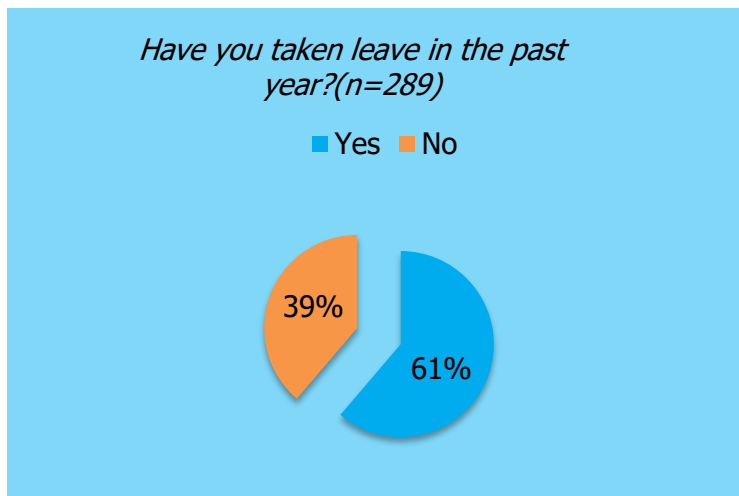


Figure 14:%Responses on whether employees took leave in the past year

However, at some companies that were visited there were complaints about not being paid for the annual leave. For instance, one of the interviewees at *Farm Africa Agrofocus (T) Ltd* in Morogoro said:<sup>198</sup>

<sup>198</sup> LHRC Human Rights and Business Study 2017, Morogoro Field Report.



“likizo zipo lakini ni za magumashi, mfano ukienda likizo haulipwi, likizo ya ugonjwa tayari wanahesabu kama umeenda likizo ya mwaka unapewa fomu ya kukatwa mshahara”

*“Annual leave is granted but when you take it you are not paid. If you took a sick leave they substitute it for annual leave and you are provided with a form for salary deduction.”*

In Mwanza, it was observed that some employers take advantage of ignorance of labour laws among employees to deny them their right to annual leave. For instance, some of the employees who were engaged in a focus group discussion with the research team revealed that they are usually provided with only two weeks (14 days), while the law stipulates 28 consecutive days.<sup>199</sup>

### 2.9.2. Employer ‘buying’ and ‘substituting’ leave

At some companies that were visited, the research teams found that some employers tend to ‘buy’ or ‘substitute’ leaves. For instance, as indicated above, there was a complaint about employer substituting leave at *Farm Africa Agrofocous (T) Ltd* in Morogoro Region. In Mwanza Region, during a focus group discussion with employees of Tanzania Fish Process Limited and Nile Perch Fisheries Ltd, one employee said:<sup>200</sup>

“Likizo ya mwaka huwa tunapata lakini tunamuuzia boshi wetu... mimi siwezi acha hela niende likizo bila malipo... bora niuze likizo nilipwe nipate hela.”

*“We usually sell our annual leaves to our boss. I cannot refuse money and go for leave without payment. It is better to sell the leave and get paid.”*

The focus group discussion with employees in Mwanza revealed that most employees are not fully aware of their leave rights. For instance, while all employees were aware that they are entitled to annual leave, some of them were not aware that they are supposed to be paid for the leave.

### 2.9.3. Fear of losing jobs because of demanding leave

The research teams also came across complaints from some of the workers who were engaged for the study about the possibility of losing their jobs if they push too much for leave, especially annual leave. For instance in Mara, one of the employees at *Multivilla Hotel*, raised a concern that if she gets pregnant and goes for maternity leave she is more likely to lose her job by the time she gets back.<sup>201</sup> In Dodoma, an employee at *Salman’s Transport Co. Ltd* said:

<sup>199</sup> LHRC Human Rights and Business Study 2017, Mwanza Field Report.

<sup>200</sup> Ibid.

<sup>201</sup> LHRC Human Rights and Business Study 2017, Mara Field Report.

“Kwenye mkataba wangu umeandikwa kwamba nitakwenda likizo lakini toka nimeanza kazi sijawahi kwenda likizo, na pia kuna wengine walishakwenda likizo lakini waliporudi walikuta tayari nafasi zao zina watu.”

*“My contract indicates that I am entitled to leave. However, since I started working here I have never taken leave. Some of the workers who have taken leave found their places filled in with other people.”*

#### 2.9.4. Most workers not covered by social security

The study on human rights and business in Tanzania Mainland also revealed that most of the workers in the business sector are not covered by social security. This was especially revealed in Mara and Mbeya Regions.<sup>202</sup>

Apart from the challenge of lack of social security coverage for many, another issue was raised by general secretaries of CHODAWU and TPAWU in Mbeya regarding social security for workers in agricultural and domestic sectors. They noted that the social security law limits provision of pension to employees who have made social security contributions for more than 180 months.<sup>203</sup> However, most workers in these sectors, they said, work for less than 180 months, but some of the employers still deduct their salaries for the contributions.<sup>204</sup>

#### 2.10. Employment termination

ILO provides for international labour standards on employment security under the Termination of Employment Convention, 1982 (No. 158), prohibiting termination of employment unless valid reasons for such termination exist, based on employee’s capacity/conduct or operational requirements.<sup>205</sup> While Tanzania has not ratified this Convention, it provides for clear standards on termination of employment under the Employment and Labour Relations Act 2004 (ELRA). Sub-Part E of the Act covers **unfair termination of employment**, applying only to an employee with 6 or more month-employment with same employer.<sup>206</sup> It states that termination of employment includes:<sup>207</sup>

- a lawful termination of employment under the common law;
- a termination by an employee because the employer made continued employment intolerable for the employee;
- a failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal;

<sup>202</sup> LHRC Human Rights and Business Study 2017, Mara Field Report & Mbeya Field Report.

<sup>203</sup> Ibid, Mbeya Field Report.

<sup>204</sup> Ibid.

<sup>205</sup> ILO, *International Labour Standards on Employment security* at <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/employment-security/lang--en/index.htm>, accessed 21st May 2018.

<sup>206</sup> Section 35 of ELRA.

<sup>207</sup> Ibid, Section 36(a).



- a failure to allow an employee to resume work after taking maternity leave granted under this Act or any agreed maternity leave; and
- a failure to re-employ an employee if the employer has terminated the employment of a number of employees for the same or similar reasons and has offered to re-employ one or more of them.

Unfair termination of employment is prohibited under the ELRA and occurs if employer fails to prove that:<sup>208</sup>

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

Unfair reasons to termination of employment include: an employee disclosing information that they are allowed under the law; employee refusing to do anything that employer is not lawfully permitted or required to ask them to do; employee exercising their right under contract or law; and participation in trade union and its activities, including a lawful strike.<sup>209</sup> Other reasons include pregnancy and disability. In proceedings relating to unfair termination, the burden of proof lies with the employer to prove that it was actually fair.<sup>210</sup>

#### Remedies for unfair termination/dismissal

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

The ELRA also provides for conditions of termination based on operational requirements, which include a notice by employer on intention to retrench as soon as possible and disclosing relevant information, measures to

minimize entrenchment, timing of retrenchment, severance pay and reasons for retrenchment.<sup>211</sup> It also provides for remedies for unfair termination,<sup>212</sup> notice of termination,<sup>213</sup> severance pay,<sup>214</sup> transport to place of recruitment,<sup>215</sup> payment on termination<sup>216</sup> and certificate of service upon termination.<sup>217</sup>

<sup>208</sup> Ibid, Section 37(1) & (2).

<sup>209</sup> Ibid, Section 37(3).

<sup>210</sup> Ibid, Section 39.

<sup>211</sup> Ibid, Section 38 (1).

<sup>212</sup> Ibid, Section 40(1).

<sup>213</sup> Ibid, Section 41(1). [7 days if given in first month of employment; 4 days if employment of daily or weekly basis; and 28 days if employment on a monthly basis].

<sup>214</sup> Ibid, Section 42. [Amount at least equal to 7 days' basic wage for each completed year of continuous service with that employer up to a maximum of ten years.]

<sup>215</sup> Ibid, Section 43.

<sup>216</sup> Ibid, Section 44(1).

<sup>217</sup> Ibid, Section 44(2).

### 2.10.1. Threats of termination of employment and complaints of unfair termination

As indicated above, some of the employees who were engaged during the study indicated that they were afraid of questioning the violation of some of their labour rights because of fear of facing termination of employment. This has been highlighted in subsections on employment contracts; remuneration; leaves; and freedom of association, collective bargaining and right to strike. Those who are not covered by collective bargaining are at greater risk of such threats.

LHRC's legal aid clinic has a department that provides legal aid to workers and employees. One of the major grievances of those seeking legal aid in this category is unfair termination. For the year 2017, LHRC received 107 cases of unfair termination at its Dar es Salaam legal aid clinic.<sup>218</sup> It also received 362 cases of violation of employee rights, whereby most of the clients stated that they had been threatened with termination of employment.<sup>219</sup> At LHRC's Arusha Office, most cases received in 2017 were of unfair termination (168), followed by terminal benefits (53) and violation of employee rights (28).<sup>220</sup>

### 2.10.2. Less employment security for workers not covered by collective bargaining

As indicated above, most workers in the business sector are not covered by collective bargaining. This puts them at various labour-related risks, including unfair termination. Restrictions on freedom of association by employers and poor awareness of labour laws and rights among workers contribute to this problem.

## 2.11. Labour disputes and mechanism for resolution: the case of Access to Remedy

The Employment and Labour Relations Act 2004 (ELRA) and the Labour Institutions Act 2004 (LIA) provide for mechanism for resolution of labour disputes. LIA establishes the Commission for Mediation and Arbitration (CMA)<sup>221</sup> and the Labour Division of the High Court<sup>222</sup> as key bodies for resolution of labour disputes. CMA mediates any dispute referred to it under labour law and determines any labour dispute referred to it by arbitration.<sup>223</sup> It appoints mediators and arbitrators to perform its functions.<sup>224</sup> The Labour Court 'has exclusive civil jurisdiction over any matter reserved for its decision by the labour laws and over any employment matter falling under common law, tortious liability, vicarious liability or breach of contract within the pecuniary jurisdiction of the High Court.'<sup>225</sup> Part VIII of ELRA provides for dispute resolution in terms of mediation and arbitration under the CMA and the Labour Court, including complaints over the fairness or lawfulness of employment termination or any other contravention of ELRA,

<sup>218</sup> LHRC's Legal Aid Report 2017.

<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

<sup>221</sup> Section 12 of LIA.

<sup>222</sup> Ibid, Section 50(1).

<sup>223</sup> Ibid, Section 14(1)(a) & (b).

<sup>224</sup> Ibid, Section 19(1).

<sup>225</sup> Ibid, Section 51.



other labour law or employment contract.<sup>226</sup> Arbitration is resorted to if mediation fails.<sup>227</sup> Unlike mediation, arbitration award is binding on the parties to the dispute.<sup>228</sup> Labour Court may refuse to hear a complaint if not referred to mediation and my conduct reviews and revisions of decisions of CMA.<sup>229</sup> ELRA also provides for dispute resolution procedures in collective agreements. It states that a trade union and employer or employer association may conclude a collective agreement providing for resolution of disputes, provided the disputes are mediated or arbitrated in an independent, neutral, expedited and professional manner.<sup>230</sup>

Previous LHRC reports on human rights and business in Tanzania Mainland, including the 2015 edition, have indicated a number of challenges relating to access to remedy in case of labour disputes, including shortage of mediators and arbitrators and shortage of CMA office. For the year 2017, LHRC found out that:

- Workers are still having problems in accessing remedy, including the challenge of corruption; and
- Fear of losing jobs makes employees decide against filing labour complaints.

#### **2.11.1. Problems in accessing remedy, including corruption and fear of losing jobs**

Problems in the justice system in Tanzania, including corruption, are well documented. Although progress is being made to address some of the challenges in the justice system that hinder access to justice and consequently reduce access to remedy, the situation is still not satisfactory. Like other people, workers in the business sector also experience these challenges. Corruption is widespread within the judicial system, according to a PCCB report of 2015.<sup>231</sup> Lack of legal knowledge among people also contributes to the problem, as observed by LHRC through its interaction with legal clients.<sup>232</sup> Reduced faith in the justice system, coupled with lengthy processes of resolving disputes, including labour disputes, and low awareness about labour laws and rights, contributes to workers in the business sector not easily and readily seeking remedy in the business sector. It should be noted, however, corruption is not considered to be pervasive as is the case for higher courts. Nevertheless, negative perception may still exist.

LHRC's 2015 edition of this report highlighted the proximity to labour disputes bodies as a challenge.<sup>233</sup> It indicated that close to 50% of workers who wished to engage labour tribunals that year decided not to because of accessibility of such tribunals.<sup>234</sup> Shortages of office space

<sup>226</sup> Section 88(1) of ELRA.

<sup>227</sup> Ibid, Section 88(2).

<sup>228</sup> Ibid, Section 89(1).

<sup>229</sup> Ibid, Section 94(1) & (2).

<sup>230</sup> Ibid, Section 95(1) & (2).

<sup>231</sup> Prevention and Combating of Corruption Bureau, *Review of Corruption in High Risk and High Impact Sectors*, December 2015, p. 49.

<sup>232</sup> Fundikila Wazambi, *Corruption within the Tanzanian judiciary*, March 2018.

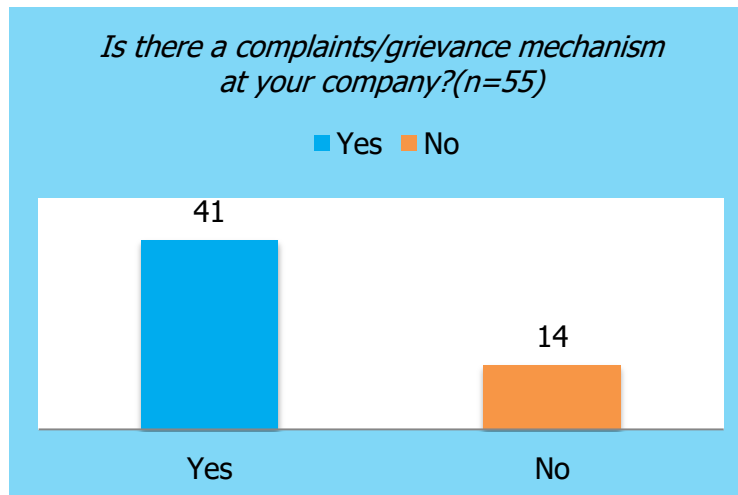
<sup>233</sup> LHRC (2016), *Tanzania Human Rights Report 2015*.

<sup>234</sup> Ibid.



and arbitrators and mediators at the Commission for Mediation and Arbitration also pose a challenge in accessing remedy. As of December 2015, shortage of arbitrators and mediators stood at 59.6% and shortage of offices was acute, such that adjudicators had to wait for each other to finish so that another mediation or arbitration session can begin, hence causing delays.<sup>235</sup> In practice, each mediator or arbitrator needs to have their office.<sup>236</sup> Furthermore, budgetary constraints and delays in disbursement of funds for CMA were cited as other challenges, as is lack of effective internal grievance mechanisms at companies.<sup>237</sup> It was observed at *Mgusu Miners Company* in Geita that there is no internal dispute settlement mechanism.<sup>238</sup>

However, in the year 2017, the situation of internal grievance mechanism appears to have improved as about 75% of corporate management officials who were engaged in the human rights and business study from 55 companies indicated that their companies have in place a internal complaints or grievance mechanism, compared to about 51% in 2015. During an interview with a CMA official in Mtwara Region it was revealed that CMA not having the power to execute its awards is a challenge that results in delay of justice.<sup>239</sup>



**Figure 15: #Responses on whether company has internal complaints/grievance mechanism**

LHRC calls upon the Government and the Ministry of Labour, Employment and Youth Development to address the challenges facing CMA in order to increase efficiency and thereby increase access to remedy. Adequate funds should be made available to CMA to enable it to effectively conduct its operations and open more offices and provide office spaces and equipment. All employers should also establish internal complaints mechanism.

<sup>235</sup> LHRC (2016), *Tanzania Human Rights Report 2015*.

<sup>236</sup> *Ibid.*

<sup>237</sup> *Ibid.*

<sup>238</sup> LHRC Human Rights and Business Study 2017, Geita Field Report

<sup>239</sup> LHRC Human Rights and Business Study 2017, Mtwara Field Report.



During the study on human rights and business for the year 2017 some of the employees indicated that they were afraid to file claims or complaints against their bosses because of fear of losing their jobs. In Dodoma, for example, an employee at *Salman Transport Co. Ltd* told the research team that their human resources officer usually reminds them that there are many people out there who want their jobs and thus if they pretend to be ‘know it all’ (know their rights) they could lose their jobs.<sup>240</sup>

## 2.12. Awareness of labour laws, rights and duties

### 2.12.1. Low awareness of labour laws, standards and rights

The LHRC study on human rights and business situation in Tanzania Mainland for the year 2017 looked at the level of awareness among workers in the business sector of the relevant laws, rights and duties. Previous studies conducted by LHRC generally indicate low awareness of labour laws and rights among workers.<sup>241</sup> 76.7% of employees who filled out questionnaires indicated that they were not aware of labour laws, rights and duties only a few among those who stated they are aware of them (about 50%) could clearly mention them. As such, less than 20% of respondents could clearly mention relevant labour laws, rights and duties.



**Figure 16: % Responses on awareness of labour laws, rights and duties**

Allowing employers to ‘buy’ or ‘substitute’ leave also attests to low awareness of labour laws, standards and rights among workers, not possessing adequate or full understanding and significance of such rights. In Mwanza Region, majority of workers who were interviewed were not aware of proper forums for filing complaints and seeking remedy.<sup>242</sup> During a focus group

<sup>240</sup> LHRC Human Rights and Business Study 2017, Dodoma Field Report.

<sup>241</sup> See for example LHRC (2017), *Human Rights and Business Report 2016*; and LHRC (2016), *Human Rights and Business Report 2015*.

<sup>242</sup> LHRC Human Rights and Business Study 2017, Mwanza Field Report.

discussion with 10 workers, only 2 of them could clearly mention key labour laws and rights, but could not briefly explain the scope of such laws and rights.<sup>243</sup>

### 2.12.2. Employers not fulfilling their duty to enhance employees' awareness of their rights

The ELRA 2004 provides that employer must display a statement of rights of employees at a conspicuous place within a workplace.<sup>244</sup> The first schedule of the Employment and Labour Relations (General) Regulations<sup>245</sup> provides a form of employee rights that has to be filled out and displayed by the employer.<sup>246</sup>

FORMS	
EMPLOYEES' RIGHTS FORM	LAIF. 9
<i>(Made under Regulation 12)</i>	
<b>PART I: RIGHTS UNDER THE ACT</b>	
1.	Right to exercise freedom of association
2.	Right to be supplied with the Contract of Service/Statement of Particulars
3.	Right to annual leave
4.	Right to maternity/paternity/sick leave
5.	Right to certificate of service on termination
6.	Right to remuneration and written statement of particulars supporting each payment of remuneration
7.	Right to payment for the overtime worked and night work allowance
8.	Right to daily and weekly rest periods as provided for in the Act
9.	Right to be repatriated to place of recruitment on termination
10.	Right to daily subsistence allowance between termination date and the date of transporting an employee and family to the place of recruitment
11.	Any other rights as provided for under the Act .....
<b>PART II: GENERAL RIGHTS UNDER CONTACT OF SERVICE</b>	
.....	
.....	
<b>PART III: GENERAL RIGHTS UNDER COLLECTIVE AGREEMENT</b>	
.....	
.....	
Name: .....	Signature: .....
Designation: .....	Date: .....
Employer's Common Seal: .....	
*NOTE: Employer shall display dully filled copy of this form, in a conspicuous place at workplace	

Picture 16: Employee rights form provided in the labour regulations of 2017

The study conducted in 15 regions of Tanzania Mainland revealed that many companies do not comply with this requirement. Less than 50% of the companies were found to display a statement of rights of employees on a place they can easily be seen (conspicuous place). These

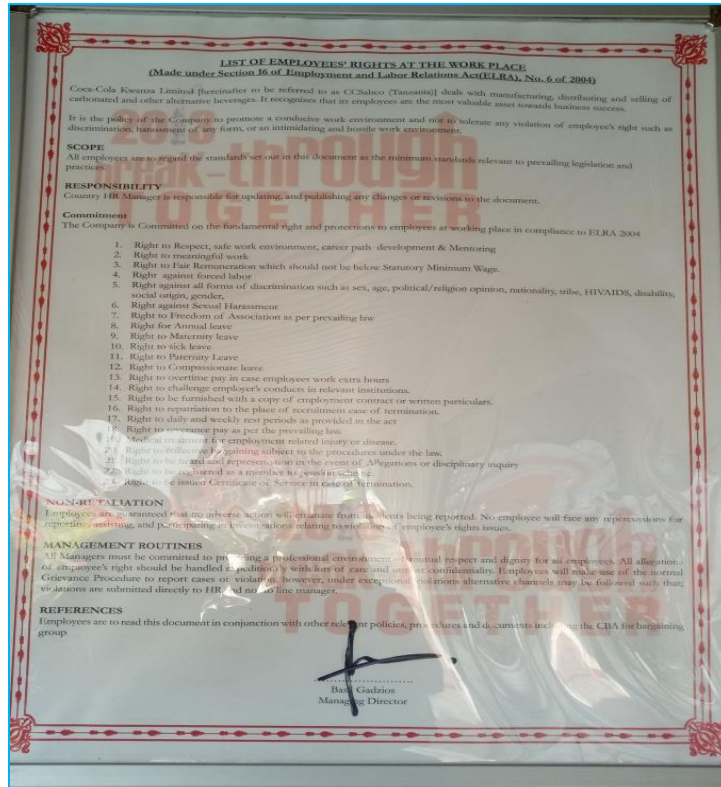
<sup>243</sup> Ibid.

<sup>244</sup> Section 16 of Employment and Labour Relations Act 2004.

<sup>245</sup> GN. 47 of 2017.

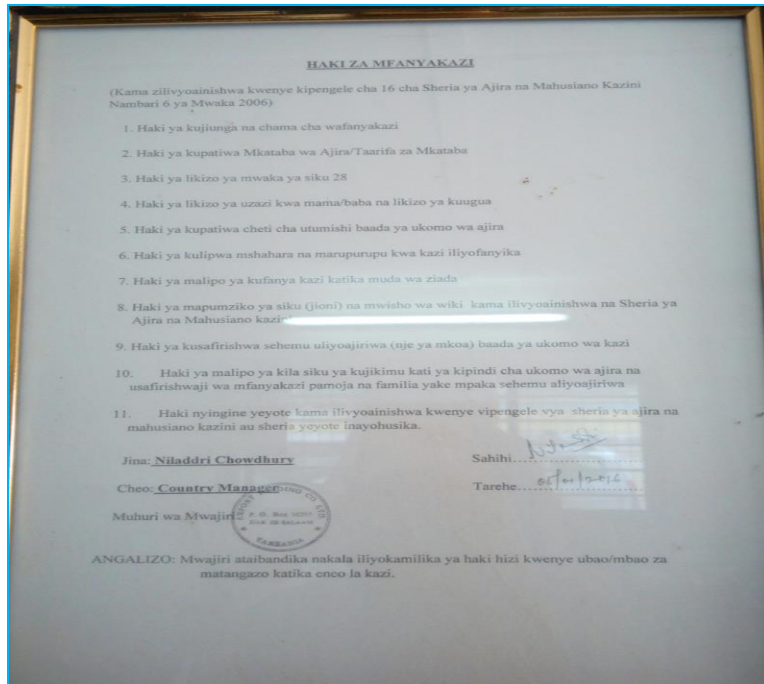
<sup>246</sup> Ibid, Regulation 12.

include Coca Cola Company Limited in Mbeya and Agro Processing Industry in Dodoma, as indicated in pictures below. Agro Processing Industry in Dodoma has gone even further by translating the list of rights in a language all workers can easily understand, Swahili Language, in order to ensure all workers understand their rights at workplace. LHRC commends this company for taking this further step in enhancing awareness of workers’ rights and calls upon other companies to do the same.



Picture 17: Statement of employee rights at Cocacola Company Limited in Mbeya





Picture 18: Statement of employee rights at Agro Processing Industry in Dodoma

### 2.12.3. Increased awareness about trade unions, but lack of clear understanding of importance of such unions and low awareness of key policies and regulatory authorities

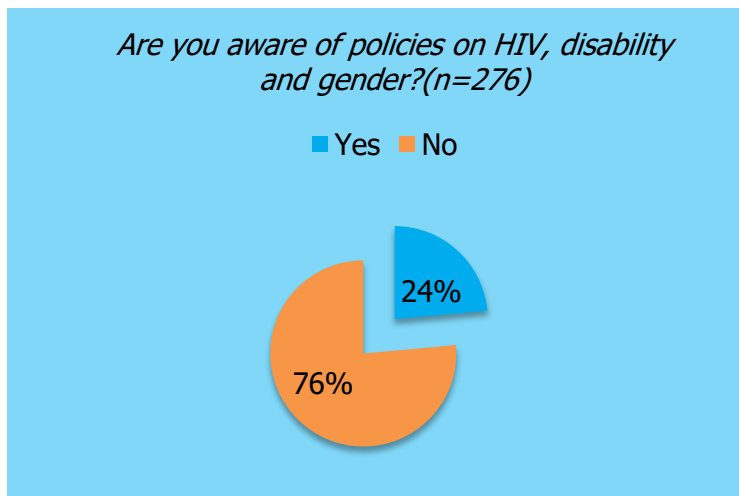
Majority of respondents of the study on human rights and business indicated that they were aware of trade unions. For instance, over 60% of questionnaire respondents stated that there is a trade union branch at their workplaces. However, few of the respondents who were interviewed showed a clear understanding of importance of such unions, including how they can help them in collective bargaining. The negative perception of trade unions among some workers, as indicated above, further compounds this problem as it prompts workers not to bother much about trade union activities, including attending meetings.



Figure 17: %Responses on availability of trade union branch



During the study, respondents were also asked whether they were aware of any policies or guidelines on HIV, disability and gender at their workplaces. Less than 30% indicated that they were aware of such policies, while over 70% state that they were not aware. This shows that there is a big awareness gap, although 63.5% of corporate management officials at 55 companies revealed that they have such policies.

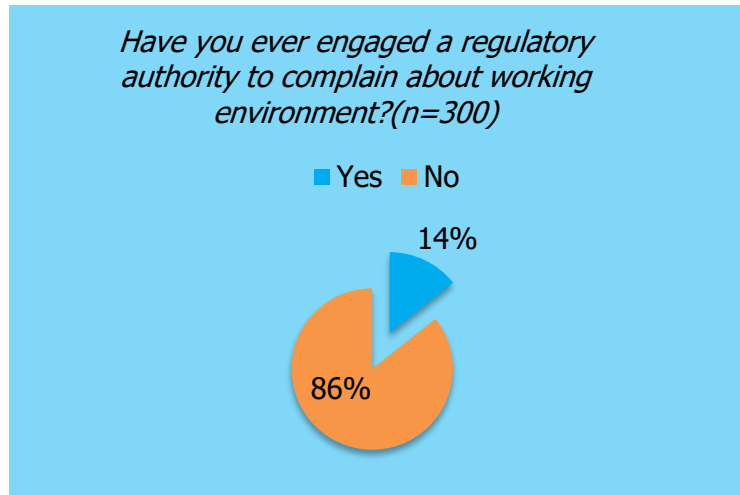


**Figure 18: % Responses on awareness of policies on HIV, disability and gender**

Regarding regulatory authorities in the business sector, only 33% of the respondents were aware of such authorities and their functions.<sup>247</sup> Knowledge about regulatory authorities in the business sector is thus low, which raises concerns over how often these regulatory authorities engage workers when they visit workplaces. Indeed, only 15% of workers who filled out questionnaire respondents indicated that they were engaged by a regulatory authority during an inspection at workplace.<sup>248</sup> Since awareness about regulatory authorities is low, only a few workers tend to such authorities to complain about working environment, as indicated in the figure below.

<sup>247</sup> LHRC Human Rights and Business Study 2017, Questionnaire Data.

<sup>248</sup> N=299.



**Figure 19: %Responses on worker engagement of regulatory authority**

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

As a result of failure to comply with relevant labour laws and standards, businesses violated the following 10 human rights in 2017:

- Right to work, which includes right to gain living by work and right to just and favourable working conditions;
- Right to fair remuneration;
- Right to freedom of association;
- Right to form and join trade union;
- Right to freedom of expression;
- Right to adequate standard of living;
- Right to health;
- Right to a family life;
- Right to social security; and
- Right to education.

As indicated in Chapter One of this report, these rights are protected under various international and regional human rights instruments, including: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights, the Universal Declaration of Human Rights; the Convention on the Elimination of All forms of Discrimination Against Women; and the African Charter on Human and Peoples' Rights. Most of these rights are also protected under the Constitution of the United Republic of Tanzania of 1977 and the Law of the Child Act of 2009. The table below indicates how these rights were violated by businesses in the year 2017.

**Table 7: Human rights violations resulting from non-compliance with labour laws and standards**

Human Right	How it was violated
Right to work (right to gain living by work & right to just and favourable working conditions)	<ul style="list-style-type: none"> <li>• Inadequate wages</li> <li>• Threats of termination of employment</li> <li>• Unfair termination of employment</li> </ul>
Right to fair remuneration	<ul style="list-style-type: none"> <li>• Ready-made contracts, no collective bargaining</li> <li>• Inadequate wages</li> <li>• Unfair wage cuts</li> </ul>
Freedom of association	<ul style="list-style-type: none"> <li>• Discouraging workers from joining trade unions</li> </ul>
Right to form and join trade union	<ul style="list-style-type: none"> <li>• Discouraging workers from joining trade unions</li> </ul>
Freedom of expression	<ul style="list-style-type: none"> <li>• Restrictions on freedom of association</li> <li>• Discouraging workers from joining trade unions</li> </ul>
Right to adequate standard of living	<ul style="list-style-type: none"> <li>• Inadequate wages</li> <li>• Unfair wage cuts/salary deductions</li> </ul>
Right to health	<ul style="list-style-type: none"> <li>• Disregard of occupational health and safety</li> <li>• Lack of regular workplace inspection</li> </ul>
Right to a family life	<ul style="list-style-type: none"> <li>• Denial of or restrictions on leave</li> <li>• 'Buying' or 'substituting' leave</li> </ul>
Right to social security	<ul style="list-style-type: none"> <li>• Lack of employment contracts</li> <li>• Lack of social security coverage</li> </ul>
Right to education	<ul style="list-style-type: none"> <li>• Presence of child labour (seen as cheap labour)</li> </ul>

## Conclusion

The human rights and business study by LHRC generally revealed that awareness of labour laws and rights among workers in the business sector is low. However, even those who are aware of what the law says and what their rights are tend to settle for unfair contractual terms, unjust remuneration and unfavourable working conditions because of the difficulty of securing and keeping jobs. Most employers appear to take advantage of the fear of losing jobs among

employees to deny them their basic labour rights, including right to join and form trade unions. Indeed, some of the workers who were approached for interview by the LHRC research assistants indicated that they were not comfortable responding to their questions for fear of losing their jobs if they say anything negative about their workplaces.

Generally, compliance with labour laws and standards is still a challenge, though there have been some notable improvements such as in provision of employment contracts and granting annual leave. However, the main challenges are lack of enforcement of labour laws and standards by the Government and its regulatory authorities and low awareness among workers of the relevant labour laws and their rights.



## CHAPTER THREE: LAND ACQUISITION FOR INVESTMENT

### 3.1. Overview of land tenure and acquisition in Tanzania

#### 3.1.1. Introduction

In Tanzania, land is one of four major natural resources apart from forestry, water and minerals. Land affects other sectors which are of paramount importance to the economy, employing nearly 67% of the population.<sup>249</sup> The country has a total area of about 945,000 square kilometers, of which about 440,000 square kilometers is arable land (88% found in rural areas).<sup>250</sup> Land is a fundamental human right, its availability being key to human existence. Proper distribution and use of land resource is therefore of vital importance.<sup>251</sup>

Land tenure in Tanzania has evolved over time. It can shortly be analyzed by looking at three major eras that is, pre-colonial era, during colonial times and in post-colonial era. In pre-colonial times, land ownership was based on customary laws, derived from traditions and customs where ownership was predominantly communal (land owned by a tribe, clan or family). During colonial period, the Germans and later British colonial rule introduced village councils to replace the chiefs, headmen and elders. In the post-colonial era, land ownership powers were essentially shifted to the Government of the newly-independent Tanganyika (now Tanzania). The authority of the state (and specifically the President) was reinforced to allocate and designate the uses of Tanzania's natural resources.

#### 3.1.2. Legal framework on land tenure and acquisition in Tanzania

In the 1990s, Tanzania realized the need of formulating and implementing a coherent and comprehensive land policy for proper management as well as allocation of land. Thus, the National Land Policy of 1995 was adopted, which, among other things, made the President of the United Republic of Tanzania a land trustee on behalf of all Tanzanians.<sup>252</sup> Land is categorized into four categories namely; general land, village land, reserve land and urban land.<sup>253</sup> The Land Act, No. 4 of 1999; the Village Land Act, No.5 of 1999; and the Land Acquisition Act of 1967, CAP 118 [RE 2002] were enacted to supplement the implementation of the National Land Policy, 1995.

<sup>249</sup> Chachage, C. (2010). Land acquisition and accumulation in Tanzania: The case of Morogoro, Iringa and Pwani regions, 'Available at; <http://www.commercialpressureonland.org/research-paper/land-acquisition-and-accumulation-tanzania>, Accessed 2<sup>nd</sup> March 2018.

<sup>250</sup> See <http://countries.bridgat.com/Tanzania.html> [accessed on 4/7/2018]

<sup>251</sup> S. Rowton Simpson (1976), *Land Administration in the developing world: A resource for students and practitioners*, Surveyor's Publications, at <http://landadmin.co.uk/llr.html>, accessed 2<sup>nd</sup> March 2018.

<sup>252</sup> This is parallel to Section 3 and 4(1) of Land Act 1999 Cap 113.

<sup>253</sup> Section 4 (4) of the *Land Act* of 1999.

In regard to ownership, **Tanzania has two types of land ownership**: customary (deemed right of occupancy whereby village land with or without time limitation is allocated to an individual or group of individuals; and statutory (granted right of occupancy), where land is allocated through a periodic title deed of 33, 66, or 99 years depending on type of land use.<sup>254</sup> The Commissioner for Lands is the only authority responsible for overall administration of land ownership categories, though such powers may be delegated to land officers at local government authorities. This chapter looks at land rights in the current legal framework in Tanzania.

Although land ownership, a Constitutional and fundamental human right,<sup>255</sup> is reliant on a given land tenure and type of land, it is not an absolute right to be enjoyed by everyone, especially the non-citizens. It is only citizens of the United Republic of Tanzania who are allowed to own land by means of occupation (right of occupancy)<sup>256</sup> while non-citizens can have the right to occupy land through the Tanzania Investment Centre (TIC) established under the Tanzania Investment Act of 1997. That is to say, non-citizens can only have a right of occupancy of investment purposes as prescribed in the investment laws of the country.<sup>257</sup>

## 3.2. Compulsory acquisition of land and compensation

### 3.2.1. Introduction

#### **Compulsory land acquisition**

Sustainable development requires governments to provide public facilities and infrastructure that ensure safety and security, health and welfare, social and economic enhancement, and protection and restoration of the natural environment.<sup>258</sup> An early step in the process of providing such facilities and infrastructure is the acquisition of appropriate land. Compulsory land acquisition is always done at the outflow of large scale projects either by the government through its agencies or by private corporations.

In order to obtain land when and where it is needed, governments have the power of compulsory acquisition of land. They can compel owners to sell their land in order for it to be used for specific purposes. Nevertheless, compulsory acquisition of land requires finding the

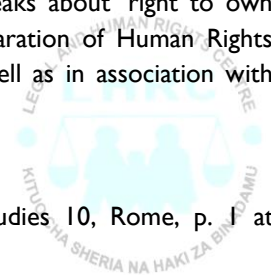
<sup>254</sup> Tanzania Land Policy Action Node: Policies that work 4 lands; Policy Brief No.4, England, 2014. Available at <https://agriknowledge.org/downloads/4t64gn20s>.

<sup>255</sup> Article 24 of the Constitution of the United Republic of Tanzania, 1977, which speaks about 'right to own property' including land as a property. This is in conformity with the Universal Declaration of Human Rights (Article 17) which provides that "everyone has the right to own property alone as well as in association with others" and that "no one shall be arbitrarily deprived of his property."

<sup>256</sup> Section 19 (1) of the *Land Act* of 1999.

<sup>257</sup> Sections 19 (2) and 20 of the *Land Act* of 1999.

<sup>258</sup> See FAO (2008), *Compulsory acquisition of land and compensation*, Land Tenure Studies 10, Rome, p. 1 at <http://www.fao.org/3/a-i0506e.pdf>, accessed 12<sup>th</sup> March 2018.



balance between the public need for land on the one hand, and the provision of land tenure security and the protection of private property rights on the other hand.

In Tanzania, compulsory land acquisition is a valid practice, governed by the Land Acquisition Act - which provides for the compulsory acquisition of land for public purposes and in connection with housing schemes.<sup>259</sup> The law intends to legalize the acquisition, for public purposes, of land which is a private property of individuals the owners and occupiers, and pay equitable compensation calculated at market value of land acquired, plus an additional sum on account of compulsory character of acquisition.

The President of the United Republic of Tanzania is empowered by the law to exercise compulsory land acquisition in the name of public interest.<sup>260</sup> Public interest refers to all purposes where the general interest of the community, as opposed to a particular interest of the individual, in generally and indispensably are concerned.<sup>261</sup>

Compulsory land acquisition must not be done arbitrarily. It involves a number of compliance procedures wherefore; if the President realizes that any land is required for a public purpose, the Minister shall give notice of intention to acquire the land to the persons interested or claiming to be interested in such land, or to the persons entitled to sell or convey the same, or to such of them as shall, after reasonable inquiry, be known to him.<sup>262</sup>

Compulsory acquisition causes adverse impacts. The practice is that, although the law has laid down the procedures for compulsory acquisition of land, it sometimes becomes harder to realize and/or seeing every procedure followed. Issues of community engagement and compensation are listed under the law but you may only find that people are engaged but they are not timely compensated.

### ***Compensation following compulsory acquisition of land***

Compulsory acquisition of land for development purposes may ultimately bring benefits to society but it is disruptive to people whose land is acquired. It displaces families from their homes, farmers from their fields, and businesses from their neighborhoods. If compulsory acquisition of land is done poorly, it may leave people homeless and landless, with the feeling that they have suffered a grave injustice. If, on the other hand, governments carry out compulsory acquisition satisfactorily, they leave communities in equivalent situations while at the same time providing the intended benefits to society. Good governance and adherence to the rule of law is necessary to provide a balance between the need of the government to

<sup>259</sup> Land Acquisition Act of 1967 CAP 118[RE 2002]

<sup>260</sup> Ibid, Section 3.

<sup>261</sup> Ibid, Section 4.

<sup>262</sup> Ibid, Sections 6, 7 & 8.

acquire land rapidly, and the need to protect the rights of people whose land is to be acquired.<sup>263</sup>

Compensation following compulsory land acquisition is very important, in line with human rights principles. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.<sup>264</sup> For already existing public and private corporations which seek to extend their investments and thus acquire new land, state-based judicial and non-judicial grievance mechanisms should form the foundation for a wider system of remedy. Within such a system, operational-level grievance mechanisms can provide early stage recourse and resolution.

In Tanzania, when land is compulsorily acquired by the President or any other Government agency, the victim is required to be compensated. The law requires the government to compensate the victims of land acquisition according to the market value of the land.<sup>265</sup> Principles of administrative justice and good governance often require that such powers are bound by legal rules which allow for hearings and appeals and are subject to judicial review.

### 3.2.2. Disputes relating to land acquisition and compensation: The Case of Mtwara

A case study of Mtwara makes a good reference of land disputes pending in courts of law relevant to this study. Some of these cases are as follows:

**Athman Ibrahim Kibaraka v. Tanzania Port Authority (TPA) & Mtwara District Council.** The plaintiff claims compensation at the tune of three (3) billion Tanzania shillings against the defendant following compulsory acquisition of land which at first belonged to him. The case is ongoing at the High Court of Tanzania, at Mtwara.

**Bwata Msaidi and 4 others V. Tanzania Port Authority (TPA), Mtwara District Council & Attorney General.** The Plaintiffs claim compensation at the tune of two (2) billion Tanzanian Shillings against the defendants, following compulsory acquisition of land. The case is ongoing at the High Court of Tanzania at Mtwara.

**Ahmed Mussa Njopa & 56 others V. Dangote Industries & Mtwara District Council.** The plaintiffs claim against the defendant for unfair eviction from their land. Seeks redress before the court at the tune of one (1) billion Shillings as compensation the case is ongoing.

<sup>263</sup> See FAO Land Tenure Studies 9, “Good governance in land tenure and administration” at <http://www.fao.org/docrep/010/a1179e/a1179e00.htm>, accessed 2<sup>nd</sup> March 2018.

<sup>264</sup> Principle No. 22, The United Nations Guiding Principles on Business and Human Rights, 2011.

<sup>265</sup> Sections 11 of Land Acquisition Act also the position of the Court in *Salum Juma Mzeru v Omari Ubaya* [1984 TLR 31 (HC)]



### 3.2.3. Lack of effective participation of community members in land acquisition for investment: The Case of Nyarugusu villagers and Pamoja Gold Mine in Geita Region

Lack of effective participation is one of the major barriers for community members during land acquisition for investment.<sup>266</sup> Either they are not involved in the process or they are involved but the process is rushed/fast-tracked or the community members have minimal understanding of their land-related-rights and acquisition process.<sup>267</sup> Not having clear knowledge of the law and investment, contributed by low education levels, presents a challenge on the part of community members in terms of making an informed consent. Another challenge that affects their decision-making is the tendency of investors only saying the good things that the investment will bring and leaving out the relevant social, economic and environmental consequences.<sup>268</sup> Their decision-making is also usually influenced by promises made by investors to improve their lives, but unfortunately these promises are often not put in writing, thus not being able to hold them accountable in case they do not deliver.<sup>269</sup> The challenge of effective participation of community members in cases of land acquisition for investment thus continues to exist.

LHRC's study on human rights and business looked at the issue of community involvement in land acquisition for investment. 67% of respondents indicated that they had not been involved in land acquisition for investment, while 33% said they had been involved in such a process.<sup>270</sup>

<sup>266</sup> See Celine Salcedo-La Viña, *An Assessment of Community Participation in Land Acquisitions in Mozambique and Tanzania*, at [http://webcache.googleusercontent.com/search?q=cache:bZYMqZm4o\\_gj:www.abcg.org/action/document/download%3Fdocument\\_id%3D720+&cd=1&hl=en&ct=clnk&gl=tz](http://webcache.googleusercontent.com/search?q=cache:bZYMqZm4o_gj:www.abcg.org/action/document/download%3Fdocument_id%3D720+&cd=1&hl=en&ct=clnk&gl=tz), accessed 12<sup>th</sup> March 2018.

<sup>267</sup> Ibid.

<sup>268</sup> Ibid.

<sup>269</sup> Ibid.

<sup>270</sup> LHRC Human Rights and Business Study 2017, Questionnaire Data.

In **Geita Region**, the LHRC study team met with community members of Nyarugusu Area in Geita District, who had complaints against *Pamoja Gold Mine* located in the area. They claimed that the heavy machines used for operations by the mining company was causing damage to their houses; and that intervention by the village government had led the mining company agreeing to paying some of the affected members of the community a monthly allowance to enable them to repair their houses. However, not all of them are paid the monthly allowance, hence the complaint.

This scenario of the villagers surrounding *Pamoja Gold Mine* attests to the importance of effective participation of community members when land is about to be acquired for investment purposes. This includes the villagers knowing their land rights and be fully informed about the impact of the investment, the investor having conducted EIA and SIA. However, it appears that either the EIA and SIA were not conducted and/or the villagers were not informed about the negative impact of the investment. In situation such as this, remedies for the villagers would include relocation and/or compensation, but since there is not effective participation and the villagers lack legal knowledge and are poorly informed about the investment, they settle for a monthly allowance to repair their houses.



Picture 19: Cracks at some of the houses in Nyarugusu area claimed to have been caused by Pamoja Gold Mine operations

#### 3.2.4. Compensation for land acquisition being unfair or not timely

Low awareness about land law and rights may affect the issue of compensation, if those in line for compensation are not aware of the value of their land. Question about compensation was

also raised during the study on business and human rights. Participants were asked whether compensation provided for acquisition of land is fair and timely. Majority of them, 42%, stated that they were not sure about whether the compensation provided is fair or timely, or both. 29.9% of the respondents felt that the compensation provided is fair but not timely, while 14% claimed no compensation is provided. 9.2% of the respondents were of the view that compensation provided is unfair but timely and only 4.5% felt it is both fair and timely.

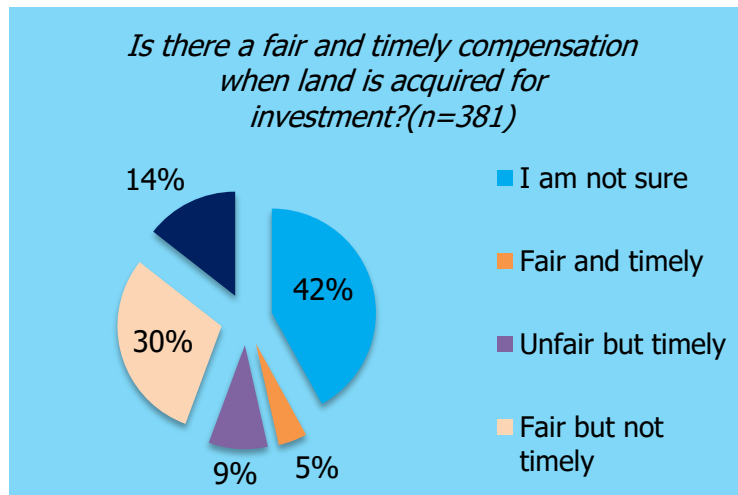


Figure 20: %Responses on whether compensation is fair and timely

The fact that majority of respondents were not sure about compensation suggests low knowledge about land and investment issues, putting them at risk of not effectively participating in land acquisition and compensation process. Lack of timely compensation is also a big concern, as it seriously affected the affected parties who have to relocate and rebuild their lives.

### 3.2.5. Corruption within the land sector contributing to unfair land acquisition for investment

The land sector has been cited as one of the sectors tainted by corruption,<sup>271</sup> contributing to unfair land acquisition for investment. Factors contributing to rampant corruption in the land sector include lack of transparency, abuse of power by public officials and lack of accountability.<sup>272</sup> Corruption in this sector also results into land-related conflicts, as highlighted in the subchapter below. Village leaders, local government authorities and officials from district councils are usually implicated in corrupt land transactions.<sup>273</sup>

<sup>271</sup> See Prevention and Combating of Corruption Bureau, *Review of Corruption in High Risk and High Impact Sectors*, December 2015.

<sup>272</sup> Nuhu, S. and Mpambije, C.J. (2017) Land Access and Corruption Practices in the Peri-Urban Areas of Tanzania: A Review of Democratic Governance Theory. *Open Journal of Social Sciences*, 5, 282-299. <https://doi.org/10.4236/jss.2017.54025>.

<sup>273</sup> See LHRC(2018), *Tanzania Human Rights Report 2017*.

### 3.3. Access to unutilized land reserved for investment

During the study on human rights and business, some places under investment were observed to include land that is not utilized. The land in these places enjoys the same status of protection like any other land used for investment. The key issue in this sub-chapter is limited access to unutilized land reserved for investment.

#### 3.3.1. No or Limited access to unutilized land reserved for investment

The study on business and human rights shows that although in some areas investors allow community members to access land for different uses, most investment companies do not allow them access to such land. Those who tend to use the unutilized land tend to face serious consequences, especially in places where investors have employed security guards or state police.<sup>274</sup> In other areas, when, for instance, cattle enter the land of an investor, they get confiscated until a fine is paid, as determined by the investor.

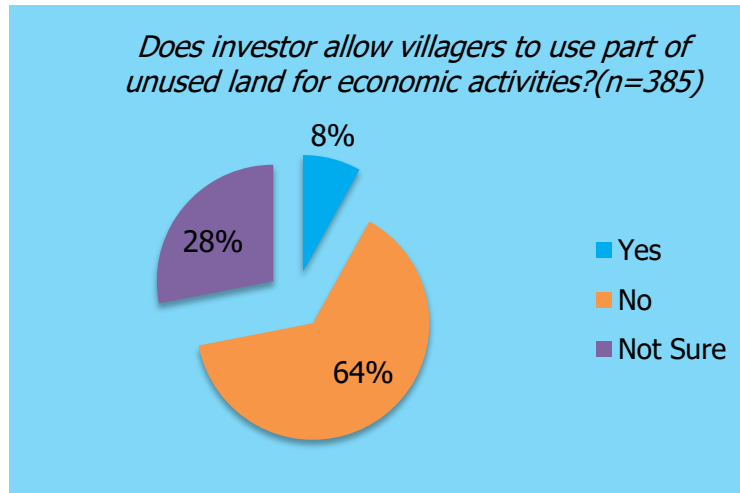
A good example of an investor with a substantial unutilized land was said to be *Ngano Ltd* in Manyara Region. During an interview with the study team, some villagers of Gidagamowd in the region commented that the investor has about 16,000 hectares of land, but only 6000 is currently utilized, but the investor does not allow villagers access to unutilized land.<sup>275</sup> The fifth phase government has also shown concern over unused land and in 2017 it was reported that the Government repossessed plantations in Tanga that had been unused or underutilized and warned investors that if they do not make use of their large tracts of land they will lose them.<sup>276</sup>

During the study on business and human rights, community members were asked whether investors in their areas allow them to use part of their land for economic activities. Majority of them, 64%, stated that they are not allowed, while only 8% claimed they are given such access. A remaining number of respondents, 28%, stated they were not sure, as indicated in the figure below.

<sup>274</sup> LHRC Human Rights and Business Study 2017, Mara, Mbeya, Iringa, Njombe and Shunyanga Field Report.

<sup>275</sup> LHRC Human Rights and Business Study 2017, Manyara Field Report. [“Mwekezaji ana jumla ya ekari elfu kumi na sita, lakini ekari elfu sita tu ndizo zinazotumika kwa uzakishaji, akari elfu kumi zlizobaki zipo tuu, na haruhusu wanakijiji kuzitumia”]

<sup>276</sup> See Salome Kitomari “Rais Magufuli baada ya Tanga, iwe Kilimanjaro” *Nipashe Jumapili* Newspaper, at <https://www.ippmedia.com/sw/safu/rais-magufuli-baada-ya-tanga-iwe-kilimanjaro>, accessed 12<sup>th</sup> March 2018; Kizito Makoye “Tanzania to seize idle’ land from rogue investors” at <https://www.aa.com.tr/en/africa/tanzania-to-seize-idle-land-from-rogue-investors/841302>, accessed 12<sup>th</sup> March 2018.



**Figure 21: %Responses on whether investor allows villagers to use part of unused land for economic activities**

Majority of corporate management officials that were engaged for the study (66%) also indicated that their companies do not allow community members to access or use part of their land that is not utilized. Not allowing community members access to such land is also indicative of the poor knowledge about corporate social responsibility (CSR) among companies, as allowing community members access would be a way of ‘giving back to the community’ and would provide investors with a social license to operate.

In Mbeya, villagers around *Mbarali Rice Farm Ltd* complained about limited access to land provided by the company.<sup>277</sup> They complained about high rent (about Tshs. 295,000/- per acre) imposed by the company for part of its land provided to them for farming purposes, which hinders their ability to obtain profit. They also complained about not being allowed into their farms to cultivate and harvest around the time the investor is doing so.<sup>278</sup> Normally, cultivation and harvest of rice are conducted between November and April, but the villagers claimed they are not allowed to cultivate during these times, instead allowed to do so between January/February and harvest by June/July, despite the fact that they pay the required rent. One of them claimed that these conditions are imposed because owners of the estates are afraid of losing casual laborers and competition in the market because after harvest the estate sell the rice at the price of Tsh 120,000 per a sack of rice while the price for community members may fall up to Tshs. 50,000 per sack.<sup>279</sup>

<sup>277</sup> LHRC Human Rights and Business Study 2017, Mbeya Field Report.

<sup>278</sup> Ibid.

<sup>279</sup> Ibid.

### 3.4. Large-scale land acquisition and related conflicts

#### 3.4.1. Conflict between mining rights and surface rights

The laws in Tanzania do not provide a solution for the conflict between mining rights and surface rights. For instance; **The Land Act**<sup>280</sup> separates mining rights and surface rights in land ownership. Equally, the Mining Act, 2010, provides that mining rights supersede surface rights. Once an investor acquires mining right (license), he/she becomes an absolute successor of all surface rights which were in the hands of community members. It is important for community members to be fully engaged during the preliminary processes of investment in order to reconcile surface and mining rights.

**Free Prior and Informed Consent (FPIC):** Failure to bring in the component of FPIC has contributed to ongoing land disputes. FPIC, as an important ingredient of human rights due diligence, is an initiative to engage local community members in all processes prior to and during investment. Community members are required to offer their consent for an investment to take place. FPIC does not only assist in taking care of negative impacts and potential threats of investment in a given premise but also it stands as a sign of honor and recognition of the presence of local community members. However, FPIC is not directly reflected under the laws related to acquisition of land for investment. For instance, the Mining Act 2010, which has been recently amended, does not provide for a mandatory free prior informed consent when the land is to be taken for investment. The LHRC finds it appropriate and very important to incorporate FPIC into the laws relating to investment and large-scale land acquisition. FPIC should be made legal and mandatory.

#### 3.4.2. Reported land conflicts in 2017

Uvinje, Bagamoyo: In October 2017, LHRC received complaints of unfair land acquisition and compensation from residents of Uvinje sub-Village in Bagamoyo-Pwani Region. The villagers claimed their community land rights and compensation rights were being denied or violated by TANAPA following proposed eviction to pave way for expansion of Saadani National Park. The situation in Bagamoyo has captured the attention of the international community and prompted LHRC intervention in October 2017, both finding faults with the eviction and calling for the Government to ensure the community rights of the people in the sub-Village are respected and land laws are complied with.

Kisarawe-Pwani Region: On-going land-related conflicts involving villagers, investors, farmers and pastoralists were reported in 2017.<sup>281</sup> During a meeting with village, ward and district leaders, organized by Tanzania Gender Networking Programme (TGNP) in February 2017, residents in the district complained about denial of their right to own land through their land

<sup>280</sup> [Cap 113 R.E. 2002]

<sup>281</sup> Tumaini Msowoya “Migogoro ya ardhi inavyoirudisha nyuma Kisarawe” *Mwananchi* Newspaper, 16 February 2017, available at <http://www.mwananchi.co.tz/habari/habari-ya-ndani/Migogoro-ya-ardhi-inavyoirudisha-nyuma-Kisarawe/1724700-3815314-y65660z/index.html>, accessed 21st January 2018.

being taken by people who use their money to get their way (corruption), not being compensated when their land is taken and their farms being invaded by livestock.<sup>282</sup> One resident, Kuruthum Mbwana, stated that she found herself screaming when she saw a herd of cattle in her farm. The Kisarawe District Commissioner, Happyness Seneda, acknowledged that there are many land conflicts in the district, which negatively affect development. She singled out dishonest village leaders as a major factor contributing to land conflicts in Kisarawe, selling village land to investors without following legal procedures and taking advantage of villagers not knowing land laws and procedures. She called upon the village authorities to rectify the situation and hold themselves accountable. A study by TGNP in the region revealed conflicts between community members and investors, boundary disputes among villages, many villagers lacking certificates of customary right of occupancy and lack of land use plan.<sup>283</sup> TGNP Executive Director, Lilian Liundi, noted that the major victims of these land conflicts are women and children.<sup>284</sup>

Kilosa-Morogoro: Land conflicts between farmers and pastoralists are also common. Kilosa District Commissioner, Adam Ngoyi, noted that the large herds of cattle that enter the district are the main cause of conflicts between farmers and pastoralists, stating that as of April 2017 there were about 300,000 cattle while the district could only accommodate 100,000.<sup>285</sup> As a result, due to limited pastureland, pastoralists enter their cattle in farms, leading to conflicts. He noted that the only solution he sees that will help to resolve the situation is for pastoralists to reduce the number of cattle they keep.<sup>286</sup> On his part, the Chairperson of Kilosa District Council, Hassan Mkopi, noted that apart from the problem of large herds of cattle, another challenge in the district is presence of many farms/plantations that are cultivated on, preventing other people from farming and grazing cattle.<sup>287</sup>

Land conflicts in Kilosa District have led to several human rights violations, including killings of people and cattle; and destruction of farms and plantations. It was reported in 2017 that not 3 months go by without people or cattle getting killed due to clashes between farmers and pastoralists.<sup>288</sup>

One farmer in the district claimed that sometimes when they find pastoralists grazing cattle in their farms they tell them that they have paid for the farms for pasture and sometimes resort to beating them, taking away their possessions and even occasionally raping women.<sup>289</sup> Another

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<sup>282</sup> Ibid.

<sup>283</sup> Ibid.

<sup>284</sup> Ibid.

<sup>285</sup> “Migogoro ya wakulima, wafugaji ipatiwe ufumbuzi” *Mwananchi* Newspaper, 4 April 2017, available at [HTTP://WWW.MWANANCHI.CO.TZ/HABARI/HABARI-YA-NDANI/MIGOGORO-YA-WAKULIMA--WAFUGAJI-IPATIWE-UFUMBURI/1724700-3877086-Y3IPMDZ/INDEX.HTML](http://www.mwananchi.co.tz/habari/habari-ya-ndani/migogoro-ya-wakulima--wafugaji-ipatiwe-ufumbuzi/1724700-3877086-Y3IPMDZ/INDEX.HTML), accessed 22<sup>nd</sup> January 2018.

<sup>286</sup> Ibid.

<sup>287</sup> Ibid.

<sup>288</sup> Ibid.

<sup>289</sup> Ibid.

farmer claimed that they usually do not get much help when they report these incidents to authorities. As result of these conflicts, there are so many land conflict cases in courts in Kilosa District. LHRC is involved in some of these cases, providing legal representation.

Handeni-Tanga: Corruption within village leaderships was cited as a major factor fueling conflicts between farmers and pastoralists.<sup>290</sup> One farmer and pastoralist in Mbagwi Village claimed that there is a tendency of village leaders selling the same land twice (to two different people), driven by greed, sometimes even selling pastureland to farmers. He added that pastoralists are better off economically and use their money to bribe local leaders and magistrates to win cases against farmers.<sup>291</sup> Village leaders were also blamed for not adhering to land use plans. Areas mostly affected by land conflicts in the district are Kwamagome, Sindeni, Kwematuku, Mkata and areas near Manyara Region, where most pastoralists and cattle come from.<sup>292</sup>

### 3.5. Human rights violations resulting from unfair land acquisition and compensation

It is in principle important to note that acquisition of land must be fair and in line with public interest. It must also be accompanied by both fair and timely compensation. The people must also fully and effectively participate in the land acquisition process in order to guarantee their welfare. They must be informed about both positive and negative aspects of a proposed investment. If land acquisition and compensation process is not fair, there is risk of violating fundamental human rights, including:

- Right to clean, safe and healthy environment;
- Right to health
- Right to property;
- Right to adequate standard of living;
- Right to work;
- Right to benefit from natural resources; and
- Right to development.

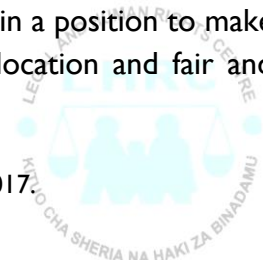
#### 3.5.1. Right to clean, safe and healthy environment and right to health

Where there is no fair land acquisition and compensation provided is also not fair, community members may be affected in several ways, including serious health problems and environmental pollution. This may lead to the violation of fundamental human rights such as right to health and right to clean, safe and healthy environment. It denies them an opportunity to fully understand the impact of the proposed investment, both positive and negative; and be in a position to make an informed prior consent and seek the relevant remedies, including relocation and fair and timely compensation.

<sup>290</sup> “Migogoro ya wakulima, wafugaji ipatiwe ufumbuzi” *Mwananchi* Newspaper, 4 April 2017.

<sup>291</sup> Ibid.

<sup>292</sup> Ibid.





### **3.5.2. Right to property and right to benefit from natural resources**

Land is the most important property for people all over the world. Where people are denied meaningful participation in matters affecting their land rights the right to property is put in jeopardy. It puts them at a disadvantaged and unfair position against the investor. It also leaves loopholes for corruption as village leaders and land officers may be targeted by unscrupulous investors to ‘fast-track’ the land acquisition process by taking advantage of lack of effective participation of community members in the process. Violation of this fundamental right to property may also lead to violation of the right to benefit from natural resources, land being one of the key natural resources.

### **3.5.3. Right to adequate standard of living, right to work and right to development**

Unfair land acquisition process may also lead to loss of livelihood for community members, jeopardizing their right adequate standard of living, which includes right to adequate housing and right to food. It may totally disrupt their way of life and force them to start from scratch in rebuilding their lives. Effective participation of the people in the process, accompanied by fair and timely remedies such as compensation and resettlement, are very important for the welfare of community members.

In Solwa, Shinyanga Region, LHRC was able to meet with small-scale miners in Mwakitolyo Village, who complained about a Chinese investor possessing a mineral rights license. They claimed that they did not effectively participate in the land acquisition process, which they said was unfair. The matter had also attracted the intervention of the President of the United Republic of Tanzania, Hon. John P. Magufuli, who had called upon the Vice President and the Minister of Energy and Minerals to make follow upon the matter and ensure the rights and interests of the local community and small-scale miners are protected. The President ordered for the small-scale miners not to be evicted and questioned why 5000 people should be sacrificed because of one investor, jeopardizing their right to make a living (work).





Picture 20: Villagers in Mwakitolyo Village in Shinyanga during an interview with the LHRC team



## CHAPTER FOUR: BUSINESS COMPLIANCE WITH TAX OBLIGATIONS

### 4.1. Introduction: Taxation as a human rights issue

Concerned with the growing impact of business activities on the enjoyment of economic, social and cultural rights,<sup>293</sup> in June 2017 the UN Committee on Economic, Social and Cultural Rights (CESCR) issued its General Comment No. 24 titled “State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities.”<sup>294</sup> In this Comment the CESCR clearly indicates that taxation is a human rights issue and among the concerns raised by the committee are practices and policies that leave loopholes for tax

Businesses play an important role in the realization of economic, social and cultural rights, inter alia by contributing to the creation of employment opportunities and — through private investment — to development. However, the Committee on Economic, Social and Cultural Rights has been regularly presented with situations in which, as a result of States’ failure to ensure compliance, under their jurisdiction, with internationally recognized human rights norms and standards, corporate activities have negatively affected economic, social and cultural rights.

*CESCR, June 2017.*

avoidance and corporate tax abuses. According to CESCR, “..Lowering the rates of corporate tax solely with a view to attracting investors encourages a race to the bottom that ultimately undermines the ability of all States to mobilize resources domestically to realize Covenant rights.”<sup>295</sup> It also reminds states of their obligations to respect, protect and fulfil human rights under the International Covenant on Economic, Social and Cultural Rights, “focusing on their duties to protect, which are the most relevant in the context of business activities.”<sup>296</sup> CESCR further reminds states that in order to combat corporate tax abuses, they should combat transfer pricing practices and deepen international tax cooperation.<sup>297</sup>

Although the UN Guiding Principles on Business and Human Rights (UNGPR) do not cover taxation, one of the major principles provided for is that of due diligence. UNGPR 15 states

<sup>293</sup> Rights specifically mentioned in this regard in the General Comment are: Right to health, right to housing, right to food, right to water, right to social security, the right to work, the right to just and favourable conditions of work and the right to form and join trade unions.

<sup>294</sup> See Committee on Economic, Social and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, available at

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/24&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/GC/24&Lang=en), accessed 19<sup>th</sup> April 2018.

<sup>295</sup> Ibid, para 37.

<sup>296</sup> Ibid, para 10.

<sup>297</sup> Ibid, para 37.

that corporate responsibility to respect human rights includes **human rights due diligence process to identify, prevent, mitigate and account for how businesses address their adverse impacts on human rights**. Tax avoidance and evasion cause adverse human rights impact by undermining the ability of the Government to meet its human rights obligations. Taxation plays a crucial part in realization of human rights,<sup>298</sup> especially economic, social and cultural rights. It is essential for achieving economic growth<sup>299</sup> as one of the major sources of government revenue.

Tanzania has in place legal and institutional taxation frameworks, which have been reformed over the years to improve taxation system and revenue collection. There are various tax laws, including the Income Tax Act,<sup>300</sup> the Value Added Tax Act,<sup>301</sup> Stamp Duty Act<sup>302</sup> and the Tanzania Revenue Authority Act.<sup>303</sup> The Tanzania Revenue Authority Act establishes the Tanzania Revenue Authority (TRA), which is the main body tasked with administration of tax in Tanzania, revenue collection being among its key functions. In the mining sector, the Mining Act also contains tax-related provisions.

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

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

When the fifth phase Government was formed following the 2015 elections, one of its priorities was to enhance revenue collection. A number of measures have been taken since then to improve the taxation system, which saw a record revenue collection of Tshs. 1.4 Trillion in January 2016.<sup>304</sup> Further improvement in revenue collection was made in the first half of the fiscal year 2016/17, with tax revenues reportedly rising up to 12.7%.<sup>305</sup>

Companies are required to pay corporate tax/corporation tax, which the Tanzania Revenue Authority (TRA) defines as “a tax charged on the taxable incomes (profits) of entities such as limited companies and other organizations including clubs, societies, associations and other

<sup>298</sup> See Sebastián López Nieto & Beretta Godoy, *Taxation as a human rights issue* at <https://www.ibanet.org/Article/Detail.aspx?ArticleUid=4d8668cb-473a-44ea-b8be-1327d6d9d977>, accessed 19<sup>th</sup> April 2018.

<sup>299</sup> See Actionaid, *Tax responsibility: The business case for making tax a corporate responsibility issue* at

<sup>300</sup> CAP 332, R.E 2008.

<sup>301</sup> Act No. 5 of 2014.

<sup>302</sup> CAP 189, R.E 2006.

<sup>303</sup> Act No. 11 of 1995.

<sup>304</sup> “TRA collections hit a record Sh 1.4 tr since establishment” *The Citizen Newspaper*, 7<sup>th</sup> January 2016, available at <http://www.thecitizen.co.tz/News/TRA-collections-hit-a-record-Sh-1-4-tr-since-establishment/1840340-3024280-9c8i6g/index.html>, accessed 19<sup>th</sup> April 2018.

<sup>305</sup> “Tanzania’s first-half 2016/17 tax revenues up 12.7pct” Reuters, 18<sup>th</sup> January 2018, at <https://www.reuters.com/article/tanzania-tax/tanzanias-first-half-2016-17-tax-revenues-up-12-7-pct-idU5L5N1F821J>, accessed 26<sup>th</sup> June 2018.

unincorporated bodies.”<sup>306</sup> It falls under the category of direct taxes. Other direct taxes include *Pay As You Earn* (P.A.Y.E), individual income tax, withholding tax and gaming tax.

Trends of the past 10 years indicate an increase of tax revenues. The Tax Statistics Report for the year 2016/2017 indicates that Tshs. 5,121 billion was collected through direct taxes in the year 2016/2017, a significant increase compared to Tshs. 4,865 billion in the year 2015/2016.<sup>307</sup> Tax contribution by the corporate sector also slightly increased in the year 2016/2017 at Tshs. 1,450.3 billion, while the figure for the year 2015/2016 was Tshs. 1,379.7 billion.<sup>308</sup>

**Table 8: Direct taxes collected by tax type (Tshs. Billion), Tanzania Mainland, 2007/08-2016/2017**

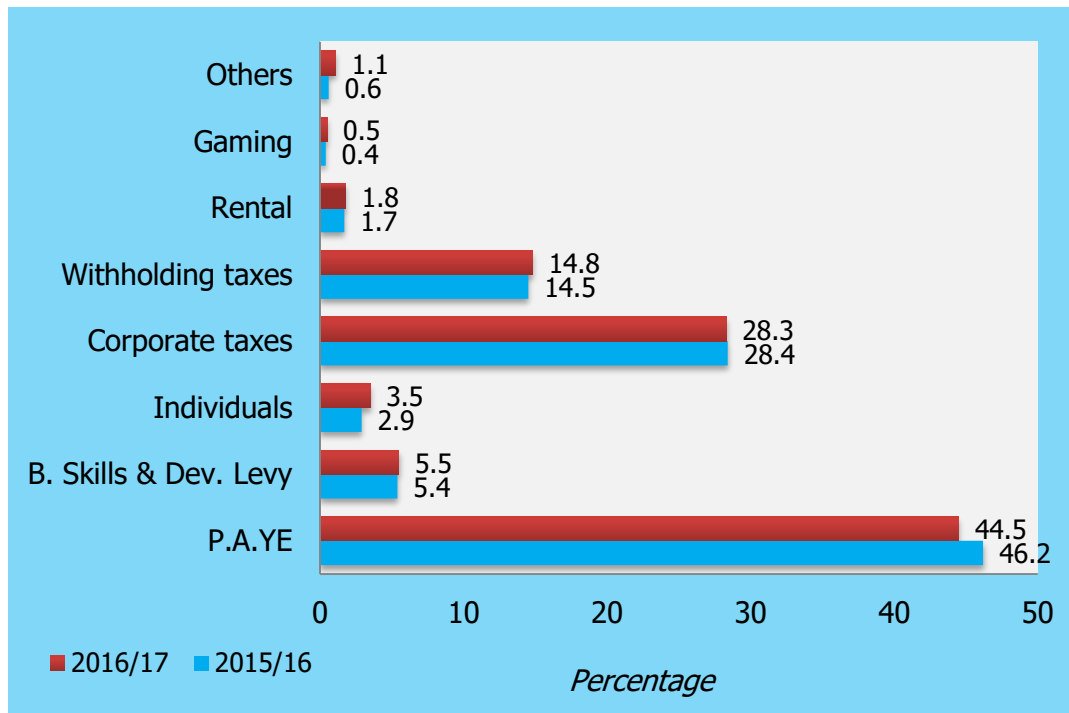
Year	Type of Tax							
	P.A.YE	B.Skills & Dev. Levy	Individuals	Corporate taxes	Withholding taxes	Rental	Gaming	Others
2007/08	512.2	76.5	36.3	374.6	81.1	16.9	n.a	8.2
2008/09	662.3	91.7	42.1	414.7	105.3	23.9	2.7	7.2
2009/10	743.4	110.2	48.6	418.3	137.7	29.0	3.2	7.5
2010/11	928.5	120.0	58.4	537.9	142.1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

Source: Tax Statistics Report 2016/2017 Tanzania Mainland

<sup>306</sup> See TRA “What is Corporation Tax?” at <https://www.tra.go.tz/index.php/corporation-tax/108-what-is-a-corporation-tax>, accessed 19th April 2018.

<sup>307</sup> National Bureau of Statistics, *Tax Statistics Report 2016/2017 Tanzania Mainland*, June 2018, available at <https://nbs.go.tz/nbstz/index.php/english/statistics-by-subject/tax-statistics/1014-tax-statistics-report-2016-17-tanzania-mainland>, accessed 19<sup>th</sup> July 2018, p. 6.

<sup>308</sup> *Ibid*, p. 8.



**Figure 22: %Contributions of individual taxes to total direct taxes, Tanzania Mainland, 2015/16, 2016/17**

Despite the increasing trend of tax contributions, including corporate taxes, it has been widely claimed that Tanzania could earn so much more if not for tax avoidance and evasion. In 2017, the government took a number of measures to address this problem, including sacking and holding accountable tax and mining officials as Hon. President John P. Magufuli initiated a crackdown on tax evasion by big businesses, particularly in the mining industry.<sup>309</sup> The President also formed a committee to probe into the loss of taxes in the mining industry due to tax evasion, which found that Tanzania was losing billions to tax evasion in the sector. Mining companies that were on the government spotlight regarding this issue in the year 2017, especially Acacia, are discussed below.

In March 2017, President Magufuli ordered the Controller and Auditor General (CAG) to conduct a special audit of the mining sector to determine tax losses caused by tax evasion and avoidance.<sup>310</sup> On his part, the CAG noted that assessment of mineral development agreements (MDAs) conducted by his office revealed that gold mining companies use loopholes in these agreements to avoid tax.<sup>311</sup> He urged the Government to reform its mineral law regime and

<sup>309</sup> “Tanzania's President Magufuli vows to toughen tax evasion crackdown” Reuters, 2<sup>nd</sup> February 2017, at <https://www.reuters.com/article/tanzania-taxation-idUSL5N1FN7MI>, accessed 26<sup>th</sup> June 2018.

<sup>310</sup> “JPM amtaka CAG akague kwa kina madini, wabunge wafurahia kamati” *Mwananchi* Newspaper, 28<sup>th</sup> March 2017, at <http://www.mwananchi.co.tz/habari/JPM-amtaka-CAG-akague-kwa-kina-madini--wabunge-wafurahia-kamati/1597578-3867520-1dob0o/index.html>, accessed 26<sup>th</sup> June 2018.

<sup>311</sup> “CAG slams mining deals, urges rethink of tax code” *The Guardian* Newspaper, 17<sup>th</sup> April 2017, at <https://www.ippmedia.com/en/news/cag-slams-mining-deals-urges-rethink-tax-code>, accessed 28<sup>th</sup> June 2018.

renegotiate unfavorable contractual terms.<sup>312</sup> The Government responded by introducing new laws, which allow renegotiation of contracts with mining and energy companies, the Natural Wealth and Resource Contracts (Review and Renegotiations of Unconscionable Terms) Act and the Natural Wealth and Resources (Permanent Sovereignty) Act.<sup>313</sup>

#### **Tax avoidance methods**

“There are a host of different methods. It is important to note that although a lot is lost to illegal tax evasion, more is lost to “legal” tax avoidance and aggressive tax minimization tactics. Methods include non-payment of taxes through agreements with governments, subsidies, loopholes, tax havens, creative accounting practices, “transfer-pricing”, and others.”

*Tax avoidance: the missing link in business & human rights?* By  
Mauricio Lazala, Deputy Director, Business & Human Rights  
Resource Centre

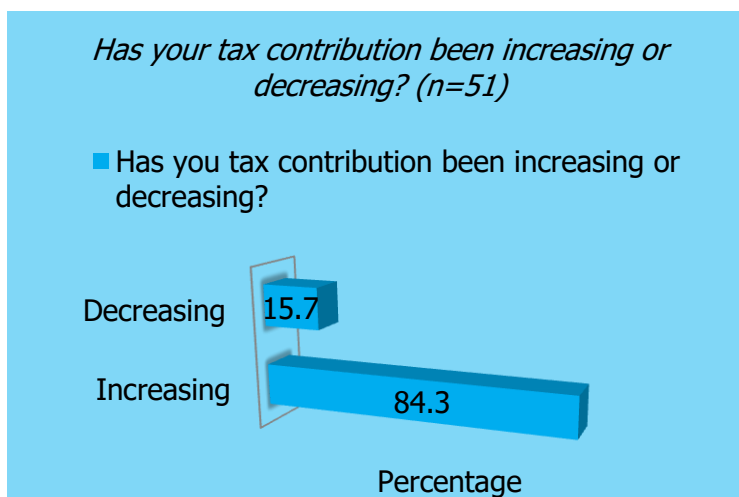
### **4.3. Field findings on tax obligations: perceptions of companies and small business owners**

Among the questions asked during the study on human rights and business in 15 regions of Tanzania Mainland were on tax obligations of companies and other businesses. Corporate management officials who were engaged for the study were asked about whether their tax contributions have been increasing or decreasing and whether they find tax imposed on their companies affordable. On the issue of tax contributions, 78% of the 51 officials who responded to the question felt that they have been increasing, while 14.5% felt they have been decreasing, as indicated in the figure below. On the question of affordability of corporate tax, almost half of the respondents indicated that it is affordable, while the other half felt that it is not affordable.

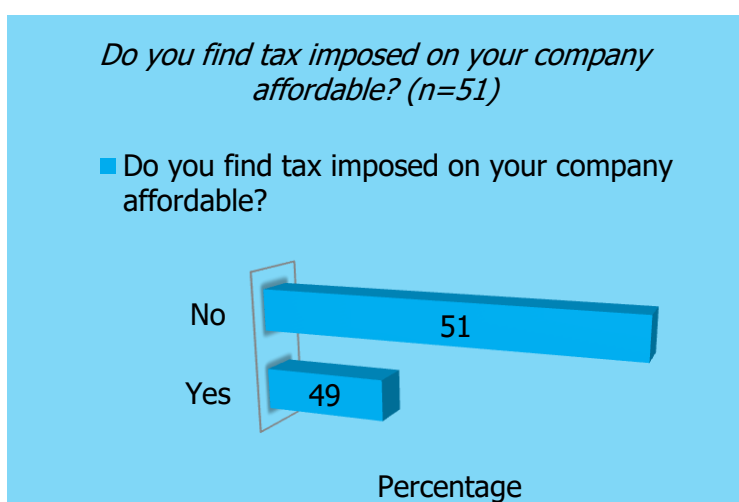
<sup>312</sup> Ibid.

<sup>313</sup> LHRC & ZLSC (2018), *Tanzania Human Rights Report 2017*, p. 144.





**Figure 23: %Responses on tax contributions status**



**Figure 24: %Responses on affordability of corporate tax**

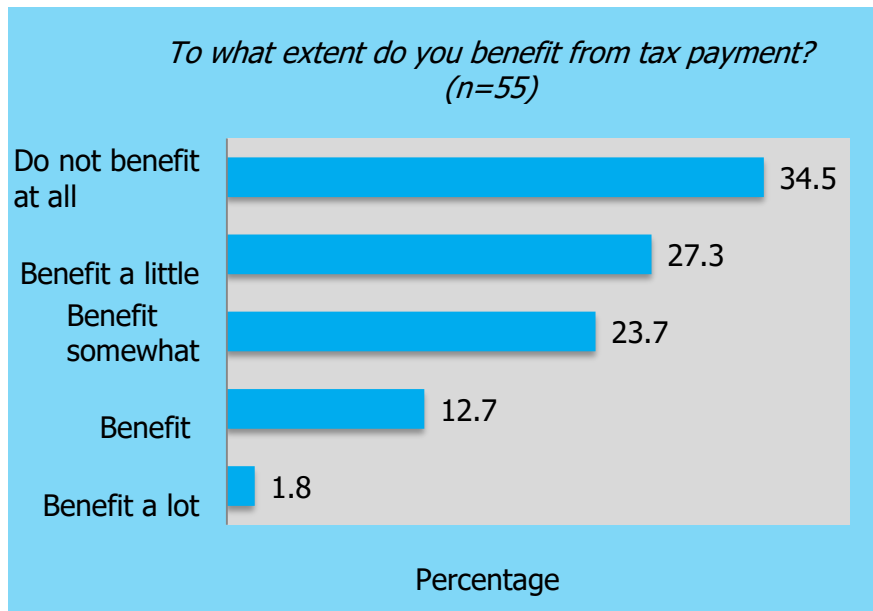
Small business owners are key in any tax system.<sup>314</sup> They are known to more likely to have less knowledge about taxation and perceive taxes to be unfair and losses on their part. Consequently, they may resort to non-compliance with their tax obligations.<sup>315</sup>

Small businesses in Kariakoo and Ilala areas in Dar es Salaam Region were also engaged in the study on human rights and business in Tanzania Mainland for the year 2017. Among the questions they were asked were whether they feel they benefit from tax payment and reasons for small businesses to avoid or evade tax.

<sup>314</sup> Bernadette Kamleitner, Christian Korunka, Erich Kirchler, (2012) "Tax compliance of small business owners: A review", International Journal of Entrepreneurial Behavior & Research, Vol. 18 Issue: 3, pp.330-351, <https://doi.org/10.1108/13552551211227710>

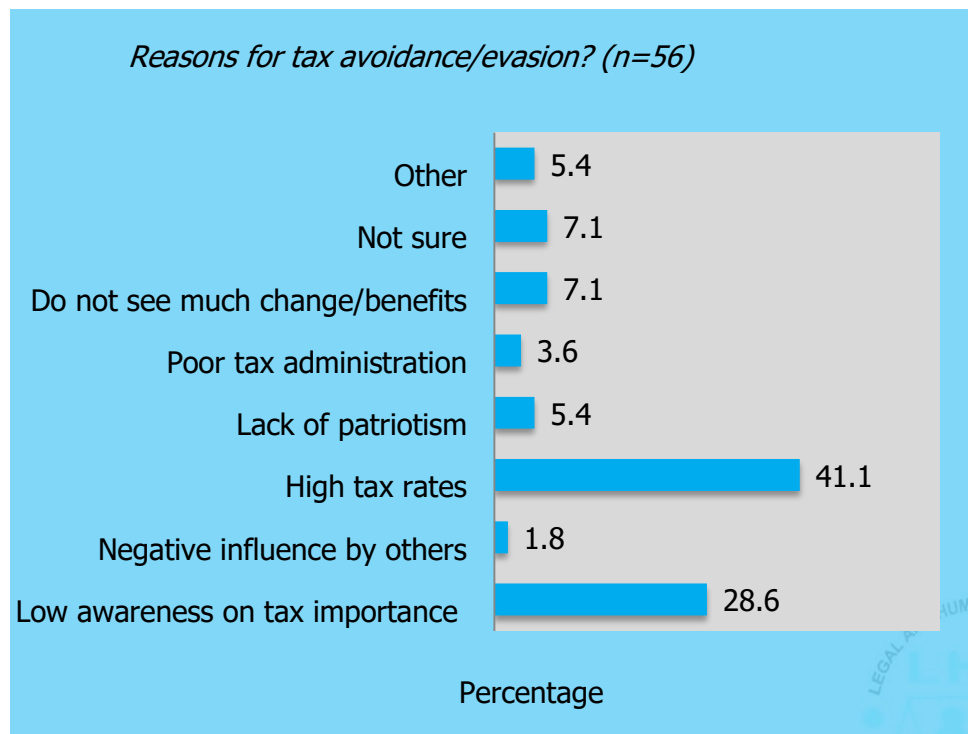
<sup>315</sup> Ibid.





**Figure 25: Perception of extent of benefiting from revenue collection**

From the figure above, it can be observed that sense of ownership of the tax money is a matter of huge concern among small businesses owners. They do not feel that they benefit enough from their tax contributions, which is more likely to influence their tax behavior and practices.



**Figure 26: %Responses on reasons for tax avoidance/evasion by small business owners**

From the figure above, it can be observed that high tax rates is the biggest reason for tax

avoidance and evasion (41.1%) among small businesses owners, followed by low awareness on tax importance (28.6%). These findings are somewhat similar to those of a 2015 study on attitude towards tax compliance among small and medium sized enterprises (SMEs), which ranked ‘poor skills an tax knowledge’ and ‘multi taxation’ as challenges hindering SME full compliance with tax obligations first and second respectively.<sup>316</sup>

#### 4.4. Transfer pricing to reduce corporate tax

According to the International Monetary Fund (IMF), developing countries incur loss of USD 100-300 billion due to tax avoidance, inefficient taxation of extractive industries and transfer pricing being major contributing factors.<sup>317</sup> According to the UN Practical Manual on Transfer Pricing for Development Countries, transfer pricing refers to setting of prices for transactions between associated enterprises involving the transfer of property or services.<sup>318</sup> It is “the general term for the pricing of cross-border, intra-firm transactions between related parties.”<sup>319</sup> A good example is when Company A sells equipment to Company B, the latter being a subsidiary company (affiliated to Company A).

In Tanzania, majority of companies are subsidiary companies,<sup>320</sup> hence the risk of tax avoidance through transfer pricing is very high. In response to this problem, in 2014 the Government introduced the Income Tax (Transfer Pricing) Regulations.<sup>321</sup> The Regulations were made under Section 33 of the Income Tax Act 2004, which provides for transactions between affiliated businesses to be conducted at arm’s length.<sup>322</sup> The Regulations apply to a controlled transaction if a person who is a party to the transaction is located in, and subject to tax in Tanzania and the other person who is a party to the transaction is located in or outside Tanzania.<sup>323</sup> The applicable principle in case of such a transaction or a series of transactions is the *arm’s length principle*,<sup>324</sup> according to which commercial or financial transaction between associates must take place on the same terms as if such transaction had taken place between independent persons under comparable conditions and circumstances.<sup>325</sup> This is done in order to prevent tax avoidance; and a person who contravenes this requirement and fail to apply the stated transfer pricing methods is deemed to have committed an offence and is liable to a penalty

<sup>316</sup> See Tumsify Elly, *Attitude Towards Tax Compliance among SMES in Tanzania*, at <http://journals.udsm.ac.tz/index.php/orsea/article/download/836/78>, accessed 12<sup>th</sup> June 2018.

<sup>317</sup> See Nuru Ngaillo, *Tax avoidance and the extractive Industries*, HakiRasilimali, at <https://www.hakirasilimali.or.tz/transfer-pricing-in-the-extractive-sector-in-tanzania/>, accessed 12<sup>th</sup> June 2018.

<sup>318</sup> United Nations (2013), *United Nations Practical Manual on Transfer Pricing for Developing Countries*, Department of Economic and Social Affairs, p. 2.

<sup>319</sup> Ibid.

<sup>320</sup> See KPMG, *Global Transfer Pricing Review: Tanzania*, at <https://home.kpmg.com/content/dam/kpmg/pdf/2015/10/tp-review-tanzania-v3.pdf>, accessed 12<sup>th</sup> June 2018.

<sup>321</sup> See the Income Tax (Transfer Pricing) Regulations, 2014, at <https://www.tra.go.tz/tax%20laws/Income%20Tax-Transfer%20Pricing%20Regulation.pdf>, accessed 12<sup>th</sup> June 2018.

<sup>322</sup> Section 33 of the Income Tax Act 2004.

<sup>323</sup> Regulation 2 of the Income Tax (Transfer Pricing) Regulations, 2014.

<sup>324</sup> Ibid, Regulation 4(1).

<sup>325</sup> Ibid, Regulation 3.

equal to 100% of the underpayment of tax.<sup>326</sup> The regulations also require parties involved in transfer pricing (controlled transaction) to have in place contemporaneous transfer pricing documentation,<sup>327</sup> failure of which a person may face imprisonment not exceeding six months or a fine of not less than 50 million shillings or both.<sup>328</sup>

Despite these initiatives to combat transfer pricing, the practice is still a big challenge. A 2015 study by an organization called the Natural Resource Governance Institute (NGRI) on challenges facing implementation of transfer pricing rules in the extractive sector, whose findings were released in 2016, highlights a number of challenges in relation to implementation of transfer pricing rules. The study was conducted in Tanzania, Ghana, Guinea, Zambia and Sierra Leone. The challenges include: weak transfer pricing regulations; poor coordination between Tanzania Petroleum Development Corporation (TPDC) and Tanzania Revenue Authority (TRA); lack of integrated, automatically accessible database for all extractive industry information; and limited industry expertise.<sup>329</sup> LHRC calls upon the Government, through the Ministry of Constitutional and Legal Affairs and the Tanzania Revenue Authority (TRA) to address the challenges highlighted above and ensure enforcement of the law and regulations in relation to transfer pricing.

#### 4.5. Government crackdown on tax evasion in the mining sector: the case of Acacia and other mining companies

In a bid to intensify revenue collection efforts, in 2017 the Government initiated a crackdown on tax evasion in the mining sector, making a number of interventions towards safeguarding the right to enjoy and benefit from natural resources, as indicated in LHRC's Tanzania Human Rights Report 2017.<sup>330</sup> Among measures taken were to ban export on mineral concentrates for tax evasion reasons; sackings of senior government officials implicated in tax evasion; and probe into tax practices of several mining companies, including Acacia Mining Company. The President formed a team to probe into mineral exports, which found loss of government revenue, Acacia being the main culprit.<sup>331</sup> Among the recommendations made by the team were to impose export ban, review of mining laws and agreements and taking legal action against government/public officials implicated in revenue loss. Acacia, however, disputed the team's findings and dismissed them as unfounded accusations. However, the company was later involved in negotiations with the Government, which had two major outcomes. One, it was agreed that the Government would have a 16% stake in Acacia/Barrick mines, in line with the new mining law. Two, the two parties will now divide the profit equally (50/50). It was also agreed that the communities surrounding the mines deserve to benefit more from the mining

<sup>326</sup> Ibid, Regulation 5.

<sup>327</sup> Ibid, Regulation 7(1).

<sup>328</sup> Ibid, Regulation 7(5).

<sup>329</sup> Nuru Ngaillo (*supra*).

<sup>330</sup> See LHRC & ZLSC (2018), *Tanzania Human Rights Report 2017* at [www.humanrights.or.tz](http://www.humanrights.or.tz)

<sup>331</sup> Ibid.



activities in their areas and Acacia will make a good faith payment of USD 300 million to the Government.

In 2017, there was also a probe into diamond and tanzanite mining operations. A parliamentary team was formed to probe into the operations, its report indicating substantial tax losses and missing revenues in ministry records. The team revealed discrepancies in diamond production statistics and claimed that only 20% of tanzanite produced is legally exported.

#### 4.6. Attracting more investment: the case of tax exemptions and other tax incentives

Over the years, Tanzania has been known as one of the countries in Africa that provide generous tax incentives in a bid to boost investment. The incentives include tax exemptions, which constitute a significant portion of the Gross Domestic Product (GDP), usually worth billions of Tanzanian shillings. A number of government and non-government actors have commented on and raised concern over tax exemptions. The issue of tax exemptions, especially in the mining sector, continues to take centre stage, drawing from recent CAG reports. Major beneficiaries of tax exemptions are multinational investors which possess certificates of incentives from the Tanzania Investment Centre (TIC).<sup>332</sup>

In March 2017, the CAG submitted his report on the audit of public authorities and other bodies for the financial year 2015/2016.<sup>333</sup> In this report, the CAG highlighted some weaknesses in Mining Development Agreements (MDAs), having reviewed four such agreements between Tanzania and Geita Gold Mining Ltd (Geita), Acacia Mine (Buzwagi), Bulyanhulu and North Mara Mine.<sup>334</sup> Among the weaknesses highlighted by the CAG in his report are what he called “unreasonable terms which undermine public interests”, including “unreasonable incentives in tax.”<sup>335</sup>

In his 2015/2016 report the CAG also discussed about **exemption of fuel levy and excise duty on fuel for mining companies**. He noted that Geita Gold Mine, Bulyanhulu, Buzwagi and North Mara were exempted from fuel toll and excise duty worth Tshs. 126.7 billion for the financial years ended December 2015 and 2016.<sup>336</sup> The CAG advised the Government to “revise means necessary to supply reliable power to the mining companies which will increase

<sup>332</sup> Twaweza, *Tanzania’s Tax Exemptions: Are they too high and making us too dependent on foreign aid?*, Policy brief TZ.12/2010E, at <https://twaweza.org/uploads/files/Tax%20Exemptions.PDF>, accessed 12<sup>th</sup> Jun 2018.

<sup>333</sup> The United Republic of Tanzania, National Audit Office, *Annual General Report of the Controller and Auditor General on the Audit of Public Authorities and other Bodies for the Financial Year 2015/2016*, p. 80, available at [http://www.nao.go.tz/?wpfb\\_dl=226](http://www.nao.go.tz/?wpfb_dl=226), accessed 17<sup>th</sup> June 2018.

<sup>334</sup> Ibid; see also “CAG slams mining deals, urges rethink of tax code” *The Guardian* Newspaper, 17<sup>th</sup> April 2017, at <https://www.ippmedia.com/en/news/cag-slams-mining-deals-urges-rethink-tax-code>, accessed 12<sup>th</sup> June 2018.

<sup>335</sup> Ibid, CAG Report 2015/2016.

<sup>336</sup> Ibid, p. 96.

revenue to the Government and **eliminate giving tax exemption on the fuel.**<sup>337</sup> He also provided an alternative solution of imposing a slight levy on fuel instead of full exemption.<sup>338</sup>

Other instances highlighted by the CAG in his 2015/2016 report are: **low tax rates compared to current applicable rates; perpetual reporting of losses in mining operations; and zero-rating VAT on mineral exports.**<sup>339</sup> The CAG noted that due to stability clauses in MDAs with North Mara Gold Mine, Geita Gold Mine, Buzwagi Gold Mine and Bulyanhulu Gold Mine, applicable tax rates are those in the Income Tax Act of 1973, which are lower, instead of those stipulated in the Income Tax Act of 2004. The CAG report provides a good example in this regard, indicating that “MDAs provide for payment of local levy at capped amount of USD 200,000 per annum contrary to Section 6(1) (u) of the Local Government Finances Act of 1982 which sets local service levy at 0.3% on annual turnover.”<sup>340</sup> This means the Government incurs tax losses.

Section 8 of the Road and Fuel Tolls Act, 1985 as amended from time to time, gives Minister for Finance mandate to exempt fuel levy through publishing order in the Gazette. Through Government Notice Number 190 published on 15 July 2011 which repealed prior relevant notices, the Minister exempted road and fuel tolls on fuel imported or purchased by holder of a mining license for gold subject to compliance with the stipulations required.

*CAG Report 2015/2016, p. 96.*

Regarding perpetual losses, the CAG notes in his report that for five years (2012 to 2016), four mining companies<sup>341</sup> indicated perpetual losses from their operations, mainly attributed to full capital expenditure being deducted from revenue generated during the year in question.<sup>342</sup> As for the zero-rating VAT issue, the CAG points out that five mining companies have enjoyed significant refunds of VAT worth Tshs. 1,144 billion from 2012 to 2016, due to loopholes under VAT Act of 2014 and VAT Acts which were in place before 2014 – allowing zero-rating VAT on goods exported outside Tanzania.<sup>343</sup>

In relation to the issues highlighted above, which occasion the Government loss of considerable amount of revenue, the CAG advised the Government to:<sup>344</sup>

- Engage mining companies and amicably negotiate with them to adjust tax rates by using the principle of sanctity of fundamental clause, given the changing economic variables;

<sup>337</sup> Ibid.

<sup>338</sup> Ibid.

<sup>339</sup> Ibid, pp 94 & 95.

<sup>340</sup> Ibid.

<sup>341</sup> Bulyanhulu Gold Mine, North Mara Gold Mine, Wiliamson Diamonds and Pangaea Minerals Ltd.

<sup>342</sup> CAG Report 2015/2016, pp 94 & 95.

<sup>343</sup> Ibid.

<sup>344</sup> Ibid.

- Renegotiate with mining companies which incur perpetual losses to allow it to charge corporate tax at 0.3 per cent on gross turnover in line with the First schedule of Income tax Act 2004 as revised in 2015; and
- Review the Value Added Tax Act 2014 and eliminate zero-rating on mineral exports and discuss with affected companies about the effect of this measure on MDAs.

LHRC calls upon the Government to take on board recommendations made by the CAG and make the necessary reforms to reduce tax exemptions in order to increase government revenue.

#### 4.7. Human rights violations resulting from non-compliance with tax obligations

Tanzania, as a party to the International Covenant on Economic, Social and Cultural Rights of 1966, has an obligation to ensure progressive realization of social, economic and cultural rights of Tanzanians depending on availability of resources.<sup>345</sup> To achieve this, the Government needs to mobilize its resources, taxation being one of the major sources of revenue. To this end, corporate practices of tax avoidance and evasion cripple the ability of the Government to ensure progressive realization of the rights under the convention, including right to health, right to adequate standard of living, right to education and right to water. In LHRC's opinion, as long as there is adverse human rights impact, business practices that lead to tax avoidance and evasion means failure on the part of businesses, including companies, to adhere to their responsibility to respect human rights.

On the other hand, the Government has a duty to protect human rights. This duty includes protection of economic, social and cultural rights, which require mobilization of resources in order to be realized; and to order to guarantee effective mobilization of these resources the Government has a duty to ensure there are no loopholes in taxation laws. Laws that enable mobilization of resources, including taxes, must also be effectively enforced.

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<sup>345</sup> Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, 1966.



## CHAPTER FIVE: CORPORATE SOCIAL RESPONSIBILITY, ENVIRONMENTAL RESPONSIBILITY AND CORPORATE RESPECT FOR HUMAN RIGHTS

### 5.1. Overview and Essence of Corporate Social Responsibility and Environmental Responsibility

There are different definitions of Corporate Social Responsibility (CSR), none of them universally accepted. However, one of the commonly used definitions is that by the World Business Council for Sustainable Development, which defines CSR as ‘the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.’<sup>346</sup> Simply put, it is ‘the responsibility of business towards the society’,<sup>347</sup> a way for business entities to give back to the community and make up for social, economic and environmental consequences of their business activities. The main objective of socially responsibility, including CSR, is to contribute to sustainable development, and to this end businesses/corporates are expected to take responsibility for the impacts of decisions they make and business operations on the society and the environment, through transparent and ethical behaviour.<sup>348</sup>

The concept of social responsibility started to take shape in 1970s, leading to development of several instruments relating to such matter over the years. Key instruments governing CSR are the Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises; the United Nations Global Compact; the International Organization for Standardization (ISO) 26000 Guidance on Social Responsibility; the United Nations Guiding Principles on Business and Human Rights; and the International Labour Organization (ILO) Conventions.<sup>349</sup> These are what are known as the core set of internationally recognized principles and guidelines regarding CSR.<sup>350</sup> Bar the ILO Conventions, these instruments are not binding, but some of the principles and guidelines contained in them reflect human rights principles covered in the international bill of rights.

<sup>346</sup>Richard Holme & Phil Watts, *Corporate social responsibility: making good business sense*, World Business Council for Sustainable Development, January 2000, p. 4 at

<http://www.ceads.org.ar/downloads/Making%20good%20business%20sense.pdf>, accessed on 12<sup>th</sup> June 2018.

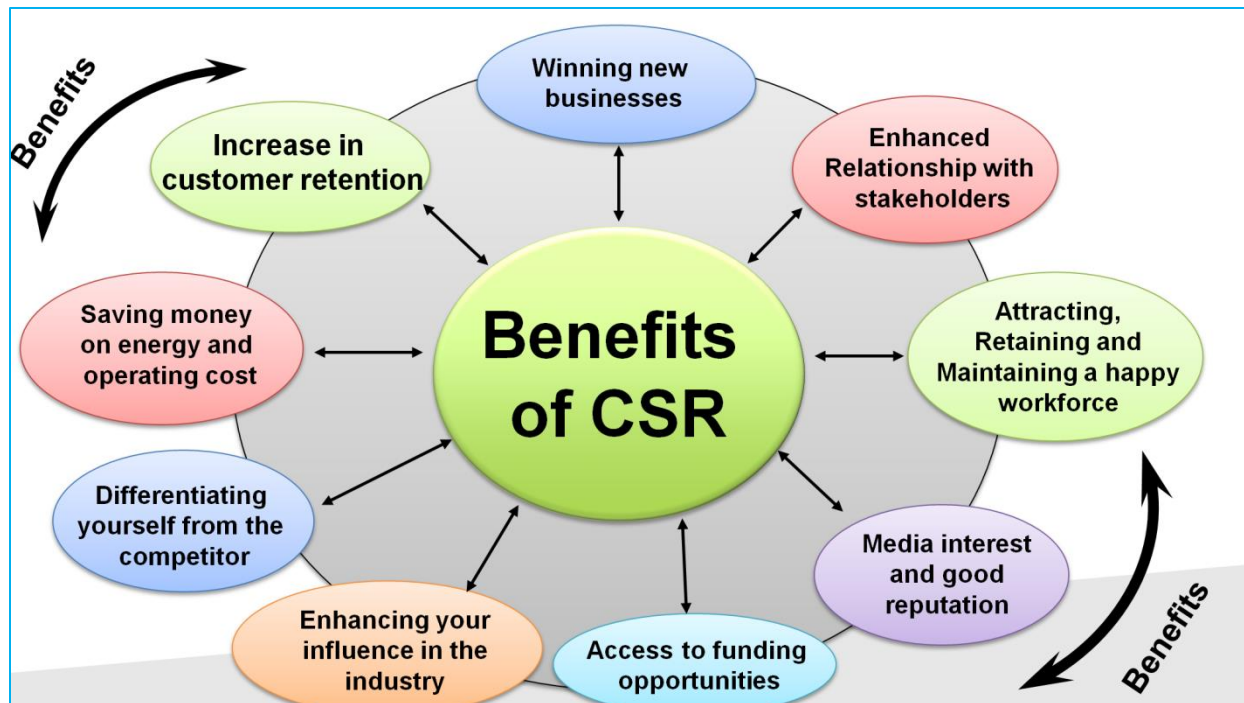
<sup>347</sup> See FASSET, *Corporate Social Responsibility: Course Handbook* at

[http://www.fasset.org.za/downloads/CSR\\_Handbook\\_Review.pdf](http://www.fasset.org.za/downloads/CSR_Handbook_Review.pdf), accessed on 12th June 2018.

<sup>348</sup> See ISO, ISO 26000 - Social responsibility at <https://www.iso.org/iso-26000-social-responsibility.html>, accessed on 12th June 2018.

<sup>349</sup> Martje Theuws & Mariette van Huijstee (2013), *Corporate Responsibility Instruments: A Comparison of the OECD Guidelines, ISO 26000 & the UN Global Compact*, SOMO, at <https://www.somo.nl/wp-content/uploads/2013/12/Corporate-Responsibility-Instruments.pdf>, accessed on 12th June 2018.

<sup>350</sup> Ibid.



Picture 21: Benefits of CSR

(Source: FASSET, [www.fasset.org.za](http://www.fasset.org.za))

As indicated in the picture above, CSR comes with a number of benefits, including enhancing the reputation of the business, helping to make it more popular within a community. It gives them a license to operate freely as community members are in one way or another impacted by business activities. Implementation of a good CSR policy is also key for retaining employees and keeping them happy. Companies that practice CSR also enhance protection of their businesses by community members as they feel as part of the businesses and develop sense of ownership.

Corporate Environmental Responsibility (CER) is part of CSR. It has been defined as “the duty to cover the environmental implications of the company’s operations, products and facilities; eliminate waste and emissions; maximize the efficiency and productivity of its resources; and minimize practices that might adversely affect the enjoyment of the country’s resources by future generations.”<sup>351</sup> Businesses, especially companies, now have a duty to improve their

### Environment

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

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

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

*Ten Principles of the UN Global Compact*

<sup>351</sup> See Mazurkiewicz, Piotr. 2004. *Corporate environmental responsibility : Is a common CSR framework possible?* (English). Washington, DC: World Bank.

<http://documents.worldbank.org/curated/en/577051468339093024/Corporate-environmental-responsibility-is-a-common-CSR-framework-possible>



environmental performance and protect the environment. CER stems from the Ten Principles of the UN Global Compact and the UN Guiding Principles on Business and Human Rights. Principle 8 of the Ten Principles of the UN Global Compact requires businesses to **“undertake initiatives to promote greater environmental responsibility.”**

One of the principles in the UN Guiding Principles on Business and Human Rights states that in order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights.<sup>352</sup> This includes the environment and environmental rights, which are protected under domestic, regional and international laws. Domestically, the legal framework and policy framework on protection of the environment environmental rights includes the Environmental Management Act 2004; the Public Health Act 2009; and the National Environmental Policy of 1997. The National Environment Management Council (NEMC), established under the Environmental Management Act, is the major body tasked with protection and management of environment in Tanzania. The Environmental Management Act states that every person living in Tanzania has a right to clean, safe and healthy environment.<sup>353</sup> The Act also provides for the right to bring action when an action or omission causes or is likely to cause harm to human health or the environment,<sup>354</sup> remedies<sup>355</sup> and duty of every person to protect the environment.<sup>356</sup>

## 5.2. Corporate Social Responsibility in Tanzania

In Tanzania, the awareness about the concept of CSR continues to grow as more and more companies are now practicing CSR and have in place CSR policies. CSR in Tanzania is mainly understood along the lines of philanthropy (“doing good with part of the profit”), referring to charitable support to community members.<sup>357</sup> However, there are other aspects of CSR, relating to the environment, human rights, labour and anti-corruption, in line with the UN Global Compact Principles and the UN Guiding Principles on Human Rights and Business. These aspects, which are social, economic and environmental, are briefly discussed in subchapter 5.4 of this report. CSR provides businesses with a social license to operate.

<sup>352</sup> Principle 15(b) of the UN Guiding Principles on Business and Human Rights.

<sup>353</sup> Section 4(1) of the Environmental Management Act 2004.

<sup>354</sup> Ibid, Section 5(1).

<sup>355</sup> Ibid, Section 5(2).

<sup>356</sup> Ibid, Section 6.

<sup>357</sup> See Karin Mader, *Corporate Social Responsibility in Tanzania: An Overview*, Dar es Salaam, June 2012 at <https://csroverviewtanzania.files.wordpress.com/2012/08/csr-overview-tanzania3.pdf>, accessed 12<sup>th</sup> June 2018.



Awareness of CSR and its practices has been increasing at a significant rate over the past 10 years, international businesses, especially

The Government will require companies to implement **credible corporate responsibility** policies.

*Policy Statement 5.9(i) of the Mineral Policy of Tanzania, 2009*

extractive industries, being the major players given their desire or need to comply with international standards for sustainable management and performance.<sup>358</sup> Introduction of the UN Global Compact Principles in 2000s and the UN Guiding Principles on Business and Human Rights in

2011, has also fueled awareness about CSR, including in Tanzania. Consequently, in 2009, the Government included a CSR component in the Mineral Policy of Tanzania 2009.

Key stakeholders in the promotion of CSR in Tanzania include the business sector, the government and CSOs. In the businesses sector there are key players such as international audit, tax and accounting firms (e.g. Deloitte and KPMG); CEO Roundtable of Tanzania; and the Tanzania Responsible Business Network (TRBN).<sup>359</sup> In the Government, key stakeholders include the Tanzania national Business Council (TNBC) and the Tanzania Investment Centre (TIC).<sup>360</sup> CSOs in Tanzania operate in different areas, including health, human rights, education and environment. Some CSOs, including LHRC, are also working on business and human rights, which include the component of CSR.

While awareness about CSR and its practices have been increasing year after year, compliance has been low. This is mainly attributed to lack of a legal framework on CSR, as highlighted in several previous LHRC reports.<sup>361</sup> Moreover, limited knowledge about CSR and its practices (provision of financial support), especially among local businesses and community members, is a challenge (see subchapter 5.4.2 of this chapter, below). Other challenges affecting compliance with CSR in Tanzania include failure to comply with tax obligations among businesses, especially through tax avoidance and evasion; harming the environment; human rights abuses by businesses, failing to act and operate ethically and in a socially acceptable way. Most businesses are yet to understand that CSR is a mutually-beneficial initiative that will guarantee sustainability of their businesses.

<sup>358</sup> Ibid; See also Fulgence S.E. (2016) Corporate Social Responsibility in Tanzania. In: Vertigans S., Idowu S., Schmidpeter R. (eds) Corporate Social Responsibility in Sub-Saharan Africa. CSR, Sustainability, Ethics & Governance. Springer, Cham, at <https://www.springer.com/gp/book/9783319266671>, accessed 12<sup>th</sup> June 2018.

<sup>359</sup> Ibid.

<sup>360</sup> Ibid.

<sup>361</sup> See for example, LHRC (2016), *Human Rights and Business Report 2015*, available at [www.humanrights.or.tz](http://www.humanrights.or.tz)

### 5.3. Corporate Social Responsibility in Extractive Industries: the Case of Mining Companies

As highlighted in previous LHRC reports on business and human rights, one of the challenges of ensuring companies fulfil their corporate social responsibility is lack of a law on the matter. But in 2017, the situation changed in the mining sector. In the aftermath of a crackdown on tax avoidance and evasion, a number of changes were made in the Mining Act 2010. Among these changes was inclusion of a new part in the Act titled PART VIII: LOCAL CONTENT, CORPORATE SOCIAL RESPONSIBILITY AND INTEGRITY PLEDGE.” This part contains provisions under Section 105 which provide for a mandatory corporate social responsibility (CSR) in line with the Mineral Policy of Tanzania of 2009. It provides for a joint CSR plan between mineral right holder and local government authority, taking into account environmental, social, economic and cultural activities based on local government priorities of host community.<sup>362</sup> Moreover, the plan must be submitted by mineral holder to the local government authority for approval, which shall have in place CSR guidelines.<sup>363</sup>

A mineral right holder shall on annual basis, prepare a **credible corporate social responsibility** plan jointly agreed by the relevant local government authority or local government authorities in consultation with the Minister responsible for local government authorities and the Minister of Finance and Planning.

*Section 105(1) of the Mining Act 2010 as amended in 2017*

LHRC commends the Government for this move and welcomes the amendment made in the Mining Act 2010 in this regard. This is a step in the right direction in ensuring that companies have in place credible CSR policies, as stipulated in the Mineral Policy of Tanzania 2009, as this is now not only a policy requirement but also a legal one. Enabling the local government to have a say on the type of CSR provided is also an important aspect of the new CSR environment as companies will not be in a position conduct the same type of CSR activities that may not have much impact on the community or not a priority.

Nevertheless, the amendment of the Mining Act means only mining companies are bound to fulfil their CSR. LHRC therefore calls upon the Government to spearhead for a law that will cover all business sectors in Tanzania and ensure all companies comply with CSR as a legal requirement.

<sup>362</sup> See the Written Laws (Miscellaneous Amendments) Act, 2017, Amendment of the Mining Act (s. 105(2)) at <http://parliament.go.tz/polis/uploads/bills/1498723111-EXTRACTIVE%20INDUSTRY%20AND%20FINANCIAL%20LAWS-4.pdf>

<sup>363</sup> Section 105(3) & (4) of the Mining Act 2010 as amended in 2017.

## 5.4. Corporate Social Responsibility in 2017: Study Findings

### 5.4.1. Improved situation of CSR practices

Overall, the human rights and business study across 15 regions of Tanzania Mainland indicates that the situation of business compliance with CSR has slightly improved. Majority of the companies that were visited had evidence of CSR activities conducted in local communities.

**Table 9: CSR Activities of some of the companies visited during human rights and business study**

Company	CSR Activities
Shanta Mining Company	Education (classrooms), health (maternity ward), employment
GGM Mining Company	Health (construction and rehabilitation of health facilities, supporting malaria prevention program, supporting HIV/AIDS prevention program), education (contribution of desks), sport (sponsoring Geita Gold Sports Club), education (construction of Nyankumbu Girls Secondary School), water (construction of a well), employment
Manyara Sugar Company	Education, health, employment
Farm Africa Agrofocous (T) Ltd.	Contributions to support local development, employment
Williamson Diamond Limited	Education (schools), health (health facilities), water, employment
Acacia's North Mara Gold Mine	Education (schools), water, health, employment
Geita Gold Mine (GGM)	Infrastructure (roads), health (health facilities), children (orphanage centre), employment
Jambo Foods Products Co. Ltd	Sports (a football club), water services, employment
Dangote Industry Ltd	Infrastructure, education, building materials
Mamujee Ltd	Education, employment
MeTL	Building materials, health, transport, donations, employment
Tanga Fresh Company	Education, employment
Ngano Ltd	Health, employment

Source: LHRC Human Rights and Business Study, Field Reports



## CSR practices in Mbeya, Geita, Manyara, Mara, Tanga, Morogoro, and Shinyanga Regions

### Mbeya

Shanta Mining Company in Mbeya was observed to have done very well in implementing their CSR policy. The study team found that the company makes significant financial contributions to support education, water and health services.<sup>364</sup> For instance, the company sponsored construction of a maternity building in Mbangala Ward and classrooms at Maleza Primary School. It also provides transport services to sick persons and pregnant women in Maleza, Saza, Patamela and Mbangala Villages.



Picture 22: Classrooms, desks and a maternity ward at Mbangala Dispensary, sponsored by Shanta Gold Mining Company



Picture 23: Maternity ward (left) and classrooms at Maleza Primary School (right) built by Shanta Mining Company as part of their CSR

### Geita

<sup>364</sup> LHRC Human Rights and Business Study 2017, Mbeya Field Report.

In Geita Region, GGM Mining Company was found to be a standout performer of CSR activities. It was reported that the company has helped with road construction and repair to and around it, including the road from Nyakabale and Mgusu to a roundabout.<sup>365</sup> In 2016 and 2017, the company also made contributions to support Geita District Council to construct outpatient buildings at Nyakabale Health Centre and construction of an orphanage centre, *Moyo wa Huruma Orphanage Centre*.<sup>366</sup> It has also offered employment to about 70 young members of the community surrounding the mine and is reportedly providing free transport services, upon request of Nyakabale community members for security/safety reasons, from Nyakabale round about to Nyakabale Centre.<sup>367</sup>



Picture 24: A well and orphanage centre sponsored by GGM in Geita as part of its CSR

While GGM is doing well in terms of CSR in Geita Region, other companies need to do more to support communities surrounding them as the situation of social services and infrastructure is still of concern in some areas of the region. For instance, shortage of clean and safe water was observed in some areas of the region that were visited.<sup>368</sup>

Complaints were also leveled by community members that were approached by the study team against *Pamoja Mine Company* that operates at Nyarugusu area in Geita Region. The company was accused of not having a very good relationship with community members and doing little or nothing in terms of CSR.<sup>369</sup> Report by the Controller and Auditor General for the year 2015/16, released in April 2017, also indicates shortage of toilets, desks and classes, especially Geita (Geita Region), Mpanda (Katavi Region) and Mpwawa Districts (Dodoma Region).<sup>370</sup>

<sup>365</sup> LHRC Human Rights and Business Study 2017, Geita Field Report.

<sup>366</sup> Ibid.

<sup>367</sup> Ibid.

<sup>368</sup> Ibid.

<sup>369</sup> Ibid.

<sup>370</sup> See LHRC & ZLSC (2018), *Tanzania Human Rights Report 2017*, p. 104.





Picture 25: Children fetching water at unsafe water source in Nyakabale area, Geita

### Manyara

In Manyara Region, *Manyara Sugar Company* was found to be the standout performer of CSR activities among the companies that were visited; and to recognize their social and economic contribution to the community, the Babati District Council awarded the company a certificate of recognition in 2017.<sup>371</sup> One of the major contributions of the company in 2017 was construction of a dispensary, Masware Dispensary, as indicated in a picture below.



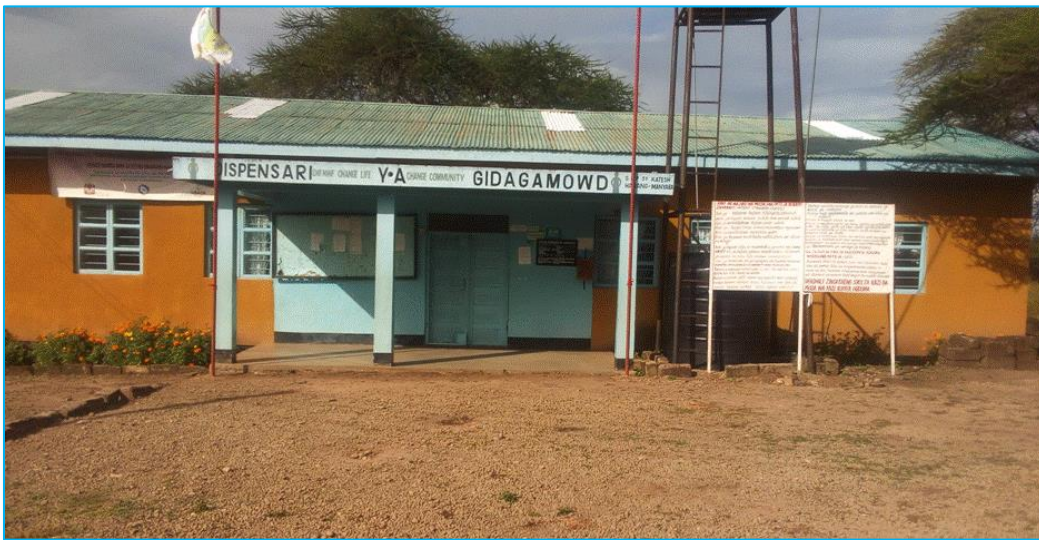
Picture 26: Certificate of recognition granted to Manyara Sugar Company in relation to CSR

<sup>371</sup> LHRC Human Rights and Business Study 2017, Manyara Field Report.



**Picture 27: Masware Dispensary, which is under construction, sponsored by Manyara Sugar Company**

Another company which was observed to have in place a CSR policy and implementing it in Manyara Region was *Ngano Company Ltd*. The company was said to have sponsored construction of a dispensary, *Gidagamowd Dispensary*, which is located just outside the company premises. The dispensary provides health services to both employees and other community members surrounding the company.<sup>372</sup>



**Picture 28: *Gidagamowd Dispensary* constructed by *Ngano Company Ltd* as part of its CSR**

## Mara

In Mara Region the major performers in CSR were found to be *Acacia's North Mara Gold Mine*, although they have not been faring well in the component of human rights protection, as indicated in subchapter 5.6 below. Apart from providing employment to community members,

<sup>372</sup> Ibid.



it was revealed that the mine makes contributions or sponsors education, water and health programs.<sup>373</sup>



**Picture 29: Hospital building in Tarime District, sponsored by Acacia's North Mara Gold Mine**



**Picture 30: Julius Kambarage Secondary School (left) and teacher houses (right) built by Acacia's North Mara Gold Mine**

### Morogoro

In Morogoro, out of the seven investment companies that were visited, only two companies, *Farm Africa Agrofocus (T) Ltd* and *Kilombero Sugar Company Ltd*, stood out as far as CSR is concerned, but overall companies appear to contribute very little in terms of CSR compared to other surveyed regions.<sup>374</sup> *Farm Africa Agrofocus (T) Ltd* indicated that they have contributed about Tshs. 40 million in local development in the past five years, while *Kilombero Sugar Company Ltd* has been providing support in health centres, teacher training and teaching materials, apart from employment for members of the local community.<sup>375</sup> In this region, challenges associated with CSR were identified to include CSR activities not being in line with

<sup>373</sup> LHRC Human Rights and Business Study 2017, Mara Field Report.

<sup>374</sup> LHRC Human Rights and Business Study 2017, Morogoro Field Report.

<sup>375</sup> Ibid.

priority needs of the community and poor knowledge about CSR and its benefits among community members and corporate officials.<sup>376</sup>

### Tanga

In Tanga Region, companies that were found to actively engage in CSR were *Tanga Fresh Company*, *Kilimanjaro Cement Company*, *Katani Ltd*, *Mohamed Enterprises Tanzania Ltd (MeTL)* and *Mamujee Ltd*.<sup>377</sup> MeTL engages in CSR through contributing building materials, supporting health services, providing transport services to local community members and sometimes providing monetary support.<sup>378</sup> *Mamujee Ltd* mainly provides support in the education sector, including making contributions in different forms.



**Picture 31: Officials from Mamujee Ltd distributing books to primary school students from Darajani Primary School and Mwanzange Primary School in Tanga**

### Shinyanga

In Shinyanga Region, companies that were found to have in place a CSR policy and implementing it, among those which were visited, were mainly the *Williamson Diamonds Ltd*, which owns and operates the Williamson Diamond Mine (also known as Mwadui Mine), and *Jambo Food Products Company Ltd*.<sup>379</sup> *Williamson Diamonds Ltd* has been playing its CSR role through building schools and hospitals in the local community, accessed by employees and community members. It has also contributed an estimated Tshs. 6 billion to sponsor construction of classrooms, government offices in vilalges (Kishapu District), medical supplies and improvement of water infrastructure.<sup>380</sup> *Jambo Food Products Ltd* sponsors *Stand United Football Club* and has a water tap at its entrance to provide free water services to members of the local community. This is the right approach, in LHRC's view, considering the water shortage problems in Shinyanga

<sup>376</sup> Ibid.

<sup>377</sup> LHRC Human Rights and Business Study 2017, Tanga Field Report.

<sup>378</sup> Ibid.

<sup>379</sup> LHRC Human Rights and Business Study 2017, Shinyanga Field Report.

<sup>380</sup> Ibid.



Region.<sup>381</sup> Another company that was visited and practises CSR, *Fang Hua Investment Company Ltd*, indicated that had contributed Tshs. 1 million to the local authorities.<sup>382</sup>



Picture 32: A school (left) and a hospital (right) built by Williamson Diamonds Ltd



Picture 33: Stand United Football Club's bus (left) and a water tap (right) sponsored by Jambo Food Products Company Ltd

#### 5.4.2. Limited Understanding of CSR among companies and community members

As indicated in subchapter 5.2 above, CSR in Tanzania is mainly understood in the lines of charitable contributions. CSR practices among companies that were visited also point towards this direction, as indicated above. However, CSR in the contemporary world goes beyond philanthropy.<sup>383</sup> CSR knowledge is higher among international businesses and lower among local businesses.

In their journal article on aspects on CSR published in 2008, *Mohamemend Bela Uddin, Riad Hassan and Kazi Tarique* identify three aspects of CSR that may help to explain the extent of

<sup>381</sup> Ibid.

<sup>382</sup> Ibid.

<sup>383</sup> See Karen Mader (supra).

CSR and can be applicable in Tanzania.<sup>384</sup> The three dimensional aspects are the **Economic Aspects**, **Social Aspects** and **Environmental and Ecological Aspects**, summarized in the box below.

#### **Economic Aspects of CSR**

- The multiplier effect (economic performance of company affecting different stakeholders directly and indirectly, attracting service industry, government programs and community activities)
- Contribution through taxes (companies complying with their tax obligations for the welfare of local community, refraining from tax avoidance and evasion)
- Avoiding actions that damage trust (such as corruption and tax avoidance)

#### **Social Aspects of CSR**

- Responsibility towards customers (respect for customers, quality goods and services, value for money)
- Responsibility towards employees (guaranteeing labour rights such as safe working conditions and fair remuneration)
- Responsibility towards the community (sponsorships, trainings, donations, e.t.c)

#### **Environmental and ecological aspects of CSR**

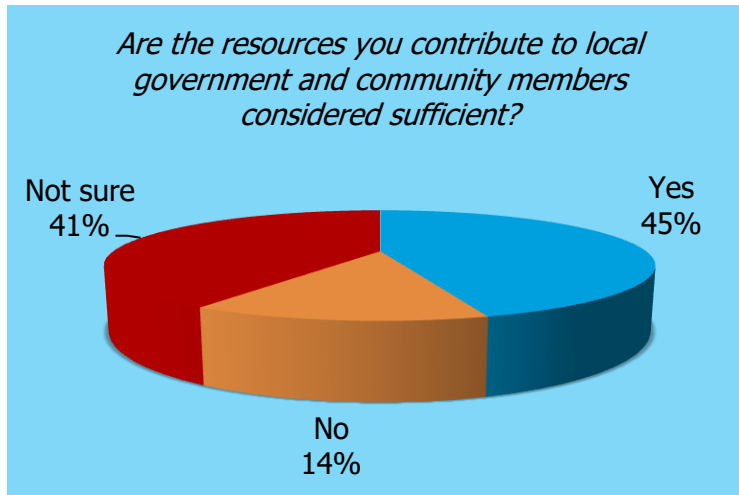
- The environmental impact (conducting environmental impact assessments, addressing environmental impacts, establishing environmental management system)
- The win-win of environmental responsibility (improving environmental performance, environmental-friendly activities)

Businesses, including companies, are therefore expected to act ethically in their business operations and operate in socially-acceptable ways, thinking about employees, community members, the environment and stakeholders. In short, they must act in a way that protects the interests of the local community. This cannot happen through charitable contributions alone, but also by refraining from adversely impacting the environment; respecting labour and human rights; and respecting consumer/customer rights (to ensure customary satisfaction), community members being consumers of goods and services produced or provided by businesses. This will enable businesses to obtain a social license to operate and guarantee greater benefits in the long run and guarantee sustainability.

#### **5.4.3. Almost half of community members are not satisfied with CSR activities**

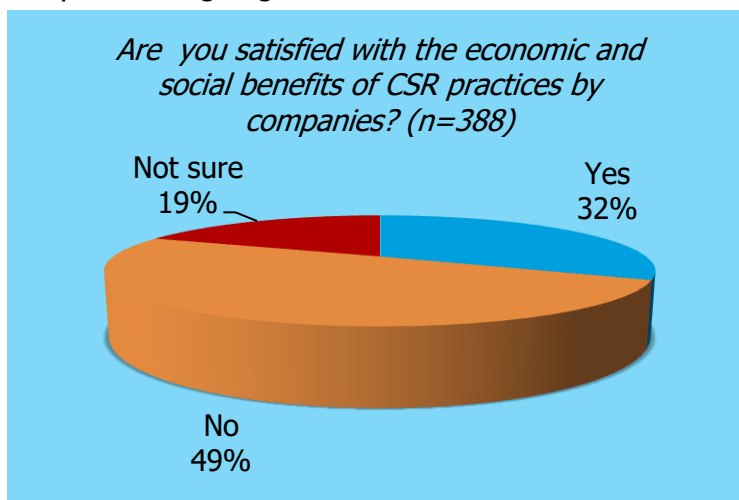
During the study on human rights and business, corporate management officials at companies that were visited were asked whether what they give back to the community is considered sufficient. As indicated in the figure below, majority of the respondents (45%) indicated that their CSR activities are considered sufficient, while 41% were not sure and 14% said No.

<sup>384</sup> See Mohammed Belal Uddin et al, "Three Dimensional Aspects of Corporate Social Responsibility" (2008), Daffodil International University Journal of Business and Economics, Vol. 3, No. 1, at <https://kantakji.com/media/3450/z111.pdf>, accessed 12<sup>th</sup> June 2018.



**Figure 27: %Responses of corporate management officials on sufficiency of resources contributed as part of CSR**

However, when asked whether they were satisfied with the CSR practices of the companies in their respective communities, majority of community members who were engaged as respondents indicated they were not, as shown in the figure below. 32% indicated they were satisfied with what companies are giving back to their communities, while 19% were not sure.

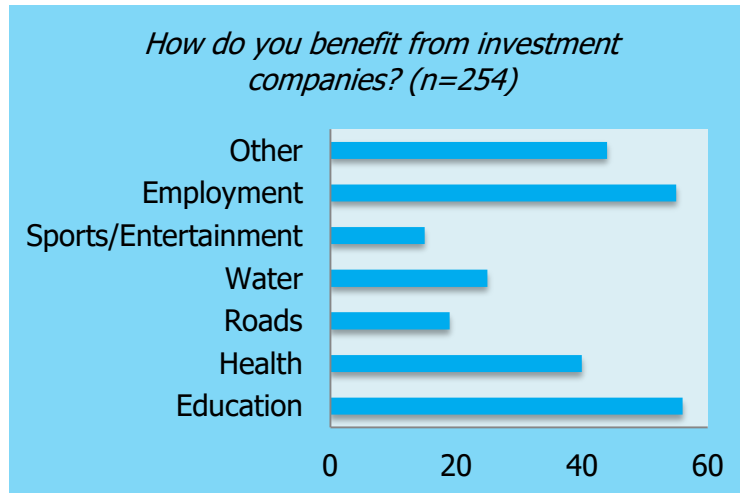


**Figure 28: %Respondents satisfied and not satisfied with CSR practices and benefits**

#### 5.4.4. Most CSR practices seek to improve education

Community members were asked how they feel they benefit most from CSR activities. Majority of them indicated that they feel they benefit through support of education in their communities, followed by employment opportunities. Health, water and roads were also identified as benefits that come with CSR practices, as indicated in the figure below.





**Figure 29: Responses on how community members benefit from investment companies**

## 5.5. Environmental Responsibility in 2017: Study findings

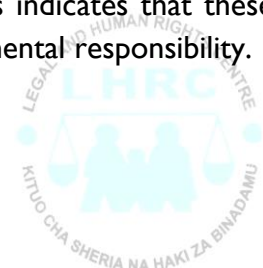
4.-(1) Every person living in Tanzania shall have a right to clean, safe and healthy environment.  
*Environmental Management Act 2004*

As indicated above, Corporate Environmental Responsibility (CER) is part of CSR and businesses have a duty to undertake initiatives to promote greater environmental responsibility and take a precautionary approach to environmental challenges. LHRC study on business and human rights for the year 2017 revealed that:

- A significant number of companies do not do much to promote greater environmental responsibility and take a precautionary approach to environmental challenges, as they do address environmental concerns and do not have in place a policy on sustainable use of natural resources;
- A significant number of companies do not provide remedy to people adversely affected by pollution caused by their operations; and
- Very few community members were involved in social impact assessment.

### 5.5.1. A significant number of companies do not effectively address environmental concerns

Corporate management officials at 55 companies were asked whether they have a mechanism for addressing environmental concerns or complaints at their company. While 56% of the respondents stated they had the mechanism in place, the remaining 44% stated they did not have such a mechanism, which is a significant number of companies. This indicates that these companies are not complying with their duty to promote greater environmental responsibility.





**Figure 30: Availability of a mechanism of addressing complaints or concerns about environment**

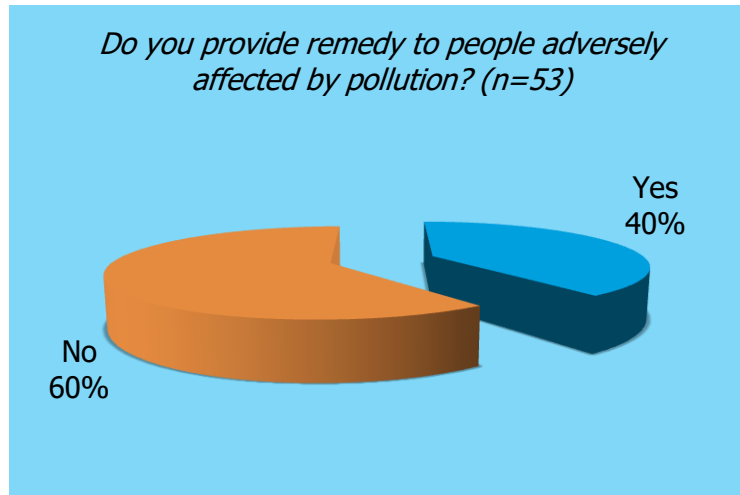
Corporate management officials were also asked about having a policy on sustainable use of natural resources, and the findings were somewhat similar to those above as 42.3% of the respondents said they did not have the policy. 57.7% indicated that they have the policy on sustainable use of natural resources.<sup>385</sup> Again, this contravenes their environmental responsibility and their responsibility to respect human rights, which includes a policy commitment to meet such responsibility.<sup>386</sup> As indicated in subchapter 5.6 below, the major human rights concern among community members is environmental pollution. Consequently, having in place a mechanism for addressing concerns about environment is very important.

### **5.5.2. Lack of remedy for people adversely affected by pollution caused by company operations**

When asked whether they provide remedy to people adversely affected by pollution caused by company operations, most companies stated they do not. 60% of the companies do not provide such remedy, while only 40% do so.

<sup>385</sup> LHRC Human Rights and Business Study 2017, Questionnaire Data.

<sup>386</sup> See Principle 15(a) of the UN Guiding Principles on Business and Human Rights.



**Figure 31: Provision of remedy to people adversely affected by pollution caused by company operations**

Deliberate measures should be taken to provide remedy for pollution caused by business enterprises, as a 2015 report by *The Lancet*<sup>387</sup> on pollution indicates that it is one of the world's biggest killers, causing diseases such as asthma, cancer, stroke as well as causing developmental delays in children.<sup>388</sup> According to the report, pollution caused 9 million deaths worldwide in 2015, with air pollution leading with 6.5 million deaths, followed by water pollution at 1.8 million deaths.<sup>389</sup> The report further reveals that more than 90% of such deaths occur in low and middle income and rapidly industrializing countries such as India, Pakistan, China, Bangladesh, Madagascar and Kenya.<sup>390</sup>

### **5.5.3. Little involvement of community members in social impact assessment**

The study findings also show that most of the companies are not undertaking steps to engage communities in assessing social and environmental impacts of before investment. When asked whether they participated in social impact assessment before investor started operations, an overwhelming majority of respondents said *No*, while 21.8% said they had. Only 4.4% of the respondents said they have participated in such assessment.

<sup>387</sup> A weekly peer-reviewed general medical journal.

<sup>388</sup> See Global Health Alliance on Health and Pollution, "Press Release: The Lancet Commission on Pollution and Health" at <http://gahp.net/press-release-lancet-commission-pollution-health/>, accessed 12<sup>th</sup> June 2018.

<sup>389</sup> *Ibid.*

<sup>390</sup> *Ibid.*



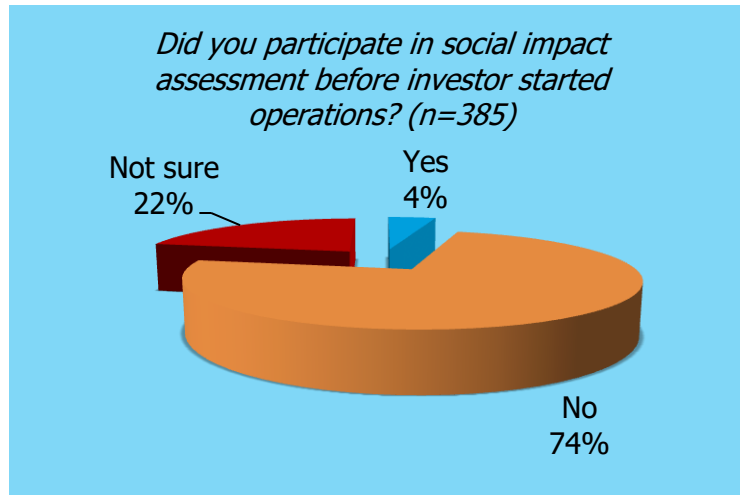


Figure 32: %Responses on participation in social impact assessment

While the study shows there is little involvement of community members in social impact assessment (SIA), this assessment and environmental impact assessment (EIA) are important in protecting the environment and the right to clean, safe and healthy environment; and is a legal requirement under the Environmental Management Act.<sup>391</sup> In her speech, delivered during the commemoration of the World Environment Day in Butiama-Mara Region in June 2017, the Vice-President - Hon. Samia Suluhu Hassan - insisted on protecting the environment in this era of industrialization.<sup>392</sup> She noted that it is important to comply with the Environmental Management Act 2004 and its regulations, including conducting environmental impact assessment (EIA) as a way of ensuring environmental safety and sustainable economic development.<sup>393</sup> A recent paper about environment and industrialization also stresses on the importance of adherence to EIA in the industrialization agenda and businesses to ensure they incorporate environmental issues in their plans.<sup>394</sup>

<sup>391</sup> See Section 4(1) of the Environmental Management Act 2004.

<sup>392</sup> See HOTUBA YA MHESHIMIWA SAMIA SULUHU HASSAN, MAKAMU WA RAIS WA JAMHURI YA MUUNGANO WA TANZANIA KWENYE KILELE CHA MAADHIMISHO YA SIKU YA MAZINGIRA DUNIANI, YALIYOFANYIKA KITAIFA BUTIAMA, MKOANI MARA TAREHE 4 JUNI, 2017 [Speech by Hon. Samia Suluhu Hassan, Vice-President of the United Republic of Tanzania during the Commemoration of the World Environment Day in Butiama, mara Region on 4<sup>th</sup> June 2017], at [http://www.nemc.or.tz/uploads/publications/en1497691923-New%20HOTUBA%20YA%20MAKAMU%20Butiama%20%202017%20%20-RASIMUJI-I\\_1100\(2\).pdf](http://www.nemc.or.tz/uploads/publications/en1497691923-New%20HOTUBA%20YA%20MAKAMU%20Butiama%20%202017%20%20-RASIMUJI-I_1100(2).pdf), accessed 12<sup>th</sup> March 2018.

<sup>393</sup> Ibid.

<sup>394</sup> See Eng. B. T. Baya & Menan H. Jangu PhD "ENVIRONMENTAL CONSIDERATION FOR SUSTAINABLE INDUSTRIALIZATION IN TANZANIA" The National Environment Management Council, March, 2017, at <http://www.nemc.or.tz/uploads/publications/en1508331411-Environmental%20Consideration%20for%20Industrialization%20in%20Tanzania.pdf>, accessed 20<sup>th</sup> March 2018.

## 5.6. Corporate Respect for Human Rights

### 5.6.1. Overview: Corporate responsibility to respect human rights

When businesses/companies fail to comply with the relevant national, regional and international labour and human rights standards, they cause labour and human rights violations. They must therefore abide by these standards and avoid causing or contributing to adverse human rights impacts related to **business operations, products made and services provided**. But when they are complicit in human rights abuses, they should ensure the **victims have access to remedy**.

Corporate responsibility to respect human rights stems from the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the ILO Declaration on Fundamental Principles and Rights at Work.<sup>395</sup> This responsibility is contained in the UN Guiding Principles on Business and Human Rights, and following five foundational principles:

11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.

13. The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts.

<sup>395</sup> Principle 12 of the UN Guiding Principles on Business and Human Rights.



15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

(a) A policy commitment to meet their responsibility to respect human rights;

(b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;

(c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

There are several ways a business can fail to respect and therefore violate human rights. The table below provides examples of human rights violations by businesses.

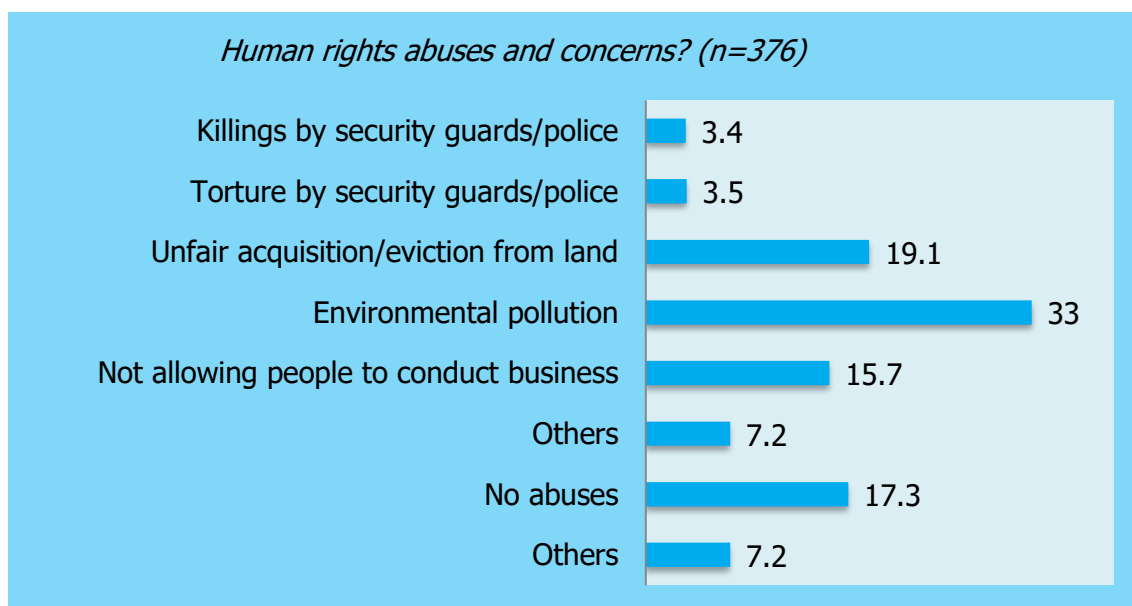
**Table 10: Possible human rights violations by businesses**

Human Right	Example(s) of How it can be Violated by Business
<b>Right to life</b>	<ul style="list-style-type: none"> <li>• Business activities that pose threat to health of workers.</li> <li>• Community members or security officials of a mining company (private or police) using excessive force against workers or community members.</li> <li>• Company selling substandard food products.</li> <li>• Disregard of occupational health and safety</li> </ul>
<b>Right to health</b>	<ul style="list-style-type: none"> <li>• Company selling substandard food products.</li> <li>• Disregard of occupational health and safety</li> <li>• Environmental pollution</li> </ul>
<b>Right to education</b>	<ul style="list-style-type: none"> <li>• Child labour</li> </ul>
<b>Right to privacy</b>	<ul style="list-style-type: none"> <li>• Disclosing information of employees to another party illegally</li> </ul>
<b>Right to non-discrimination</b>	<ul style="list-style-type: none"> <li>• Employees or job applicants denied an opportunity unfairly</li> </ul>
<b>Right to work</b>	<ul style="list-style-type: none"> <li>• Unfair termination/dismissal</li> </ul>
<b>Right to family life</b>	<ul style="list-style-type: none"> <li>• Denial of leave</li> <li>• Disregard of working hours limit</li> </ul>
<b>Right to just and favourable working environment</b>	<ul style="list-style-type: none"> <li>• Disregard of occupational health and safety</li> <li>• Unfair/inadequate wages</li> </ul>
<b>Right to form and join trade unions</b>	<ul style="list-style-type: none"> <li>• Discouraging or preventing workers from forming or joining trade unions</li> </ul>



### 5.6.2. Reported human rights abuses and concerns: study findings

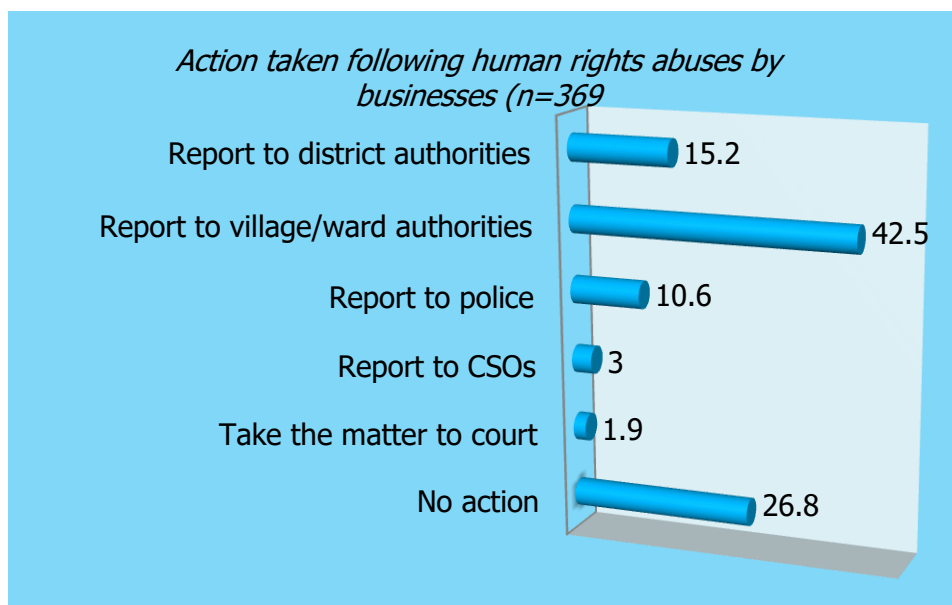
During the study on business and human rights in Tanzania Mainland, community members that were engaged were asked about common human rights abuses by businesses/companies. Majority of the respondents mentioned environmental pollution caused by businesses as a major human rights concern, as indicated in the figure below. 19.1% of the respondents mentioned unfair acquisition/eviction from land as common human rights abuse, while 15.7% complained about not being free to conduct their businesses in areas surrounding companies. However, 17.2% of the respondents stated that there are no human rights abuses by businesses/companies.



**Figure 33: %Responses on types of human rights abuses by businesses and concerns**

When asked what action they took following human rights abuses by businesses, majority of respondents (42.5%) stated that they reported the matter to village/ward authorities. This question was designed to determine whether community members report human rights abuses by businesses. However, a quarter of the respondents (26.8%) stated they took no action, while 15.2% referred the matter to district authorities and 10.6% reported to the police.

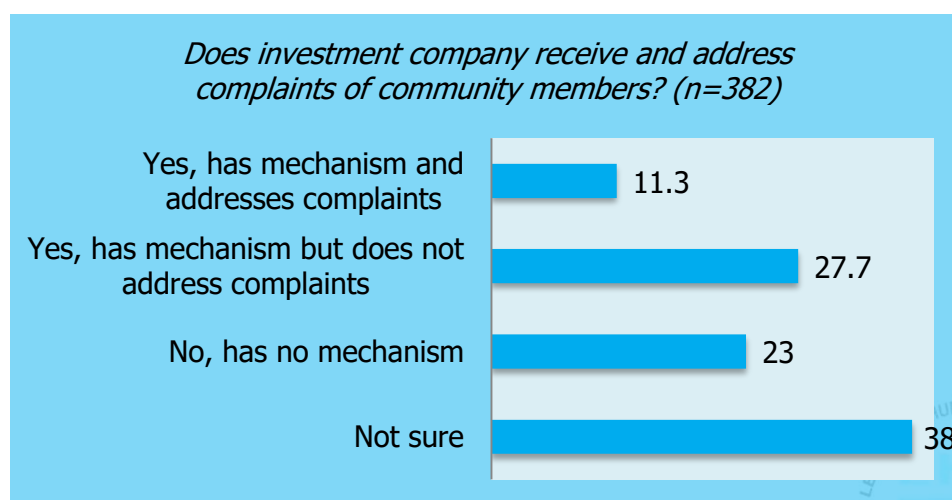




**Figure 34:** %Responses on action taken following human rights abuses by businesses

### 5.6.3. Limited access to remedy: the case of grievance mechanisms

Respondents in the regions that were studied in Tanzania Mainland were asked about grievance mechanism. They were asked whether investment companies within their communities receive and address complaints by community members. 27.7% of the respondents stated that there is a mechanism but the companies do not address complaints by community members, while 23% said there is no such mechanism, as indicated in the figure below. Only 11.3% of the respondents claimed there is a mechanism and it addresses complaints, while the majority of respondents (38%) were not sure whether such mechanisms exist or not.



**Figure 35:** %Responses on availability of complaints mechanism at investment companies

From the figure above, it can be observed that over 50% respondents either do not have access to remedy through grievance mechanism because such mechanism does not exist or because it

exists but does not address complaints by community members. A significant number of respondents (38%) also indicated they were not sure if such a mechanism exists or not. This raises the issue of awareness about grievance mechanisms among community members and knowing where to access remedy.

#### 5.6.4. Concern over human rights violations at Acacia's North Mara Mine

In 2017, the local and international community showed concern over human rights abuses at Acacia Mining Company's North Mara Mine, located in Mara Region. In response this, seven rights groups, three local and four foreign,<sup>396</sup> wrote an open letter to Hon. President John P. Magufuli, seeking his intervention to address human rights abuses at the mine.<sup>397</sup> In March 2017, it was reported that Acacia confirmed 32 "trespasser-related" fatalities between 2014 and 2016. It was also revealed that a parliamentary probe into complaints at North Mara Mine indicated reports of 65 killings and 270 people injured by police jointly responsible for mine security.<sup>398</sup> In September 2017, it was further reported that the International Commission of Jurists (ICJ) visited the North Mara Mine and expressed concern about the human rights situation, including lack of access to adequate/effective remedy. An earlier assessment of Acacia's grievance mechanism by LHRC and other rights groups revealed that the mechanism fell short of human rights standards and effectiveness criteria set out in the UN Guiding Principles on Business and Human Rights.<sup>399</sup>

The open letter to President Magufuli was written in October 2017 and urged the President to include and address the matter of human rights concerns at Acacia's North Mara Gold Mine under the framework agreement with Barrick Gold Corporation,<sup>400</sup> which is the main shareholder at Acacia Mining Company. The rights groups called for provision of adequate compensation to victims of human rights abuse and judicial investigation into alleged unlawful use of force by members of the Tanzanian police and North Mara's mine security.<sup>401</sup>

<sup>396</sup> Local rights groups were LHRC, Tanzania Human Rights Defenders Coalition (THRDC) and HakiRasilimali. Foreign rights groups were RAID, Mining Watch Canada, CORE and London Mining Network.

<sup>397</sup> See RAID, "Acacia Mining Fails to Address Rights Abuses in Tanzania" at <http://www.raid-uk.org/blog/acacia-mining-fails-address-rights-abuses-tanzania>, accessed 12<sup>th</sup> June 2018.

<sup>398</sup> Ibid.

<sup>399</sup> Ibid.

<sup>400</sup> See Joint open NGO letter to President Magufuli over human rights abuses at North Mara Mine at <http://www.humanrights.or.tz/assets/images/upload/files/Joint%20NGO%20Letter%20to%20Tanzanian%20President%2025%20October%202017%20%20.pdf>, accessed 12<sup>th</sup> June 2018.

<sup>401</sup> Ibid.

## CHAPTER SIX: GENDER AND OTHER FORMS OF DISCRIMINATION IN THE BUSINESS SECTOR

### 6.1. Introduction: Gender issues in the business sector

Women play a big role in driving the economy in the private sector and micro, small and medium enterprises (MSMEs), whereby they own more than 50% of the enterprises, most of them microenterprises.<sup>402</sup> A number of interventions have been made to support women in the business sector to guarantee their economic growth by both the Government and private sector. The interventions have geared towards mainstreaming gender perspective into policies, programmes and strategies. As a result, key government plans and policies make reference to importance of gender balance and promotion of women's economic rights. For instance, one of the objectives of the Tanzania Five Year Development Plan 2016/17-2020/21 (FYDP II) is to "Accelerate economic growth while making sure that the quality of that growth will benefit the majority of the people in terms of significant poverty reduction and job creation especially for the youth and women." In 2000, the Women and Gender Development Policy was adopted, followed by adoption of the National Strategy for Gender Development (NSGD), with the aim of ensuring effective implementation of the policy. Among the areas of gender concern in Tanzania are employment and economic empowerment.<sup>403</sup>

In the formal sector of employment, despite the efforts made to promote women's economic rights, there is still need to increase female participation as women account for less than 40% of employees, according to the National Bureau of Statistics (NBS).<sup>404</sup> Men also continue to dominate in wages paid,<sup>405</sup> as most women continue to take low paid jobs and positions. The Tanzania Integrated Labour Force Survey 2014 indicates that in Dar es Salaam and other urban areas, the number of unemployed females is twice that of males.<sup>406</sup>

<sup>402</sup> See Neema Mori, *Women's Entrepreneurship Development in Tanzania: Insights and Recommendations*, Institute of Management and Entrepreneurship Development, ILO, p. 1 at [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/---ifp\\_seed/documents/publication/wcms\\_360426.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/publication/wcms_360426.pdf), accessed 20<sup>th</sup> April 2018.

<sup>403</sup> See Ministry of Community Development Gender And Children, *National Strategy For Gender Development*, p. 5, at [http://www.mcdgc.go.tz/data/Tanzania\\_-\\_National\\_Strategy\\_for\\_Gender\\_Development.pdf](http://www.mcdgc.go.tz/data/Tanzania_-_National_Strategy_for_Gender_Development.pdf), accessed 20<sup>th</sup> April 2018.

<sup>404</sup> See National Bureau of Statistics, *Formal Sector Employment And Earnings Statistics, Tanzania Mainland 2005-2014*, May 2015, at [http://www.nbs.go.tz/nbs/takwimu/labour/Leaflet-FORMAL\\_SECTOR\\_EMPLOYMENT\\_AND\\_EARNINGS\\_TANZANIA\\_MAINLAND\\_2005-2014.pdf](http://www.nbs.go.tz/nbs/takwimu/labour/Leaflet-FORMAL_SECTOR_EMPLOYMENT_AND_EARNINGS_TANZANIA_MAINLAND_2005-2014.pdf), accessed 20<sup>th</sup> April 2018.

<sup>405</sup> See the Ministry of Health, Community Development, Gender, Elderly and Children "Gender and Economic Growth in Tanzania; Creating Opportunities for Women" at [http://www.mcdgc.go.tz/index.php/publications/more/gender\\_and\\_economic\\_growth\\_in\\_tanzania\\_creating\\_opportunities\\_for\\_women/](http://www.mcdgc.go.tz/index.php/publications/more/gender_and_economic_growth_in_tanzania_creating_opportunities_for_women/), accessed 20<sup>th</sup> April 2018.

<sup>406</sup> See National Bureau of Statistics (NBS) [Tanzania] 2014. Tanzania Integrated Labour Force Survey 2014, Dar es Salaam, Tanzania: NBS, p. 63.

Women dominate the informal sector, which is said to be the second main employing sector after agriculture.<sup>407</sup> In this sector, women, especially urban women, face a number of challenges related to gender. Some of the challenges are highlighted in the box below:

#### **Challenges Faced by Women in the Informal Sector**

- Inadequate capital
- Lack of access to affordable loans
- Denial of property rights, hence no collateral for loans
- Low awareness on women's rights
- Complicated and long procedures for business start-up
- Laws and regulations which are more in line with large enterprises as opposed to microenterprises
- Cultural/traditional attitudes relating to gender roles
- Gender-based violence, including sexual violence by corrupt officials in the business sector
- Low level of education and entrepreneurship skills
- Markets for business products and suitable business location

## **6.2. Situation of women engagement in the business sector**

Initiatives to empower women in the business sector have resulted into increased engagement of women in the sector, witnesses by an increase of women employed and self-employed. Although we are not yet in the desired situation, the signs are promising and the gap is slowly closing in most sectors. The Integrated Labour Force Survey 2014 indicates that 9,887 women are employed in different sub-sectors of the industrial sector, while the number of men stands at 10,144, the difference being 257.

<sup>407</sup> See Policy Forum “The Power of Tanzania’s Informal Economy: Unveiling the Concealed Opportunities” at <https://www.policyforum-tz.org/power-tanzania%E2%80%99s-informal-economy-unveiling-concealed-opportunities>, accessed 20th April 2018.





Industry	Women	Men
Agriculture, forestry and fishing	69.9	64
Mining and quarrying	0.4	1.7
Manufacturing	2.6	3.6
Construction	0.1	4.0
Wholesale and retail trade; repair of motor vehicles and motorcycles	12.8	12.4
Transportation and storage	0.2	5.0
Accommodation and food service activities	6.5	1.4
Administrative and support service activities	0.3	1.0
Education	2.1	2.1
Human Health and social work activities	1.0	0.7
Other	4.1	4.1
<b>Total</b>	<b>100.0</b>	<b>100.0</b>
<b>Total Number</b>	<b>9,887</b>	<b>10,144</b>

Picture 34: Proportion of women and men employed in different sectors

Source: Integrated Labour Force Survey, 2014

Improved situation of women engagement in the business sector is a result of continued efforts by the Government, civil society and other stakeholders advocating for women's economic rights, including right to property, right to work and right to fair remuneration. As highlighted in subchapter 6.1 above, the legal framework has been improved to accommodate and safeguard women's rights and gender perspective mainstreamed in different plans, policies and strategies, including those related to businesses and economic development. As a result, more women are given or have access to economic opportunities and their chances of securing employment have been boosted. For instance, there are now many women employed in food processing industry. Women are also doing jobs that were traditionally seen as belonging to men, including in the mining and transportation sectors.

When asked why they have employed more women than men during the study on business and human rights, company officials noted that women are more likely to comply with health and safety standards required in food processing compared to men.<sup>408</sup> This is good news for women, as they face many challenges in accessing employment, including discrimination.

<sup>408</sup> LHRC Human Rights and Business Study 2017, Mtwara Field Report.





Picture 35: Women employed at different companies in Mtwara and Mbeya Regions



Picture 36: Women working in the transportation sector





Picture 37: Women working in the mining sector at some of the companies that were visited

### 6.3. Gender discrimination when seeking employment and at work

The Constitution of the United Republic of Tanzania prohibits discrimination of any kind.<sup>409</sup> With respect to work, the Constitution provides that, without discrimination of any kind, every person is entitled to remuneration commensurate with his work.<sup>410</sup> One of the major protections in the Employment and Labour Relations Act (ELRA) is prohibition of discrimination at workplace. It prohibits an employer from discriminating, directly or indirectly, against an employee on different grounds, including sex and gender.<sup>411</sup> The Act also states that ‘employee’ includes a person seeking employment.<sup>412</sup> Prohibition of discrimination based on gender is also prohibited under regional and international conventions on rights of women, including the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol).

One of the obvious observations made by LHRC research teams during the study on business and human rights in Tanzania Mainland was the gap between male and female employees. Overall, more men were seen at workplaces, compared to women, save for some of the companies, especially food processing industries. Consequently, more men were engaged as respondents during the study, than women. Officials at some companies, including Shanta Mining Company, mentioned that some the nature of some jobs require employment of more men than women. However, LHRC is of the view that this has more to do with negative

<sup>409</sup> See Article 13(1) of the Constitution of the United Republic of Tanzania 1977.

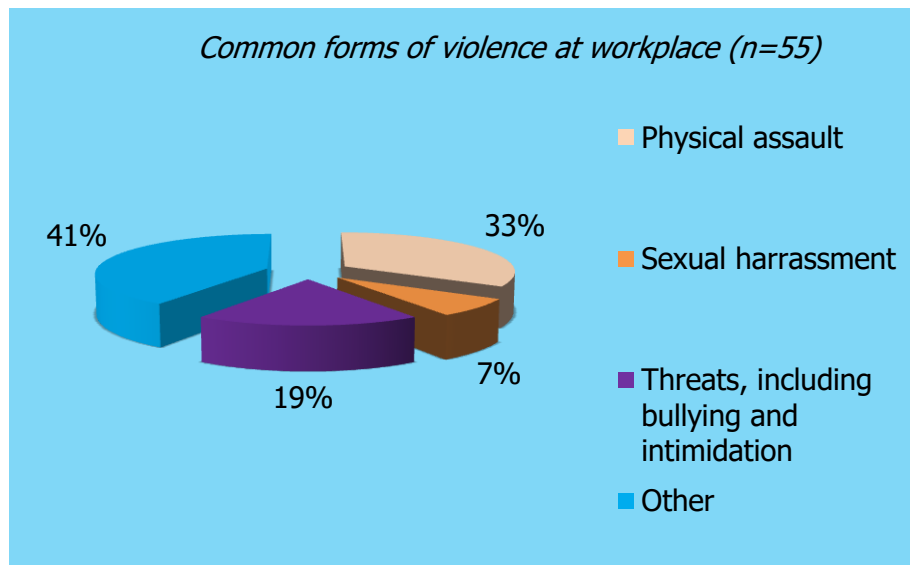
<sup>410</sup> Ibid, Article 23(1).

<sup>411</sup> See Section 7(4) (h) & (i) of Employment and Labour Relations Act No. 6 of 2004.

<sup>412</sup> Ibid, Section 7(9) (b).

perception than actual inability of women to do certain jobs. In some cases, women themselves tend to think that such jobs are for men and decide not to even give them a try.

The study on business and human rights also revealed forms of violence that are common at workplaces as part of discrimination, especially against women. As indicated in the figure above, these include physical assault, sexual harassment and threats and bullying (psychological violence). Violence experienced women at home and workplaces prevents them from earning an income and restricts business productivity and profitability.<sup>413</sup>



**Figure 36: Common forms of violence at workplace**

Due to limited understanding of violence against women, some forms of such violence, such as sexual harassment are considered to be normal. Women in both formal and informal sector face such violence, including unwanted touching of body parts. Awareness about women's rights and GBV is lower among women in the informal sector, leaving them at greater risk of violence against women at workplaces. Women traders, such as food vendors, also experience economic violence at their business places, including men refusing to pay for food. They are also more likely to experience verbal abuse or insults compared to their counterparts in the formal sector. Women employed in bar and hotel businesses also face various forms of violence, including verbal abuse and sexual violence.

Most women fear reporting such acts of violence against them for different reasons, including fearing losing their jobs, losing customers, not knowing where to get help and believing that no action will be taken against perpetrators. Others tend to fear not being taken seriously when they report sexual harassment, as revealed by legal aid clients attended by LHRC. Efforts to

<sup>413</sup> Women, Gender Violence and Economic Empowerment in Tanzania (IWD2017) available at [www.tgnp.org](http://www.tgnp.org) (accessed on 26<sup>th</sup> June 2018)

provide education and raise awareness about women's rights must be taken to address violence against women at workplaces.



**Picture 38: A woman vendor operating with a tricycle in Tabata, Dar es Salaam, who claims to frequently experience sexual harassment**



**Picture 39: A warning against gender based violence at workplace at Mohammed Enterprises Tanzania Limited's sisal factory in Tanga Region**

Trade unions must take appropriate steps to raise awareness on gender-based violence at workplace and provide relevant support whenever needed. Since the unions are regarded as the entities that can have a direct engagement with employers and employees then some of the most crucial initiatives to end and alleviate sexual harassment and other forms of violence at workplace shall be undertaken by them.

It is advised that, there are different mechanisms and roles that the trade unions can play in enhancing status of female workers at the work places. Some of them include and not limited to the following:<sup>414</sup>

- Negotiate policies, procedures and awareness-raising actions at sectorial and company level;
- Produce model workplace policies, and train workplace trade union representatives to negotiate agreements and policies on sexual harassment and violence;
- Ensure health and safety and wellbeing initiatives include solutions to harassment and violence against women; and
- Provide information and support to workers experiencing violence and harassment at work or at home.

Businesses must employ a gender-sensitive approach to promote equality and address gender discrimination at workplace. “A gender-sensitive perspective can help companies to recruit and retain the best employees, make the best use of human resources, improve productivity and competitiveness, as well as the public image. Under-valuing of women’s work and under-utilization of their skills is a loss for the economy.”<sup>415</sup> Addressing gender discrimination at workplace will thus help to improve the overall working environment for women and in turn boost performance and increase productivity. It is also an important step towards achieving the sustainable development goal of gender equality and empowerment of women and girls.<sup>416</sup>

Gender pay gap<sup>417</sup> is also a challenge for most women. According to the World Economic Forum, Tanzania has ranked number 68 out of 144 in 2017 gender gap in matters related to social and economic status in comparison to rank number 24 out of 115 in the year 2016. This shows that despite availability of laws and policies prohibiting discrimination in terms of gender, the pace of reducing gender gap continues to be slow.

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<sup>414</sup> See Trade Unions: no more brushing sexual harassment & violence under the table available at [www.etic.org](http://www.etic.org), accessed on 13rd June 2018

<sup>415</sup> Lisa, W. (2009) Gender Equality and the Corporate Sector, UNECE, Geneva Switzerland; Kapombe, M. (2015) gender based Violence at the Workplace, University of Zambia and Allied Workers Union, Zambia

<sup>416</sup> Goal No. 5 of the United Nations Sustainable Development Goals: 17 Goals to Transform the World, 2015

<sup>417</sup> The gender wage gap is the difference between wages earned by men and wages earned by women. The gap can be measured in various ways, but the most common method is to look at full-time, full year wages. It is also possible to measure the gender wage gap on the basis of hourly wages. Other ways of calculating the gender wage gap include the comparison of annual earnings for both full- and part-time workers and comparing the hourly wages for full- and part-time workers

KEY INDICATORS				
GDP (US\$ billions)				47.43
GDP per capita (constant '11, intl. \$, PPP)				2,583.28
Total population (1,000s)				55,572.20
Population growth rate (%)				3.09
Population sex ratio (female/male)				0.98
Human Capital Index score				53.58
		2006		2017
	rank	score	rank	score
<b>Global Gender Gap score</b>	<b>24</b>	<b>0.704</b>	<b>68</b>	<b>0.700</b>
Economic participation and opportunity	1	0.809	69	0.674
Educational attainment	97	0.859	125	0.910
Health and survival	95	0.967	62	0.976
Political empowerment	26	0.180	44	0.239
rank out of	115		144	

**Figure 37: Tanzania gender gap score 2017: World Economic Forum**  
Source: The Global Gender Report 2017

#### 6.4. Discrimination based on race and tribe

Racial discrimination just like any other kind of discrimination is strongly prohibited and should not be employed by employers at any cost, as is the case for discrimination based on tribe. Like other forms of discrimination, it is prohibited under international conventions on women's rights, the Maputo Protocol, the Constitution of the United Republic of Tanzania and the Employment and Labour Relations Act 2004. The international labor standards advocates for equality of employees and employment conditions favorable for all despite their differences in ethnicities, races, tribes, religion and colors of their skins.<sup>418</sup>

During the study on business and human rights across 15 regions of Tanzania Mainland, only one claim of racial discrimination was made, at *NeelKath Company Ltd* in Tanga Region. However, the research team observed that the workers who were complaining about this form of discrimination did not have a clear understanding of the matter and based on what they said there is racial discrimination at the company. They raised a concern that there are two human resources officers, one of Indian origin and the other a Tanzanian. In the absence further information showing existence of racial discrimination, the research team could only reach a conclusion that there was no racial discrimination.<sup>419</sup>

With regards to discrimination based on tribe, complaints were made by about 10 workers who were interviewed by LHRC research teams. Such claims were especially made within the Lake Zone in regions such as Mwanza, Shinyanga and Geita.

<sup>418</sup> Article I of the ILO Convention on Discrimination (Employment and Occupation) No. 111 of 1958

<sup>419</sup> LHRC Human Rights and Business Study 2017, Tanga Field Report

## 6.5. Access to employment by persons with disabilities (PWDs): Survey findings

It is globally recognized that everyone has to enjoy the right to work, with equal opportunities to gain living by work; and States have a duty to protect such a right.<sup>420</sup> This includes persons with disabilities (PWDs). The Convention on the Rights of Persons with Disabilities (CRPD) provides for rights of PWDs, calling for States to recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.<sup>421</sup> It also provides for the right of PWDs to work on an equal basis with others, including 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 PWDs.<sup>422</sup>

### Steps required to be taken by States to promote realization of PWDs' right to work include:

- Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
- Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including protection from harassment, and the redress of grievances;
- Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
- Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
- Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
- Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

#### *Article 27 of CRPD*

In 2010, the Persons with Disabilities Act was enacted, domesticating the CRPD and seeking to ensure implementation of the National Policy on Disability of 2004. The Act provides for various rights of PWDs, including the right to access to public buildings<sup>423</sup> and right to

<sup>420</sup> Article 6 of the International Covenant on Economic, social and Cultural Rights, 1966

<sup>421</sup> See Article 5(1) of the Convention on the Rights of Persons with Disabilities 2006.

<sup>422</sup> Ibid, Article 27(1).

<sup>423</sup> Section 35 of the Persons with Disabilities Act 2010.





employment.<sup>424</sup> It also prohibits discrimination of PWDs in employment,<sup>425</sup> not treating them differently in relation to issues such as advertisement of employment, recruitment for employment, remuneration, training and employment benefits.<sup>426</sup> Employers are also required to ensure safe and healthy working conditions for all PWD employees and protect them from harassment.<sup>427</sup> The Minister responsible for PWD affairs is empowered, in consultation with the Minister responsible for labour, to make regulations requiring every employer with the work force of twenty and above to employ PWDs based on a quota system and to ensure that 3% of it constitutes PWDs.<sup>428</sup>

Despite a sound legal framework on PWDs, in practice PWDs do not have much access to employment. Most of them find themselves unemployed and unable to easily to access employment as discrimination against them continues to exist. Most employers are still reluctant to employ PWDs, believing they may not be capable of fully performing their duties like other people. There is generally a misconception that they are not fit for work or employment.<sup>429</sup> According to SHIVYAWATA, a federation of PWD organizations in Tanzania, one of the major challenges currently faced by PWDs is unemployment.<sup>430</sup> The negative perception against PWDs is still a big problem among a large section of the society, believing that PWDs are people who cannot help themselves and always dependent, something that is not true.

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<sup>424</sup> Ibid, Section 31.

<sup>425</sup> Ibid, Section 33.

<sup>426</sup> Ibid.

<sup>427</sup> Ibid, Section 34(1).

<sup>428</sup> Ibid, Section 31(2).

<sup>429</sup> See National Bureau of Statistics (NBS) [Tanzania] 2014. Tanzania Integrated Labour Force Survey 2014, Dar es Salaam, Tanzania: NBS, p. 22.

<sup>430</sup> See SHIVYAWATA “Challenges for People with Disabilities persist” at <http://shivyawata.or.tz/challenges-for-people-with-disabilities-persist/?lang=en>, accessed on 12<sup>th</sup> April 2018.



	Occupation Activity									Total
	Legislators, administrators and managers	Professionals	Technicians and associate professionals	Clerks	Service workers and shop sales workers	Agricultural and fishery workers	Craft and related workers	Plant and machine operators and assemblers	Elementary occupations	
<b>Total</b>	<b>1,222</b>	<b>4,077</b>	<b>11,414</b>	<b>7,955</b>	<b>59,358</b>	<b>96,327</b>	<b>49,683</b>	<b>7,224</b>	<b>92,942</b>	<b>330,202</b>
Albinism	-	597	-	-	2,222	509	1,836	-	1,577	6,742
Seeing	678	1,058	7,707	5,684	35,196	46,029	28,349	3,746	47,756	176,202
Hearing	303	810	1,023	1,432	6,167	8,674	4,292	1,801	17,854	42,357
Walking	242	1,438	2,977	2,635	20,461	40,015	10,678	2,052	29,125	109,623
Remembering	-	441	920	1,284	9,715	25,048	10,104	1,450	19,050	68,012
Selfcare	-	-	-	398	8,003	262	2,583	433	2,835	14,514
Language	-	-	467	205	3,544	262	3,869	-	4,712	13,059

**Figure 38: PWDs by occupation**  
Source: National Bureau of Statistics



**Picture 41: A woman PWD employed at HATWE Investment Ltd in Mtwara Region**

In terms of accessibility, PWDs face a challenge of working environment not being friendly to them, making it more difficult for them to perform their duties successfully and timely. In protecting PWDs, however, the law has established mechanisms of making follow ups on their welfare, one of them being establishment of the National Advisory Council for PWDs. The

National Advisory Council was established for the purpose of advising the Minister responsible for the welfare of PWDs. The council is mandated to advise the minister on different matters regarding the affairs of the PWDs in the country. Among others, the council has a duty to promote equalization and implementation of opportunities for persons with disabilities and encourages the best practices in the treatment of PWDs.<sup>431</sup> LHRC urges the Government to establish effective mechanism to enhance enforcement of labour laws and the law on PWDs in the employment sector, so as to guarantee protection of the welfare of PWDs.



Picture 42: A woman who is a PWD employed at Njombe Milk Factory

### 6.6. Discrimination of persons living with HIV/AIDS

Persons Living with HIV (PLHIVs) are among the groups that need special attention, care and protection. Their status does not make them any less capable of contributing to the economy like other people who are HIV free. Discrimination and stigma because of HIV status only demoralizes them and bring about a sense of exclusion in the society.

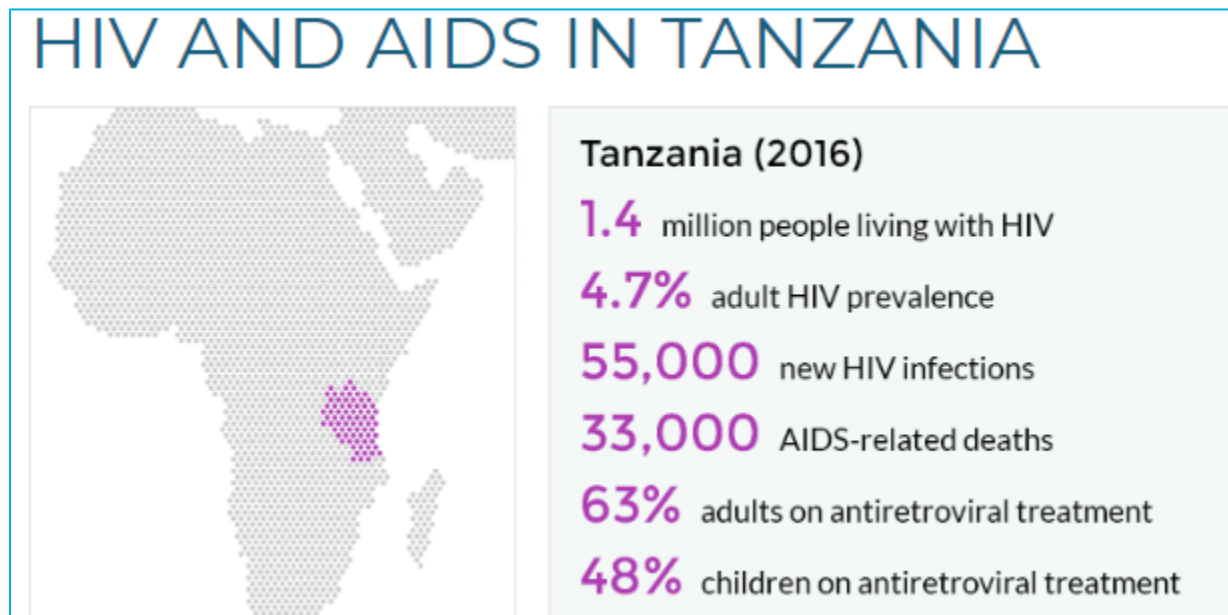
HIV and AIDS is a workplace issue, and should be treated like any other serious illness/condition in the workplace. This is necessary not only because it affects the workforce, but also because the workplace, being part of the local community, has a role to play in the wider struggles to limit the spread and effects of the epidemic.<sup>432</sup> Tanzanian workforce includes PLHIVs, both men and women. The Government, being responsible for protection of the

<sup>431</sup> Section 10 of the Persons with Disabilities Act No. 9 of 2010

<sup>432</sup> Para. 4.1 of the ILO Code of Practice on HIV/AIDS and the World of Work.

public, has emphasized on the protection of dignity and rights of PLHIVs. There are laws in force that protect PLHIVs and provide for their rights, including the right to work and right to non-discrimination. Discrimination based on the status of HIV is strongly prohibited under the HIV and AIDS (Prevention and Control) Act.<sup>433</sup> The Act emphasizes on equal treatment of PLHIVs in accessing employment and at workplaces. There should be no stigmatization or discrimination of any kind, including HIV status.<sup>434</sup>

In 2016/2017, 1.4 million people were living with HIV in Tanzania. This equates to an estimated HIV prevalence of 4.7% in the same year, 55,000 people was newly infected with HIV, and 33,000 people died from an AIDS-related illness.<sup>435</sup> Deaths caused by HIV and AIDS-related diseases reduce manpower to a large extent and hence accelerates economic degradation. Due to that, States are obliged to enact policies and strategies that will necessitate preservation and reduction of loss of manpower caused by the HIV epidemics.



**Picture 43: Prevalence of HIV and AIDS in Tanzania, 2016/2017**

Source: UNAIDS, 2017

The Government, in ensuring that PLHIVs are protected at the workplaces, has criminalized discrimination based on HIV status. The HIV and AIDS (Prevention and Control) Act imposes a fine of two million Tanzanian Shillings for whoever is found guilty of stigmatization and discrimination of PLHIVs at the workplaces.<sup>436</sup> The Employment and Labour Relations Act also prohibits employers from discriminating employees simply because of their HIV status.<sup>437</sup> This

<sup>433</sup> Section 30 of the HIV and AIDS (Prevention and Control) Act No. 28 of 2008.

<sup>434</sup> Ibid section 31

<sup>435</sup> HIV and AIDS in Tanzania available at [www.avert.org](http://www.avert.org), accessed on 12<sup>th</sup> June 2018.

<sup>436</sup> Section 32 of the HIV and AIDS (Prevention and Control) Act No. 28 of 2008

<sup>437</sup> Section 7 (4) (m) of the Employment and Labour Relations Act No. 6 of 2004



was purposely done so as to ensure that PLHIVs engage in economic activities and have meaningful access to employment.



**Picture 44: Awareness on HIV at workplace**

Engagement of PLHIVs should be done in a way that stigmatization and discrimination is discouraged so as to enhance and maintain a status quo between PLHIV and other employees. PLHIV should feel safe working at places where their rights are recognized and guaranteed. Employers should meet statutory requirements in business and companies settings and workers should be willing and cooperative in accepting services and support provided at the working places as stated hereunder below:

### **Enhancing Awareness on HIV and AIDS at Workplaces**

Employers are required under the law to enhance awareness on HIV and AIDS among workers at workplaces.<sup>438</sup> This includes having in place HIV and AIDS policy and displaying information related to HIV and AIDS and the policy on a place all workers can easily see. During the study on business and human rights across 15 regions of Tanzania Mainland, most companies were found to have in place HIV and AIDS policies, which among other things, provide for rights of PLHIVs and prohibit discrimination and stigmatization of PLHIVs.

<sup>438</sup> Section 8 (2) of the HIV and AIDS (prevention and Control) Act No. 28 of 2008



Picture 45: HIV and AIDS policy statement at Coca-Cola Company Ltd in Mbeya Region

However, despite the efforts to spread the knowledge and information about HIV and AIDS at workplaces, the study revealed that most of the workers at the companies that were visited had limited understanding of the contents of the policies, one of the reasons being the English Language, which most of them do not clearly understand. Limited understanding of HIV and AIDS is also contributed by lack of further information and education about the matter.

LHRC calls upon companies and other businesses to ensure that means of dissemination of knowledge on HIV and AIDS are effectively exhausted to ensure that each and every worker becomes fully aware of HIV and AIDS. The information should be spread and documented in a language all workers can easily understand, which is the Swahili Language.



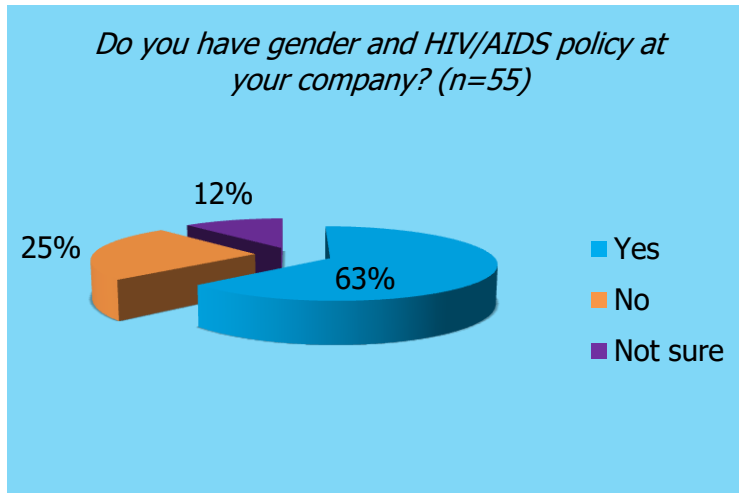
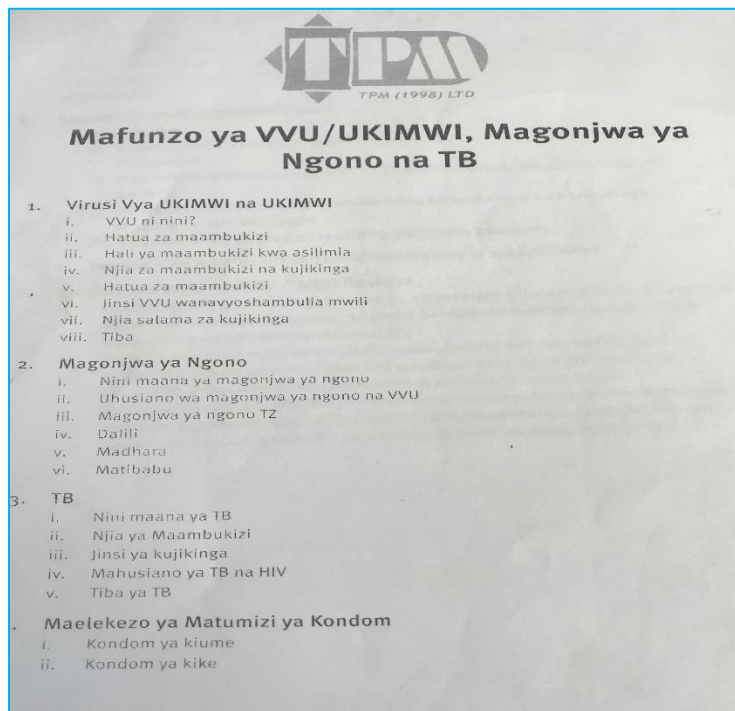


Figure 39: Availability of gender and HIV/AIDS policies at workplace

### Programs on HIV at working places

The law requires the Ministry of Health, Community Development, Gender, Elderly and Children to have consultations with employers in establishing and coordinating workplace programs on HIV/AIDS for employees, which include education, distribution of condoms and support to people living with HIV and AIDS.<sup>439</sup>



Picture 40: TPM (1998) Ltd's training manual on HIV/AIDS

<sup>439</sup> Section 9 of the HIV and AIDS (Prevention and Control) Act No. 28 of 2008

However, the study findings revealed a number of challenges affecting the support provided by companies on prevention and control of HIV/ AIDS at work places through sex practices at working place, misuse of condoms and reluctance to reveal HIV status.

#### Sex practices at the working place

In Mbeya, it was revealed that some of employees misuse the support given by company management and business owners. Despite the fact that distribution of condoms at the working places is one of the means of preventing workers from contracting HIV, some of workers were said to take advantage of that to engage in sexual intercourse at workplace during working hours. This was claim was made by a human resources officer at *Pepsi Company Ltd.* in Mbeya Region as follows:

*“We have stopped providing workers with condoms because there are workers who were found having sex on the toilet during working hours, simply because they were provided with the condoms. So the service is no longer provided as it has been misused.”<sup>440</sup>*

#### Misuse of condoms at Shant Gold Mining Company

A medical doctor at Shanta Gold Mining Company in Mbeya stated that there has been reluctance to supply workers with condoms as one of employees was found stealing particles of gold and hiding them in the packets of condoms, pretending that they are unused condoms that have been supplied by the office. He was quoted stating the following:

*“We do not put condoms at places where they were kept before due to misuse by company employees, that forced the company to be reluctant to supply workers with condoms, and if they are supplied, they have to be distributed at specific places, not just any place.”<sup>441</sup>*

#### Reluctance of revealing the HIV status

Despite sensitization and information provided to workers through education, one of the challenges that hinder protection and provision of support to PLHIVs at the workplaces is readiness to reveal their HIV status. This makes it difficult for employers to provide relevant support to workers who are PLHIVs. In Mbeya, only 7 employees out of 600 were said to be ready to reveal their HIV status at *SHANTA Gold Mining Company Ltd.*, and only 1 employee at *Pepsi Company Ltd.*<sup>442</sup>

LHRC urges employees to join employers on prevention and control of HIV and AIDS workplaces. Through a healthy society, there will be a more reliable manpower to participate and engage in economic activities and achieve economic development.

<sup>440</sup> LHRC Human Rights and Business Study 2017, Mbeya Field Report.

<sup>441</sup> Ibid.

<sup>442</sup> Ibid.





## CHAPTER SEVEN: PERFORMANCE AND EFFECTIVENESS OF REGULATORY AUTHORITIES

### 7.1. Introduction

Regulatory authorities are legally-established government bodies that are tasked with regulating and managing different sectors of the government. In Tanzania, a number of regulatory authorities have been established to regulate the business sector. These include key regulatory sectors that have been discussed in the chapters above, such as the Occupational Health and Safety Authority (OSHA), the Tanzania Revenue Authority (TRA) and the National Environmental Management Council (NEMC). These authorities are established by different laws that give them different mandates, mainly inspection and monitoring to check compliance with relevant laws and regulations in the business/investment sector. The table below gives a highlight of key regulatory authorities in the business/investment sector, their mandates and laws governing them.

**Table 11: Key Regulatory Authorities in the Business Sector in Tanzania**

Regulatory Authority	Mandate/Functions	Governing Law(s)
<b>Occupational Health and Safety Authority (OSHA)</b>	Labour Inspection: Ensure working environment is free from occupational hazards. Registration of workplaces.	Employment and Labour Relations Act 2004 Occupational Health and Safety Act 2003
<b>National Environmental Management Council (NEMC)</b>	<i>Object:</i> Undertake enforcement, compliance, review and monitoring of the council environmental impact assessment, including facilitating public participation in environmental decision making, exercise general supervision and coordination over all matters relating to the environment assigned to the council, under the Act or any other written law. <i>Key function:</i> Enforce and ensure compliance of the national environmental quality standards.	Environmental Management Act 2004
<b>Tanzania Revenue Authority (TRA)</b>	<i>Key functions:</i> Assess, collect and account for all revenue; Monitor and ensure the collection of fees, levies, charges or any other tax collected by any Ministry, Department or Division of the Government as revenue for the Government; Promote voluntary tax compliance to the highest degree possible.	Tanzania Revenue Authority Act
<b>Tanzania Food</b>	<i>Key functions:</i> Regulate all matters relating to	Tanzania Food,

Regulatory Authority	Mandate/Functions	Governing Law(s)
<b>Food and Drugs Authority (TFDA)</b>	quality, and safety of food, drugs, herbal drugs, medical devices, poisons and cosmetics; regulate the importation, manufacture, labeling, marking or identification, storages promotion, sell and distribution of food, drugs, cosmetics, herbal drugs and medical devices or any materials or substances used in the manufacture of products; Approve and register products manufactured within or imported into, and intended for use in Tanzania; examine, grant, issue, suspend, cancel and revoke certificates and licenses or permits issued; Appoint inspectors and order inspection of any premises; Provide the public with unbiased information on products; Prescribe standards of quality in respect of products regulated under the Act; Attend to and, where possible, take legal measures on complaints made by consumers against manufacturers of products regulated under the Act	Drugs and Cosmetics Act, 2003
<b>Tanzania Bureau of Standards (TBS)</b>	<i>Key functions:</i> Undertake measures for quality control of commodities, services and environment of all descriptions and to promote standardization in industry and trade; Approve, register and control the use of standard marks in accordance with the Act; Grant, renew, suspend, vary or cancel any license issued for the use of any standards mark; assist industries in setting up and enforcing quality assurance and environmental management systems procedures.	Standards Act, 2009
<b>Mining Commission</b>	<i>Key functions:</i> Taking over TMAA functions, including: Audit the quality and quantity of minerals; Produced and exported audits revenue, capital investment and operating expenditure of large- and medium-scale mines; Monitor quantity and quality of mineral exports.	Mining Act, 2010
<b>Surface and Marine Transport Regulatory</b>	<i>Key functions:</i> Protecting the interests, of consumers; Monitor the performance of the regulated sectors in relation to availability, quality and standards of services; Establish	Surface and Marine Transport Regulatory

Regulatory Authority	Mandate/Functions	Governing Law(s)
<b>Authority (SUMATRA)</b>	standards for regulated goods and regulated services; Regulate rates and charges;	Authority Act 2001
<b>The Police Force (Traffic)</b>	<i>Key functions:</i> Inspection of motor vehicles, including those used for business purposes; Enforce road safety laws.	Road Traffic Act
<b>Tanzania Fair Competition Commission (TFCC)</b>	<i>Key functions:</i> Develop and promote policies for enhancing competition and consumer welfare; Promote and enforce compliance with the Act; investigate impediments to competition, including entry into and exit from markets, in the economy as a whole or in particular sectors and publicize the results of such investigations.	Tanzania Fair Competition Act, 2003
<b>Social Security Regulatory Authority (SSRA)</b>	<i>Key functions:</i> Protect and safeguard the interests of members; Monitor and review regularly the performance of the social security sector; Facilitate extension of social security coverage to non-covered areas including informal groups; Regulate and supervise the performance of all managers, custodians and social security schemes.	Social Security Regulatory Authority Act 2008
<b>Tanzania Communications Regulatory Authority (TCRA)</b>	<i>Key functions:</i> Protecting the interest of consumers; Protecting financial viability of efficient suppliers; Promoting the availability of regulated services to all consumers; Promoting effective competition and economic efficiency.	Tanzania Communications Regulatory Authority Act 2003
<b>Business Registration and Licensing Agency (BRELA)</b>	<i>Key functions:</i> ensure that businesses operate in accordance with the laid down regulations and sound commercial principles; Regulate business by administering business and industrial licensing laws; Protect the development of creativity in artistic, literary works, and expression of folklore by protecting such work in conjunction with rights owners; Administer intellectual property laws.	Government Executive Agencies Act No. 30 of 1997

## 7.2. State duty to protect human rights: the role of regulatory authorities

Establishment of regulatory authorities to regulate the business environment is in line with the Tanzania's duty to protect human rights. As indicated in Chapter One of this report, this duty is stipulated under the UN Guiding Principles on Business and Human Rights and stems from the

international bill of rights. This duty extends to protection from human rights abuses by business enterprises; and in order to do this States must set up with a proper regulatory framework to enforce laws and ensure that these enterprises respect human rights.

### **The State duty to protect human rights**

1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

General State regulatory and policy functions

3. In meeting their duty to protect, States should:

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

***UN Guiding Principles on Business and Human Rights 2011***

The Tanzanian Government is therefore responsible for ensuring there are appropriate laws and policies that seek to protect human rights in the business sector and they are effectively implemented and periodically reviewed. The laws and policies must not contain business respect for human rights and the government has a duty to guide businesses on how they can respect human rights during their operations.

## **7.3. Performance and Effectiveness of Regulatory Authorities: Study Findings**

### **7.3.1. Scope and coverage: Accessibility of regulatory authorities**

Most of the regulatory authorities are not present in every region of Tanzania Mainland. Instead, there are zonal offices, which serve a number of nearby regions. For instance, by 2015 OSHA had 6 zonal offices, namely: Northern Zone (Arusha, Kilimanjaro, Manyara, and Tanga Regions) with its zonal office at Arusha region; Lake Zone (Mwanza, Geita, Simiyu, Shinyanga, Kagera and Mara Regions) with its zonal office at Mwanza region; Central Zone (Dodoma, Singida, Tabora, and Kigoma Regions) with its zonal office at Dodoma Region; Southern Highlands Zone (Iringa, Mbeya, Katavi, Njombe and Rukwa regions), with its zonal office at Mbeya Region; Coastal Zone (Dar es Salaam, Pwani, and Morogoro Regions), with its zonal office at Dar es Salaam Region; and Southern Zone (Mtwara, Lindi, and Ruvuma regions), with its zonal office in Mtwara Region.



NEMC has five zonal offices.<sup>443</sup> These offices are: Lake Zone (covers six regions, namely Mwanza, Shinyanga, Geita, Kagera, Mara and Simiyu. Zonal office is in Mwanza); Northern Zone (Arusha, Kilimanjaro, and Manyara. Zonal office is in Arusha); Southern Zone (Mtwara, Lindi and Ruvuma. Zonal office is in Mtwara); Eastern Zone (Dar es Salaam, Morogoro, Tanga and Pwani regions. Zonal office is in Dar Es Salaam); Southern Highlands Zone (covers six regions, namely Iringa, Njombe, Mbeya, Songwe, Rukwa, Katavi. Zonal office is in Mbeya).

TFDA has a wider coverage as it has seven zonal offices, namely”: the Lake Zone (2006), Eastern Zone (2008), Northern Zone (2007), Southern Highlands Zone (2007), Central Zone (2011), Southern Zone (2015) and Western Zone (2015).<sup>444</sup> The zonal office for Lake Zone is in Mwanza, serving Mwanza, Shinyanga, Simiyu, Mara, Geita and Kagera Regions. The Northern Zone office is in Arusha, serving Manyara, Arusha, Kilimanjaro and Tanga Regions. The Southern Highlands Zone has its office in Mbeya and serves Mbeya, Iringa, Njombe, Rukwa and Songwe Regions. Zonal office of the Eastern Zone is located in Dar es Salaam, serving Dar es Salaam and Pwani Regions, while the Southern Zone office is in Mtwara, serving Mtwara, Lindi and Ruvuma Regions. The Western Zone has its office in Tabora, serving Tabora, Kigoma and Katavi Regions; and the Central Zone has its office in Dodoma, serving Dodoma, Singida and Morogoro Regions. In implementing its regulatory functions, TFDA works closely with Local Government Authorities (LGAs).<sup>445</sup>

On its part, TRA enjoys a much wider coverage it has regional offices across Tanzania Mainland. It is therefore easier for the authority to fulfill its mandate as it is much closer to community members and businesses. For other RAs highlighted above, having only zonal offices sometimes presents a challenge of accessibility and may be a reason for limited awareness about RAs and their functions. This is because majority of respondents, both community members and employees, indicated little knowledge about regulatory authorities, as indicated in the figures below.

<sup>443</sup> See NEMC “Zonal Offices” at <http://www.nemc.or.tz/>, accessed 12<sup>th</sup> May 2018.

<sup>444</sup> See TFDA “TFDA Zone Offices” at [https://www.tfda.go.tz/index/?q=tfda\\_zones](https://www.tfda.go.tz/index/?q=tfda_zones), accessed 12<sup>th</sup> May 2018.

<sup>445</sup> Ibid.



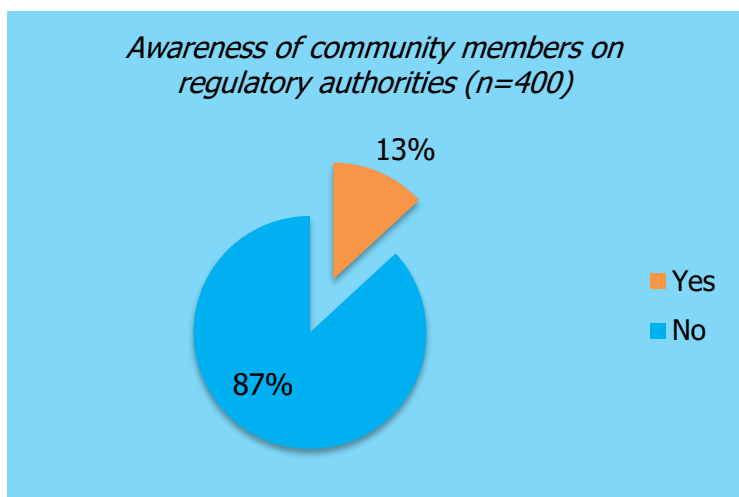


Figure 40: Community awareness on regulatory authorities

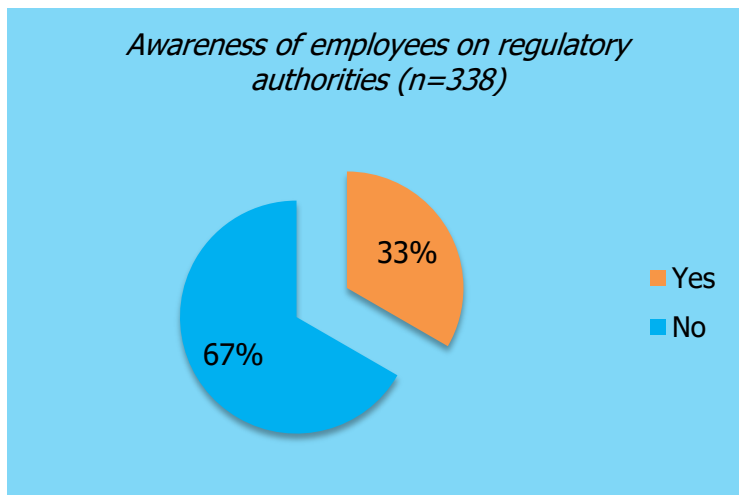


Figure 41: Employees' awareness on regulatory authorities

### 7.3.2. Financial capacity: Concerns over underfunding of some of the authorities

According to the ILO, some countries have labour inspection systems that are underfunded and understaffed, affecting their ability to perform or effectively perform their functions.<sup>446</sup> During the study on business and human rights in Tanzania Mainland, 32 officials at regulatory authorities were approached and asked about the capacity of the regulatory authorities to fulfill their mandates. They were also asked about capacity gaps that exist. On the first question, 56.7% of them stated that the regulatory authorities are well equipped to fulfill their mandates, while 43.3%, which is a significant number of respondents, felt they do not have the required capacity.<sup>447</sup> On the second question, majority of respondents (42%) mentioned lack of sufficient

<sup>446</sup> See ILO, "International Labour Standards on Labour inspection" at <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/labour-inspection/lang-en/index.htm>, accessed on 12<sup>th</sup> May 2018.

<sup>447</sup> LHRC Human Rights and Business Study 2017, Questionnaire Data.

skilled officers as a major capacity gap, followed by lack of sufficient financial resources at 27%, as indicated in the figure below.

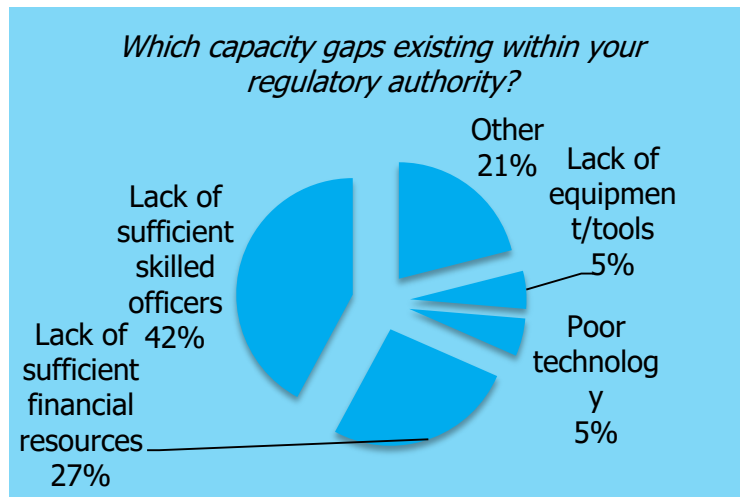


Figure 42: Capacity gaps identified by regulatory authority officials

### 7.3.3. Staff capacity: Concerns over understaffing of some of the authorities

One of the regulatory authorities that have been experiencing shortage of staff is OSHA. Recent study on occupational health and safety in Tanzania indicates that OSHA does not have sufficient staff members to fulfill its mandate, including registration and inspection of workplaces.<sup>448</sup> In 2015, OSHA's staff deficit stood at over 50%.<sup>449</sup>

As indicated above, a significant percentage (43%) of regulatory authority officials engaged for LHRC's study on human rights and business indicated that they were not well equipped to fulfill their mandates and lack of sufficient skilled officers is the biggest problem. However, in this case OSHA seems to suffer the most.

### 7.3.4. Monitoring and Inspection

Shortage of human and financial resources within regulatory authorities means inadequate monitoring and inspection of businesses. For OSHA, trends ending the year 2015 indicate that due to insufficient resources, both human and financial, OSHA had only been able to fulfill its mandate regarding labour inspection by an average of 50%, rate of labour inspection rapidly declining from over 80% in 2011/2012 to 40% in 2014/2015.<sup>450</sup> In 2016, however, it was reported that OSHA had increased registration of workplaces, from registering 60 workplaces to 150 per week.<sup>451</sup> In 2017, it was reported that OSHA had further increased its inspection

<sup>448</sup> Ezra J. Mrema (BSc Ed, MSc, PhD), Aiwerasia V. Ngowi (BSc, MSc, PhD) and Simon H.D. Mamuya (BSc, MPhil, PhD).

<sup>449</sup> See LHRC & ZLSC (2016), *Tanzania Human Rights Report 2015*, available at [www.humanrights.or.tz](http://www.humanrights.or.tz).

<sup>450</sup> Ibid.

<sup>451</sup> See Masalu Erasto "OSHA yaongeza ukusanyaji takwimu za viwanda" at <http://mwanahalisionline.com/osha-yaongeza-ukusanyaji-takwimu-za-viwanda/>, accessed 20<sup>th</sup> June 2018.

and provision of occupational health and safety at workplaces for the first three quarters of the financial year 2016/2017, exceeding its expectations.<sup>452</sup>

The study on human rights and business across 15 regions of Tanzania Mainland revealed that monitoring/inspection is usually done through physical visits,<sup>453</sup> which requires sufficient human and financial resources. The issue of accessibility affects performance of RAs, considering the financial resources available, which are usually not sufficient. For SUMATRA and Traffic Police, however, inspection can be conducted anywhere, since they deal with motor vehicles.

### 7.3.5. Legal framework on regulatory authorities: Is it adequate?

Officials at regulatory authorities that were visited during the study on business and human rights were asked about the adequacy of the legal framework governing their respective regulatory authorities. An overwhelming majority, 86%, felt that the legal framework is adequate. None of the respondents indicated that the legal framework is totally inadequate.

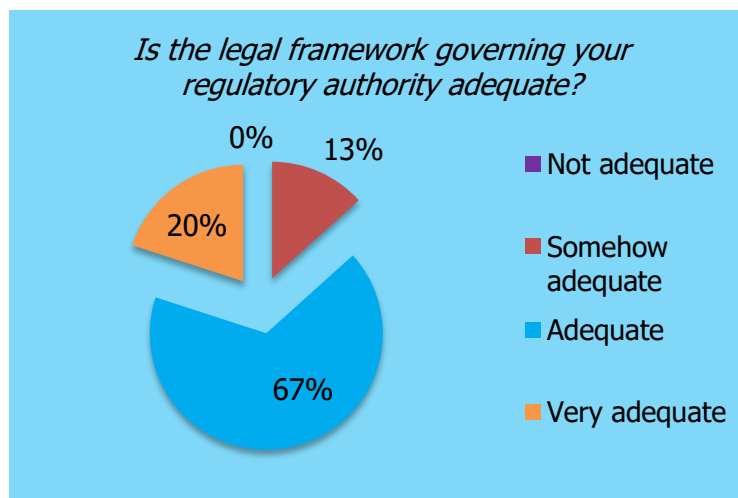


Figure 43: % Responses on adequacy of legal framework of regulatory authority

As indicated in the figure above, the legal frameworks of regulatory authorities are generally considered to be adequate. The major problem is therefore enforcement of relevant laws, regulations and policies in order to enhance protection of human rights in the business sector.

### **President's dissatisfaction with TMAA, resulting into sacking of officials and dissolution of the body**

In May 2017, President John P. Magufuli dissolved the Tanzania Mineral Audit Agency (TMAA) and suspended its chief.<sup>454</sup> This move came following recommendations made in the report by a

<sup>452</sup> "Shitindi awafunda watumishi wa OSHA" at <http://dar24.com/shitindi-awafunda-watumishi-wa-osh/>, accessed 20<sup>th</sup> June 2018.

<sup>453</sup> LHRC Human Rights and Business Study 2017, Field Reports.

<sup>454</sup> "Magufuli sacks energy Minister Prof Muhongo" *The Citizen Newspaper*, 24<sup>th</sup> May 2017, at <http://www.thecitizen.co.tz/News/Magufuli-sacks--energy-Minister-Prof-Muhongo-/1840340-3939756-mxnb0iz/index.html>, accessed 20<sup>th</sup> March 2018.



team formed to probe into mineral sands saga.<sup>455</sup> In July 2017, the agency was replaced by the Mining Commission through amendment of the Mining Act 2010 by Written Laws (Miscellaneous Amendment) Act 2017.<sup>456</sup> The Mining Commission takes over all functions that were performed by TMAA, seeking to enhance management of the mining sector and ensure that the Government benefits from income generated in a sustainable manner.<sup>457</sup>

### 7.3.6. Common Challenges

Common challenges among regulatory authorities include:

- Lack of coordination/poor collaboration among RAs
- Shortage of human and financial resources
- Corruption among officials of RAs
- Political interference
- Multiplicity of functions and conflict of interest
- Multiplicity of regulatory authorities
- Limited access to some RAs

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<sup>455</sup> Ibid.

<sup>456</sup> See Mining Commission “Background Information of the Commission” at <http://tumemadini.go.tz/background-info/>, accessed 20th March 2018.

<sup>457</sup> Ibid.



## CHAPTER EIGHT: GENERAL CONCLUSION AND RECOMMENDATIONS

### 8.1. Conclusion

The situation of human rights and business in Tanzania for the year 2017 appears to have slightly improved compared to the year 2016. This is particularly the case in compliance with labour laws and standards, especially on issues of employment contracts; corporate social responsibility; and gender and other forms of discrimination. However, common challenges continue to exist, including poor awareness and knowledge about relevant laws and rights in the business sector, especially among workers and community members; threatening workers with termination when they demand their work-related rights; tax avoidance and evasion by companies, especially in the mining sector; businesses failing to comply with their environmental responsibility; and violations of human rights by businesses, especially in the mining sector. These challenges affect promotion and protection of human rights in the business sector. Deliberate measures need to be taken to improve the situation of human rights in this sector; and LHRC makes the following recommendations:

### 8.2. Recommendations

#### 8.2.1. *Compliance with labour laws and standards*

- The Government, through the Ministry of Labour, Employment and Youth Development, to ensure effective enforcement of labour laws to ensure businesses comply with relevant labour and human rights laws and standards.
- Civil society organizations and the Commission for Human Rights and Good Governance (CHRAGG) to reach out to workers and employers to sensitize them about labour and human rights of both parties in a bid to promote human rights in the business sector.
- The Government and the Judiciary to improve access to remedy in the business sector, including by strengthening key institutions such as the CMA.
- Ensure labour rights are included in the new constitution, should the constitution-making process continue.
- The Government should ensure the Wage Order is regularly reviewed in order to safeguard the right to fair remuneration and right to adequate standard of living.
- Community members and employees should report practices that lead to abuse of human rights in the business sector to the relevant authorities, including regulatory authorities.

#### 8.2.2. *Land acquisition for investment*

- The Government, through the Ministry of Lands, Housing and Human Settlements to ensure that community members effectively participate in the process of land acquisition

for investment, including having the relevant legal knowledge and be fully informed about the impact of proposed investment in order to make free prior informed consent.

- The Prevention and Combating of Corruption Bureau to address corruption in the land sector which is one of the major obstacles in realization of land rights.
- Community members and local authorities should refrain from corrupt practices that hinder land-related rights.
- The Government should facilitate amendment of land laws to limit the size of land that can be acquired by investors in order to cure the problem of unutilized land and community members not having enough land to conduct their economic activities.
- The Ministry of Lands, Housing and Human Settlements to collaborate with the Ministry of Constitutional and Legal Affairs and the Judiciary to effectively address land-related conflicts between community members and investors in order to guarantee realization of land-related rights.
- The Ministry of Lands, Housing and Human Settlements to ensure land acquisition process is fair and the affected community members are fairly remedied, including fair and timely compensation.

### **8.2.3. Business Compliance with tax obligations**

- The Government to continue closely monitoring companies to ensure they comply with their tax obligations, especially those in the mining sector – which have been mainly implicated in tax evasion and avoidance.
- The Government should reduce tax exemptions and other tax incentives discussed in this report in order to increase revenue collection.
- Companies should comply with their tax obligations and refrain from tax avoidance and evasion as part of their responsibility to respect human rights and corporate social responsibility.

### **8.2.4. Corporate social responsibility, Environmental responsibility and Corporate Respect for Human Rights**

- The Government, through the Ministry of Constitutional and Legal Affairs, should enact a comprehensive law on corporate social responsibility (CSR) to supplement the changes in the mining law, which makes CSR a legal requirement for mining companies. This will ensure all businesses, not just mining companies, comply with their CSR.
- Environmental impact assessment (EIA) and social impact assessment (SIA) are very important for ensuring environmental responsibility and protecting the interests and welfare of community members before investment is made. As such, the Government, through the ministries responsible for investment, land and environment, should ensure compliance with these requirements in line with the laws, including the Environmental Management Act.
- Companies should refrain from causing adverse human rights impact or participate in human rights abuses; and when they are implicated in human rights abuses they should provide effective remedy.

- The Government should take action against businesses that violate human rights as part of its duty to protect human rights and ensure the victims have access to effective remedy.

#### **8.2.5. Gender discrimination and other forms of discrimination**

- The Government should ensure companies adopt affirmative measures to protect PWDs, women and PLHIVs from any form of discrimination at workplace, including when accessing employment.
- Community development officers and other stakeholders should ensure that rights relating to gender and non-discrimination are mainstreamed in all plans and activities of companies.

#### **8.2.6. Regulatory authorities**

- The Government, through the Ministry of Labour, Employment and Youth Development, to strengthen key regulatory authorities in the business sector, especially their institutional capacity, to enable them to conduct regular inspection and monitoring of businesses to check compliance with relevant laws and regulations.
- Regulatory authorities should increase efforts of raising community awareness about their mandates and functions in order to increase accessibility.

#### **8.2.7. Other Stakeholders**

- Regulatory authorities cannot be at every place, given the challenges highlighted in the report. Other actors such as local governments, community members and civil society organizations must play a role in assisting these authorities in checking compliance and monitoring compliance of businesses with relevant laws and standards. These actors can play a role of agents of regulatory authorities.
- There is need to enhance coordination and collaboration between regulatory authorities and local government authorities in addressing concerns relating to labour, land, environment, tax and business operations.
- Community members should cooperate with regulatory authorities in the business sector and report business operations or activities that cause adverse impact on human rights.
- The media should enhance its watchdog role in the business sector to expose issues of concern in the sector. The media should also enhance understanding of labour and human rights in the business sector.



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## ANNEXES

*Minimum Wage Rates in Tanzania*

Sector	Area	Minimum Wage Rates (Tshs.)				
		Per Hour	Per Day	Per Week	Per Fortnight	Per Month
Agriculture		512.85	3,846.50	23,078.70	46,157.40	100,000.00
Health		677.00	5077.30	30,463.90	60,927.76	132,000.00
Communication	Telecommunication	2051.45	15,385.80	92,314.80	184,629.60	400,000.00
	Broadcasting and Mass Media, Postal and Courier	769.30	5769.70	34,618.05	69,236.10	150,000.00
Domestic and Hospitality Services	Domestic Workers employed by diplomats and potential businessmen	769.30	5769.65	34,618.05	69,236.10	150,000.00
	Domestic workers employed by entitled officers	666.70	5000.40	30,002.30	60,004.60	130,000.00
	Domestic workers, other than those employed by diplomats	410.30	3077.15	18,463.00	36,925.90	80,000.00
	Other domestic workers not specified in (a), (b) and (c) above.					40,000.00
	Potential and tourist hotels	1282.15	9616.10	57,696.75	115,393.50	250,000.00
	Medium hotels	769.30	5769.85	34,618.05	69,236.10	150,000.00
	Restaurants, guest house and bars	666.70	5000.40	30,002.30	60,004.60	130,000.00
Private Security Services	International and potential companies	769.30	5769.65	34,618.05	69,236.10	150,000.00
	Small companies	615.45	4615.75	27,694.45	55,388.85	120,000.00
Energy Services	International companies	2051.45	15,385.80	92,314.80	184,629.60	400,000.00
	Small companies	769.30	5769.65	34,618.05	69,236.10	150,000.00
Transport Services	Aviation services	1795.05	13,462.55	80,775.45	161,155.90	350,000.00
	Clearing	2367.1	11,539.3	69,238.1	138,472.20	300,000.00

~KIA NA HAKI ZA BINI

Sector	Area	Minimum Wage Rates (Tshs.)				
		Per Hour	Per Day	Per Week	Per Fortnight	Per Month
	and forwarding	0	5	0		
	Inland transport	1025.80	7692.90	46,157.40	92,314.80	200,000.00
Construction Services	Contractors class I	1666.80	12,500.95	75,005.75	150,011.55	325,000.00
	Contractors class II-IV	1436.05	10,770.05	64,620.35	129,240.35	280,000.00
	Contractors class V-VII	128.15	9616.10	57,690.75	115,393.50	250,000.00
Mining	Mining and prospecting licenses	2051.45	15,385.80	92,314.80	184,629.60	400,000.00
	Primary mining licenses	1025.80	7692.90	46,157.40	92,314.80	200,000.00
	Dealers' licenses	1538.55	11,539.35	69,236.10	138,472.20	300,000.00
	Brokers licenses	1025.80	7692.90	46,157.40	92,314.80	200,000.00
Private schools (nursery, primary and secondary)		718.00	5385.02	32,310.15	64,620.35	
Trade, industries and commercial services	Trade, industries and commerce	589.80	4423.40	26,540.40	53,081.00	115,000.00
	Financial institutions	2051.45	15,385.80	92,314.80	184,629.60	400,000.00
Fishing and marine services		1025.80	7692.90	46,157.40	92,314.80	200,000.00
Other sectors		512.85	3846.45	23,078.70	46,157.40	100,000.00

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