

LEGAL AND HUMAN RIGHTS CENTRE - LHRC

HUMAN RIGHTS AND BUSINESS REPORT - 2016



Human Rights on the Business Agenda

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List of Abbreviations and Acronyms

BEST	Business Environment Strengthening Programme
BOT	Bank of Tanzania
BRELA	Business registration and Licensing Agency
BRN	Big Results Now
CEDAW	Convention on the Elimination of Discrimination against Women
CHRAGG	Commission for Human Rights and Good Governance
COTWU	Communication and Transport Workers union of Tanzania
CRB	Contractors Registration Board
CRC	Convention on the Law of the Child
CRC	Convention on the Rights of the Child
CRDB	Cooperative Rural Development Bank
CRO	Customary Rights of Occupancy
CSR	Corporate Social Responsibility
EAC	East Africa community
EFD	Electronic Fiscal device
EFG	Equality for Growth
ELRA	Employment Labour relations Act
EPZ	Export Processing Zone
EPZA	Export Processing zones Authority
EWURA	Energy and Water Utility Regulatory Authority
GDP	Growth Domestic Product
GEPF	Government Employees Provident Fund
GN	Government Notice
GPBHR	Guiding Principle on Business and Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICT	Information and Communication Technology
IFIs	International Financial Institutions
ILO	International Labour Organization
LAPF	Local government Provident Fund
LGAs	Local Government Authorities

LHRC	Legal and Human Rights Centre
LTD	Limited
MKUKUTA	<i>Mpango wa Kupunguza Na Kuondoa Umaskini</i> Tanzania (National Strategy for Reduction of Poverty)
MKURABITA	<i>Mpango wa Kurasimisha Rasilimali na Biashara</i> <i>Tanzania</i> (Property and Business Formalization Program)
NBAA	National Board of Accountants and Auditors
NBS	national Bureau of Statistics
NEMC	National Environmental Management Council
NGOs	Non-Governmental Organizations
NHIF	National Health Insurance Fund
NMB	National Microfinance Bank
NMGM	North Mara Gold Mine
NSSF	National Social Security Fund
NTB	Non-Tariffs Barriers
OSHA	Occupational Safety and Health Authority
PAYE	Pay as You Earn
PLC	Public Limited Company
PLHA	People Living with HIV/AIDS
PPF	Parastatal Pension Fund
PPRA	Public Procurement Regulatory Authority
PRSP	Poverty reduction Strategy Paper
PWD	Persons with Disabilities
RAs	Regulatory Authorities
RUBADA	Rufiji Basin Development Authority
SAGCOT	Southern Agricultural Growth Corridor in Tanzania
SAP	Structural adjustment Programme
SHIVYAWATA	<i>Shirikisho la vyama Vya Walemavu</i> Tanzania
SIDO	Small Industries Development Organization
SML	Special Mining License
SSRA	Social Security Regulatory Authority
SUMATRA	Surface and Marine Transport Regulatory Authority
TACAIDS	Tanzania Commission for AIDS
TAFIMU	Tanzania Fishing and Maritime Workers Union
TALGWU	Tanzania local Government workers Union

TAMICO	Tanzania's Mines Energy and Construction Workers Union
TANCOAL	Tanzania Coal Limited
TANESCO	Tanzania Electrical Supply Company
TAZARA	Tanzania Zambia Railway Authority
TBL	Tanzania Breweries Limited
TBS	Tanzania Bureau of Standards
TCAA	Tanzania Civil Aviation Authority
TCRA	Tanzania Communication Regulatory Authority
TDB	Tanzania Dairy Board
TDV	Tanzania Development Vision
TFCC	Tanzania Fair Competition Commission
TFDA	Tanzania Food and Drugs Authority
TIC	Tanzania Investment Centre
TIN	Taxpayer's identification Number
TMAA	Tanzania Mineral Audit Agency
TPAWU	Tanzania Plantation and Agricultural Workers union
TPDC	Tanzania Petroleum Development Corporation
TRA	Tanzania revenue Authority
TUICO	Tanzania Union of Industrial and Commercial Workers
TYP	Three year Development plan
UN WOMEN	United Nations Entity for Women
UN	United Nation
URT	United Republic of Tanzania
USD	United States Dollar
VAT	Value Added tax
VCT	Voluntary Counselling and Testing
VLUP	Village Land Use Plan
WCF	worker's Compensation Fund
WDL	Williamson Diamond Limited
WHO	World Health Organization

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The Bank of Tanzania (BOT) Act, (Act No. 4 of 2006)
The Banking and Financial Institutions Act, Cap 342, 2006
The Code of Practice on HIV/AIDS and the world of Work, 2001.
The Coffee Industry Act, 2001 (No. 23 of 2001)
The Contractors Registration Board Act, (Act No. 17 of 1997)
The Constitution of United Republic of Tanzania, 1977, (Cap. 1, R.E 2002)
The Cotton Industry Act, (Act No. 2 of 2001)
The Courts (Land Disputes Settlements) Act, (Act No. 2 of 2002)
The Cyber-crime Act, (Act No. 14 of 2015)
The Dairy Industry Act, 2004, Cap. 262
The Employment and Labour Relation Act, (Act No. 6 of 2004)
The Energy and Water Utility Regulatory Authority Act, 2003, Cap. 414
The Engineers Registration Act, (Act No. 15 of 1997)
The Executive Agencies Act, Cap. 245
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The Foreign Exchange (Bureau de Change) Act, 2006
The HIV and AIDS (Prevention and Control) Act, (Act No. 28 of 2008)
The Income Tax Act, Cap 332.
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The Labour Institutions Act, 2004, Cap. 300
The Land Act, 1999, Cap 113
The Land Acquisition Act,(Act No. 47 of 1967)
The Land Registration Act, Cap. 334
The Land Use Planning Act, 2007 (Act No. 6 of 2007)
The Law of the Child Act, (Act No. 21 of 2009)
The Local Government (Finances) Act (Act No.9 of 1982)
The Urban Planning Act, (Act No. 8 of 2007)
The Meat Industry Act, (Act No. 10 of 2006)
The Mining Act, (Act No. 14 of 2010)
The Mortgage Financing (Special Provisions) Act, (Act No. 17 of 2008)
The National Environment Management Act, (Act No. 20 of 2004)
The Non-Citizens (Employment Regulation) Act, (Act No. 1 of 2015)
The Occupational Health and Safety Act, (Act No. 5 of 2003)

The Oil and Gas Revenue Management Act, (Act No. 22 of 2015)
The Petroleum Act, (Act No. 21 of 2015)
The Petroleum (Exploration and Production) Act, (Act No. 27 of 1980)
The Public Procurement Act, (Act No. 15 of 2011)
The Railways Act, 2002
The Registration of Documents Act, Cap. 117
The Range Land Act, 2009
The Road Traffic Act, (Act No. 30 of 1973)
The Shipping Agency Act, (Act No. 11 of 2002)
The Sisal Industry Act, (Act No. 2 of 1997)
The Standards Act, (Act No. 2 of 2009)
The Sugar Industry Act, (Act No. 26 of 2001)
The Surface and Marine Transport Regulatory Authority Act, (Act No 9 of 2001)
The Social Security (Regulatory Authority) Act CAP 135, R.E 2015
The Tanzania Communications Regulatory Authority Act, (Act No. 12 of 2003)
The Tanzania Extractive Industry (Transparency and Accountability) Act, (Act No. 23 of 2015)
The Tanzania Fair Competition Act, (Act No. 8 of 2003)
The Tanzania Food, Drugs and Cosmetic Act, (Act No. 1 of 2003)
The Tanzania Investment Act, Cap. 38 (RE: 2002)
The Tanzania Revenue Authority (TRA) Act, 2005, Cap. 399
The TAZARA Act, 1995, Cap 143
The Tea Act, (Act No. 3 of 1997)
The Tourism Act, (Act No. 6 of 2008)
The Unit of Titles Act, (Act No. 16 2008)
The Village Land Act of 1999, (Cap 114 R.E. 2002)
The Workers' Compensation Act, (Act No. 20 of 2008)

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The Kilimo Kwanza Policy of 2009
The Mineral Policy in 2009
The National Employment Policy, 2008
The National HIV/AIDS Policy, 2001
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The National Natural Gas Policy of 2013
The National Policy on Disability 2004
The National Strategy for Growth and reduction of Poverty (NSGRP, 2005)
The Policy on HIV/AIDS, 2001
The Small and Medium Enterprise Development Policy, 2003
The Women and Gender Development Policy, 2000

LIST OF REGIONAL AND INTERNATIONAL INSTRUMENTS

African Charter on Human and Peoples' Rights, 1981
African Charter on the Rights and Welfare of the Child (ACRWC) 1990
Beijing Declaration and Platform for Action (PFA 1995)
Convention on the Rights of the Child, 1990
Convention on the Rights of the Persons with Disabilities (CRPD), 2006
Convention Concerning Application of Principles of the Right to Organize and to Bargain Collectively, 1949
Convention Concerning Benefits in the case of Employment Injury, 1964 (No. 121)
Convention Concerning Discrimination in Respect of Employment and Occupational Convention No. 111 of 1958
Convention Concerning the Protection of Wages Convention No.95 of 1949
Convention on Elimination of all Forms of Discrimination against Women, 1979
Convention concerning Vocational Rehabilitation and Employment (Disabled Persons), 1985
ILO Convention on Freedom of Association and Protection of the Right to Organise Convention, 1948
Indian Contract Act, 1872
International Covenant on Civil and Political Rights, 1966
International Convention Concerning the Protection of Workers against Hazardous in the ILO Universal Declaration of Human Rights, 1948
UN Guiding Principle on Business and Rights, 2011

Preface

About LHRC

The Legal and Human Rights Centre envisages a just and equitable society. LHRC was established in 1995 and registered under the Companies Act, Chapter 212 of the Laws of Tanzania as a Company limited by guarantee without share capital. It is a non-partisan and non-profit sharing, non-organization striving to empower the public, promote, reinforce and safeguard human rights and good governance in Tanzania through legal and civic education and information; sound legal research and advise; monitoring and follow up of human rights violations; and advocacy for reforms of policies, laws and practices to conform to international human rights standards

The LHRC is guided by a number of core values that guide the way its members, board, staffs and partners relate and operate. These values are; integrity; equality; transparency; accountability; professionalism; voluntarism and volunteerism.

This report focuses on the improved monitoring of government and corporate companies compliances with code of conducts, regional and international human rights standards with regards to economic, social and environmental rights. This work falls under the LHRC's Strategic Outcome Four (4) of the six years Operational Plan, (2013-2018)

The reports therefore, increases the pressure to all companies to take reasonable steps to ensure that their operations do not have negative impact on the enjoyment of human rights by the communities in which they operate and adhering to labour, land, and environmental rights and take social responsibility. The LHRC urge the public and different stakeholders anticipate and through this research to play their crucial role to ensure transparent and credibility in complying with regional and international human rights standards.

Please take time to read this report, make use of it in improving human rights standards of corporate companies. 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

About the Study and the Report

Human Rights and Business Report is one of the products produced by LHRC since 2012. The report is of its own kind in Tanzania as LHRC responded positively to the UN initiatives to promote Human Rights and Business worldwide. It should be recalled that in 2011 the UN passed the Guiding Principles on Human Rights and Business that gives duties to government and companies to promote and protect human rights respectively. Also the principles ensure that affected members of communities by investments have access to both judicial and non-judicial remedies.

Henceforth, this report assess business sector in Tanzania how it complies with international standards on respect of human rights. It examines government institutions, companies and available remedial mechanisms. The Human Rights and Business report responds to the LHRC Operation Plan in enhancing human rights adherence by government and companies.

The report is divided in Eight Chapters of which each chapter assess human rights thematic group. Chapter One profiles the country in economic perspective and provides the methodology of this study. The subsequent Chapter Two highlights the situation of labour rights and standards; Chapter Three gives an overview of land rights in relation to investment; Chapter Four examines corporate tax compliance and practices; Chapter Five focuses on Corporate Social Responsibility practices; Chapter Six assess performance of regulatory authorities; Chapter Seven provides for gender related issues in corporate business endeavour; and the last Chapter Eight gives general recommendation and conclusions.

This report is useful to inform the decision makers, law makers, law enforcers, corporate, media, CSOs, academic institutions and entire community to influence positive economic changes.

Therefore the Legal and Human Rights Centre expects positive use of this report as barometer for self-assessment to all stakeholders involved. The objective being to push for legal and practices transformation on how to conduct sound business that respects human rights. Moreover, the report should as well be taken as a tool for initiating development of National Action Plan on human rights and business. This will supplement the fifth phase policy on industrialization that will attract investments that respects human rights.

It is LHRC's call that companies that respect human rights will minimize risks and associated costs. Will foster and improve relationship with local communities, government, CSOs and their own employees by eliminating unnecessary conflicts such as labour and land disputes.

Lastly, LHRC invites general and specific comments and recommendations from the general public in order to improve this product in the future. LHRC calls upon all stakeholders mentioned in this report to take part in reading the whole report with positive attitude to improve its performance. It further calls for full implementation of all the recommendations provided thereof.

Dr. Helen Kijo-Bisimba
Executive Director

Executive Summary

The Human Rights and Business Report, 2016 is a continuation of LHRC's initiatives to improve human rights and business situation in the country. It is the fifth edition since 2012 when the first report was produced. For the duration of five years there have been improvements in some aspects on practices by corporate as well as implementation of our recommendations is promising.

The study was conducted in 14 regions in Tanzania mainland of the selection criteria based on presence of investment on natural resources especially minerals, manufacturing industries, agricultural investment and tourism. It is the very same regions that featured the 2015 report for purpose of tracking progress and changes as per LHRCs past recommendations.

The LHRC deployed 27 Research assistants of which a pair was allocated in each region. The research assistants had four sets of different structured questionnaires that were distributed to four targeted audiences. These targets include;

- (a) Management of companies visited;
- (b) Community members;
- (c) Workers/employees;
- (d) Regulatory authorities.

The research assistants also conducted interviews with key informants in different areas and Focus Group Discussions (FGD). Different relevant documents were collected and pictures were taken. The research assistants were able to produce regional reports as final output that enabled compilation of the Human Rights and Business Report, 2016.

Main findings from the study:

The report is divided into chapters and sub-chapters that discuss different subject matters. However for purpose of easy referencing to the content hereunder are some of the key findings which are contained in the main report for the year ending 2016.

Labour Rights

- (a) The findings show that 62.18 percent of the employees do not have employment contracts. Also the study shows that 61.60 percent of

workers do not have written contracts whereas only 38.40 percent have written contracts.

- (b) The study shows that 59.89 percent did not negotiate terms of contracts and only 40.11 percent have written contracts.
- (c) There is poor practice on keeping records of the signed contracts. During the study employees complained to have been denied the right to get a copy of signed contract by employees.
- (d) It was revealed that workers' contracts did not state the nature of their jobs and some were even different from the copies signed by them from the ones left with their managements.
- (e) Some companies do not submit monthly contribution to the social security regimes as required by law.
- (f) Majority of salaried workers in formal sectors are covered by Collective Bargaining Agreements (CBA) of which there are 325-recorded CBAs as by 2016.
- (g) The study indicates that 53.01 percent of research participants responded that there are no trade union branches at their work place. Whereas 35.81% percent (bad and very bad responses combined) indicated that the trade unions do not have capacity to represent its employees.
- (h) It was found that 45.85 percent of the sampled companies effectively paid overtime to its workers whereas 54.15 percent of workers had no any overtime pay for the work done beyond legally allowed working hours.

Land Rights

- (a) Almost 50% of land acquired for investment is not utilised by the investors.
- (b) The Minister for Land and Human Settlement had revoked ownership of the 1870 hectares of land allocated to the Kapunga Rice Project Limited. This land conflict has existed for some years and reported in our previous reports.
- (c) During the 2016 study 22.31percentof the respondents cited that land grabbing/alienation to be among the most common human rights violations in investment areas.
- (d) Many villages do not have in place the Village Land Use Plan (VLUP). As a result villages enter into agreement to allocate the village land without considering the land needs of the local communities.

Taxation

- (a) Tanzania was ranked 148th in PWC's paying taxes rankings, far below other East African countries due to narrow tax base.
- (b) The Tanzania Revenue Authority (TRA) collected taxes amounting to TSHs10.87 Trillion for the period of nine months from July 2016.
- (c) TRA continues to emphasize consistent use of Electronic Fiscal Devices (EFD) machines by issuing receipts for every sale while encouraging customers to demand receipts for every purchase.
- (d) Tanzania's lower income tax bracket was already reduced in 2015–2016 budgets, from 12% to 11%.
- (e) Revenue Growth; that through corporate tax, the Revenue tends to increase rapidly. For instance; the TRA, Mwanza region, in the year 2016 estimate to have collected TZS 6,892,429,976/= from Corporate, but they managed to collect TZS 6,386,992,846/= which in a real sense is a very huge amount of money.

Corporate Social Responsibility

- (a) Still most of the companies do not adequately pay back to the community; for instance, the public opinion on CSR during the study suggests that majority of local community members about 46.2 percent said that they do not see any benefit of investment in their areas whereas 16.3 percent were not sure on direct benefit of investment versus 37.5 percent only of the research participants responded in affirmative.
- (b) In the study about 48.3 percent said that companies do not give back to the community at all, whereas 19.4 percent acknowledged that investment contribute to employment.
- (c) In 2016 a number of companies especially financial institutions, telecommunication companies and manufacturing industries contributed in improving infrastructures in education sector especially through providing desks in schools.

Gender Rights

- (a) Statistics indicate that unemployment rate is high among women compared to men. Tanzania's unemployment rate is 12.3% among women compared to 8.5% among men.
- (b) It seems most of the corporate sectors favour more male than female. For instance, the study found out that 71.92% of the working members interviewed were male, and the

rest 28.08% of the interviewers working in the companies were female.

- (c) Almost 46% of the respondents had witnessed discrimination in employment against people with disabilities.
- (d) Child labour: It was found out that 70% of the children engaged in labour are found in agricultural sector.
- (e) The study conducted by SHIVYAWATA also indicated that 60% of individuals with communication impairment do not earn an Income. 63% of respondents reported facing difficulties in their attempts to engage in employment.

Regulatory Authorities' Performance

- (a) Only 34.21% of the Regulatory Authorities (RAs) felt that they had sufficient capacity to execute all mandated activities to the expected statutory standards. That means 65.79% of RAs do not felt that they had that capacity.
- (b) There is a Public demand for TCRA regional and district offices so as to serve an increasing number of mobile phone users especially in rural areas.
- (c) In the financial year 2015/2016 TFDA reported seizure of a total of 226.8 tonnes of counterfeit and substandard products.
- (d) Until the end of June, 2016 it was reported that only 2,464,399 workers were registered as social security beneficiaries, a small increase compared to those reported in 2015 which were 2,142,350 beneficiaries.
- (e) Major mines paid to the Government a total of USD 76.1 million and TZS 195 billion as royalty and corporate tax respectively in the year 2016.
- (f) Monitoring of mineral exports at the major airports enabled interception of smuggled minerals worth USD 93,316.38 and TZS 151,338,374 in 11 separate incidents.

The above highlights depicts how important is for a reader to go through details in specific chapters of the report. The chapters do not only provide statistics but also enumerates case studies from different companies and regions covered by this study.

Therefore, LHRC calls upon all relevant stakeholders mentioned in this study to consider their roles as instrumental to foster sustainable development as per the Sustainable Development Goals (SDGs).

CHAPTER ONE

GENERAL INTRODUCTION

1.0 Political Background

The United Republic of Tanzania attained its independence in 1961 from Britain as protectorate state; thus in December 2016 the United Republic of Tanzania (Tanzania Mainland in particular) celebrated its 55th independence anniversary. Since its independence, Tanzania has been governed by five presidents, the first being the late Julius Kambarage Nyerere (1962-1985), followed by Ali Hassan Mwinyi (1985-1995), Benjamin William Mkapa (1995-2005), Dr. Jakaya Mrisho Kikwete (2005-2015) and currently Dr. John Pombe Magufuli (2015-2020).

The United Republic of Tanzania is a sovereign union government formed in 1964 following the union of Tanganyika and Zanzibar. In that regard there are two governments, legislatures and judiciary systems. The United Republic of Tanzania has mandate on union matters in Zanzibar whereas the Peoples Republic of Zanzibar is sovereign on non-union matters in part of Zanzibar.¹

1.2 Geography

Tanzania is located in Eastern part of Africa between longitudes 29⁰ and 41⁰ East, and Latitude 1⁰ and 12⁰ South.² Topographically, the country is endowed with beautiful scenery, with mountain ranges and valleys. Tanzania is home to Mount Kilimanjaro, the highest free standing mountain in the world and the highest mountain in Africa (referred as the roof of Africa).

Tanzania has 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.³ 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.

¹ Second Schedule to the Constitution of United Republic of Tanzania, 1977.

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

³ See <http://www.tanzaniatourism.com/en/destination/kitulo-national-park/PI0> visited in December, 2016.

Livingstone.⁴ 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.

Tanzania is blessed with sufficient natural water sources. On the Western part lies 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.⁵ In 2016 Tanzania entered into agreement with Uganda to construct an oil pipeline which will run from Uganda to the Tanga port.⁶ The pipeline will be vital in transporting oil form from landlocked 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.⁷

⁴ Ibid.

⁵ These countries include Uganda, Rwanda, Burundi, DRC, Zambia and Malawi.

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

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

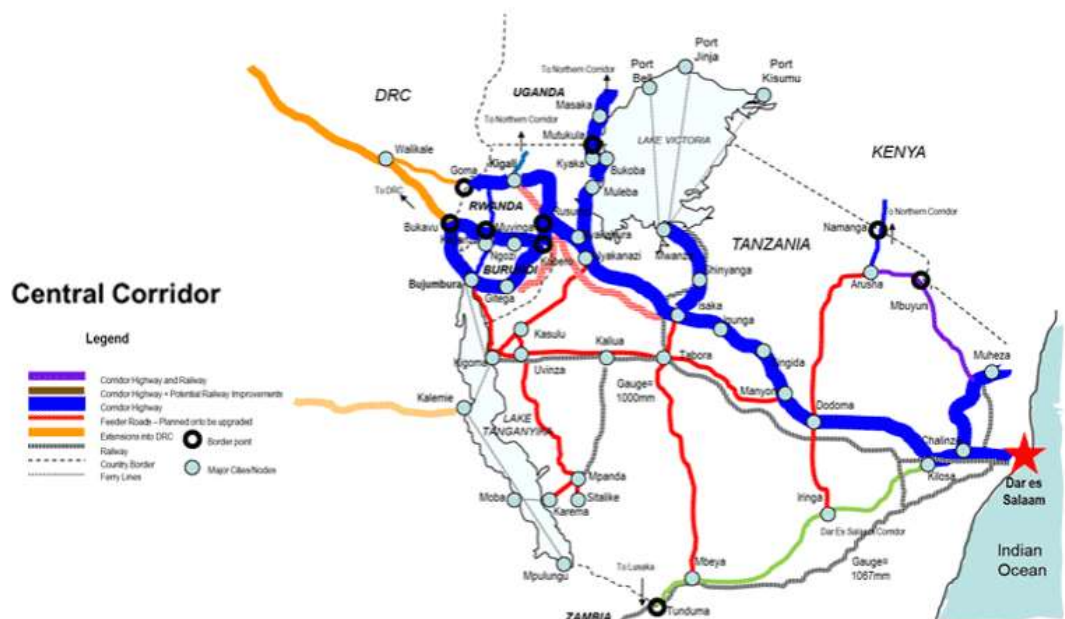


Figure 1: The Proposed Central Corridor Standard Gauge Railway Line⁸

Tanzania has a tropical climatic condition with the highland temperatures ranging between 10⁰C to 20⁰C during the cold and hot seasons respectively. The temperature around the rest of the country does not fall below 20⁰C. 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 10⁰C.

Rainfall distribution is divided into unimodal and bimodal areas.⁹ The unimodal areas experience rainfall once per year whereas the bimodal areas experience rainfall two times a year.¹⁰ The bi-modal regions experience short

⁸ *Ibid.*

⁹ www.meteo.go.tz, visited on December, 2016.

¹⁰ 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).

rainfall (*vuli*) in the months of October to December and heavy rainfall season starts around the end of March to early June.¹¹ 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.

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.¹² 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.¹³ 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.¹⁴ 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.¹⁵

¹¹ Ibid.

¹² 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 1st December, 2015.

¹³ United Republic of Tanzania, *The National Natural Gas Policy of Tanzania 2013*, p. 2.

¹⁴ See <http://www.dangotecement.com/operations/tanzania/> accessed on December 2016.

¹⁵ See www.pesatimes.com/news/energy-mining/kinyerezi-power-plant-to-add-150-megawatts, accessed on December, 2016.

1.3 Population

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%.¹⁶ In 2016 the population projection was at a total of 50,144,175, with 24,412,889 males and 25,731,286 females.¹⁷ 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.

There are estimated 662,287 non-citizens living and working in Tanzania.¹⁸ 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 421,456.¹⁹

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.

1.4 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).²⁰ Therefore such

¹⁶ URT 2012: The National Population and Housing Census.

¹⁷ TBS 2016: Tanzania Total Population Projection by District and Regions.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ 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, accessed on 15th December 2015.

initiatives have reduced donor dependency from 42% in 2005 to 15% in 2015.²¹

There are different initiatives that have been done 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.²² 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*.

1.6 Governance System

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. Equally the interim Constitution of United Republic of Tanzania, 1965 and the Union Constitution 1964 recognized the same structure of governance system. Chiefdoms were recognised and subsequently banned in 1963 with the *African Chiefs Ordinance*. The chiefs who were in power at that time were outraged by the abolition of chiefdoms. Hence, in 1963 the ruler of *Chagga Council*, Chief Thomas Marealle filed an application at the court praying for compensation for loss of office and he won. The Government was ordered to compensate him 45,000 pounds. The Government was not satisfied with the decision, hence moved the Parliament to pass another law called *The Chiefs (Abolition of Office) (Consequential Provisions) Act*, which barred any chief in Tanganyika to claim any relief from court a result of loss of office.²³

1.6.1 The Executive

The Executive arm of the state is made up of the President, who is the head of State, Government and the Commander in Chief of the Armed

²¹ See Speech by Hon. Dr. Jakaya Mrisho Kikwete, President of the United Republic of Tanzania when bidding farewell and dissolving the 10th Parliament of the United Republic of Tanzania, Parliament House, Dodoma on 9th July, 2015, p. 23.

²² <http://www.pmoralg.go.tz/quick-menu/brn/>. BRN is Malaysian development model that helped to transform the economy of Malaysia.

²³ Pius Msekwa, *Uongozi na Utawala wa Mwalimu Julius Kambarage Nyerere: Miaka 25 ya Utumishi wangu kwa Umma chini ya Uongozi wa Mwalimu Julius Kambarage Nyerere* (Dar es Salaam: Nyambari Nyangwine Publishers, 2012), pp. 71 & 72.

Forces.²⁴ The Government of the United Republic of Tanzania is vested with authority over all Union Matters in the United Republic and over all Matters of Mainland Tanzania.²⁵ This authority is thus vested with the President of the United Republic.

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 composition of the current cabinet includes 19 ministries of which only 4 are female while 15 are male. There are 16 deputy ministers, of which only 5 are female and the rest 11 are male.²⁶

1.6.2 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 organs in discharge of their respective 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.²⁷

²⁴ Article 33 of the Constitution of the United Republic of Tanzania.

²⁵ Article 34 of the Constitution of the United Republic of Tanzania.

²⁶ See www.ikulu.go.tz accessed on December 2016.

²⁷ Article 64 of the United Republic of Tanzania; and Section 132 (1) and (2) of the Constitution of the Revolutionary Government of Zanzibar 1984.

The majority of the MPs are elected members from their constituencies.²⁸ Other members are of the special seat category, appointed by political parties depending on basis of proportion of votes won on Parliamentary election.²⁹ The President also has power to appoint 10 members of his choice, while five members come from elected members of the House of Representative.³⁰ The Attorney General of Tanzania is a Member of Parliament by virtue of his/her office.³¹ The term of office for members of Parliament is five (5) years.

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.³² 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.

1.6.3 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.³³ Tanzania's legal system is based on English common law, whereby judicial functions are administered by various courts established in accordance with the law.³⁴ 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

²⁸ Article 68(1) (a) of the Constitution of the United Republic of Tanzania.

²⁹ Article 68 (1) (b) of the Constitution of the United Republic of Tanzania.

³⁰ Article 68(1) (c) of the Constitution of the United Republic of Tanzania.

³¹ Article 68(1) (d) of the Constitution of the United Republic of Tanzania.

³² 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 1st Schedule.

³³ Article 107(A) of the Constitution of United Republic of Tanzania, 1977.

³⁴ 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].

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.³⁵ Magistrates are appointed directly by the Commission.³⁶ 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 Crime Court (also known as *Mahakama ya Mafisadi in Kiswahili*).³⁷

Tanzania also has a court martial process (military tribunal) meant to deal with cases related to armed forces personnel.³⁸ 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.³⁹ The Constitutional Court is composed of members, half of which 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.⁴⁰

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.⁴¹ The High Court of Zanzibar is the highest court

³⁵ Articles 109 and 118 of the Constitution of the United Republic of Tanzania of 1977.

³⁶ Article 113(1) of the Constitution of Tanzania.

³⁷ Section 3 of the Economic and Organized Crimes Act.

³⁸ 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].

³⁹ Article 125 and 126 of the Constitution of the United Republic of Tanzania, 1977.

⁴⁰ 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.

⁴¹ 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.

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 the case may be appealed to the High Court of Zanzibar and then appealed again to the Court of Appeal of Tanzania.

LHRC avers that, in order for the Judiciary to protect and promote human rights, it must be independent. As the process of constitution-making is in progress, guaranteeing judicial independence should be paramount. The current setting jeopardizes independence of the Judiciary 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 for abuse of power by the President for political biasness in appointing. 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”.⁴²

1.6.4 Industrialization Plan: The 5th Phase Government

Since coming into power, the fifth phase government under President John Pombe Joseph Magufuli has shown strong desire of expanding the country’s economy through industrialisation, popularly known as “*Tanzania ya Viwanda*”. Through this notion there are several plans and undertakings which have been done to realise the notion. The following are some of the undertakings which have already been:

- Firstly, Tanzania wants to reduce the cost of doing business. This can be met by removing a substantial number of existing Non-Tariff Barriers (NTB) as required by *Article 13 of the Customs Union Protocol of the East African community*.⁴³
- Secondly, the government has reduced roadblocks and weigh bridges along the central corridor highway, from over 50 to 5. This has helped to ease transportation of goods from the Dar es salaam port to the neighbouring land locked countries.⁴⁴

⁴² Chris Maina Peter, “Independence of the Judiciary in Tanzania: Many Rivers to Cross” in Frederick Juuko, [e.d.] *The Independence of Judiciary and Rule of Law: Strengthening Constitutional Activism in East Africa* (Kampala: Kituo cha Katiba, 2005) 58 at 2.

⁴³ The Partner state shall formulate a mechanism for identifying and monitoring the removal of non-tariff barriers.

⁴⁴ The remaining weigh bridges are located in Mikese (Morogoro), Nala (Dodoma) Njuki (Singida) Mwenda kulima (Shinyanga) and Nyakahura (Kagera).

- Thirdly, improving services at the Dar es Salaam port; this was done by reducing the costs for clearing goods at the port as well as enhancing the port's capacity of handling. This was further enhanced by constructing new dry ports to reduce cargo congestion at the port.
- Fourthly, Launching of One Stop Border Post (OSBP) in Holili - Taveta Border towns of Kenya and Tanzania. This was done purposely to enhance the EAC Economic integration.
- Fifthly, Amendment of the Capital Markets and Securities (Foreign Investors) Regulations so as to allow foreign investors to purchase securities of listed companies. Moreover, to ensure there is competition in the domestic goods in both regional and international market, several other initiatives were done such as the transformation of the Business Registration and Licensing agency (BRELA) into a modern digitalized business facilitation centre.⁴⁵

The minister for Industry, Trade And Investment was quoted saying that, to further the industrialisation policy, the 5th phase government is marketing eight areas to prospective private investors namely manufacturing, infrastructure development, agriculture, mining, tourism, fisheries, energy, Information and communication technology (ICT).⁴⁶

The current industrial policy points to deepening the private sector-led industrial growth and transforming the economy from its reliance in subsistence agriculture. Two major policies to cater for the development include the Tanzania Development Vision (TDV) 2025 and the Sustainable Industrial Development Policy (SIDP) 2020. The Sustainable Industrial development Policy 2020 plans to change the economy from the public to the private sector.

However, despite the measures and undertakings to enhance the country's economy, there are several challenges that need to be solved in order to remove barriers for the smooth industrialisation realization. These include weak and undeveloped policies such as KILIMO KWANZA Policy of 2009 as well as poor infrastructure system.

⁴⁵ www.chiefsecretary.go.tz A paper Presented at The East African Business Council (EABC) Business Leaders Summit, Arusha (2016).

⁴⁶ www.thecitizen.co.tz (accessed on 16th May 2017).

1.7 Human Rights and Business Approach in Tanzania

Speaking of the generation of Human Rights the most concern was on the part of the state practices mainly between the states and individuals. The increase of competition of the world market in the business sector gave rise to a great violation of human rights through business by the corporate, and that is where the idea of human rights and business came into existence.

The Human Rights and Business project works hand in hand with the civil society organizations to ensure that there is an increase in the compliance of the human rights by the corporate sector. The main concern is to ensure compliance by companies in different fields such as environment, right to land ownership of, gender section (which include children, disabled, people living with HIV/AIDS and women's rights), consumer's rights and worker's rights.

In ensuring that there is a compliance of Human rights by companies, organizations are supposed to use a special tool known as Human Rights Compliance Assessment tool.⁴⁷ Human rights and business concern is an international agenda. Thus the United Nation (Special Representative of the Secretary - general) developed the Guiding Principles on Business and Human Rights.⁴⁸ The UN Guiding principles were mainly developed for the purpose of implementing the duty to Respect, Protection of Human Rights and the Access to Remedy.

The UN Guiding Principles imposes a duty upon the States to ensure that every State comply with the observation of human rights by making sure that there is no abuse of such. In doing so, there should be appropriate measures in ensuring that the formulated principles and regulations protect the human rights at the highest degree. In compliance to the duty to protect, the State has to investigate, punish and redress any violation that may have been conducted by companies.

Further, states should ensure there is equality before the law; should not apply the double standards in making decisions; the companies that are likely to violate the rights should be accountable for whatever effects that may have caused; and that there should be certainty and transparency in the legal procedures. Whenever there is any kind of investment, State should ensure

⁴⁷ A diagnostic tool designed to help companies detect human rights violations caused by the effects of their operation on employees, local residents and all other stake holders.

⁴⁸ Resolution 17/4 of 16 June 2011.

that companies should ensure that in conducting their business the rights of the citizens are not at stake.

In protection of human rights, States must ensure that measures are taken when there are violations done by the states corporations. Further there should be no denial in terms of access to public support and services by the corporations involved with the gross human rights violations.

In ensuring there is a just protection, the State has to ensure that business enterprises that are State owned and controlled or that receives substantial support from state agencies, obeys and promotes human rights. The additional steps be employed in requiring human rights due diligence.

All in all the state should ensure that the companies violating human rights take measures to address the violations and rectify the situation. If possible in case there is any denials in complying with the rights and rectification of the violated situations, it will be proper for the government to take further actions of even ceasing their business licenses.

Another principle developed by the United Nation in promotion and protection of the rights associated from the business sectors is **the Duty to Respect**. This duty calls upon the companies to respect human rights by abiding with the international principles that are propagated for safeguarding human rights in the world.

The companies are duty bound to adhere with the international labour conventions, environmental conventions, avoid any kind of discrimination (with the avoidance of child abuse) as well as promoting the right to equal ownership of land. In this case, companies are required to respect the national laws and regulations. Measures should be taken to prevent and where appropriate the remedies for violations are supposed to be taken.

The companies' activities should be done in a way that will ensure there is a respect for human rights. Human rights impact that is directly linked to their operations should be mitigated even if they were not contributed by them. The companies should carry out human rights due diligence in order to identify, prevent and mitigate the impacts of violations.

Lastly, when the companies fail to act on their duty to respect the rights, the state on its protection of those rights should ensure that there is an access to effective remedy.

The State is duty bound to ensure that there is reduction of barriers in domestic judicial mechanism to ensure there is equity and just access to remedy. The State should ensure that the promotion of justice is not prevented by corruption of the judicial process, by favouring those who are rich and disregarding those who are victims of the violations.

Implementations done by Tanzania in ensuring the applicability of the UN Guiding Principles include the following:⁴⁹

- The activities of human rights and business were incorporated in the National Human Rights Action plan of 2013-2017.
- On gender related issues; there was conduction of the public enquiries on child labour in 2008/2009 with support from ILO. The research on child labour was conducted and covered three districts of Temeke (Dar es Salaam), Ilemela (Mwanza) and Kilwa in Lindi.
- Thirdly, in relation to equal right of ownership of land, the fact finding mission was conducted on forced eviction of Maasai communities in Loliondo where the Commission for Human Rights and Good Governance (CHRAGG) conducted the investigation, since the follow up was raised by the international agencies about violation of human rights and contravention of the principles of good governance.
- Through financial support from the Legal Sector Reform Program (LSRP), CHRAGG conducted the public enquiries with the aim of identifying factors which contributed to land conflicts in mining areas. The enquiries covered twelve districts of Tanzania mainland and Zanzibar, Public hearing on the land conflict in Ulanga Morogoro (2010), public hearing on mining in Nzega Tabora (2007).
- Lastly, a report presented by LHRC with support of the International Corporate Accountability Roundtable (ICAR) titled “*Shadow National Baseline Assessment of Current Implementation of Business and Human Rights Frameworks (2016)*”⁵⁰. This report analysed the major steps in terms of policies and regulations upon which the government has initiated in protection of human rights on the part of Human Rights and Business as implementation of the UN Guiding Principles.

⁴⁹ <https://business-humanrights.org/en/tanzania-2>

⁵⁰ <https://static1.squarespace.com/Tanzania-NBA-Final.pdf>

This report has analysed the laws and issues which Tanzania has initiated and the ones which have not been implemented to ensure that the business sector adheres to with regards to the rights of the citizens. In shadow reports some of the implementation steps on abiding with human rights in the business sectors were analysed and included the following:

- i) Incorporation of the Civil and Political Rights Convention of 1966 and Regional Human Rights Charter into the Constitution of the United Republic of Tanzania, 1977.
- ii) Domestication of the African Charter on the rights and welfare of the child of 1990 by enacting the law of the Child Act 2009 that prohibits all forms of forced child labour.
- iii) Inclusion of the Human Rights and Business in the National Action plan on the implementation of Human Rights 2013-2017.
- iv) Enactment of the comprehensive labour rights laws including The Employment and Labour Relation of 2004, the Labour Institutions Act of 2004, and the Non-Citizens (Employment Regulation) Act of 2015.

1.8 Aims and Objectives of this Study

This study aims at identifying laws, policies and practices which in one way or other around leads or accelerates the maltreatment in the corporate sector especially in areas of environment, labour, land rights as well as tax payments and collections.

The study also aims to identify gender related issues and to raise challenges deviated from violating children's and women's rights.

In addition to that, the study aims at raising awareness on the part of the government for it to act on its duty to protect human rights by formulating laws and policies which will favour employees in the corporate sectors and punish those who violate the stipulated laws.

1.8.1 Objectives of the Study

The main objective of the study is to find out the most crucial problems and violations done by the corporate sectors, and trying to raise the awareness especially on the part of the government to put an emphasis on the formulation of policies and enactment of laws that favours the majority.

Specifically the objectives of the study are:

- a) To identify the violations of human rights done by the corporate sectors especially on the part of labour, environment, land, taxation and gender issues;
- b) To assess the effectiveness and efficiency of the corporate business sector's regulatory authorities;⁵¹
- c) To remind the corporate sectors to abide with the principles of professionalism and accountability, to be accountable to whatever violations that may have been caused by their sectors in the course of production of their goods and promotion of services;
- d) To awaken the civil society organizations that deals with gender issues to provide education in corporate sectors on the value of equality and abolition of child abuse;
- e) To publish and disseminate research findings.

1.9 Methodology for Data Collection and Analysis

1.9.1 Study Approaches

The approach of the study based on the use of both qualitative and quantitative methods of data collection and analysis. Where the qualitative research involved the methods of open-ended questions, interview data, observation data, document data and audio visual data text and image analysis.

1.9.2 Tools and Mechanism for Data Collection

Several tools were used to collect Data for the purpose of this Research. The main tools used were the interview guide (both structured and unstructured interview), questionnaires, which were both open-ended and close ended questionnaires,(SUQ) ,focus group discussion as well as observation where the researchers had to observe the conditions of the working environment and other related matters with regards to land, environment and gender issues.

⁵¹ LHRC (2014) Tanzania Human Rights and Business Report of 2014. Dar es Salaam.



Picture 1: LHRC's research assistants conducting interview to the respondents

The Distribution of Questionnaires per category of respondents was as follows:

- In the Focus Group Discussion (FGD's) the Key Informants Interview (KII) and documentary review were used from various reliable sources as tools for gathering the information from the field.
- The FGD involved the face to face discussion among the villagers and employees from different companies relaying on the topics concerning human rights and business on labour, land, taxations environmental, gender, corporate responsibilities and regulatory authorities' issues. A group of 5 to 10 and above was used by the research team to address the above issues.

1.9.3 Study Sample, Types and Rationale

The study samples were chosen in terms of geographical location, availability of various type of investment (business sector), findings of LHRC's similar previous studies of 2011,2012,2013,2014 and 2015 in order to assess improvements and the so called hot spots areas which are notorious for human rights violations.

1.9.3.1 Geographical areas covered

This study was conducted in 14 regions in Tanzania mainland. The regions covered basically depended on availability of Manufacturing industries, tourism, mining centres and improved social services. The regions covered were Dar es Salaam, Dodoma, Shinyanga, Mbeya, Mara, Kilimanjaro, Tanga, Ruvuma, Tabora, Morogoro and Geita. In these regions questionnaires were distributed and interviews conducted as summarized in the table below.

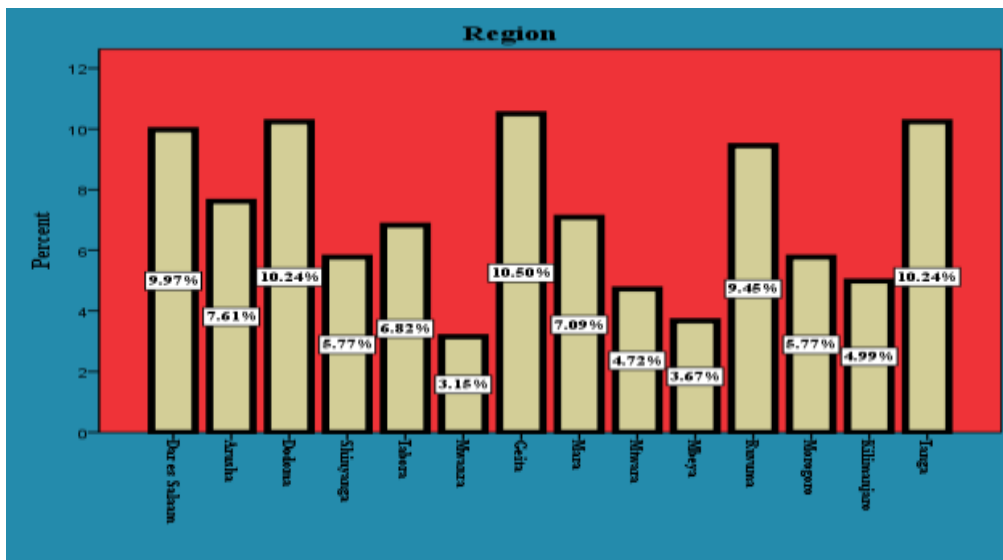


Figure 2: Regions covered during this study

1.9.3.2 Individual Samples

The study managed to interview different kind of groups, some represented companies, law enforcers, regulatory authorities, judiciary, and local government officials.

a) Number of Respondents (community Members)- By Gender

A total number of 381 of the community in the 14 regions were interviewed, out of them 176 were female and 205 were male as the table indicates below:

Table 1: Number of Respondents by Gender

	Number	Percentage
Male	205	46.2
Female	176	53.8
Total	381	100

Source: LHRC Human Rights and Business Survey 2016

(b) Number of Respondents based on Age

The study also collected data from different age groups. Most of the respondent's falls between the category of 26-35 by 52.44%, 33.24% aged between 36-60 and those between 18-25 were of 14.04% as indicated on the table below:

Table 2: Number of Respondents by Age

Years	Number	Percentage
18-25	67	14.04
26-35	149	52.44
36-60	147	33.24
61+	18	4.7
Total	381	100

Source: LHRC Human Rights and Business Survey 2016

(c) Number of Respondents based on Education

Sampling was also done with regards to the level of education as depicted hereunder by the data collected during the study as follows:

Table 3: Education of the Respondents

Education level	Number	Percentage
Illiterate	44	11.5
Primary Education	189	49.6
Secondary Education	106	27.8
Advanced Secondary	13	3.4
Tertiary Education	29	7.6
Total	381	100

Source: LHRC Human Rights and Business Survey 2016

Table 4: Number of Respondents Based on Sector

Sector	Number	Percentage
Business	155	40.7
Fisheries	3	0.8
Agriculture	93	24.4
Education	16	4.2
Formal Employment	61	16
Non-formal	53	13.9
Total	381	100

Source: LHRC Human Rights and Business Survey 2016

Therefore, the study reveals that most of the community members are engaged in business, out of 381 community members interviewed, 115 engage themselves in different kind of business, 93 members are engaged in agriculture, 61 are employed by several private companies, 53 members are unemployed and only 3 members are fishery. Due to the above observation, 40.68% of the community members interviewed are engaged in business, then there is a need for the government to put initiatives and take actions in ensuring that the local businessmen and producers are empowered and prepared to face competitions in the market as due to their big numbers may contribute to the government Income through tax payment.

(e) Number of Individual Workers

The study managed to identify differences in terms of gender as well, an interview was conducted to a total number of 349 workers in private and public sectors whom 251 are male and

98 were female hence making almost 71.92% for male workers and 28.08 for female workers. By this data it is clearly indicated that there is still no equality in terms of securing jobs in companies and business sectors. Men seems to be highly prioritized in chances of employment than females while it is known that female are many in numbers compared to men.

Table 5: Number of Respondents by Gender

	Number	Percentage
Male	205	46.2
Female	176	53.8
Total	381	100

Source: *Source:* LHRC Human Rights and Business Survey 2016

Table 6: Number of Workers Based on Age Group

Years	Number	Percentage
18-25	49	14
26-35	183	52.4
36-60	116	33.2
61+	1	0.3
Total	381	100

Source: LHRC Human Rights and Business Survey 2016

It is indicated that majority of workers in the private corporate business sector in Tanzania are youths aged between 26-35 years of age. They cover almost 52.44% of the whole workers population. Also youths between 18-25 years of age are not left behind and they are given chances of employment and their total number covers 14.04%. Due to this, if the situation of employing more workers is entertained then there will be more improvements in the production sectors as workers are energetic and may employ new skills at work.

Table 7: Number of Respondents (Workers) by Level of Education

Education level	Number	Percentage
Illiterate	4	1.1
Did not complete primary	25	7.2
Completed Primary School	111	31.8
Completed O-Level	128	36.7
Completed O-Level	4	1.1
Tertiary Education	77	22.1
Total	349	100

Source: LHRC Human Rights and Business Survey 2016

According to the study, most of the working group interviewed seems to have an education level that falls between the primary school education and the ordinary secondary school education. Out of 349 interviewed, 111 have completed Primary school Education and 128 completed Secondary school Education.

Table 8 Number of Respondents (Workers) Based on Work Experience

Duration	Number	Percentage
Under 1	48	13.8
1 Year	58	16.6
2-4 Years	154	44.1
5-10 Years	61	17.5
11+ Years	28	8.0
Total	349	100

Source: LHRC Human Rights and Business Survey 2016

Workers were also interviewed basing on their working experience .a situation of being employed as casual labourers was assessed and data obtained indicated that 44.13% were employed between 2-4 years, 17.48% were employed between 5-10 years , 16.62% were employed under 1 year and 8.02% were more than 11 years.

1.10 Limitation of the Study

Despite the Success made by the researchers there were also some limitations encountered during data collection as follows:

- a) Firstly, some employees were not willing to fill questionnaires due to lack of awareness or education. Others were afraid of losing their jobs once known to have participated in the study. A good example is the TRA officers in Dar es Salaam who were not willing to give out the information.
- b) Secondly, lack of cooperation from companies where almost 80% of Corporate Companies refused to cooperate during the researchers even when the appointments were made, most of the Companies, Regulatory Authorities and some of the governmental offices were not willing to disclose some information needed to accomplish the study. The Serengeti Breweries of Moshi denied cooperating in the study.
- c) Thirdly, data collection on the field was hindered by such things as poor infrastructure in some areas like Ifakara; rain destroyed the roads that made it difficult for the study to reach.
- d) Fourthly, there was availability of false and irrelevant information from the government offices and Regulatory Authorities.

- e) Lastly, lack of enough time to have an access to the company, a good example is that in order to have an access to most of the companies in Dar es Salaam, one need to have at least one week appointment, which slowed the study.

1.11 Ethical Consideration

During the research, all the important ethical considerations were observed. These included informed consent on data collection especially at the time of taking pictures from the victims of the violations. Some aspect of consideration included:

- Confidentiality rule was observed and whenever there was availability of confidential data, the concerned data providers were protected by the researchers.
- The study did not base on collection of data from children below 18 years of age as this would have required consent of their guardian or parents.
- The respondents were not compelled from giving out information and the Kiswahili language was used for communication to ease communication.

CHAPTER TWO

LABOUR RIGHTS AND PRACTICE STANDARDS

2.0 Introduction

The United Nations (UN) through *Sustainable Development Goals (SDGs), 2030*⁵² calls for all nations at promoting sustained, inclusive and sustainable economic growth, with full and productive employment and decent work for all.⁵³ In response to the implementation of the stated commitment the Legal and Human Rights Centre (LHRC) under this chapter examines labour rights and practice standards in the country.

Employment and Labour rights are stipulated in different national laws, policies and international laws as fundamental human rights that need protection. Labour standards and good practices forms basis of human rights protection and promotion. The International Labour Organization (ILO) defines International labour standards as legal instruments drawn up by the ILO's constituents (governments, employers and workers) setting out basic principles and rights at work⁵⁴. As it had been recognized that, ratifying conventions adopted by the International Labour Organization creates legal obligations to improve labour standards in the domestic economy of country members, Tanzania as one of the ILO member states has enacted and ratified a number of relevant legislation and instrument through Article 22 and 23 of *the Constitution of United Republic of Tanzania, 1977*.⁵⁵ Tanzania is thus duty bound to respect, promote and protect the employment and labour rights as they are constitutional rights.

⁵² SDG Goal number 8.

⁵³ Transforming Our World: The 2030 Agenda for Sustainable Development. United Nations The goal targets In regard to this SDGs targeted at; ensuring that by 2030, the world achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value; that by 2020, develop and operationalize a global strategy for youth employment and implement the Global Jobs Pact of the International Labour Organization; that, to protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.

⁵⁴ International Labour Organization (2009): Rules of Game, A brief introduction to International Labour Standards (Re Ed). ILO.

⁵⁵ [Cap 2 R.E 2002].

2.1 The Status of Compliance on Working Contracts

A contract is an agreement between two parties. A contract as defined by the Indian Contract Act, 1872 “is an agreement enforceable by law”. According to Anson "Law of Contract" a legally binding agreement between two or more persons, by which rights are acquired by one or more, to an act or forbearance on the part of others.”⁵⁶ An agreement can be either written or oral.⁵⁷ The United Nations Guiding Principles on Business and Human Rights (GPBHR) of 2011 provides for corporate responsibility to respect human rights.,⁵⁸ the principle states that, “*the responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure.*” In 1998 during the ILO 86th Conference the *Declaration on Fundamental Principles and Rights at Work* was adopted. Among the fundamental policies provided by the declaration are the rights of workers to have employment contracts.

The government of United Republic of Tanzania through National Employment Policy, 2008 shows its commitment to comply with Labour standards as provided in International and National laws.⁵⁹ *The Employment and Labour Relations Act, 2004*⁶⁰ does not define the term contract rather than it defines employer and employee.⁶¹ For a contract to be valid it must have legal requirements as stipulated under Section 10 of *the Law of Contract Act*, which states that;⁶²

“All agreement are contract if they are made by free consent of parties competent to contract for a lawful consideration and with lawful object.”

There are three types of employment contracts as stipulated under the *Employment and Labour Relations Act*.⁶³ These are:

⁵⁶ Section 3.

⁵⁷ Under the common law system Contract of Employment comes into existence when the parties namely the Employer and Employee conclude an agreement that conforms to the requirement of the contract of service as opposed to a contract for service.

⁵⁸ Principle 14.

⁵⁹ Para 3.21 of the National Employment Policy, 2008.

⁶⁰ Act No.6 of 2004.

⁶¹ Section 15 requires an employer to supply an employee with a contract statement of particular (contract) which contains names, age, sex, place of recruitment, job description, and date of commencement and duration of the contract.

⁶² Cap. 345.

⁶³ Section 14.

- i. **Contracts for an unspecified period of time:** These are essentially contracts for casual workers. Employers hire these workers for short periods of time ranging from one day to a week or more. Employers sometimes hire these workers directly, but often contract a separate agency to hire the workers in order to distance the company from the daily employment process. The employers claim little or no legal responsibility for the treatment of these workers as they contend that the agencies are responsible for the welfare of these employees.
- ii. **Contracts for a specified period of time:** These are for professionals or managers and often last for longer periods, of several years.
- iii. **Contracts for a specific task:** These are meant to be used for discrete, short-term tasks, like painting a house. Lawmakers did not intend for these types of contracts to be used for what are essentially permanent positions.

2.1.1 Research Findings

The study conducted by LHRC indicates that a large number of employees are working with no formal written contracts. The findings show that 62.18 percent of the employees do not have employment contracts. Furthermore, 61.60 percent of respondents do not have written contracts whereas only 38.40 percent have written contracts as shown in the charts below.

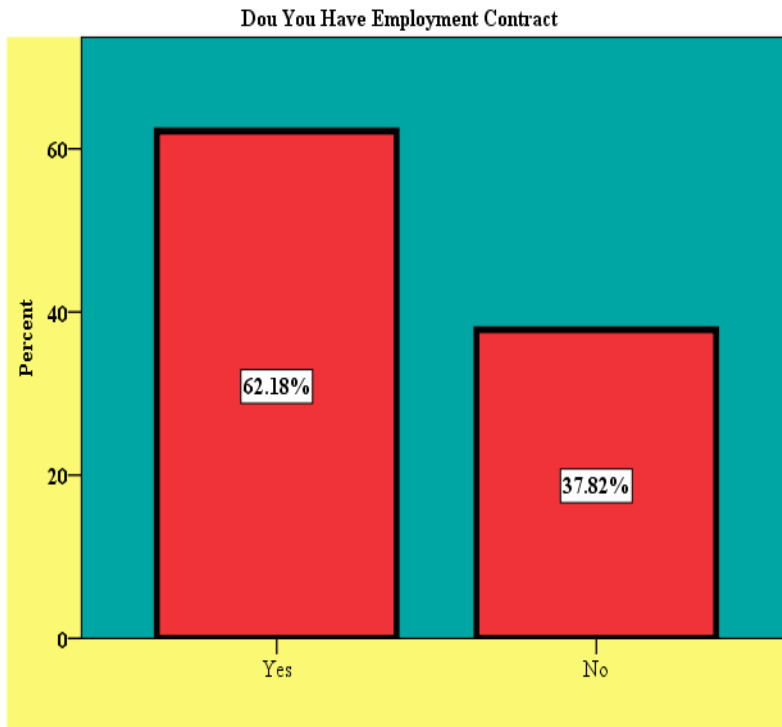


Figure 3: Status of Employees with Employment Contracts

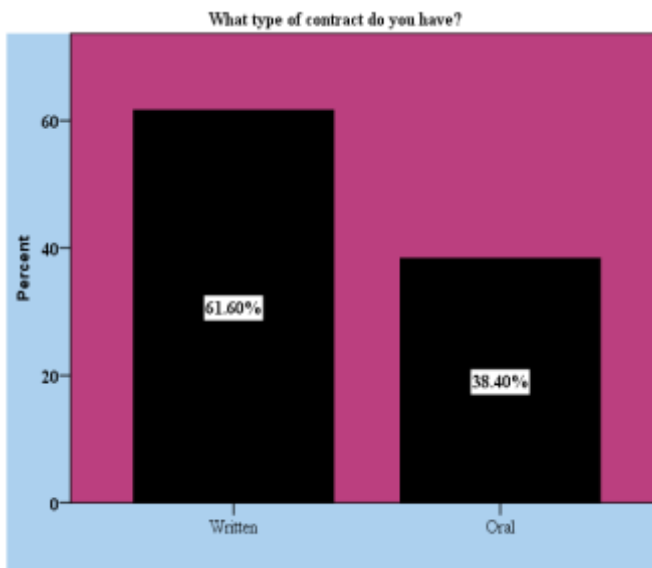


Figure 4: Types of Employment Contracts

The study further indicated that majority of employees with written contracts did not negotiate the terms of the contracts. The study shows that 59.89 percent of the respondents did not negotiate terms of contracts and only 40.11 percent had written contracts.

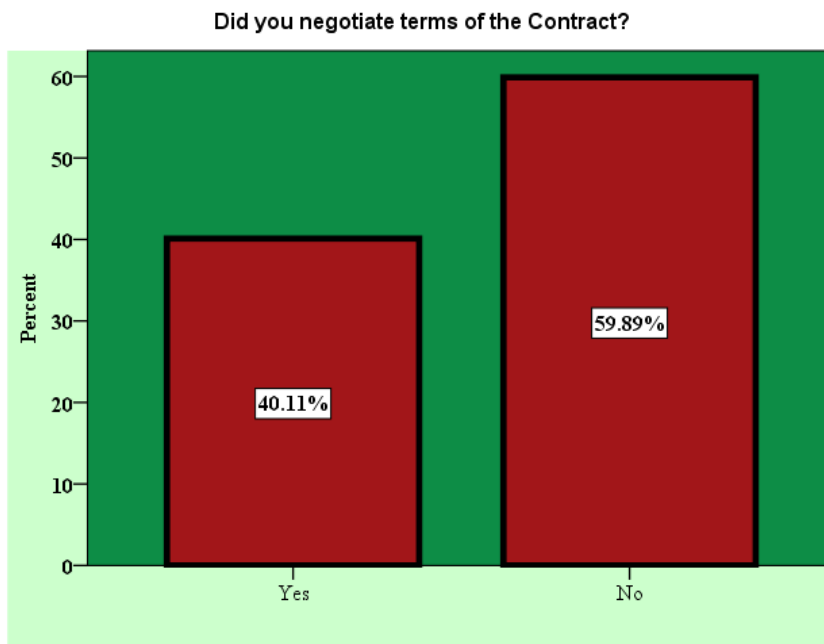


Figure 5: Majority of Employees with Written Contracts Did Not Negotiate the Terms

LHRC is of the view that lack of employment contracts does not only deprive the rights of individual employees but also deprives the Government with necessary revenues. It is difficult for the government agents or officials for instance from the Tanzania Revenue Authority to verify number of employees at a given company so as to ascertain tax payable. Therefore, LHRC urges the Ministry of Labour to ensure that all companies keep proper records of all contracts for every employee for mutual benefits.

Further, LHRC opines that an employee without a working contract is exposed to high risk of deprivation of his rights in case of accident, leave or retirement benefits since such employee is denied various entitlements such as health insurance, social security as well as other employees entitlements which are legal employment rights.

2.1.2 Case Studies

(a) Workers do not have Copies of Signed Contracts

The study revealed that there are companies which do not adhere to requirement of providing a copy of a contract to their employees as required by the *Employment and Labour Relations Act, 2004*.⁶⁴ Many of these companies have developed a practice where the management remains with the possession of the copy of the contract. A good example is revealed by the interviewed conducted to the staff at NYAKATO STEEL MILLS LIMITED which employs around 230 people where it was found that not a single employee no one had a copy of his/her employment contract.⁶⁵ One the employee (name withheld) of the company gave a testimony that:-

On my side I have not been supplied with a copy of the employment contract and no one (among the employees) is requesting for theirs, it is about three years now since I started working with this company.

The interviewed staff further reiterated that they made a complaint with the responsible minister Hon. Charles Mwijage during his visit at the company. The minister is said to have made a directive to the management of the company to make sure that every employee is provided with a copy of their employment contract.⁶⁶ By the time of this study the directives by the minister were not implemented as employees were not provided copies of employment contracts.

(b) Contracts with Different Job Descriptions and Terms of Payment

In some cases the workers' contracts did not state the nature of their jobs and some were even different from the copies signed by them from the once left with their managements. For example one of employee of Kilombero Sugar Co. Ltd when interviewed about his job descriptions he replied by saying that he was a recurring (seasonal) welder for the company for the past three (3) years in short term contracts and he has never been given his contracts in the course of his employment. Although sometimes they might be given different tasks from their usual skilled positions, the contract and salary amount remained the same. He said;

⁶⁴ Section 14 and 15.

⁶⁵ Observation on 29th March 2016.

⁶⁶ Tanzania Daima Newspaper 6th January 2016 Page 18.

“Mie nna miaka mitatu (3) na zaidi hapa (Kilombero Sugar) na sijawahi sainishwa mkataba wa muda mrefu. Kila baada ya miezi mitatu (3) nasaini mkataba upya. Tena kopi zote wanabaki nazo ofisini maana mikataba yetu inasema tunalipwa shilingi elfu tano (5,000) kwa siku. Ila sasa wakija wa wakilishi wa kazi serikalini wanapewa sukari na kuonyeshwa mikataba feki ya malipo ya shilingi elfu nane (8,000) kwa siku. Na sisi (wa muda mfupi) haturuhusiwi kujiunga na chama chochote kile cha wafanyakazi.”

[I have three (3) years and so working here (Kilombero Sugar) and they (management) never gave me a permanent contract. After every three (3) months I renew my contract. Again all the duplicates copies remain with them in the office because our contracts state that we are paid 5,000 Tanzanian Shillings per day. But when the government labour official visit (the management), they are given sugar and are shown fake contracts of 8,000 Tanzanian Shillings per day payment. And still we (short term workers) are not allowed to register in any workers' union associations].

For instance clause 9.9.2 and 9.9.4 of Chaguo Services and Consultants Ltd which provides casual labourers to Coca-cola SABCO Mbeya provides that, *‘this contract may be terminated by either party by giving fourteen (14) days’ notice in advance’* (emphasis added). This is absolutely contrary to the provisions of ELRA, 2014 which require 28 days’ notice of the intention to terminate the contract by either party or 24 hours’ notice by paying or surrendering one month salary in lieu of notice.⁶⁷

⁶⁷ Section 41 (1)(b)(ii) of the Employment and Labour Relations Act No. 6 of 2004

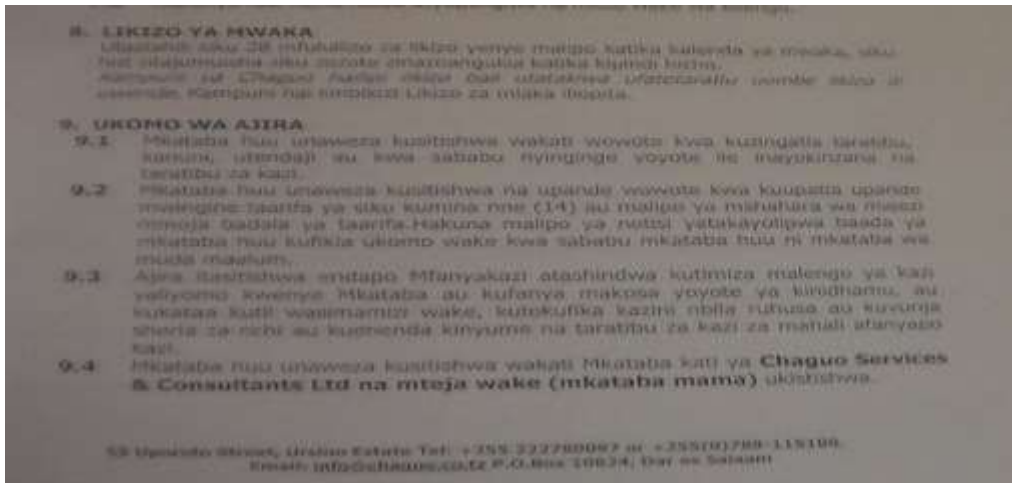


Figure 6: An extract of the employment contracts provided by one of the companies violating the law on requirement for notice

(c) The use of short term contract to exploit cheap labour

The study in different regions visited also found out that there are companies which prefer short terms contracts so as to exploit its employees. Normally the companies prefer three to six months contracts which enable the companies the ability to change workers at the expiration of those periods. The study further revealed that this is done purposely by the companies to avoid having workers who might end up demanding rights pertaining to skilled workers. As a result, such employees feel intimidated to mislay their jobs within short span of employment henceforth cannot demand fulfilment of labour standards.

The study found revealed a good example of these companies is the Pee Pee Tanzania Limited in Mbeya. This company do not have permanent employees One of the employees (name withheld) revealed to LHRC that:

Hawajatupatia mikataba ya kudumu wanatupatia mikataba ya miezi mitatu mitatu watuanguilie kama tuna uwezo wa kutimiza malengo yao; wameshazoea kila siku wanaingiza wafanyakazi wapya, wanasema wako radhi kufundisha watu kila siku.

[We have not been provided with permanent employment contracts; we are only provided with three months contracts, during which we are placed under observation whether we

can fulfil the company’s goals; this has become an habit and the company employs new people every single day, expressing that the company will not hesitate training new people every day.]

The table below summarizes list of companies which were observed to prefer such short contracts:

Table 9: Observed Companies with Employees on Short Term Contracts

No	Name of the Company	Region	Sector
1	Pee Pee Tanzania Limited	Mbeya	Manufacturing
2	Coca Cola Kwanza Limited	Mbeya	Manufacturing
3	SBC Tanzania Limited	Mbeya	Manufacturing
4	Kapunga Rice Project Limited	Mbeya	Agriculture
5	ALPHACRUST/TANPESCA TANGA PLANT	Tanga	Production
6	Kasesa Gold Mines	Geita	Mining
7	Burhnan Sawmill Company Limited	Tanga	Forestry

Source: LHRC Human Rights and Business Survey 2016

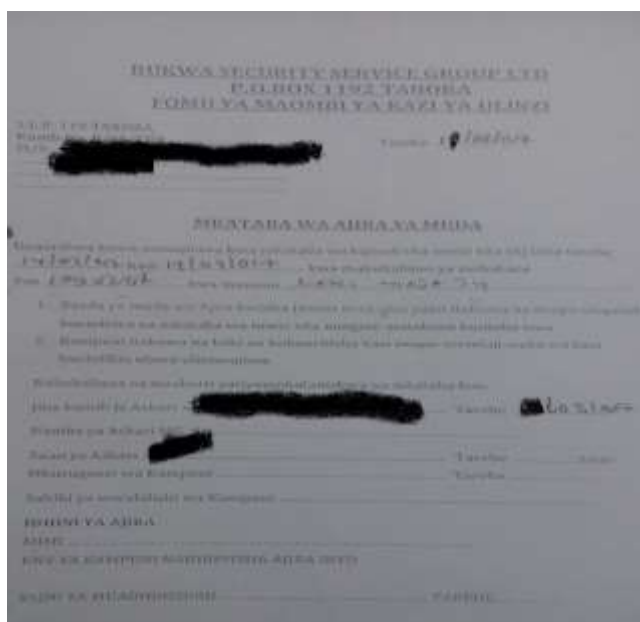


Figure 7: Extract of the short term contract offered by one of the companies in Rukwa region

Another testimony was given in Mwanza at **MWATEX COMPANY** where one employee confided with LHRC amplifying that:

'We have a three months contract, which after expiring we are made to sign another prepared contract'



Figure 8: An extract of copy of one of a short term employment contracts

LHRC urges Trade Union to push for amendments of section 36 of the *Employment and Labour Relations Act*, 2004. This provision states that a person who has been employed for a period below six months does not have a cause of action to sue their employer in case of an abuse. This provision of law is abused by employers and resort to employing people for shorter periods of time. LHRC understands the nature of the Tanzanian working environment where the majority of employees are engaged for shorter periods of time as *vibarua*. It is thus vital that the law is amended to stipulate conditions of which will protect the interests of the employee against the employer.

(d) Best Practice to Celebrate

There are few companies that could be cited as best practices in the field for providing detailed employment contracts. Such companies include Nashera Hotels and 21st Century Textile (Polyester). With Nashera Hotels, the management provide the detailed employment contract even for temporary employees.



Figure 9: An Extract of Nashera Hotels Employment Contract

MKATABA WA AJIRA

Makubaliano haya yamefanyika

Kati
Ante... PRESSIONS AFRICA LTD

(ambaye katika mkataba huu anajulikana kama mwajiri)

Na
 [REDACTED] [REDACTED] [REDACTED]

Umri *26* Jinsia *ME*

Wa SLP *000049*

(ambaye katika mkataba huu anajulikana kama mfanyakazi)

1. **KUANZA KWA MKATABA**
 Kwamba Mkataba huu utanza *July 2016* na
 utaendelea mpaka *31/12/2016* au mpaka hapo
 utakaposisifishwa kwa mujibu wa sheria

2. **SEHEMU YA KUAJIRIWA**
 Kwamba ajira imefanyika *000049*

3. **MAHALI PA KUFANYIA KAZI:**
 Kwamba mahali pa kufanyia kazi
Ante PRESSIONS AFRICA LTD

Figure 11: An extract from copy of the employment contract showing the contracted period of six months only

(e) Employment Contracts versus Social Security Contributions

Social security contributions are contributions required by the law. These contributions are imposed by different laws establishing different social security funds.⁶⁸ The employers are thus required by these laws to deduct an amount from the increment of the employees adding to the amount which the employers themselves are required to contribute. The LHRC study found out that there are number of companies which do not submit the monthly contributions to the social security funds as required by the law. When interviewed some of the employees claimed that their employment contracts provide for deductions of social security funds, to be remitted monthly. However, companies do not comply with the laws as well as terms of the contracts.

⁶⁸ Section 26 of the Employment and Labour Relations Act of 2004 also requires employers to monthly statutory deductions.

2.2 Collective Bargaining Powers between Employers and Employees

The right to bargaining and freedom of association as trade union is cornerstone to safeguard labour standards worldwide. Through this principle workers through their representatives have the right to negotiate better working conditions and reduce them into writings through employment contracts. The ILO Convention (No. 87) of 1948 provides workers and employers the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choice without previous authorization.⁶⁹ The global practice in observance of exercising right to collective bargaining powers of the trade union or workers union has been central to this principle.

The right to form and join trade unions or workers union is highly protected under several international human rights instruments for the instance, the International Covenant on Civil and Political Rights, 1966 (ICCPR) recognizes freedom of association as one of the basic fundamental freedom to all citizens.⁷⁰

Through collective bargaining powers both, parties workers and employers are subjected to sit and negotiate on the labour standards to be promoted and protected by all. During this study majority of companies visited did not have in place collective bargaining agreements signed and enforced. This situation leaves rooms for abuse of labour standards at work place especially in companies.

The right to collective bargaining agreements do not only impose obligation to private sector but also public sector. The *Labour Relations (Public Service) Convention*, 1978 promotes collective bargaining for public employees, as well as other methods allowing public employees' representatives to participate in the determination of their conditions of employment. It also provides that disputes shall be settled through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration.

Currently, very few salaried workers in formal sectors are covered by Collective Bargaining Agreements (CBA there are 325-recorded CBAs as by

⁶⁹ The Convention Concerning Application of Principles of the Right to Organize and to Bargain Collectively, 1949 provides under Article 2 that; '*workers and employers shall enjoy adequate protection against any acts of interference by each other or each other against or members in their establishment, function or administration.*'

⁷⁰ Article 21.

2016. It estimated that, the CBAs cover approximately 424,000 workers, i.e. 14 percent of the wage and salaried workers.⁷¹ Henceforth still there is a work to sensitize workers to call for employers to and trade union to ensure that CBAs are in place. The situation and the need is far more important today as the country heads towards industrialized economy. With such economy labour standards should as well be observed in similar trend with economic development.

2.2.1 Freedom of Association as Trade Unions: Limited Space for Trade Union to Organize and Operate

During the survey, LHRC deliberated on how workers through their trade unions get organized to set agenda to prepare in collective bargaining negotiations. It transpired that most Trade union do not have sufficient time and conducive environment to organize themselves. There is limited space and others do not have right to organize themselves and set agenda due to interference by employers. For instance, one of the employees of Nyakato Steel Mills Limited in Mwanza region commented on effectiveness (TUICO) saying that;

There is no platform where we employees can discuss our own concerns, trade unions seems to be an instrument of exploitation to the workers as we contribute membership fee but it doesn't work for our best interest during the dispute with our employers.⁷²

Some companies visited during the study admitted that they have never met TUICO. The employers limit them to establish workers' union branches and regional and national leaders are not allowed to visit them at work places as members. As the result it becomes impossible for them to set agenda to facilitate conclusion of Collective Bargaining Agreements as per international and national labour standards. Another example was observed at TASSY ENTEPRISES LIMITED in Mwanza region, where employees complained that TUICO leaders do not meet the workers while others said they have never seen TUICO leaders.⁷³ Similarly, the workers at Tanzania

⁷¹ Tanzania & Zanzibar – Labour Market Profile 2016 from http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/Imp_tanzania_2016_final.pdf accessed on 9 April, 2017.

⁷² Corporate Human Rights Compliance Assessment Report, Mwanza Field Report, 2017 (LHRC's Report) page 9.

⁷³ *Ibid* page 24.

Tobacco Processors Ltd (TTPL) and Achelis Group of Companies (AKILI) reiterated that employees were barred from joining the workers associations.⁷⁴

The same was also observed in Tanga region where trade unions have limited space to operate and organize themselves. This was observed in the TANGA MINING COMPANY LTD, the GOFU MATS AND PACKAGING INDUSTRIAL LTD and Pee Pee Tanzania Ltd where one of the interviewee revealed that;

Wamekikataa chama cha wafanyakazi ndiyo hao watu wote walikuwa kwenye mgomo juzi wote wamezuiliwa kujiunga TUICO hivi tupo tupo tu.

[They (employers) have refused to have the workers' association; the people who were in strike the day before yesterday have all been barred from joining TUICO.]

Equally, an employee at TPPL Company Limited in Tanga during an interview was quoted saying that;

*“It seems like we do not have workers’ Unions under TUICO because we are not allowed to organize ourselves and discuss the challenges we are facing”.*⁷⁵

The study also found out that some workers are not well informed on existence of trade unions at their work places. In this aspect the workers themselves are blame as it seems that there are no initiatives taken to ensure that there is an effective trade union at work places that represents their interests. For instance in Mbinga district one employee of TANCOAL, was quoted saying;

“kwa kweli sijawahi sikia na sijui kama ipo trade union kwa hapa japo hapa kazini nimesikia kuna chama cha wafanyakazi lakini sijawahi kuona chochote kikiendelea”

⁷⁴ Corporate Human Rights Compliance Assessment Report, Morogoro Field Report, 2017 (LHRC's Report) page 24.

⁷⁵ Corporate Human Rights Compliance Assessment Report, Tanga Field Report, 2017 (LHRC's Report) page 18.

[To tell you the truth I have never heard of the trade union branch here at our work place although I have heard that there is a workers' association.]

LHRC opines that there is need for the trade union to exercise their legal mandate in providing lead role towards enhancing existence of collective bargaining agreement at work place. The

2.2.2 Existence of Incompetent and Imposed Leaders

The study revealed that there is mistrust between employees and trade union representatives. The Trade Union representatives at work place most of the time take side of the employers against workers themselves. Moreover, there are induced decisions which the management imposes to the trade union representatives. In an interview with one key informant at Nashera Hotels complained about their union Conservation, Hotels, Domestic and Allied Workers Union (CHODAWU) that whenever there is a dispute and complaints against employers the CHODAWU representative's side with the management of the hotel.

2.2.3 Presence of Redundant and Altered CBA

In some of the regions visited there are number of CBAs signed by trade unions but there is no enforcement mechanism. Due to lack of serious enforcement vehicle the terms agreed are compromised and altered by respective companies. As a result the signed CBAs remain redundant without any enforceability and are not public documents accessible by all employees (beneficiary). They remain to be one sided compliance documents at work place due to their existence but not for the benefit of the workers to improve labour standards including fair wages (remuneration) as protected by the *Constitution of United Republic of Tanzania, 1977*.⁷⁶

In an interview in Shinyanga region it was revealed that only 10% of workers and those in administrative position are aware of the existence of CBAs whereas the remaining 90% do not have such knowledge.⁷⁷ As a result, the whole essence of CBA becomes unfeasible as it was experience at the

⁷⁶ Articles 22 and 23.

⁷⁷ Corporate Human Rights Compliance Assessment Report, Shinyanga Field Report, 2017 (LHRC's Report) page 11.

different companies in Shinyanga such as Gaki Investment Ltd, Fresho Investment Ltd, Chemi and Cotex Ltd Shinyanga Branch, Fung Hua Investment Co. Ltd, Musoma Food and Company, El Hillal Minerals Ltd as well as Jielong Holding.⁷⁸

Further, LHRC study revealed bad practices where companies alter terms contrary to previous agreed conditions. For instance a labour officer in Shinyanga expressed that companies in Shinyanga have signed CBAs with different trade union such as TPAWU, TUICO, CHODAWU and COTWU. However, the companies create their own terms and conditions different to the ones agreed resulting to increased labour disputes between employers and their workers.

2.2.4 CBAs kept as Confidential Documents

The LHRC found out that a number of companies treat CBAs as confidential documents that cannot be available to any employee. This malpractice is done intentionally to alter the terms to individual employees and thus attract violation of basic labour standards. During the study among the companies visited only one CocaCola SABCO Limited Mbeya branch was able to show the signed CBA (agreed with TUICO).⁷⁹

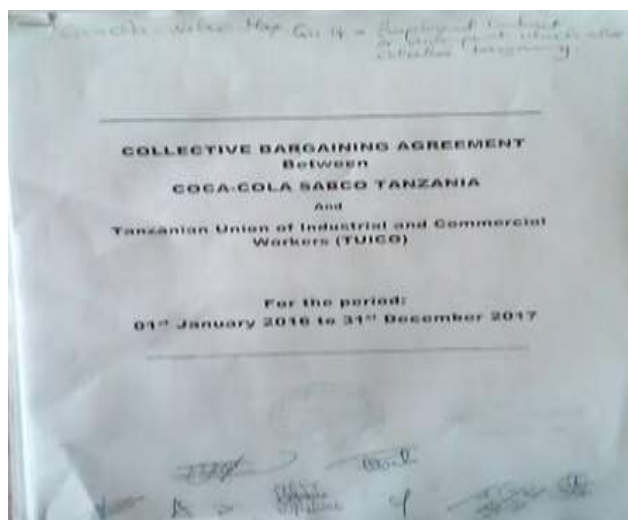


Figure 12: An Extract of CBA between Coca-Cola and TUICO

⁷⁸ Ibid page 11.

⁷⁹ Corporate Human Rights Compliance Assessment Report, Mbeya, Field Report, 2017 (LHRC's Report) page 10.

2.3 Freedom of Association as Trade Unions

2.3.1 Legal framework on Freedom of Association

Freedom of association is one of the rights of both employees and employers. The promotion of freedom of association is rooted back in *the Universal Declaration of Human Rights, 1948* under Article 20 by promoting the right of peaceful assembly and association.⁸⁰ Freedom of Association must be enjoyed freely in a sense that no one should be compelled to join an association. The ILO Convention (No 87) *on Freedom of Association and Protection of the Right to Organize* Convention sets forth the right for workers and employers to establish and join organizations of their own choosing without previous authorization.⁸¹ Article 5 states that “workers' and employers' organizations shall organize freely and not be liable to be dissolved or suspended by administrative authority, and they shall have the right to establish and join federations and confederations, which may in turn affiliate with international organizations of workers and employers”.⁸²

Freedom of Association in Tanzania is a Constitutional guaranteed right provided under Article 20 of the *Constitution of United Republic of Tanzania, 1977*. The right to form and join trade unions at work place as part of enjoyment of Constitutional right to form and join the association of one's choice is fundamentally protected under Section 9 of *the Employment and Labour Relations Act., 2004*⁸³, which provides that; ‘every employee shall have the right to form and go in a trade Union, to participate in the lawful activities of the trade union.’ The trade union is mandated to protect the rights of workers, represents employees in Collective Bargaining Agreements, represents employees in labour disputes, custodian of labour standards and actively leads the rights to strikes and lockouts. Employers are equally bound to allow trade unions to exercise their organizational rights.⁸⁴

⁸⁰ Universal Declaration of Human Rights 1948.

⁸¹ See Article 2 of the Convention No.87 of 1948.

⁸² See Article 5 of the Convention No.87 of 1948.

⁸³ Act No. 6 of 2004.

⁸⁴ (a) To access employers' premises in order to recruit new members or hold meetings. (b) To provide recognized trade unions with reasonable and necessary facilities to conduct their activities (c) To give reasonable time to trade union leaders to attend training courses relevant to their functions without loss of any benefit (d) To give trade union leaders reasonable time so that they attend to the functions of their office.

2.3.2 Active Engagement of Registered Trade Union

Trade unions in Tanzania are registered by the Prime Minister's Office, Labour, Youth Employment and Persons with Disability. The trade unions do not exist in isolation. The Trade Union Congress of Tanzania (TUCTA) is an umbrella organization that brings trade unions together so as to amplify joint efforts to protect labour standards in the country. The powers conferred to the ministry to register trade unions also guarantee safeguards that it is only through the Court Order that such registered trade union can be de-registered. Therefore, de-registration of trade unions in Tanzania is a court process that the responsible ministry is mandated to do in case of non-fulfilment of registration conditions such as failure to pay annual fees and submitting annual audit and progress reports.

Table 10: Trade Unions and Estimated Members

Trade Union	Total Members	Women Members	Estimated potential members	No. of CBAs	Workers covered by CBAs	No. of OHS Committees at workplaces
Affiliated to TUCTA						
CHODAWU - Conservation, Hotel Domestic and Allied Workers Union	39,666	10,976	11,479	35	N/A	7
COTWU - Communication Transport Workers Union of Tanzania	6,043	1,301	6,180	15	1,703	4
TTU - Tanzania Teachers Union/ Chama cha Walimu Tanzania	265,921	111,641	46,770	1	266,039	0
DOWUTA - Dock Workers Union of Tanzania	3,865	-	325	2	3,810	1
RAAWU - Researchers, Academician and Allied Workers Union	12,437	4,468	2,864	4	N/A	2
TALGWU - Tanzania Local Government Workers Union	59,903	32,145	-	1	N/A	0
TAMICO - Tanzania Mines, Energy and Construction Workers Union	12,071	1,421	17,820	10	18,765	10
TEWUTA - Telecommunication Workers Union of Tanzania	1,593	631	6,439	3	1,627	2

TPAWU - Tanzania Plantation and Agricultural Workers Union	47,861	16,769	20,580	198	N/A	25
TRAWU - Tanzania Railways Workers Union	3,540	391	478	2	3568	0
TUGHE - Trade Union of Government and Health Workers	66,038	26,973	29,366	5	300	2
TUICO - Tanzania Union of Industrial and Commercial Workers *	73,122	27,192	22,500	31	35,438	345
Not affiliated to TUCTA						
TASU - Tanzania Seafarers Union	841	40	640	3	741	0
TFCAWU - Tanzania Fishing Crew and Allied Workers' Union	2,400	-	-	-	-	-
TUJ - Tanzania Union of Journalists	150	-	-	-	-	-
TAFIMU	573	-	-	-	-	-
IGWUTA	676	-	-	-	-	-
TASIWU	2,851	-	-	-	-	-
TUPSE	1,102	-	-	-	-	-
MPETU	303	-	-	-	-	-
FIBUCA	4,508	-	-	-	-	-

PRIPPAWUTA	361	-	-	-	-	-
NUMET	1,182	-	-	-	-	-

Source: Tanzania & Zanzibar – Labour Market Profile 2016

Table 11: Registered Trade Unions

N O.	NAME OF TRADE UNIONS	REGISTRATION NUMBER	DATE OF REGISTRATION
	Tanzania Union of Industrial and Commercial Workers Union (TUICO)	001	11/9/2000
	Tanzania Plantation and Agriculture Workers Union (TPAWU)	002	11/9/2000
	Communication and Transport Workers Union of Tanzania (COTWU) (T)	003	11/9/2000
	Tanzania Teachers Union TTU (CWT)	004	13/9/2000
	Tanzania Mines Energy, Construction and Allied Workers Union (TAMICO)	005	13/9/2000
	Tanzania Railways Workers Union (TRAWU)	006	13/9/2000
	Tanzania Fishing and Maritime Workers Union (TAFIMU)	007	13/9/2000
	Tanzania Seafarers Union (TASU)	008	15/9/2000
	Researchers, Academicians and Allied Workers Union (RAAWU)	009	15/9/2000
	Tanzania Local Government Workers Union (TALGWU)	010	15/9/2000

Conservation, Hotels, Domestic and Allied Workers Union (CHODAWU)	011	15/9/2000
Tanzania Union of Government and Health Employees Union (TUGHE)	012	22/9/2000
Industrial and General Workers Union of Tanzania (IGWUTA)	013	8/6/2001
Tanzania Social Services Industry Workers Union (TASIWU)	014	8/6/2001
Tanzania Union Journalists (TUI)* UNREGISTERED THROUGH COURT ORDER	015	8/6/2001
Dock Workers Union of Tanzania (DOWUTA)	016	17/6/2002
Tanzania Union of Private Security Employees (TUPSE)	017	5/11/2004
Telecommunication Workers Union of Tanzania (TEWUTA)	018	22/11/2004
Tanzania Media Workers Union (TMW –UNION)* UNREGISTERED REQUEST SUBMITTED IN HIGH COURT LABOUR DIVISION	019	8/5/2006
Tanzania Pilot's UNION (TPU) UNREGISTERED THROUGH COURT ORDER	020	10/8/2006
Tanzania Agro forestry Workers Union (TAWU) UNREGISTERED PROCESS THROUGH COURT ORDER	021	7/8/2006
Mufindi Paper Employees Trade Union (MPETU)	022	16/10/2008
The Tanzania Higher Learning Institutions Trade Union (THTU)	023	12/12/2008
Financial, Industrial, Banking, Utilities, Commercial and Agro processing	024	24/7/2009

Industries Trade Union (FIBUCA)		
Tanzania Road Transport Workers Union (TARWOTU)	025	21/1/2013
Tanzania Medical Dental and Pharmaceutical Workers Union (TMDPWU)	026	28/1/2013
Printing Publishing and Packaging Workers Union of Tanzania (PRIPPAWUTA)	027	31/1/2013
Domestic Social Services Hospitality Industry and Tourism Workers Union (DOSHITWU)	028	21/1/2013
National Union of Mine & Energy Workers of Tanzania (NUMET)	029	20/02/2013
TAZARA Workers Union - Tanzania	030	20/9/2013
Chama cha Kutetea Haki na Maslahi ya Walimu Tanzania (CHAKAMWATA)	031	18/03/2015
Chama cha Wafanyakazi wa Malori Tanzania (CHAWAMATA)	032	28/05/2015
Chama cha Kulinda na Kutetea Haki za Walimu Tanzania (CHAKUHAWATA)	033	24/6/2015
Tanzania Drivers Workers Union (TADWU)	034	25/6/2015

Source: Prime Minister's Office, Labour, Youth Employment and Persons with Disability, 2017

The study found out that there were a number of concerns regarding operation, freedom of association and competencies and strengths of trade union leaders and as institutions. The study from different perspectives indicated that there are a number of challenges such as

2.3.2.1 Failure of Trade Union to Discharge its Functions

The opinion poll that was disseminated randomly to research participants employed in different sectors, 35.81% percent (bad and very bad responses combined) indicated that the trade unions do not have capacity to represent its employees. This factor contribute to employees to prefer not joining such union as it seems there are no direct benefit to their existence at work place. The following chart represents the response percentage-wise on the response from interviewees.

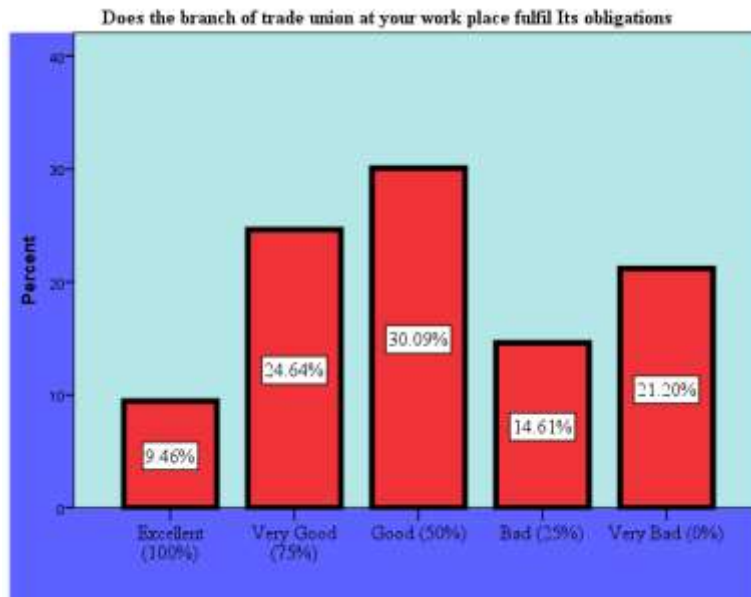


Figure 13: Opinion on whether trade union branches fulfil their obligations

2.3.2.2 Regulated and Non-Existence of Trade Union Branches at Work Place

It was observed that existence of regulated trade union by employers and non-existence of trade union branches at work place to be another critical concern on freedom of association. The study indicates that 53.01 percent of research participants responded that there are no trade union branches at their

work place. Also the trade union leaders hardly visit them for various purposes. But again for the few existing trade union branches there is much control on their conduct by employers (interference from management).

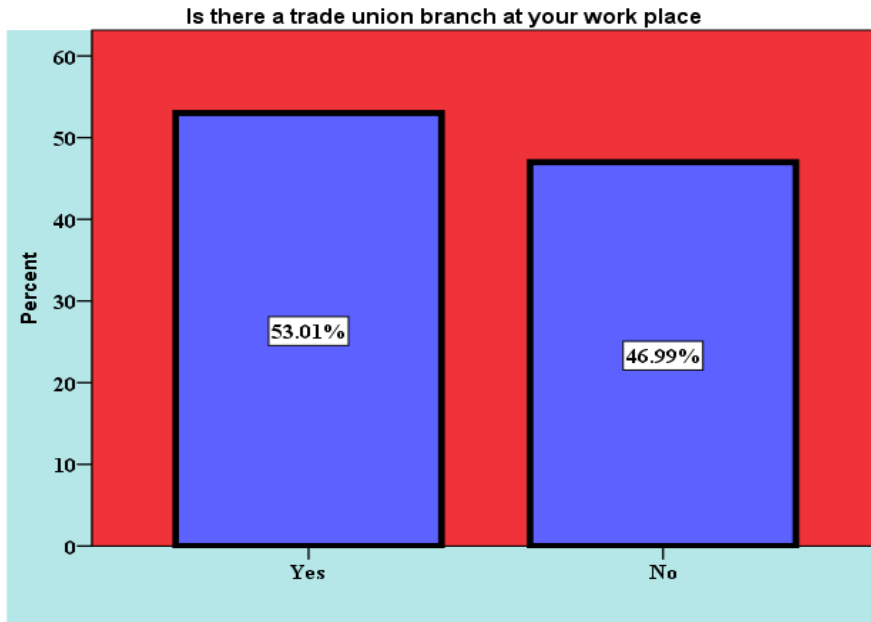


Figure 14: Presence of Trade Union Branches at work places

The study found out that some leaders of trade union branches are imposed by the management. An employee at Rhino Cement Factory in Tanga revealed the following in an interview:⁸⁵

Wamekikataa chama cha wafanyakazi ndiyo hao watu wote walikuwa kwenye mgomo juzitarehe 15/04/2016 wote wamezuiliwa watu wa TUICO sijui nini wote wamekatazwa sasa hivi tupo tupo tu.

[They (employees) have barred the employees from joining trade union. All the employees you saw on 15th April 2016 were striking because they were barred from joining TUICO.]

- (a) Most of employees interviewed at TANGA MINING COMPANY LTD and GOFU MATS AND PACKAGING INDUSTRIAL LTD acknowledged that they have no trade union in their area work place

⁸⁵ Corporate Human Rights Compliance Assessment Report, Tanga Field Report, 2017 (LHRC's Report) page18.

hence make it difficult to negotiate with their employer. Also in Ruvuma region employees of Tanzania Coal Limited (TANCOAL) were unaware of the existence of the trade union responsible with their branch of work (TAMICO).⁸⁶

- (b) Employees at Safari Cargo Company Limited do not appreciate the competency of TAMICO at the work place. One of the research assistant said that;

“Chama cha TAMICO kipo hapa ila hakisaidii kitu chochote, tunataka kujitoa kabisa” [we have TAMICO here at our work place. However, it is useless to us and we are thinking of suspending our membership].⁸⁷

This argument suggests that, so far they have not seen any importance of TAMICO for failure to represent its members.

- (c) In Shinyanga it was found EL Hillal Minerals LTD, Fresho Investment and Fung Hua, majority employees did not join the Tanzania Mines and Construction Workers Union (TAMICO). The employees had different reasons as to why they did not join TAMICO; Firstly it was observed that most of workers lack awareness on the importance to join trade unions; secondly, the management denied them a rights to join in trade union; and thirdly, the available trade union (TAMICO) sided with companies’ employers as consequences workers lack appropriate representative to who can hear their voices.⁸⁸ For instance a research participant working with El Hillal had this to say

“Chama cha wafanyakazi tunacho NUMET lakini hatujawahi kuonana nao wala kuongea nao tunasikia tu wakiwasaidia Williamson na sijawahi kusikia wamemsaidia mtu hapa kwetu akipata tatizo la kikazi, kwa ufupi ni kwamba hakifanyi kazi hapa”

⁸⁶ Corporate Human Rights Compliance Assessment Report, Ruvuma Field Report, 2017 (LHRC’s Report) page 18.

⁸⁷ Corporate Human Rights Compliance Assessment Report, Shinyanga Field Report, 2017 (LHRC’s Report) page 12.

⁸⁸ Corporate Human Rights Compliance Assessment Report, Shinyanga Field Report, 2017 (LHRC’s Report) page 12.

- (d) Again on issues of competencies of Trade Union employees have the liberty to join and start their trade union of their choice. For instance in recent years in Lake Zone region where mining sector is actively high compared to other parts of the country. Majority workers in mining areas have decided to abandon TAMICO and join the newly registered trade union which is National Union of Mining and Energy Workers of Tanzania (NUMET) which is considered to be strong and active compared to TAMICO. For instance representative of TAMICO at Williamson Diamond Limited (WDL) had this to say;

“Kipindi cha nyuma TAMICO walikuwa wanafanya kazi vizuri sana na kutetea haki za msingi za wafanyakazi hasa pale watu wanapofukuzwa kazi waliwasaidia kupata stahiki zao zote kutoka kwa mwajiri, lakini sasa hivi wanalegalega kwani mara nyingi watu wanafukuzwa kazi wakiwa na haki lakini chama hakiwasaidii”. “Tunaona TAMICO inasuasua tunawahama, kuna chama kipya kinaitwa NUMET kina kasi hicho”. [In the past TAMICO was doing its job very well for defending basic human rights to workers especially on dismissal. It ensured that all the entitlements are paid but today TAMICO is not doing its best to represent its members. So for that case we had decided to shift and join the newly trade union NUMET]

- (e) The same case happened in NMGM workers where by only few workers were aware of the existence of the Tanzania mines and constructive workers union (TAMICO), In Geita employees of Kasesa Company Limited also are not aware on existence of TAMICO; one of the interviewee was quoted;⁸⁹

"aisee nakiskia hiki chama cha wafanyakazi TAMICO lakini sijui ukitaka kujiunga unajiungaje si unajua nikinyimwa haki zangu nakimbilia huko" [I only hear about TAMICO but I do not know the procedures on how to join]

⁸⁹ Corporate Human Rights Compliance Assessment Report, Geita Field Report, 2017 (LHRC's Report) page 10.

Again in Geita in another Company called **NYARUGUSU GOLD MINING** the workers are also not aware of existence of trade union. The LHRC team heard complaints that there some employees who were abandoned at hospital by this company after sustaining injuries due to accident. But these victims do not have place to seek assistance as are unaware on existence of trade union that can come to their rescue.⁹⁰

2.3.2.3 Best Practice Employers In Favour Of Trade Union

The study also revealed that there are companies of which encourages workers to form and join trade unions at work places. For instance

- (a) Tanga Fresh Company Limited, SIDO- Tanga and Mamujee Company Limited encourage their workers to form and join trade union as per requirement of labour standards. This is a positive trend especially on Mamujee Company Limited of which in the past employees complained against it.⁹¹ It has now improved its performance and enhances freedom of association and workers are encouraged to form and join trade union.
- (b) Trade Unions, for example, in mining sectors such as Williamson Diamond Ltd workers are having their association known as TAMICO (Tanzania Mining and Construction Workers Union). They have elected leaders whom all employees have trust in them and hardly working to improve working condition of its members.⁹²

2.3.2.4 Weak Regional and District Trade Union

Trade unions operate at national, regional and district level. The current challenge on nature of operation that most unions are experiencing according to operational setup is poor management and lack of personnel at regional and district levels. The good example to illustrate this finding was experienced in Shinyanga whereby TUICO and CHODAWU regional branches had no personnel to handle labour disputes and concerns as the result they have to refer them to Mwanza regional branch. In an interview the one employee (name withheld) working with Gaki Investment was seriously

⁹⁰ *Ibid.*

⁹¹ LHRC (2014), Business and Human Rights Report, 2014.

⁹² Corporate Human Rights Compliance Assessment Report, Shinyanga Field Report, 2017 (LHRC's Report) page 12.

injured his leg in course of employment and caused him permanent disability. The company has refused to pay for his medical treatment and was fired without any compensation including salary. In order to make follow up and seek trade union assistance, this victim had to travel to Mwanza every time and then due to weak TUICO branch in Shinyanga so as to fill his complain; as he says;

*“.....ilinihidi kufunga safari mara kwa mara kwenda Mwanza kuonana na chama cha wafanyakazi, mpaka sasa wameshafungua kesi kwenye mahakama ya usuluhishi.
[.....I had to travel to Mwanza so as to meet trade union representative, so far there is a pending case at CMA]*

2.3.2.5 Subscription and Monthly Fees Hinders Employees to join Trade Union

Each and every trade union has fees which are set depending on their Constitution and regulations. Like any other organization, also trade union imposes membership fees and monthly deductions to support activities of the trade union. The monthly subscription fees are normally deducted from member's salary through employers. The practice on the ground during this study reveal that there some employees who do not join trade unions so as to avoid monthly deductions. For instance in Tabora, Sizya Mills Company one of the clauses in the employment contract indicate that there will be monthly deductions to remitted to CHODAWU every month along with statutory deductions to social security funds. Such clause was challenged by employees whom do not understand importance of joining trade union.

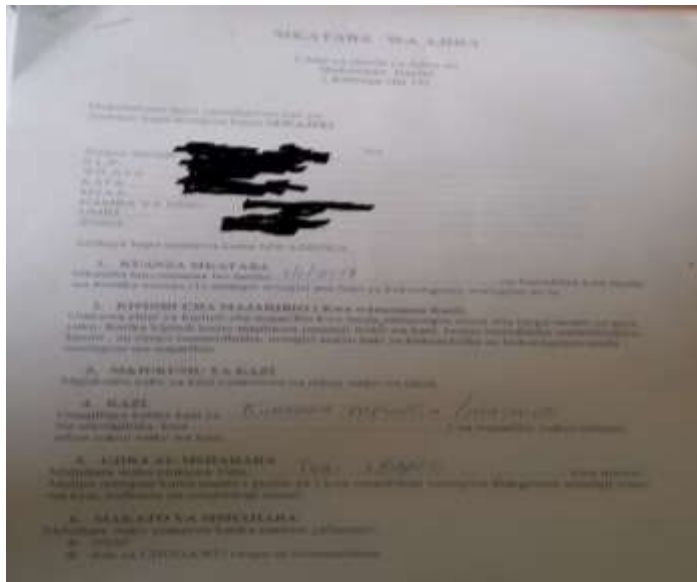


Figure 15: Extract of Employment Contract at Sizya Mills

2.4 Workmen Compensation

Workers' compensation is an insurance that provides cash benefits and or medical care for workers who are injured or become ill as a direct result of their job. Employers pay for this insurance, and shall not require the employee to contribute to the cost of compensation. This is a basic Labour right to be covered in most of business investment. The right for workers compensation is also provided for in *the Convention on Elimination of all Forms of Discrimination against Women 1979* (CEDAW) which stipulate that the right to social security particularly in cases of retirement, unemployment, sickness, old age and incapacity to work⁹³. The International treaties provides for this right as it estimated that each year two million men and women die from work-related diseases and accidents a death toll averaging some 5,000 workers a day.⁹⁴

⁹³ Article 11 (1) (e) of the Elimination of all Forms of Discrimination against Women 1979 (CEDAW).

⁹⁴ See: <http://www.ilo.org/declaration/lang--en/index.html>

In response to the *Convention Concerning Benefits in the case of Employment Injury*⁹⁵ which requires states parties to enact domestic laws to safeguard workers compensation.⁹⁶ Tanzania enacted the *Workers' Compensation Act, 2008*.⁹⁷ The Act provides for workers to be compensated in case injuries sustained during work.⁹⁸ The Act seeks to ensure employees who suffer occupational injuries or contract occupational diseases in the course of their employment obtain adequate and equitable compensation and enjoy proper rehabilitation of until full recovered. The Workers' Compensation Act, 2008 establishes the Workers Compensation Fund (WCF) which became operational in 2011. The WCF is mandatory scheme of which every employer is obliged to contribute every month.



⁹⁵ Convention No. 121.

⁹⁶ Article 3 provides that; *the national legislation concerning employment injury benefits shall protect all employees, including apprentices, in public and private sectors, including cooperatives and in respect of death of the breadwinner, prescribe categories of beneficiaries.*

⁹⁷ [Cap. 263 RE 2008].

⁹⁸ The Act applies to all employers and employees from both public and private sector in Tanzania Mainland and employees who ordinarily work outside Tanzania Mainland but have been stationed in Tanzania for more than 12 months.

Picture 2: Workers rescued at Nyarugusu Mining of which stayed underground for 15 days.

In response as to knowledge on existence of any compensation mechanisms in place at work place revealed that majority of employees are not aware of existing mechanisms in the country. The chart below shows the response on any knowledge with regard to procedures to access compensation facilities.

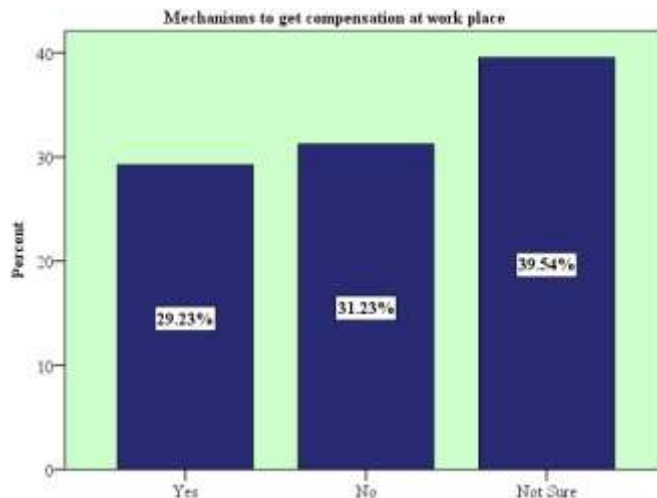


Figure 16: Mechanism of compensation at work place

Source: LHRC Human Rights and Business Survey 2016

Also the *Occupational Health and Safety Act, 2003*⁹⁹ contains more than 35 provisions on health and safety of employees. Some of the key obligation is on safety at work place so as to reduce avoidable injuries include (a) Provide workers with effective protective equipment which is properly maintained by the employer (b) Ensure suitable goggles or effective screens are provided to protect the eyes of workers (c) Ensure that periodic occupational medical examination for employees is carried out by a qualified medical practitioner.

2.4.1 Awareness on existence Workers' Compensation Fund (WCF)

The Workers Compensation Fund is established by the Act of Parliament as a compulsory scheme. It obligates every employer to contribute 1% to every employee every month. The scheme is meant to compensate an employee when sustain occupational injuries or diseases in course of employment.

⁹⁹ Act No. 5 of 2003.

The facts from the field reveal that there is little awareness by both employer and employee on the existence and benefits of joining and contributing to WCF. Much has not been done to promote importance of WCF to workers as the result victims who sustain injuries in course of employment do not access it.

For instance in an interview with selected employees of Nashera Hotel in Morogoro one of the respondent informed LHRC that:

“Recent two instances occurred in Nashera Hotels whereas in the first instance the bar tender was hit hard by a bottle when opening for a customer, and got a cut on his leg and the other; and the second incidence involved the hotel chef who was burnt with boiling cooking oil, both of these events received no attention from the employer other than a lift to the hospital. These workers had no idea that they were supposed to be paid compensation for the injuries sustained by the bottle and hot oil.”¹⁰⁰

In another incidence two employees who worked with OK Plastics Limited were sustained serious injuries in course of employment. The two victims received no compensation and in a discussion had no any information regarding WCF.¹⁰¹ They are struggling to survival in a difficult way as one of hands chopped off by machine.

¹⁰⁰ Corporate Human Rights Compliance Assessment Report, Morogoro Field Report, 2017 (LHRC’s Report) page 26.

¹⁰¹ Corporate Human Rights Compliance Assessment Report, Dar es Salaam Field Report, 2017 (LHRC’s Report) page 15.



Picture 3: An employee who sustained injuries at OK Plastic Limited in course of employment

2.4.2 Non-Compliance to the Law

The Workers Compensation Act, 2008 which establishes the WCF provides mandatory obligation to employers to contribute monthly to the fund. The Act requires that all employers in private sector to contribute 1% and public

sector employers must contribute 0.5% of their annual tax bill for one year from 1 July 2015. It was observed that most companies do not comply with the law. The trend in the field indicates that most workers who sustain injuries or fell sick at working places are not compensated. For instance employees working with TPPL, Tanga Mining Company Limited and Rhino Cement Investment complained against their employers for failure to abide with the Workers Compensation Act, 2008. Their employers do not contribute to the WCF so whenever injuries occur to employees, most of them are terminated from work and no compensation as to the injuries sustained.¹⁰²

The best example on termination upon sustaining injuries was found in GAKI industry. In this situation one employee sustained leg injury in course of employment. The employer did not pay for the treatment as well did not benefit from WCF simply because the employer did not contribute. Finally the employer decided to terminate him from employment as this employee could not continue with the production. In his own words this victim had this to say;

“Hata baada ya kuumia nilikuwa naenda kazini kama kawaida msimamizi wangu alikuwa akinipa kazi nyepesi nyepesi.....niliumia sana pale walipoamua kunifukuza kazi bila kunipa stahiki zangu zozote kwa madai kwamba hawaoni kazi ninayofanya nachukua mshahara wa bure, nimeenda sina kilema dada yangu baada ya kunisababishia kilema sikuwa na maana tena sasa siwezi kufanya shughuli nyingine yoyote ngumu mguu ni wa kuuvuta ”¹⁰³

¹⁰² Corporate Human Rights Compliance Assessment Report, Tanga Field Report, 2017 (LHRC’s Report) page 13.

¹⁰³ Corporate Human Rights Compliance Assessment Report, Shinyanga Field Report, 2017 (LHRC’s Report) page 16.



Picture 4: A leg of a victim at GAKI Industry who sustained leg injuries

Similar incidence was recorded at Pee Pee Tanzania Limited at which one employee who sustained injuries was also terminated from employment instead of being facilitated to access WCF. In an interview with LHRC said that;

Mimi nimeingia kazini mwaka 2016 mwezi wa pili. Nikafukuzwa mwezi wa tisa. Huu mkono uliteguka kutokana na kazi. Wakaniona nimefungwa P.O.P wakaniandikia ruhusa ya siku tatu. Wakasema njoo kama mkono bado unauma tukuelekeze Kidibomu kuna sehemu wanatibu kienyeji, nikaamua kukaa siku tatu kujitibia siku ya nne nilipokwenda kazini nikaambiwa jina langu limefutwa yaani

2.5 Labour Standards

The Labour Standards are set legal basic principles and rights at work places. The labour standards are set at international and national levels. At International level the International labour Organization has a number of binding and non-binding treaties stipulating labour standards. At National level also a number of laws have been enacted to provide for different labour standards such as *the Employment and Labour Relations Act, 2004* and *the Occupational Health and Safety Act, 2003*. The labour standards which as spelt out include; Decent working condition, working hours, leave and other fringe benefits, non-discrimination at work places, rights to join social security schemes and many more. Therefore the report will examine the situation of some of these labour standards as follows

2.5.1 Labour Standards: State of Working Condition at Work Place

The law requires workers or employees to be protected in vicinity of production. This principle originated from the International Convention Concerning the Protection of Workers Against Hazardous in the Working Environment due to Air Pollution, Noise and Vibration,¹⁰⁴ it provides under the provision of Article 4 that; *'national laws or regulations shall prescribe that measures to be taken for the prevention and control of and protection against occupational hazards in the working environment due to air pollution, noise and vibration'*.

Also the Occupational Safety and Health Convention,¹⁰⁵ under Article 4(1) makes further emphasis to member states that; *each Member shall, in the light of national conditions and practice, and in consultation with the most representative organizations of employers and workers, formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment*. Furthermore Article 4(2) adds that the aim of the policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment.

These standards have been domesticated in Tanzania and being part and parcel of labour laws in Tanzania. For instance under Section 61(f) of

¹⁰⁴ Convention No.148 of 1977.

¹⁰⁵ Convention No. 155 of 1981.

Labour Institutions Act,¹⁰⁶ It requires an employer to supply an employee with the working tools. The aim is to protect an employee against the hazardous working conditions.

2.5.1.1 Poor Working Condition in Selected Companies

During the study a number of companies were visited. There were companies found out to have very poor working environment that threatens workers safety and health. For instance in Mwanza, Nyakato Steel Mills Limited was found out to be not safe for workers as there was poor working condition that possessed risks to workers along production line. One of the interviewee commented that;

As you know this is one of the heavy industry dealing with melting of irons the heat affects our health in general that's why many of us here suffer from Tuberculosis (TB.) there is no even a single day free milk to workers but rather you have to bear with your own costs and on the other side the salary is inadequate.¹⁰⁷



Picture 5: Nyakato Steel Mills - Mwanza

¹⁰⁶ Act No. 7 of 2004.

¹⁰⁷ Corporate Human Rights Compliance Assessment Report, Mwanza Field Report, 2017 (LHRC's Report) page 12.

Furthermore, poor working environment included failure by the companies to provide proper working gears to employees at work place so as to minimize risks. For instance at Nyakato Steel Mills Limited employees were found on duty without wearing gloves and other protecting gears as the work they are doing needs proper attires to minimize risks. The workers informed LHRC that they need to incur their own expenses to procure such items.



Picture 6: Nyakato Steel Mills Limited

Similar poor working environment was found out at TPPL Limited at Duga Tanga of which workers complained of sustaining regular coughing. The working environment at TPPL according to workers interviewed is very poor that's why it is not easy to have access to the TPPL premises for outsiders.

In Rhino Cement Investment workers are given working gears only when there are visitors. Though their working environment according to the interview held by workers are very poor. One respondent said that;

“Kuna mazingira magumu sana ya kazi kwa hawa jamaa, yaani vifaa kama safety boot vinatolewa siku maalum tu labda kama kuna wageni”¹⁰⁸

¹⁰⁸ Corporate Human Rights Compliance Assessment Report, Tanga Field Report, 2017 (LHRC's Report) page 12.



Picture 7: SIDO workers in Ruvuma region: A poor working environment

2.5.1.2 Recommended Good Working Environment

The study also revealed that there companies with good working environment. The essence is to attract other companies to improve their working environment that safeguards safety and healthy of its workers. For instance in Tanga region there about four companies with good working conditions for its employees. These companies include; Tanga Mining Co. Ltd, TANPSCA LTD, Tanga Fresh LTD and Mamujee Product LTD



Picture 8: Best Practice as demonstrated by (Tanga Mining Co. Ltd, TANPSCA LTD, Tanga Fresh LTD and Mamujee Product LTD (from left to right)





Picture 9: Production at Mamujee Product Limited in Tanga

2.5.2 Labour Standards: Non-Observance of Working Hours

Workers' Working Hours is the period that an individual spends at paid occupational labour. Standard working hours refer to the legal permitted working hours and the limit set thereon. Ordinarily the limit of working hours is calculated per day, per week, per month or per year. If an employee needs to work overtime, the employer will need to pay overtime payments to employees as required in the law.¹⁰⁹



¹⁰⁹ https://en.wikipedia.org/wiki/Working_time accessed on January 4, 2016.

Picture 10: Working hours displayed at the public places in Ruvuma

The ILO Convention on Hours of Work (Industry) Convention,¹¹⁰ under Article 2 provides for working hours for an employee that; “*the working hours of persons employed in any public or private industrial undertaking or in any branch thereof, other than an undertaking in which only members of the same family are employed, shall not exceed eight in the day and forty-eight in the week.*”. At national level the Employment and Labour Relations Act 2004 sets the working hours standards. For instance under Section 19 (1) *the Employment and Labour Relations Act*,¹¹¹ provides subject to the provisions of this Sub-Part, an employer shall not require or permit an employee to work more than 12 hours in any day.

Section 19(2) of the same Act, provides that subject to this Sub-Part, the maximum number of ordinary days or hours that an employee may be permitted or required to work are- (a) six days in any week; (b) 45 hours in any week; and (c) nine hours in any day. Therefore in strictly sense of it working for 12 hours in any day includes 3 hours calculate as overtime of which under the law overtime is paid for.

2.5.2.1 Workers Engaged for More Permitted Working Hours

The study revealed that companies do engage workers to work for more than 12 hours per day. For instance Musoma Food Company Limited and Jambo Investment engage its employers to work for more than twelve hours. There

¹¹⁰ 1919 (No. 1).

¹¹¹ Act No.6 of 2004.

is no specific time anyone can be recalled on duty as the company operates twenty four hours a day.¹¹²

Other companies like TASIPA Limited in Dar es Salaam provides a mandatory provision that working hours will be 12 hours without any overtime payment. Therefore all employees are obliged to work for 12 hours in any day.¹¹³

In Mbalali district employees working with Kapunga Rice Project, complained that they are engaged to work for more than nine hours a day without any extra payment. There is no room for negotiation with the employer as there is no trade union that would facilitate collective bargaining on the terms and welfare of Kapunga Rice Project.



Picture 11: Casual labourers at Kapunga Rice Project in Mbarali District, Mbeya Region

The hotel sector is as well hit by exploiting its employees as they had to work for long hours in order to maximize profit. The good example was

¹¹² Corporate Human Rights Compliance Assessment Report, Musoma Field Report, 2017 (LHRC's Report) page 11.

¹¹³ Corporate Human Rights Compliance Assessment Report, DSM Field Report, 2017 (LHRC's Report) page 12.

observed in Geita region by interviewing selected employees working in different hotels/lodges around Geita town which included Alpha Hotel, Luns Hotel and Katoma hotel whereby the workers were complaining that their employers tend to force them to work overtime without overtime pay. One of the respondents said that:

*“I feel sleepy simply because I had to double my shift as a way of compensating my previous two days leave”.*¹¹⁴

Similarly in transport sector especially *Bodaboda* averred that; they are supposed to work for hours in order to meet the target agreed by their employers. They have to reach certain amount as a target set out by their employers irrespective of hours permitted by the law. LHRC finds it to be of the serious reason that increases road accidents. *Bodaboda* youth are compelled to work for hours so as to meet the set targets.

2.5.2.2 No Overtime Payments

Overtime in this industry is an agreement between employer and employee and paid 1 and half times the basic hourly wage. During holidays/weekly rest day, the payment is double times the basic hourly wage. Regulating working time is intended to promote the health and safety of employees as well as to meet social needs. The law is very clear on calculation of overtime payment as Employment and Labour Relations Act, 2004 provides that:

*“is to the effect that an employer shall pay an employee not less than one and one-half times the employee’s basic salary wage for any overtime worked.”*¹¹⁵

Furthermore, The law also provides that the employees who worked at night, that is to say a time after twenty hours, or before six hours, an employer shall pay an employee at least five per centum of the employee basic wage for each hour worked at night and if the hours worked are overtime hours, the five per centum shall be calculated on employee overtime rate.

The term remuneration is associated with wages as defined under Article 1 of the Convention Concerning the Protection of Wages, it defined wages to means *remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by*

¹¹⁴ Corporate Human Rights Compliance Assessment Report, Geita Field Report, 2017 (LHRC’s Report) page 13.

¹¹⁵ Section 19(5).

*national laws or regulations which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or for service rendered or to be rendered.*¹¹⁶

The Convention requires member states with inclusion to Tanzania to ensure that the wages payable to be in money only in legal tender and payments in form of promissory note, voucher, coupons to be prohibited. The African Charter on Peoples and Human Rights which states that: - *Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.*¹¹⁷

The Constitution of United Republic of Tanzania of 1977 provides rights to remuneration as per work done under Article 23 which provides that; *‘every person without discrimination of any kind is entitled to remuneration commensurate with his work, and all persons working according to their ability shall be remunerated to the measure and qualification for the work.* The *Employment and Labour Relations Act*, which it provides that an employer shall pay an employee any monetary remuneration to which an employee is entitled.¹¹⁸

The study revealed that 50.72 percent of the respondents employed in different sectors whose salary was decided by employer on the ready-made employment contracts, whereas 18.62 percent negotiated and only 10.03 percent was upon personal demand. This trend is critical situation especially in manufacturing industries, hotel sector in mining companies’ especially small scale mining companies.

¹¹⁶ Convention No.95 of 1949.

¹¹⁷ Article 15.

¹¹⁸ Act No.6 of 2004, Section 27.

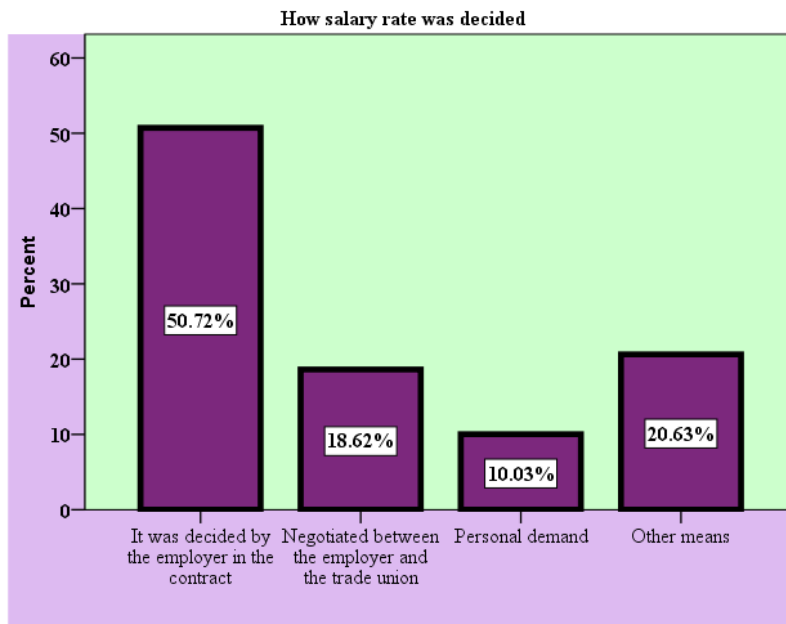


Figure 17: Decision on salary rates

Moreover, it was found out that only 45.85 percent of the sampled companies effectively paid overtime to its workers whereas 54.15 percent of workers had no any overtime pay for the works done beyond legal allowed working hours.

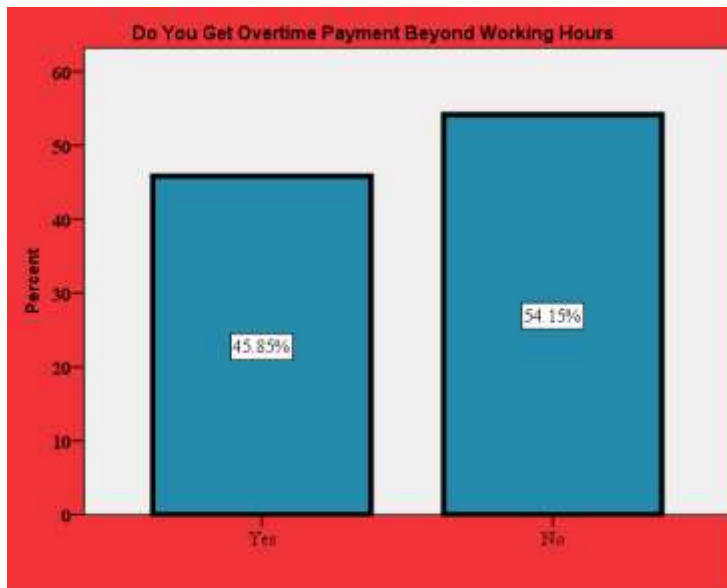


Figure 18: Status of Overtime Payment

For instance; during this survey LHRC met and interviewed workers in the following companies;

- (a) **Mashapale Gold Mine** at Mpovu area in Geita workers usually work the whole week and with overtime without any extra payment this shows that how the employee violate Human Rights at corporate business.
- (b) Lenny Hotel in Geita one employee had this to say;

"sisi huwa hatuna sikukuu tunakuja hata siku za sikukuu kufanya kazi ['we have no public holiday in our work we always come even holidays to work"]

- (c) A respondent at Chemi-Cotex Industries, Dar es Salaam had this to say;

Hatuna cha Jumamosi, Jumapili wala sikukuu. Sikukuu ninafanya kazi bila hiyari yangu. Tunajaza fomu ya overtime ina hela haitoki, ninapewa elfu moja kwa sikukuu

- (d) Workers at Nyanza Bottlers in Mwanza had the following to say,

“Unaweza fanya kazi mpaka ukapitiliza lakini hupewi malipo wakati umechoka na unahitaji kaa na familia pia hapa kazi inapigwa mara nyingine mpaka jumapili. Nye wenyewe mashahidi leo ni jumamosi na mnatuona kazini. Hatupewi over time angalia tunafanya kazi mpaka saa 12 jioni na ukichelewa kazini hata dakika 5 unakatwa 5000 kwenye mshahara bila huruma”.

2.5.3 Labour Standards: Fair Remuneration and Observance of Minimum Labour Wages

The term remuneration is associated with wages as defined under Article 1 of the Convention Concerning the Protection of Wages.¹¹⁹ It is defined that;

“wages to means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or for service rendered or to be rendered.”¹²⁰

The Convention requires member states with inclusion to Tanzania to ensure that the wages payable to be in money only in legal tender and payments in form of promissory note, voucher, coupons to be prohibited. *The African Charter on Human and Peoples’ Rights (the Banjul Charter)* the right to work and equal pay is clearly stipulate as it states that;

“Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.”¹²¹

The Constitution of United Republic of Tanzania of 1977¹²² provides rights to remuneration as per work done under Article 23 which provides that:

¹¹⁹ Convention No.95 of 1949.

¹²⁰ Article 1 (a) of ILO Convention (No. 100) “Equal remuneration” of 1951 defines the term *remuneration* as the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment.

¹²¹ Article 15.

¹²² Cap. 2.

‘every person without discrimination of any kind is entitled to remuneration commensurate with his work, and all persons working according to their ability shall be remunerated to the measure and qualification for the work.’

The Employment and Labour Relations Act 2004 provides that an employer shall pay an employee any monetary remuneration to which an employee is entitled.¹²³

However, according to National Human Rights Action Plan (2013-2017), up to date Tanzania is still faced with challenges in eliminating discriminatory labour practices and efforts towards improving labour standards. It went further by acknowledging that privatization and free market have damaged the wellbeing of employees as they have been subjected to substandard working conditions such as long working hours, forced overtime and poor remunerations.

In regard to this, pursuant to section 39 of the Labour Institutions Act, 2004,¹²⁴ the government through the Ministry of Labour and Employment provides a guideline to employers and employees on the new minimal wages for private sectors established under Government Notice No.183 of 2011 and came into effects from 1st July 2013 and lasted on 30th June 2016.

During this study different companies that were visited, it was found out that most of them do not comply with the Minimal wages set for private sectors as per GN No. 183 of 2011. For instance a worker for TTPL explained that his salary per month is 160,000 Tshs. that is expected to sustain his family, his bus fair to and from work daily. He went on to say that went on to say that;

“dadangu, hiyo 160,000 bado wananikata sijui nini maana makaratasi yao tunayosaini yameandikwa kingereza na wengi wetu hatujui kingereza, basi wametupata haswa”.

[They deduct Tshs 160,000 thereare some things which I do not understand because the papers they make us sign are in

¹²³ Section 27 and Section 26 of ELRA, 2004 provides a basis for the calculation of the payment rates that can be determined for the applicable hourly, daily, weekly or monthly rate of pay. This is being determined in accordance with the law provided whereas 9 working hours in a day; 45 hour in a week; or 234 hours in a month.

¹²⁴ Act No.7 of 2004.

English and most of us do not understand the language, and that is how they trick us.]

For instance the following table summarizes some of the companies that took part in this study;

Table 12: Companies which took part in the study

Company	Region	Sector	Minimum wages
TARPO	Arusha		160,000
Nashera Hotel	Morogoro	Hotel	160,000
Achelis Group	Morogoro	Manufacturing	360,000
Musoma Food Company	Mara	Fishing	150,000
TPC	Kilimanjaro	Agriculture	186,000
Gofu Mats And Parkeging Company Ltd	Tanga	Manufacturing	120,000
Murzah Wilmar East Africa Ltd	Tanga	Manufacturing	120,000
Aviv	Ruvuma	Manufacturing	50,000

Source: LHRC Human Rights and Business Survey 2016



Figure 19: Salary Slip Sample obtained at Tarpo Industries Tanzania Limited in Arusha

- (a) In Moshi Leather industry LHRC found out an employee who was hired in 1977 of which has worked for over 9 years his monthly salary is only 150,000/= without any increment since first

employment. Majority of employees work as casual laborers up to 10 years.¹²⁵

- (b) Increased number of companies to resort in daily payment so as to avoid statutory deductions such as Pay as You Earn (PAYE) as Income tax, social security and other charges. The payment is between 4,000/= to 7,000/= per day. Such practices was seen at TPC-Moshi, Gaki Investment Company Limited, TASIPA Limited, and PPTL in Tanga one of the respondent said that;

Mshahara wetu ni mdogo sana, yaani ni laki moja na kumi na nne elfu(114,000/=) kwa mwezi ni sawa na wastani wa shilingi elfu tatu mia nane kwa siku (3800/=). Humo humo kuna garama za usafiri, chakula na malipo endapo ukivunja sindano ya kushonea...kazi tunayofanya ni kubwa sana kwa siku lazima ushone mifuko mia tatu (300) usipofikisha hiyo idadi hiyo kwa siku, hiyo siku itahesabika kama haujafanya kazi maana yake itakatwa kwenye mshahara¹²⁶

- (c) Discriminative practices in payment rates between foreigners and locals. It was observed in Tanga whereby local employees are paid daily at a rate of 4,200/= per day whereas foreigners especially Kenyans and Indians are paid on monthly basis better salaries.¹²⁷
- (d) Also it was observed that there is a tendency by management of companies to deduct salaries or not to effect any payment to employee to compensate for destruction of company properties or any loss accrued in course of employment. This was observed at TPPL investment.
- (e) The situation is even worse in hotels and bars as workers are being paid less than 150,000/= monthly. For example, Lenny Hotel in Geita

¹²⁵ Corporate Human Rights Compliance Assessment Report, Kilimanjaro Field Report, 2017 (LHRC's Report) page 11.

¹²⁶ Corporate Human Rights Compliance Assessment Report, Tanga Field Report, 2017 (LHRC's Report) page 15.

¹²⁷ Corporate Human Rights Compliance Assessment Report, Tanga Field Report, 2017 (LHRC's Report) page 14.

pays its employees 70,000/=, the worker from Afrilux hotel in Musoma municipal said that.

Yaani tunafanya tu kazi ili siku ziende, lakini mshaharatunaolipwahaulingani kabisa na kazi ambayo tunafanya. Cha kusikitisha ni kwamba pale tunapojaribukuulizanyongezayamshaharamwajirihusema hanauwezowakuongezamshaharahivyoataakayewezakufany akaziafanyenaambaanaona anaumiaanawezakuombakuachakazi.

- (f) Payment of salaries based on other factors apart from salary structures set by the government. It was found out apart from Minimum wages set in accordance with Government Notice, companies have their own way of determining salary scale.
- (g) Companies especially in service sector depends on income generated so to plan determine wages payment. If the company in respective month records loss income then there is no wages paid to its employees. As the result most companies that provide services such as Hotels have reduced the number of employees. For instance the Luns Hotel manager in Geita had this to say; *“As you can see now a day’s hotel business is very hard due to lack of enough customers so to some extent we are facing a great challenge of paying wages to our workers”*¹²⁸
- (h) There is a very serious concern on untimely payment of salaries. During the survey some companies report non-observance of pay day. Private companies have are at liberty to set their own pay day however, there is inconsistency in respecting such payday. Employees normally suffer most to meet daily basic needs. One respondent who works with Rukwa Security Company in Songea their Managing Director confessed that;¹²⁹

“mimi kiukweli huwa nawalipa wafanyakazi wangu tarehe 15 mshahara wa mwezi uliopita hii inatokana

¹²⁸ Corporate Human Rights Compliance Assessment Report, Geita Field Report, 2017 (LHRC’s Report) page 15.

¹²⁹ Corporate Human Rights Compliance Assessment Report, Ruvuma Field Report, 2017 (LHRC’s Report).

na mimi kucheleweshewa madeni na wateja wangu, na mshahara wa wafanyakazi wangu ni tsh 150,000/= kwa mwezi na hii ni kwa mfanyakazi yoyote haijalishi ameanza kazi leo au amefanya kazi miaka mingapi”

LHRC supports the observation made by Mr. Bentrod Mathew, the Chairperson of TUICO Songea, that; “majority of employees in an area are exploited simply because of existing laws did not offer clear clarification on payment amounts by considering qualifications and experience of an individual”. The law only states the minimum wage of the employees in investment areas where employers take advantage of it by paying their employee flat rate which rank to minimum wage to all employees regardless of their qualifications or experience in which most of time it is less than TZS 200,000”

2.6 Observance of Principle of Non-Discrimination

As defined under Article 1 of the Convention Concerning Discrimination in Respect of Employment and Occupational,¹³⁰ *it includes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullify or impairing equality of opportunity or treatment in employment or occupation.* The Convention Concerning Discrimination in Respect of Employment and Occupation requires member states including Tanzania to declare and pursue a national policy designated to promote, by method appropriate to national conditions and practice equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

The labour law in Tanzania adhere the same principle as encountered under Section 7 of the Employment and Labour Relations Act¹³¹ which provides that; *‘no employee shall be subject into discrimination in the working place.’*

The situation on the ground indicates that there are some notable incidences of discrimination at work places. Respondents who took part in this survey revealed that 89.68 percent of workers have not experienced discrimination at work place and 7.5 percent of respondents are reported to have encountered gender based violence as summarized in the following charts;

¹³⁰ Convention No. 111 of 1958.

¹³¹ Act No. 6 of 2004.

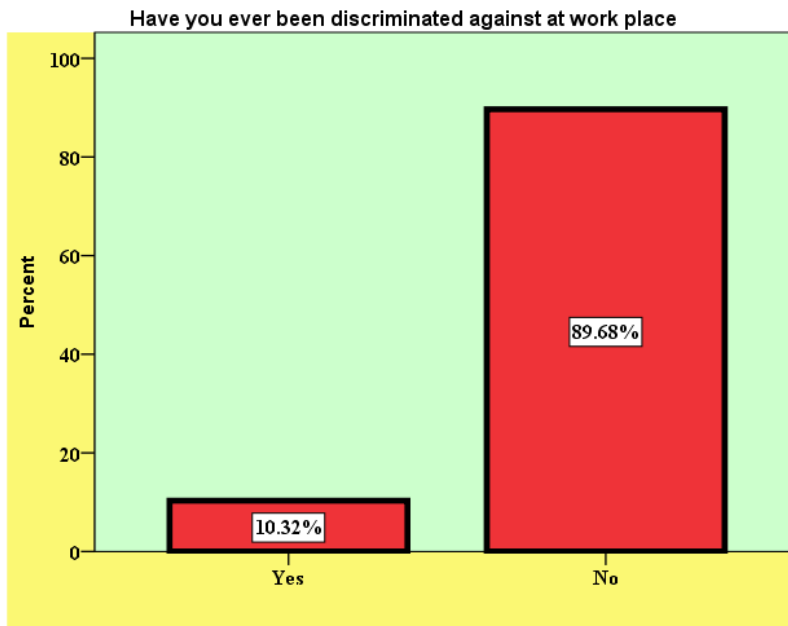


Figure 20: Discrimination at work place

2.7 Labour Rights Awareness

The protection of employees and employers is ensured by legal certainty; or how much employees and employers are aware of their rights and obligations and the extent to which they are obliged to exercise their rights and carry out their responsibilities. However, there is reputable presumption everyone is presumed to know the law. That is to say ignorance of law excuses no one. In order to safeguard labour standards knowledge on labour laws is very important. The knowledge on labour laws enriches one's capacity to demand for labour rights at work place. During this study it was found out that there is limited knowledge on labour laws among selected research participants. From the analysis 79.94 percent of respondents had no basic knowledge on Tanzanian labour laws and obligation stated therein.

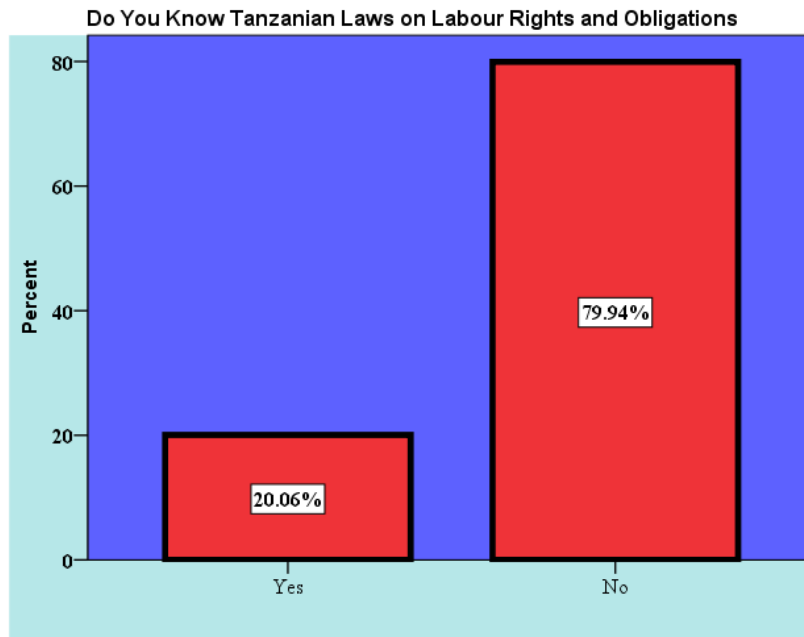


Figure 21: Knowledge of Tanzania labour laws

For example:

- (a) Workers at Tanga Mining Co. LTD located at Mwanzange ward had no knowledge on labour laws especially importance of joining and forming trade unions.
- (b) TPPL investment workers were denied to form and join any trade union. The workers thought it to be illegal to form and join trade union. This is clear indication that most workers are unaware of their legal rights especially employment standards as provided for under Employment and Labour Relations Act, 2004.

The study revealed that there are initiatives taken by in different places to raise awareness on labour laws through different ways. For instance conducting radio programs as it was observed in Geita, provision of flyers to workers at all levels, including domestic workers was being done by TUCTA and ATE.



Picture 12: A flyer on labour laws

On the other hand there are some who has had the awareness of labour laws and rights, on an interview with ex-employee of Rhino Cement CO. Ltd one Juma Omary noted that;

“Ninazijua sheria za wafanyakazi na haki zangu pia nazijua kama mfanyakazi, ndiyo maana mwaka jana 2016 nilikuwa kati ya watu walioongoza maandamano hapa kwa lengo la kudai mshahara upande pamoja na kuboreshewa kwa mazingira ya kazi...katiba ya nchi inaniruhusu pamoja na sheria ya haki kufanya hivyo lakini tulipigwa mabomu na wengine tukafukuzwa kazi kwa ajili ya kutetea haki yangu pamoja na wafanyakazi wenzangu tunaonyanyaswa na wahindi...ndiyo maana unaniona niko hapa naendesha boda boda....”



Picture 13: Rhino Cement employees on strike



Picture 14: NIDA Textile Mills Ltd Workers on Strike

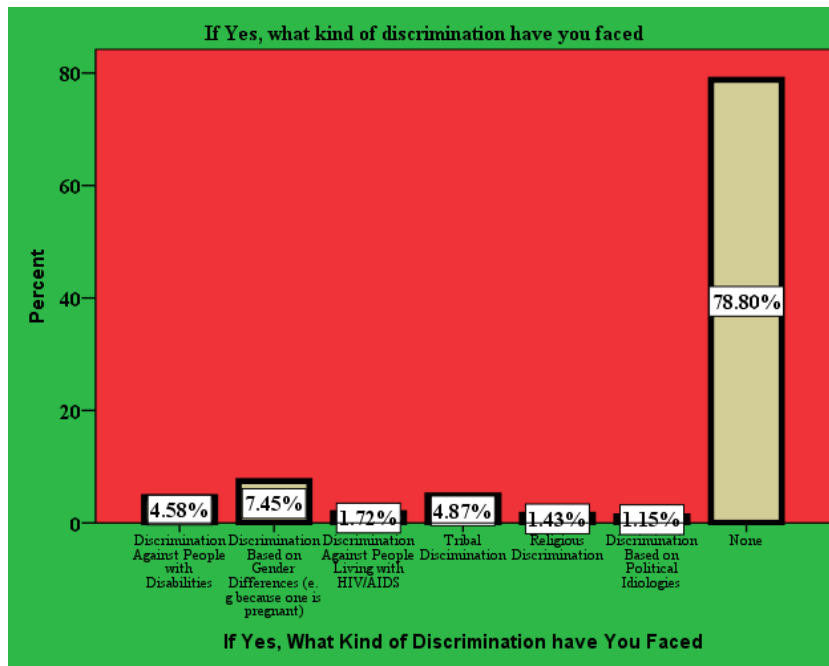


Figure 22: Types of discrimination faced at work place

Apart from responses recorded in the study there isolated incidences of discrimination in selected companies on the ground such as;

- (a) Nyakato Steel Mills in the supervisory positions the number of Indians is very high in each department of production as compared to the African people by origin.¹³²
- (b) Rhino Cement is accused to discriminate its workers based on nationality.¹³³ Local people who are working on the industry are given TSH 4,200/= per day while foreigners is above their amount.
- (c) Discrimination based on disability was experience at Jambo Company whereby one respondent to this study had this to say “*there is no any person with disability work in his place, if any worker got*”

¹³² Corporate Human Rights Compliance Assessment Report, Mwanza Field Report, 2017 (LHRC’s Report) page 32.

¹³³ Corporate Human Rights Compliance Assessment Report, Tanga Field Report, 2017 (LHRC’s Report) page 22.

injured during work and become disable their taking care of all hospital expenses until he gets better, the issue of taking him or her back to work it depend on the condition of his disability”



Picture 15: Chinese and Tanzanians workers in a team work

Huacheng international company the ratio between men and women is far different as total of workers is 35, men 31 equals to 88.6%, women is only 4 equals to only 11.4%. Similarly there were claims by Musoma Food And Company & El-Hillal Company all casual laborers are male and the management claims that the nature of the work they are doing is not favorable for women.¹³⁴

¹³⁴ Corporate Human Rights Compliance Assessment Report, Mara Field Report, 2017 (LHRC's Report) page 27.



Picture 16: Male workers at Musoma Food and Company

- (d) Basia Gold Mining Co-Operative Society at Kolandoto only works with native of Kolandoto only. They do not allow any persons outside Kolandoto to join the society.

A good example, of the Company in Shinyanga region which prepared Plans and Policies to ensure no forms of discrimination at their work place is Williamson Diamond Ltd in Mwadui. These policies included (a) Policy to Promote Equal Opportunity and to Eliminate Discrimination in WDL Workplaces (WDL-HR-03) and Sexual Harassment Policy (WDL-HR-28). According to the Human Resource Officer of WDL those Policies help them to ensure compliance in protection and promotion of Human Rights in work place.¹³⁵ Also similar good practice was observed at DAE Company Limited in Mbinga of which clear policy on non-discrimination principle.

¹³⁵ Corporate Human Rights Compliance Assessment Report, Shinyanga Field Report, 2017 (LHRC's Report) page 17.

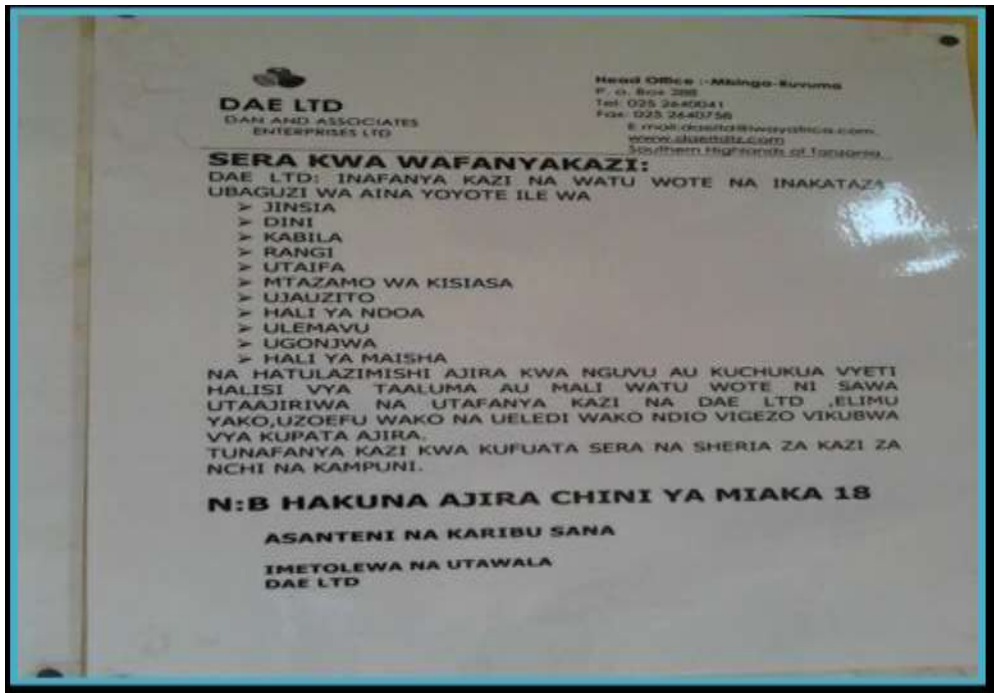


Figure 23: Illustrating a Policy against Discrimination at DAE LTD in Mbingo District, Ruvuma Region

LHRC considers any form of discrimination at work place is contrary to Convention No. 111 of 1958 Concerning Discrimination in Respect of Employment and Occupational “it includes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullify or impairing equality of opportunity or treatment in employment or occupation.” Therefore LHRC calls for all employees to adhere to international and national labour standards.

2.8 Rights to Leave and Fringe Benefits

2.8.1 Leave

Leave is recognized as one of the human rights stipulated for under the laws of the land. Leave is the time where someone has permission to be absent from work with salaries present as usual. Although generally voluntary, some of the most important “fringe” benefits have actually come to be

expected from employees. These major types of fringe benefits include health insurance, retirement plans and paid time off. Information regarding these benefits is covered in the health insurance, retirement plans and others.

2.8.2 Types of Leave

There are four types of leaves as stipulated under the Employment and Labour Relations Act including; Annual Leave, Sick Leave, Maternity Leave and the Paternity Leaves provided for under the Employment and Labour Relation Act, 2004.

- a) **Annual Leave;** the law provides that every employee is entitled to annual leave of 28 consecutive days. It is further provided that during the leave “an employer shall pay an employee the remuneration the employee would have been paid had the employee worked during the period of Leave before the commencement of the leave.”¹³⁶
- b) **Sick Leave;** An employee shall be entitled to sick leave for at least 126 days in any leave cycle. And that sick leave for the first 63 days shall be paid full wages, and for the second 63 days shall be paid half wages” as provided under section 31(1-2).¹³⁷
- c) **Maternity /Paternity Leave;** Maternity leave is provided for under section 33 of ELRA, 2004, that all the female employees are entitle to 84 days paid maternity leave if she delivers more than one child is entitled 100 days paid leave. Also, avers that once a child dies within the live circle a female employee will be entitled to 184 days paid leave. Under the same limb, section 34 provides for the paternity leave whereby a man is entitled to three days payable paternity leave within the leave circle. The leave, however, must be taken within seven days after the birth of the child, and he must be the father of the said child.

It is in principle that an employee of any cadre is entitled to rights to leave and fringe benefits according to his/her job description. Those rights, however, may be defined by an institutional set-up subject to the general standards that are put according to the laws of the land. The Universal declaration of human rights recognizes leave as one of the human rights, in

¹³⁶ Sec 31(4) of Employment and Labour Relation Act, No 6 of 2004.

¹³⁷ Employment and Labour Relations Act, no 6 of 2004.

Article 24.¹³⁸ Also in our nation laws leave is stipulated as employee right and are stipulated for under the Employment and Labour Relations Act, 2004, and its regulations as discussed, albeit, above.¹³⁹

It should be borne in mind that the ILO has no comprehensive instrument that embodies matters pertaining leave for workers. However, in 2000, the ILO enacted the Maternity Protection Convention,¹⁴⁰ a convention that appears to be the most up-to-date International Labour Standard on maternity protection for women workers, although the earlier relevant instruments - the Maternity Protection Convention,¹⁴¹ and the Maternity Protection Convention (Revised),¹⁴² are still in force for countries in certain countries.

Convention No. 183 provides an entitlement of 14 weeks benefit to women in countries where the instrument applies.¹⁴³ The convention also requires and mandates ratifying states to take measures to ensure that a pregnant woman or nursing mother is not obliged to perform work which has been determined to be harmful to her health or that of her child, and provides for protection from discrimination based on maternity. The standards under the same convention prohibits employers to terminate the employment of a woman during pregnancy or absence on maternity leave, or during a period following her return to work, except on grounds unrelated to pregnancy, childbirth and its consequences, or nursing.¹⁴⁴ Moreover, Women returning

¹³⁸ Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holiday with pay.

¹³⁹ Employment and labor relation act Section 30 provides for the right, the section provides for the annual leave, that every employee is entitled to 28 days consecutive paid leave in each leave circle, Section 32 provides for the 126 paid sick leave, the said 126 leave is divided into two, first 63 days the employee shall be paid his full wages and second 63 days shall be paid half of his wages. Also Section 33 provides for the maternity leave, that all the female employees are entitle to 84days paid maternity leave if she has delivered one child, if she delivers more than one child is entitled 100 days paid leave, also the section went further by providing that if the child dies within the live circle she is entitled to 184 days paid leave, Section 34 provides for the paternity leave that a man is entitled to three days payable paternity leave within the leave circle, this leave must be taken within seven days after the birth of the child, and he must be the father of the said child. The same section, section 34 provide for other type of leave, that is four days for sickness or death of the employees children and four days for the death of the employees spouse, parents, grand parent or siblings.

¹⁴⁰ **2000 (No. 183).**

¹⁴¹ 1919 (No. 3).

¹⁴² 1952 (No. 103).

¹⁴³ See Article 4 of Convention No. 183.

¹⁴⁴ See Article 8 of Convention No. 183.

to work must be returned to the same position or an equivalent position paid at the same rate.¹⁴⁵ Also provides a woman the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.

In Tanzania the Constitution which is a mother law is silent about leave. However the Employment and Labour Relations Act,¹⁴⁶ provides leave. Section 29(2) (a) and (b) of the Act states that; *(a) an employee employed on a seasonal basis is entitled to paid leave under the provisions of this Part; (b) an employee, with less than six months service and who has worked more than once in a year for the same employer, shall be entitled to paid leave under the provisions of this Part if the total period worked for that employer exceeds six months in that year.*

Furthermore, under the law, the Employment and Labour Relations Act, Section 31(1) of the Act provides for annual leave which shall be granted to an employee at least 28 consecutive days' leave in respect of each leave cycle, Section 32(1) of the Act provides for a sick leave for at least 126 days in any leave cycle. Also Section 33(1) of the Act provides for maternity leave by which an employee must give notice to the employer of her intention to take maternity leave at least 3 months before the expected date of birth and such notice shall be supported by a medical certificate. In addition to this the Act further explain that there must be 84 days' paid maternity leave; or 100 days paid maternity leave if the employee gives birth to more than one child at the same time.

2.8.3 Lessons Learnt from Industries and Work Places on the Right to Leave

The findings from this study revealed that *the majority* of industrial companies' offer leaves, that is, annual leave for 28 days per annum; and sick leave for 3 days to their employees save for the few companies and areas that do not practice the standards as required by the law.

The study revealed that majority 53.30% of workers do not take any type of leave in an annual cycle due to several factors imposed by employer for instance loss of job. These reasons can further be amplified by experiences from the following instances from different companies visited.

¹⁴⁵ See Article 8 (2) of Convention No. 183.

¹⁴⁶ Act No. 6 of 2004.

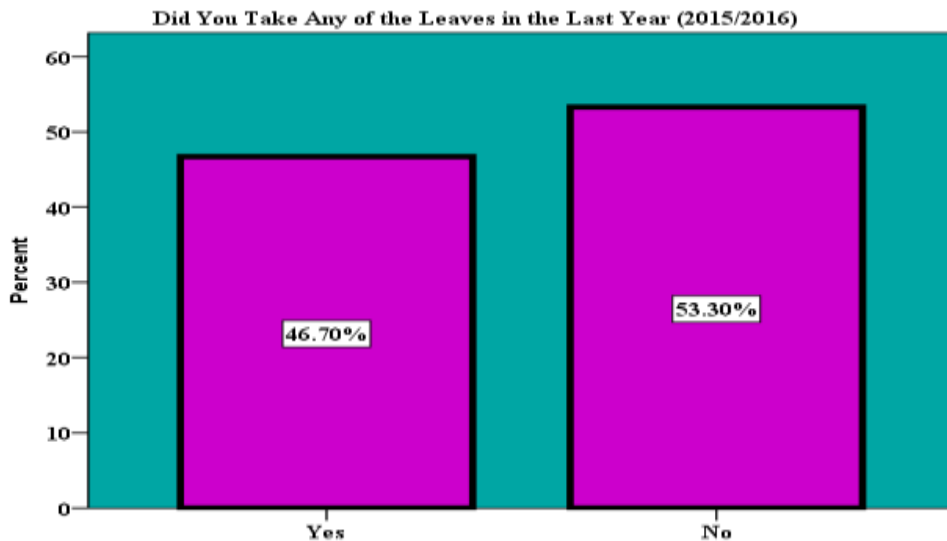


Figure 24: Status of worker taking annual leave

- (a) The experience drawn from bars and hotels including cafeterias and cafes' respectively avers that the leaves are arranged and decided by the owner of the business and it is with that discretionary will an employer may decide to either grant or not grant the same to an employee. In addition to that, once the worker gets the leave, it becomes a leave with no payments under the same. The same situation observed Dawill Cleaners Limited (DCL) whereby the worker has the right to get the annual leave of 28 days but with no payment.
- (b) In Musoma Food Company Ltd, the employees claimed that they are not given any leave and when one decides to go for a short leave that would be the end of his/her work.
("kuna mwenzetu alifiwa na mke wa kaka yake aliomba ruhusa ya kuhudhuria mazishi, boss kamwambia hakuna kwenda kwanza wewe hakuhusu sana").
- (c) As distinguished from bars and hotels, in factories such as in Musoma Fish Factories, it was witnessed that there is compliance of the laws, regulations and standards. That the employers are providing their workers with annual leave every year and they use to provide them with fringes benefits as a leave payment.

- (d) An experience from Bonite Bottlers reiterates that an employee is given 90,000/- after he/she returns from his/her annual leave and he is not given his/her monthly salary for the month when he/she goes for the leave rather he is given the 90,000/- with delay.
- (e) From TPC staffs; it was observed that the employees are monthly paid 10,000/- as their leave payment whereby they are supposed to save the money for their leave payment. There are three types of employees in TPC 3 month renewable contract for 9 month consecutively making a total of 9 month by renewing it every after three months they are paid 186,000/- per month and 100,000/- as leave payment. One year contract are given leave but they are not given leave payment instead they are given the money but they return the money when they come back they deduct the money from their monthly salary and compensate from the money they provide to one year's contract as leave payment and permanent contract.
- (f) In Shinyanga region; workers from industrial sectors are given annual leave, maternity leave and few corporate companies provide for paternity leave such as Williamson Diamond Ltd, tried to comply with laws, regulations and standards by providing their workers with annual leave as well as paternity leave and they use to provide them with fringes benefits as a leave payment (*only on annual leave*).
- (g) The question of sick leave was provided to complicated conditions by many of the company for instance, Gaki Investment, Jambo Company and El-Hillal Minerals Ltd, if someone went for sick leave permission and took more than a week he/she should be chased away from the job and non-payment will be compensated to him/her. Also sometimes replacement occurs because the employers depend on cheap labours (*vibarua*).
- (h) Pee Pee Tanzania Ltd does offer leave to its employees, but in a very restricted manner. This was evidenced in an interview with one of the employee of P.P.T.L who refused to disclose her name for fear of being fired that: -
Mimi nimeingia kazini mwaka jana (2016) mwezi wa pili nikafukuzwa mwezi wa tisa, huu mkono ulitenguka kutokana na kazi wakaniona kabisa nimefungwa P.O.P wakaniandikia ruhusa ya siku tatu baadae wakasema njoo kama mkono bado unauma tukuelekeze Kidibomu kuna sehemu wanatibu kienyeji, nikaamua kukaa siku tatu

zaidi kujitibia siku ya nne nilipokwenda kazini nikaambiwa jina langu limefutwa yaani sina kazi na wakikuachisha kazi hakuna kulipwa.

- (i) At **Lenny Hotel**, the employer was approaching to comply with laws and procedures of employment and labour standard by providing them with annual leave every year and working shifts as usual. Also they do practice sick leave but not exceeding one week if one appears to exceed the set limit/standards, he/she will be expelled from work. Maternity leave is provided for but it does not fit the set standards put for under the law; such that it is merely a paid leave for one month whilst the net month attracts no payment.
- (j) The workers at **Kasesa Goldmines** narrated that they are not allowed to go for leave instead they have working shifts which are regarded by the owner as a leave. Sick leave was provided for complicated conditions and that if someone went for sick leave permission and took more than a week he/she should be chased away.
- (k) In Ruvuma region many companies provide leave especially annual leave. However, the experience drawn from TANCOAL Company is that there is no annual leave instead they work for six weeks and they rest for two weeks and TANCOAL workers revealed that they cannot complain about not receiving a legally required annual leave fearing that they might lose their jobs. The leave mandated by the law appears to be adequate, but enforcement is lacking. Many employers deny employees leave, particularly maternity leave, and suffer no legal consequences. It was further observed that more than 80% of employees in Ruvuma region especially Songea and Mbinga districts are provided different forms of leave but the most common are “*Annual and Sick Leave*”; even though during the discussion with employees it was found out that the leaves that employees received most of the time do not meet the legal standard.

During the discussion with TANCOAL energy employees, it was observed that, even though in year 2015/ 2016 leaves were provided, proper legal procedures were not followed. One of the employees narrated that the conditions for taking leaves are not friendly and are not in consonance with the laws. The leave is unpaid and hence most

of employee prefers to continue working rather than taking a leave, his quotation below illustrate the situation above:-

“Kiukweli kwa hapa katika kampuni yetu kuchukua mapumziko ni kama adhabu. Ni kweli nafasi zipo na likizo za namna zote zinatolewa lakini ukitizama likizo zenyewe haupatiwi pesa yoyote na mtu unafamilia, si ni bora uje kazini tu kuliko kukaa nyumbani wakati likizo zenyewe hazina malipo na familia inakutazama”

- (1) It was observed that employees in informal sectors do not have any of the above mentioned leave, but an employee who asks for leave will have to go without payment and no leave whilst payment will be granted to an employee, this was observed at Tabora Misisitu Product Co Ltd, Sizya Mills Co Ltd, Rukwa Security Co Ltd and Oxygen Lounge.

It is with these observations hereinabove we therefore find that in Tanzania, the issues of maternity leave and its associated benefits is not anyhow in dispute as per the laws. The law is settled and the employers are mandated by the same to fulfil their obligations towards their employees.

However, the practice in some of the areas appears to be different, right far from the provisions of the law. There is a need of uplifting and putting in place the enforcement of the standards as per the laws. The employees are afraid of losing their stands at work places and so whenever they are in injustices and/or in conflict with any of their right, they cannot question. Major claims are dismissed and defeated by such a reality.

It is with the same tune LHRC urges the employers to make sure that they channel in by meeting the requirements of the laws and where possible, mitigate accordingly to fix some situations that might be not be directly expressed, covered and/or dealt with under the law.

CHAPTER THREE

LAND MANAGEMENT AND ACQUISITION FOR INVESTMENT

3.0 Introduction: Tanzania Land Rights Framework

Land is the source of all material wealth.¹⁴⁷ Land is recognised as a property and thus the right to own property is stipulated in the Constitution of the United Republic of Tanzania of 1977.¹⁴⁸ Land rights are further stipulated in major laws of the country governing land matters which are the *Land Act* No.4 and the *Village Land Act* No. 5 of 1999. These laws were enacted to enforce the Land Policy of 1997. Thus the two land laws carry the principles of the land policy, that:¹⁴⁹

- i. All Tanzanian land is public land, vested on the President of the United Republic as a trustee on behalf of all Tanzanians;
- ii. There should be an equitable of and access to land by all;
- iii. Full and fair compensation should be paid to any person whose right over land has been revoked or otherwise interferes with to the detriment of the State;
- iv. The amount of lands that a person or body corporate can occupy or use is regulated.

Land management in Tanzania is governed by other laws (the two land laws inclusive), including the Land Acquisition Act, 1967; *the Land Registration Act, Cap. 334*; *the Registration of Documents Act, Cap.117*; *the Courts (Land Disputes Settlements) Act, 2002*; *the Land Use Act, 2007*; *the Urban Planning Act, 2007*; *the Mortgage Financing (Special Provisions) Act, 2008*; and, *the Unit of Titles Act, 2008*.

¹⁴⁷ LHRC 2015: Tanzania Human Rights and Business Report.

¹⁴⁸ Article 24.

¹⁴⁹ Section 3 of the *Land Act* and the *Village Land Act* of 1999.

This Chapter examines principles of land rights, specifically the right to full and fair compensations (as in principle (iii) above) and the regulation provided by the State over the amount of land one can use or occupy.

3.1 Land Tenure and Security: Practical Concerns

Land ownership as a property is a constitutional right as stipulated above. In Tanzania land is a public property vested under the President on behalf of Tanzanian citizens.¹⁵⁰ The law recognises three regimes of land tenure; namely the statutory or granted right of occupancy, the customary right of occupancy and other informal right of occupancy. The law further categorises Tanzanian land into three categories; namely the general land, the village land and the reserved land.¹⁵¹

Under the Tanzanian land tenure system Tanzanian citizens own land by means of occupation.¹⁵² Non-citizens can only have right of occupancy for investment purposes as prescribed in the investment laws of the country.¹⁵³ The right to occupy land in Tanzania is limited to Tanzanian citizens only, where as non-citizens can have the right to occupy land through the Tanzania Investment Centre (TIC) established under the *Tanzania Investment Act* of 1997.

As stipulated above, the legal framework guarantees security over land ownership. However, there are a number of loopholes in the legal system and in practice which put into jeopardy the security provided by the legal framework, especially where investment involving land is concerned. This has been established by the study conducted in 2016 where a number of issues were identified. These include:

- i. Majority of investments involve the use of land of local communities. This has led to land alienation and eviction of local communities to pave way for investment. The LHRC 2016 study indicated that 22.31% of the respondents indicated that among the common human rights violation conducted in investment areas involve land alienation and/or grabbing.

¹⁵⁰ Section 4 (1) of the *Land Act* of 1999.

¹⁵¹ Section 4 (4) of the *Land Act* of 1999.

¹⁵² Section 19 (1) of the *Land Act* of 1999.

¹⁵³ Sections 19 (2) and 20 of the *Land Act* of 1999.

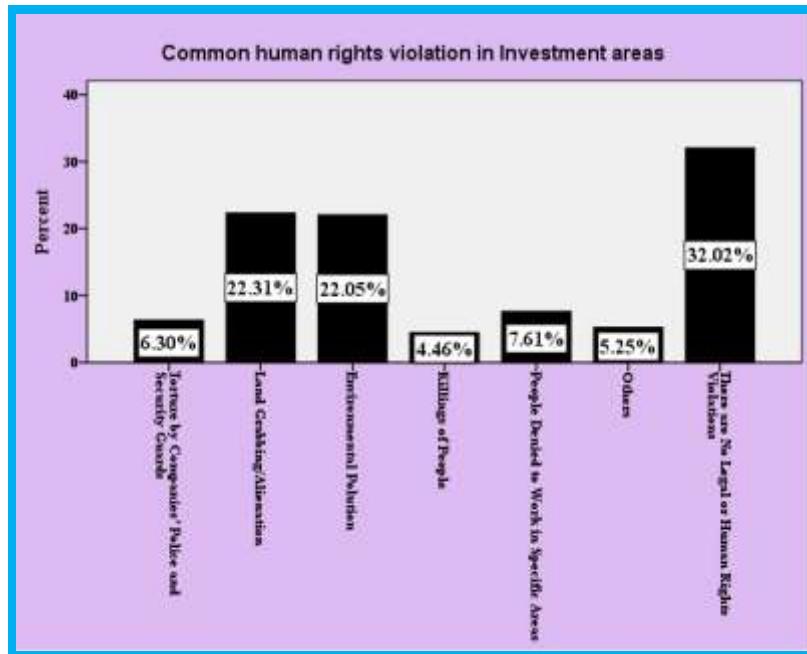


Figure 25: Common human rights violations conducted in investment areas according to community perception

- ii. Investors and government authorities usually ignore the need to compensate people who have been evicted from their land to pave way for investment. In incidents where compensation is paid it is usually undervalued compared to the value of the land.

The 2016 study came across several cases of residents complaining about issues of compensation of their land which has been ‘taken’ for investment.¹⁵⁴ It is interesting to note that the complaints surrounding issues of compensation have remained almost the same since 2013 to 2016. The complaints based on delayed compensation, the evaluation process not being participatory, underpayments and denial of payment.

The study received complaints from villagers at industries in Shinyanga region who complained about an investor named Jambo, that the investor had taken their land without compensating them. The village further said they have a number of pending cases against the investor; however they did not provide details of the said cases.

¹⁵⁴ LHRC & ZLSC, Tanzania Human Rights Report, 2016 pages 100-101.

Such complaints were also made in Geita at Katoma and Nyamalengo villages against the Geita Gold Mines.

In responding to the questionnaires majority of the respondents (50.6%) interviewed by the 2016 study expressed that they were not sure on whether the compensation provided was timely and fair. This could suggest a number of issues ranging from knowledge of the respondents over issues of compensation to the knowledge of the value of their land. However, only 2.6% of the respondents were affirmative that the compensation provided was timely and fair, with 11.5% responding that no compensation was provided.

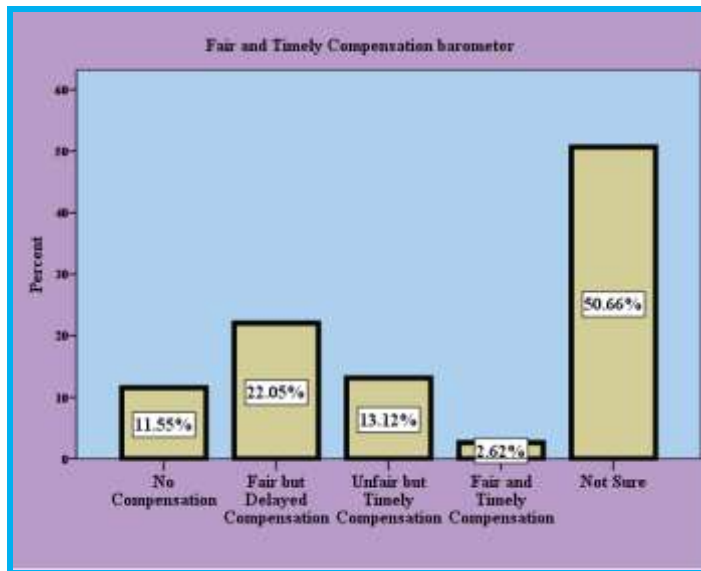


Figure 26: Fair and Timely Compensation Barometer

- i. However, the 2016 study also found out that there are several challenges which lead to delayed compensation in some areas. In Mara region one interviewee said that:

“Changamoto kubwa tunayokabiliana nayo katika swala zima la migogoro ya ardhi katika wilaya yetu ya Tarime ni kwamba, wananchi wakishafanyiwa tathmini kabla ya kujakulipwa wanaanzisha makazi yasiyo rasmi ili walipafidia wanapokuja waweze kuwafanyia tathmini kutokana na makazi yao ambayo kimsing sio nyumba za kuishi, kwa jina maarufu kitendo hiki kinafahamika kama TEGESHA.

[“One of the biggest challenge facing the Tarime district in issues of compensation is the fact that once evaluation has been conducted the residents embark in establishing ‘un-authorized’ dwellings so that they can receive higher compensation that estimated. This act is commonly known as TEGESHA”].

- ii. Most of the land needed for investment is vested under village authorities. The study has shown that in many villages the procedure to allocate land for investment is usually not followed and sometimes the investors are granted permits to operate in areas without consulting the local authorities.

Lack of knowledge on investment among the community members was another area challenge also shows to have lack of knowledge of investment coming into their areas. During the study it was revealed that more than half the respondents (55.1%) responded that they were not sure of how the investment that is found in their areas came into being. This shows that the communities were not involved and informed of the investment in their areas. Only 12.8% responded showed knowledge of the involvement of the local authorities where an agreement was entered with the investor.

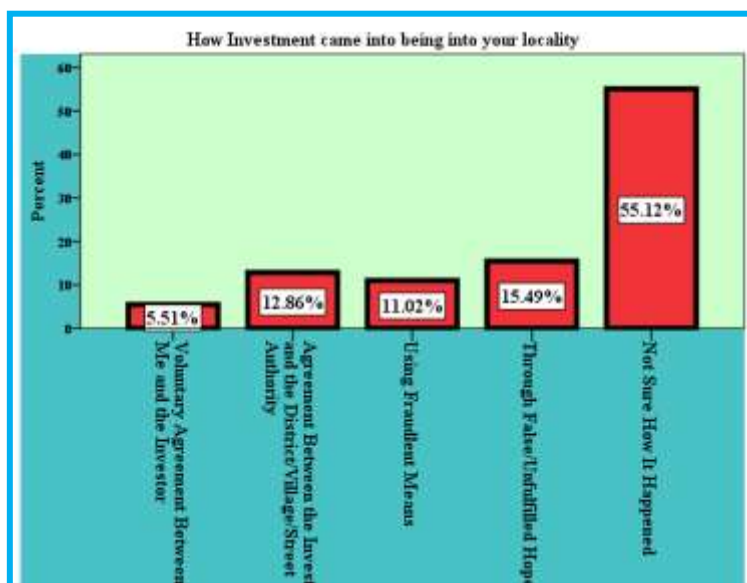


Figure 27: Community knowledge on how investment came into their areas

- iii. Many villages lack the Village Land Use Plan (VLUP). As a result villages enter into agreement to allocate the village land without considering the land needs of the local communities;
- iv. Some investments decisions are made at the central Government without involving the villages and the village communities, under whom principally the land belongs. As a result the investor gets into conflict with village authorities and with local communities.

The study observed that one of the causes of land conflicts is that local communities are not consulted for proposed investments which require possession of land. As a result the proposed investor comes into conflict with local communities. A good example of such conflicts was observed in Tanga where an investment company called Aldora Investment Limited had a land dispute with the Tanga City Council, the former claiming that indigenous have grabbed the land the company has purchased for the proposed investment.¹⁵⁵ This has led to the company initiating a civil case in claim of the land allegedly grabbed.¹⁵⁶ The government officials interviewed expressed that among the investor was granted permission to invest in the area from the central government. This was done without consulting the local government authorities and the local communities.

Another good example observed during the study in Tanga involved a local mining investor who was granted mining permit by the central government in an area belonging to the Amboni Farms. LHRC interviewed the investor in question who admitted that indeed he had a mining permit in the land belonging to the said farm. The investor further stated:

“Inachojali Serikali ni kutoa kibali cha uchimbaji wa madini bila kujali yapo wapi.” [the government is only concerned with issuing mining licence regardless of the locality].

¹⁵⁵ LHRC (2016): Human Rights and Business Survey.

¹⁵⁶ Civil Case No. 35/2016.

JAMHURI YA MUUNGANO WA TANZANIA
WIZARA YA NISHATI NA MADINI No. EZ [REDACTED]

HATI YA MAUZO YA MADINI / MINERAL SALES VOUCHER

Identi ya Mteuli wa Leseni
Name of License Holder: [REDACTED] Tarbuhe
Date: [REDACTED]

Identi ya Leseni
License No: [REDACTED] Mchali pa Ukarabaji
Mine Location: PINGUAI

Identi ya Muzaji
Name of Buyer: [REDACTED] Namba ya Gari
Vehicle No: [REDACTED] Mawala
Distributor: MUHEZA

Identi ya Madini
of Minerals: [REDACTED] Kikoko
Gravel: Mchanga
Sand: Base Course
Stone: Mafua Mafua
Other Minerals: [REDACTED]

Identi ya Madini Yaliyozwa
Qty of Minerals Sold: 4.0 T Tani
Tons: [REDACTED] Thamani ya Madini Yaliyozwa (TZS)
Value of Minerals Sold (TZS): 500,000

Identi ya Muzaji
Signature: [REDACTED] Saini ya Muzaji
Buyer's Signature: [REDACTED] Muda wa Kusuka Kizu
Checkpoint Time: [REDACTED]

NB: Vochi hii ni kwa matumizi ya kukokotwa mabwala wa madini yaliyozwa.
(This voucher is intended for mineral royalty computations only)

Mwawasiliano (Contact Details):
Tanzania Minerals Audit Agency (TMAA)
Plot 1129 Chole Road, Masaki, P.O. Box 23400, Dar es Salaam,
Tel: +255 22 260 1819, Fax: +255 22 260 1326, Email: info@tmaa.go.tz
Zonal Mines Office - Eastern Zone
United Nations Road, Upanga, P.O. Box 3060, Dar es Salaam
Tel: +255 22 215 0243, Fax: +255 22 215 0243, Email: info@mem.go.tz

Figure 28: Mineral sale voucher of a local investor who was granted permit to extract mine in land belonging to Amboni Farms

In an interview with officers of the Tanga City Council stated that the council is doing its level best to solve on-going land disputes and preventing prospective disputes. Among that efforts involve the creation of the special desk to settle land disputes amicably.¹⁵⁷

An interview carried during the 2016 study indicated that 75.8% of the investment was done in consultation with the community in the investment areas, with only 24.1% having consulted the same.

¹⁵⁷ LHRC (2016): Human Rights and Business Survey.

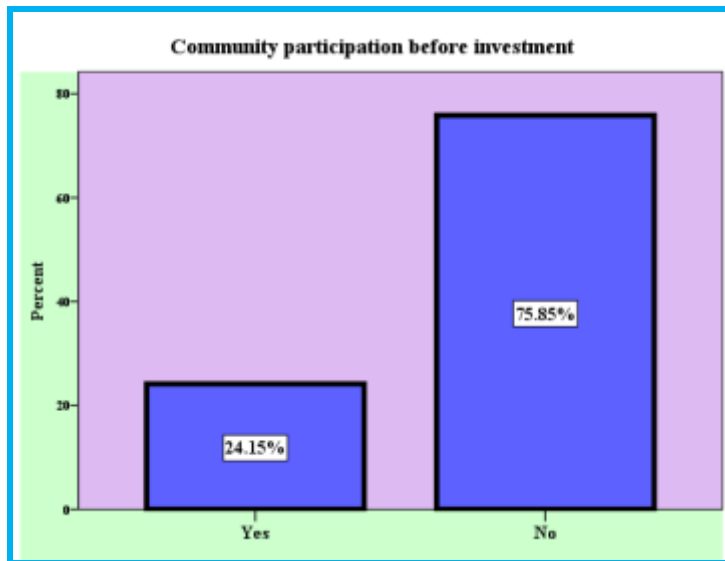
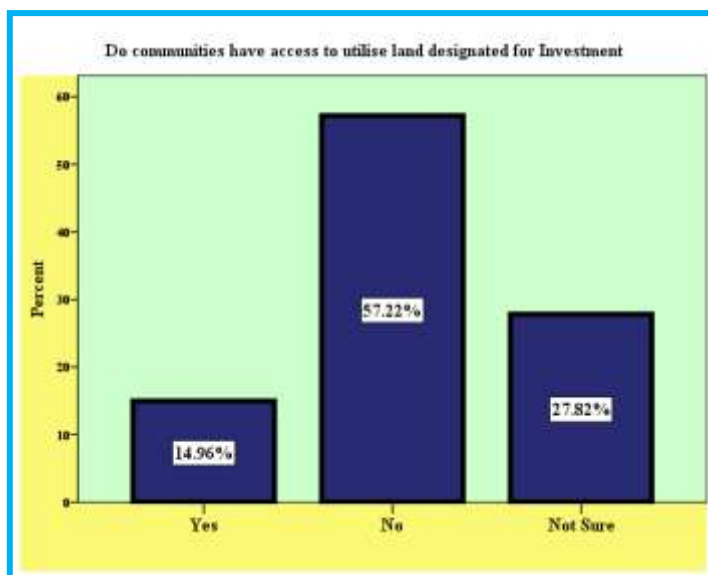


Figure 29: Majority of investment decision were done without consulting the communities in investment areas

- v. Some investment request to be allocated with larger piece of land than they could manage to utilise. As a result the land remains unutilised for a long period of time attracting invasion from local communities who have been deprived of land for their economic activities.



The 2016 Human Rights and Business Report urged that it is a moral obligation for an investor to allow residents to make use of the land which has not been utilised.¹⁵⁸ Majority of investor do not allow communities to use land which is not being utilised for proposed investment.

In the 2016 study in Shinyanga region, A massive 96% respondent interviewed by LHRC indicated that investors do not allow them to use unutilised land. as illustrated in the figure below:

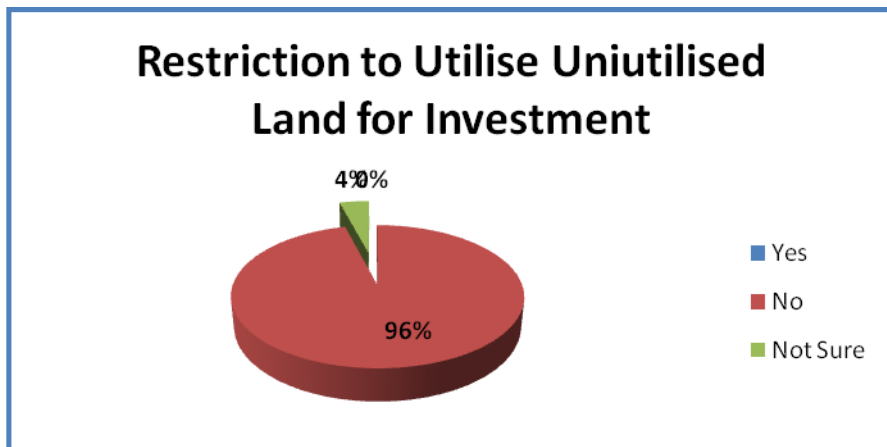


Figure 30: LHRC (2016) Human Rights and Business Study in Shinyanga Region

LHRC study found that almost 50% of land acquired for investment is not utilised by the investors. Usually the land set for investment is a huge piece of land, which has been taken from the communities, using lawful or unlawful methods. Nevertheless, the surrounding communities are usually left with quest for land for their everyday activities of hunting, farming and grazing, among others. As a result these communities may resort to invading the investment land and establish their activities and thereby igniting disputes with the owner of the land.

One of the good examples of such conflicts is the conflict involving Maganzo villagers on one hand and the investor El Hillal Minerals on

¹⁵⁸ LHRC (2016): Human Rights and Business Report.

the other.¹⁵⁹ The latter is said to have acquired a huge land for investment purposes. However, the investor for a long period of time has not put that land into use. The villagers had scarcity of pasture lands, thus creating tension between the two to the point where the government had to intervene and requested the investor to give the village a piece of land to utilise for pastures. The investor thus provided the villagers a piece of land amounting to 400 m².



¹⁵⁹LHRC 2016: Human Rights and Business Survey.

Picture 17: Cattle grazing at the land belonging to an investor El-Hillal Minerals Ltd

- vi. There is great ignorance from local communities as far as land rights and ownership is concerned, thus in many areas people invade unutilised land believing (ignorantly) that the land is vacant.
- vii. Land dispute settlement mechanism is not adequate especially in rural areas. The Village Land Tribunals and the Ward Tribunals lack capacity to deal with land disputes. In case of land for investment the District Land and Housing Tribunals are overwhelmed with land disputes brought before them and in that instance causing delay over determination of land disputes;

3.2 Associated Land Conflicts in Investment Areas

3.2.1 An Overview of Land Conflicts Associated to Investments

During his 2016/17 budgetary speech the Minister for Land, housing and Human Settlements Development Mr. William Lukuvi mentioned land grabbing as the main source for land conflicts.¹⁶⁰ The Minister further said that most of the land grabbing comes through a highly touted foreign investment. The Minister made the remark when he was addressing the inter-ministerial initiative which would help to address issues of land conflicts. The minister further said that his ministry had established a department which will deal with handling land allocated for investment activities.

Foreign Direct Investment in both productive and extractive sectors, including agriculture has been in the rise in Tanzania over the past decade. Interest has grown for land to establish agro fuel and food production investments. This has led to major land grab, threatening local food security and land conflicts. Local communities are usually not well informed of the planned investments putting them at risk over claims of their land rights.

Local communities expect to benefit from investment through betterment of social service provision and job creation. However, experience has shown that there is lack of capacity on local management, corruption and

¹⁶⁰ <http://allafrica.com/stories/201605230206.html>

misinformation. Land acquisition thus comes with poor land valuation and compensation, with local communities less consulted and lack of transparency resulting to poor constructive engagement between investors and local communities.

The 2014 LHRC study indicated the following factors to be the root cause of land conflict in Tanzania:

- (i) An increased pressure on land and natural resources to both human and animal population;
- (ii) Global warming and climate change (land and natural resources degradation);
- (iii) The demarcation or reservation of land for national parks, game reserves and conservation;
- (iv) Poor land governance system;
- (v) The commercial pressure over land including large scale acquisition for investment;

There are also other factors attributing to land conflicts including large scale land acquisition; wrongful or unclear demarcation of investment land; acquisition through false pretence; restriction to access unutilised lands or other resources within the investment lands; poor involvement and participation of local communities in land management; and poor capacity to negotiate on land acquisition.

3.2.2 Land Conflicts Associated to Large – Scale Land Acquisition

Land acquisition is regulated by the *Land Acquisition Act* of 1967. This law empowers the President (who is custodian of all land on behalf of the people) to acquire any land for public purposes.¹⁶¹ Public interest is defined by the law to mean acquisition of land for exclusive government use.¹⁶² These uses are for general public use; for any government scheme; for the development of agricultural land or for provision of sites for industrial, agricultural or commercial development; sanitary improvement; extension of the city; and many other like activities.

The State usually employs the methods of negotiations; legalised force towards acquisition; and compulsory acquisition. These methods give the state the powers to expropriate private property for public use without necessary seeking the owners' consent.

¹⁶¹ Section 4(1) of the *Land Acquisition Act* of 1967.

¹⁶² *Ibid.*

Deprivation of private property is without limits. That is why the *Constitution of the United Republic of Tanzania* of 1977 prohibits such without compensation.¹⁶³ The same is further cemented by the *Land Acquisition Act* of 1967 which further provide for compensation procedure.

The law permits land in other forms, among them is what is called the ‘silent alienation of land from natives’ and forceful land grabbing.¹⁶⁴ The silent alienation of land include extension of wildlife protected areas which involved restricting human activities in the reserved areas; however allowing creation of other ‘investment’ activities such as hunting blocks, hotels and other touristic activities.

Land grabbing is one of the most common human rights violation conducted in investment areas. During the 2016 study 22.31% of the respondents cited that land grabbing/alienation to be among the most common human rights violations in investment areas.

3.2.3 Problematic Demarcation of Investment Land: Revocation of the 1870 (ha) of Kapunga Rice Project

In the 2016 Human Rights and Business Report, LHRC observed that the Kapunga Rice Project in Mbarali Mbeya was among the disputes attributed to conflicts resulted from boundary disputes. Residents of Mbarali had long been in conflict with the Kapunga Rice Project Limited, an investor in rice project. The conflict dates back in 1995 when the villagers gave their land amounting to 5,500 hectares to the then National Agriculture and Food Corporation (NAFCO) for rice project.¹⁶⁵ NAFCO later gave the land to an investor, the Kapunga Rice Project Limited. The conflict erupted when the land extended to 7,370 hectares, with the additional land said to belong to the villagers. It is estimated that over 4,400 residents of the villages around depended on this land for rice production.¹⁶⁶ The villagers have been complaining for many year demanding that they are given back their land to no avail. The villagers have been accusing the government in being reluctant in solving the conflict and giving back the villagers their land. The villagers

¹⁶³ Article 24(4).

¹⁶⁴ LHRC termed forceful land grabbing as ‘open manifestation’ of land alienation.

¹⁶⁵ <http://www.thecitizen.co.tz/News/Ownership-of-1-870ha-of-rice-fields-revoked/1840340-2886448-10c9e09z/index.html>

¹⁶⁶ *Ibid.*

have accused the government of favouring the investor more than in expense of the villagers.¹⁶⁷

In September 2016 it was announced that the Minister for Land and Human Settlement had revoked ownership of the 1870 hectares of land allocated to the Kapunga Rice Project Limited.¹⁶⁸ This land amounts to the land which was in conflict between the villagers and the investor. The Minister further ordered the investor to surrender the land to the villagers. The decision by the Minister had gone further by withdrawing the deed title which the investor had deposited with the bank to secure a loan for the project development, demanding that the title will only be accepted once rectification following the surrender of the same has been done.



Picture 18: Part of the land which the Kapunga Rice Project Limited has returned to the villagers

Following the revocation of the title deed and the surrender of the land to the villagers, one officer of the Kapunga ward told LHRC study that the village was making the new plan for the use of the surrendered land, in which all

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

villagers will have the right to live and cultivate as in accordance to the village plan.¹⁶⁹

However the ward officer interviewed by LHRC said that there were still some challenges which need to be resolved. One of the challenges is that there are still disputes in some areas of land specifically at Ukwavila village at Mapogolo ward. The dispute arises from the fact that the boundary between the land belonging to the Kapunga Rice Project Limited and the Ukwavila village passes through this village which has 13 households. These residents have refused to relocate their land which now belongs to the investor. The officer further reiterates that the investor has promised to enter into negotiations with these villagers in order to have amicable solution by the month of September.



Picture 19: Part of the Ukwavila Village Where the Villagers have Refused to Relocate

¹⁶⁹ LHRC (2016): Human Rights and Business Survey.

S/ No.	Land issue	Performance Indicators			
		2013	2014	2015	2016
i.	Land Size	<ul style="list-style-type: none"> ○ Only 31.3% of the total landmass is habitable as village land, while 80% of Tanzanians are village dwellers. ○ More than 30% of the landmass is for conservation. 	<ul style="list-style-type: none"> ○ At least 75% of the arable land in Tanzania was now occupied by natives or investors [therefore there is no huge ‘free-land’ as it is alleged]. ○ Over 2.5 million hectares of land was established to be Land Bank and TIC. ○ RUBADA, which manages Rufiji basin, occupies about 20% of the country’s land from Coastal region. ○ Private registered operators (investors) own 50.2% of the land under large scale farming. 	<ul style="list-style-type: none"> ○ Land alienations from the local owners were on-going while little efforts were taken to acquire back dormant lands from ‘lazy’ investors. ○ Same perception that, village or indigenous land was down-sized through various tricks including expansion of wildlife protected areas; creation of land banks under TIC, RUBADA, EPZA, SAGCOT, etc; and, illegal grabbing of residents land by some of investors e.g. in Mbeya, Kilimanjaro, etc. ○ Presence of several incidents discussed in this report about land conflicts due to land size pressure. 	<ul style="list-style-type: none"> ○ Presence of several incidents discussed in this report about land conflicts due to land size pressure.

ii.	Land Tenure	<ul style="list-style-type: none"> ○ Accessibility of land resources steadily decrease with an increase of investment volumes in Tanzania. ○ Agricultural productivity and pastoralism have gone down in recent years making both rural and urban Tanzanians live in abject poverty. ○ Insecure land tenure. 	<ul style="list-style-type: none"> ○ The legal and traditional norms on land tenure systems have increasingly been challenged by higher demand for land for investments. ○ Obtainment of land titles has been a huge challenge. Only 373,655 customary rights of occupancy (CRO) titles were granted as of June 2014. More than 64% of the plots were owned without formal documentations (posing a challenge of land insecurity in the villages). 	<ul style="list-style-type: none"> ○ Current population density is estimated to be more than 49 per KM2 owing to an increase of population from 44.9 million to around 47 million people in 2015. ○ Therefore, more land pressure is both urban and rural settings especially due to an increase of investment projects as well. ○ Insecure village land. For instance, 9,451 (85.2%) of 11,090 villages were surveyed; but, only 1,471 (13.3%) villages had village land use plan; and only 972 (8.8%) villages were granted with village land certificates. The number of CROs issued so far was about 2.2% only of the expectations. 	<ul style="list-style-type: none"> ○ Current population density is estimated to be more than 64 per KM2 (based on UN estimations) owing to 2016 population projection at 50.1 million people. ○ Still more land pressure is both urban and rural settings due to an increase of investment projects as well. ○ However, most of the village land is still in unsecured status due to limited survey conducted.
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iii.	Land Alienation/Acquisition	<ul style="list-style-type: none"> ○ 61.0% of the respondents were not (effectively) consulted during land alienations/ acquisitions. ○ 35% of the respondents local residents said to have been affected by land alienations/ evictions. 	<ul style="list-style-type: none"> ○ 47.7% of the respondents in the sampled villages reported lack of (effective) participation during land alienations/ acquisitions. [Note: around 40% of villages consulted in 2015 study were new compared to 2013]. 	<ul style="list-style-type: none"> ○ 62.1% of the respondents in the sampled villages reported lack of (effective) participation during land alienations/ acquisitions. [Note: At least 50% of villages consulted in 2015 study were new compared to 2013 and 2014]. 	<ul style="list-style-type: none"> ○ 75.8% of the respondents in the sampled villages reported lack of (effective) participation before investment was carried in their localities, which subsequently might have resulted to land alienations/ acquisitions.
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iv.	Compensation	<ul style="list-style-type: none"> ○ Only 3.5% of respondents said to receive fair compensation; 20.8% did not receive any. ○ Only 8.3% had fair bargaining with investors; 17.7% had their land negotiated by LGAs; 15.9% had their land taken through undue influences or deceit; while, 36.0% just saw their land being taken away (not sure of the procedures and justification used to get them out). 	<ul style="list-style-type: none"> ○ Only 2.7% of respondents said to receive fair compensation; 20.4% did not receive any. ○ Only 12.5% had fair bargaining with investors; 12.8% had their land negotiated by LGAs; 10.5% had their land taken through undue influences or deceit; while, 47.7% just saw their land being taken away (not sure of the procedures and justification used to get them out). 	<ul style="list-style-type: none"> ○ Only 3.9% of respondents said to receive fair compensation; 13.7% did not receive any. ○ Only 5.2% had fair bargaining with investors; 20.3% had their land negotiated by LGAs; 12.4% had their land taken through undue influences or deceit; while, 31.4% just saw their land being taken away (not sure of the procedures and justification used to get them out). 	<ul style="list-style-type: none"> ○ Only 2.6% of respondents said to receive fair and timely compensation; 11.5% did not receive any. ○ Only 5.5% involved in voluntary agreement with an investor; 12.8% had their land negotiated by district/village authorities; 15.4% had their land taken through false/unfulfilled promises and hopes; while, 55.1% saw their land being taken away (not sure of the procedures and justification used to get them out).
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v.	<p>Access to Dormant Investors' Lands</p>	<ul style="list-style-type: none"> ○ Total of 73.9% of the community members were denied access to dormant/undeveloped lands of investors – even when villagers had scarcity of lands. ○ Law enforcers failed to take actions against land hoarders due to impunity. 	<ul style="list-style-type: none"> ○ At least 60% of the community members were denied access to dormant/undeveloped lands of investors – even when villagers had scarcity of lands. ○ The guidelines to limit the size of the land for investors were not ready despite being promised in January 2013. ○ At least 50% of the lands given to investors were not developed/ utilized. 	<ul style="list-style-type: none"> ○ Total of 65.4% of the community members were denied access to dormant/undeveloped lands of investors – even when villagers had scarcity of lands. ○ Still no guidelines to limit the size of the land for investors despite being promised two years ago. ○ Some actions are taken by the 5th phase government to acquire back dormant lands e.g. case of Lindi. 	<ul style="list-style-type: none"> ○ Total of 57.2% of the community members were denied access to dormant/undeveloped lands of investors. ○ The 5th phase government revoked ownership of land belonging to the Kapunga Rice Project amounting to almost 1,800 hectares and gave it back to the village.
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Table 13: 3.1 Performance Indicators on Land Management

CHAPTER FOUR

CORPORATE COMPLIANCE AND TRANSPARENCY IN TAXATION

4.0 INTRODUCTION: Taxation as a Human Rights Issue

Taxation is a crucial instrument for the realization of human rights, not just because it is necessary for ensuring sufficient resources, but also because tax policy plays a fundamental role in redressing inequalities and in shaping how governments are accountable to their people.¹⁷⁰

With the increase of companies' investments there has been reported an increase of corporate tax abuses. Companies usually exploit the complex tax structures to avoid paying taxes. While this practice may be legal, it is however socially condemned and unacceptable. This brings the question of multilateral companies working in the 'developing countries.' The question is the implication of tax abuses to poverty reduction and development. There is a lot of money coming out of these countries through tax avoidance thus undermining the abilities of the governments to bring about development through combating poverty.

Corporate tax abuse is framed as a human rights issue. Among the potential tax abuses that raise greater concern are: transfer mis-pricing; negotiation of tax holidays; (non-) taxation of natural resources; and the use of off shore investment accounts.¹⁷¹ These abuses deprive the governments of resources needed to address poverty and to finance programs seeking to protect and fulfill recognized human rights principles.¹⁷²

The UN Guiding Principles on Business and Human Rights are grounded under recognition of the following:¹⁷³

¹⁷⁰ CESR: Human Rights in Tax Policy <http://www.cesr.org/human-rights-taxation>.

¹⁷¹ Lipset Lloyd 2013: Tax Avoidance as a Human Rights and Business Issue: Can Corporate Avoidance of Taxes Also Lead to Human Rights Harms? <https://www.shiftproject.org/resources/viewpoints/tax-abuse-business-human-rights/>.

¹⁷² *Ibid*,

¹⁷³ UN Guiding Principles in Business and Human Rights: General Principles.

- a) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

Tanzania has thus in place legal and institutional framework on tax management. This system is a product of reforms, which have been done over the period of time. One of the most significant institutional reforms is the 1995 establishment of the Tanzania Revenue Authority (TRA).¹⁷⁴ TRA is thus the umbrella authority for government revenue collection.

4.1 Performance of TRA in Revenue Collection

4.1.1 TRA Surpasses Revenue Collection Target 2015/16

The Tanzania Revenue Authority (TRA) collected taxes amounting to Tsh. 10.87 Trillion for the period of nine months from July 2016 to March 2017. The collected revenue is equivalent to 9.99 percent growth compared to the same period in the previous financial year 2015/2016 in which the collection was Tsh. 9.88 Trillion.

TRA has surpassed fiscal year's 2015/16 revenue collection by collecting a total of Tsh. 13.371 Trillion which is equivalent to 100.04 per cent of the targeted revenue collection of 13.366 Trillion for both Mainland and Zanzibar.¹⁷⁵

According to the same source the strategies for increased revenue collection included intensification of anti-smuggling actions, combating corruption and emphasize on the use of Electronic Fiscal Devices (EFD), inspection and debt collection.¹⁷⁶ TRA continues to emphasize consistent use of EFD machines by issuing receipts for every sale while encouraging customers to demand receipts for every purchase.

¹⁷⁴ TRA is established under Section 4 of the Tanzania Revenue Authority Act, Cap 399. The law also provides the function of the authority under section 5.

¹⁷⁵ TRA Brochure Issue No. 10, July 2016.

¹⁷⁶ *Ibid.*

Table 14: Comparison of Tax Collection for Financial year 2015/2016 and 2016/17

Month	Year 2015/16	Year 2016/17	Increment
July	925,384.7	1,069,458.5	15.57
August	923,316.9	1,154,222.5	25.01
September	1,132,310.3	1,378,048.9	21.70
October	1,037,179.8	1,131,094.9	9.05
November	1,027,939.6	1,123,509.7	9.30
December	1,403,189.8	1,414,921.8	0.84
Total	6,449,321.1	7,271,256.26	12.74

Source: TRA Press Release

4.1.2 Income Tax

His Excellency, Dr. John Pombe Magufuli, announced that his government will reduce the lowest Pay as You Earn (PAYE) income tax on salaries from 11% to 9%, starting the fiscal year 2016/2017. PAYE is a withholding tax on income payments to employees, and amounts withheld are treated as advance payments of income tax due. Tanzania's lower income tax bracket was already reduced in 2015–2016 budgets, from 12% to 11%.¹⁷⁷

Table 15: Tanzania Income Tax Rates for the year 2015/2016

Taxable Income (TZS)		Tax on column 1 (TZS)	Tax on excess (%)
Over (column 1)	Not over		
0	170,000	-	0
170,000	360,000	-	11
360,000	540,000	20,900	20
540,000	720,000	56,900	25
720,000	And above	101,900	30

Tanzania Income Tax Rates 2015 - 2016¹⁷⁸

4.1.3 Corporate tax

¹⁷⁷ <http://www.tanzaniainvest.com/law/tanzania-to-reduce-income-tax-from-11-to-9-percent-in-2016-2017> accessed on 12 April, 2017.

¹⁷⁸ <http://www.tanzaniainvest.com/law/tanzania-to-reduce-income-tax-from-11-to-9-percent-in-2016-2017>

Corporation tax this is a tax which is paid from corporate profits. Companies or entities who prepare final accounts, must be approved by authorized Auditors, and Accounts recognized by both NBAA and TRA. These accounts are submitted to TRA on prescribed accounting date. All companies whether resident or non-resident are required to the Income Tax Laws to file an estimate of income within three months after the start of its accounting year. However, during the study the researcher observed that most of corporate companies failed to disclose how much tax they collect/remitted to the TRA save for SIDO which shows contribution of tax. Contrary to the position of companies to fail to disclose the revenue paid to the TRA, the study revealed that there is an increase in corporate tax collection in some of the regions. For instance the table below summarizes corporate tax compliance for Mwanza region in 2016.

Table 16: Corporate Tax Returns

	2016	2015	2014	2013
Filing returns estimates	1,140	910	908	782
Final	-	110	127	141
Late submitted as estimated	178	110	111	140
Late Submitted final return	-	41	50	48

Therefore compliance level in Mwanza region on corporate tax is as follows; Estimated returns is 92% and Final Return is 78% which shows improvement in corporate tax compliance in the Mwanza. For instance for the year 2016 TRA Mwanza estimated to collect 6,892,429,976 and the final actual collection was 6,386,992,846 including arrears of the previous year 2015. Also the increased revenue collection in a way is contributed by effective use of EFDs machines by manufacturing companies. For instance the Shinyanga Municipal Council, acknowledge that adherence in payment of tax by most big investors for instance Jambo Company Ltd, Gaki Investment Company Ltd, big business owners, whole sales and suppliers. The companies at instance are required to pay 0.3% service levy which is paid quarterly and the collection becomes easy to them currently because of the EFD machines used by business owners.¹⁷⁹

¹⁷⁹ Corporate Human Rights Compliance Assessment Report, Shinyanga Field Report, 2017 (LHRC's Report) page 29.

The second scenario on improved collection of corporate tax was observed in Tanga whereby the officer responsible informed LHRC that; the compliance level of business community towards paying taxes in Tanga has been improved. For example, people are now reporting business transactions to TRA even before agreed upon. However to enhance compliance TRA has been creating friendship environment to business community by awarding the tax payers as a mean of motivating them.

Also the table below indicate the trend of corporate tax collection in Geita region in exclusion of mining companies which operate in Geita. The trend estimate is still very low as the government needs to promote private investment in the region.

Table 17: Trends of Tax Collections in terms of license for Geita Region

SN	Financial year	Amount
1	2015-2016	125,000,000
2	2016-2017	131,000,000

Source: Human Rights and Business Survey 2016

Also statistics from TRA shows that there is increased number of tax payers registered companies whereby a total of 20,043 newly tax payers including companies in Tanga alone have been registered by TRA, this shows that tax collection from corporate companies is increasing.¹⁸⁰

Table 18: Trend of Tax Payers in Tanga Region

	437	533
	436	438
	14,437	17,285
	381	403

¹⁸⁰ Corporate Human Rights Compliance Assessment Report, Tanga Field Report, 2017 (LHRC's Report) page 32.

297	185
16	18
70	91
3	3
16, 887	20,043

Source: LHRC Human Rights and Business 2016

4.2 Tax Compliance, Evasions and Exemptions

TRA and LGAs are the responsible agencies in collecting levy in their level of their jurisdictions.¹⁸¹ These include; property tax; service Levy; crops and forest produce fees; hotel and guest house levy; slaughtering fees; bill boards and sign fees; market fees; trading license fees; and liquor license fees. The government also established central authority for tax collections. Section 4 of The Tanzania Revenue Authority Act, 2008 state that “*there is established an Authority to be known as the Tanzania Revenue Authority (TRA) which shall consist of the Board and all operating Departments.*”¹⁸² The authority will be mandated to collect all central government revenue. In its establishment, TRA aimed at enhancing revenue collection with the following main functions;

- (a) Assess, collect and account for all central Government Revenues;
- (b) Administer effectively and efficiently all the Revenue Laws of the Central Government;
- (c) Advice the Government on all matters related to fiscal policy;
- (d) Promote voluntary tax compliance;
- (e) Improve the quality of services to the taxpayers;
- (f) Counteract fraud and other forms of tax and fiscal evasion;
- (g) Produce trade statistics and publications.

¹⁸¹ Local Government (Finances) Act of 1982.

¹⁸² Establishment of the Authority Act No. 13 of 1996 s. 50.

The institution was necessitated by the inefficiency and ineffectiveness performance of the former tax systems and administration, under the civil service. Tax evasion is when individuals or corporations intentionally misrepresent the true position of their dealings to the tax authorities so to reduce their tax liability. Dishonest tax reporting, such as declaring less income, profits or gains than the amounts actually earned or overstating deductions.

In Tax avoidance is the misuse of legal methods to adjust an individual or entity's financial position in order to reduce the amount of income tax owed. This is generally accomplished by claiming the permissible deductions and credits. In short, it is the process of bending the rules of the tax system to gain a tax advantage that the Parliament never intended.

4.2.1 Tax Evasions by Corporate Sector

Tax evasion has been also described as the illegal non-payment or under payment of taxes, usually by making a false declaration or no declaration to tax authorities; it entails criminal or civil legal penalties. Tax evasion as defined is an illegal practice where an eligible tax payer does not pay taxes at all or may be may reduce taxes in many ways.¹⁸³ These ways may include failure by a taxable person to notify of a tax authority of a presence of its operations, if they are taxable operations, failure to report full amounts of taxable income, deduction claims for expenses that have not been incurred or which exceed the amounts incurred but not for the purposes stated, falsely claiming relief(s) that are not due, failure to pay over to tax authorities due taxes, departure from a country leaving taxes unpaid without intention to pay and failure to report items or sources of taxable income for example profits or gains where there is an obligation to do so. Generally speaking, tax evasion can be summarized as a deliberate measure to escape one's tax obligation through illegal means.¹⁸⁴

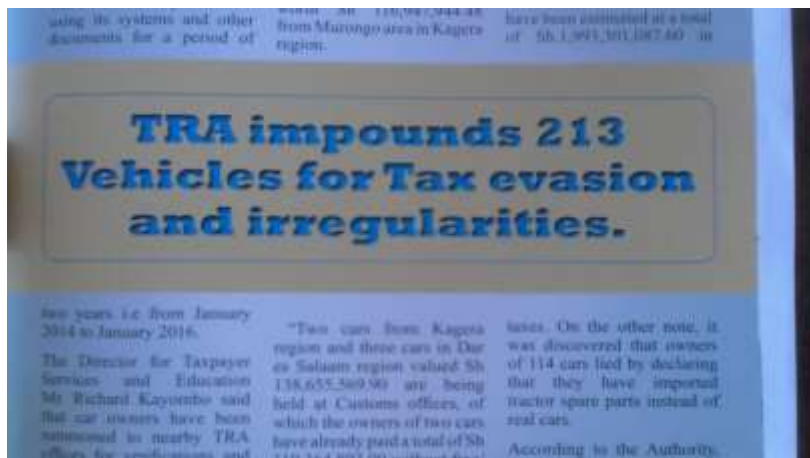
¹⁸³ Tax Justice Network; *Tax us if you can*, London, 2012.

¹⁸⁴ Tax 'evasion' involves 'illegal arrangements through or by means of which liability to tax is hidden or ignored' as a consequence of which "the tax payer pays less than he is legally obliged to pay by hiding income or information from the tax authorities, while tax 'avoidance' as provided for under s. 35(a) provides that tax avoidance constitutes an 'arrangement of tax payer's affairs that is intended to reduce his ability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law it purports to follow.'

The information from reliable and credible sources deliberates that a total of 213 cars are being held by the Tanzania Revenue Authority (TRA) on allegations they were imported in the country without being paid for the required customs fees and taxes.¹⁸⁵ The Director for Tax Payers Services and Education Mr. Richard Kayombo said: - *“It is discovered that owners of 114 cars lied by declaring that they have imported tractor spare parts instead of real cars”*.

According to the Authority, tax verification in a bid to nab tax evaders is a continuous exercise aiming at making sure that no any car is imported into the country without paying the required taxes. The efficiency in Revenue collections is also reflected by the Corporate Managements; for instance, Plant Manager for Pepsi, Mwanza Plant, gave credits to TRA officials in dealing with the tax avoiders especially for those companies which operates as Enterprises and not companies for the sake of avoiding tax liability.

Figure 31: Impounded vehicles for Tax Evasion



Source Revenue News July, 2016

Tax evasion in corporate sector is a main challenge facing Tanzania Regulatory Authority, as addressed by Mwanza TRA Manager in coastal regions and Lake Zone he addressed the researcher that they are dealing with six regions namely Mara, Musoma, Mwanza, Tabora, Shinyanga, and Geita.¹⁸⁶ The drive by H.E Dr. Magufuli is recommended to continue, but it

¹⁸⁵ REVENUE NEWS July 2016 P. 16.

¹⁸⁶ Human Rights and Business Report: Legal and Human Rights Centre; 2015, P. 149.

should also be backed up with structural reforms as well as observance of the good governance principles.

The issue of tax evasion by corporate companies also has been addressed by Tax Appellate Board in several cases; for instance, in the case of *Commissioner General Vs Geita Gold Mining Ltd*, which appeared before the Tax Revenue Appeals Tribunal (Originating from Tax Revenue Appeals Board, in which Geita Gold Mining Limited had failed to pay PAYE as required under section 41 of the Income Tax Act, 1973.¹⁸⁷ In this case a TRA audit revealed that PAYE was paid as additional salary to the employees, recorded as expenses to the company and demanded it to be set off.

TRA submitted that such act reduced the taxable income of the respondent and subsequently the tax paid by the company was reduced. Geita had illegally claimed expenses which it was not entitled to. The Tax Revenue Board, in weighing the submissions by both parties, made reference to a provision within Geita Gold Mine's Expatriate Conditions Terms of Service which was aimed at avoiding taxes. Section 3.1 of the Expatriate Conditions Terms of Service stated categorically that subject to Article 3.2 the employees' offshore Salary component will be paid free of local income tax into the employees nominated bank account. All other benefits may attract local taxation. The Board, therefore, ruled in favour of TRA.

According to various reports, companies, especially in the mining sector, have been either avoiding or evading taxes by engaging in multiple tax planning measures including, although not limited to, inflation of operation costs so as to reduce their tax obligation. The Tanzania Revenue Authority (TRA) and other authorities can invest in "micro investments" instead of paying preferential attention to the so called large tax payers, who can base on the current business trend, decided to close or transfer their project to other countries.¹⁸⁸ That is to say, on the other hand, there is no guarantee that large tax payers will continue trading in Tanzania due to the stiff competitions between east and other African countries to attract investments to their jurisdictions.

Furthermore, the researcher observed the practice of tax avoidance and/or evasions from SIMBA LIME FACTORY which is under renovation but secretly producing. This shows at the glance one does not need telescopic

¹⁸⁷ Case No. 22 and 23 of 2004.

¹⁸⁸ Human Rights and Business Report: Legal and Human Rights Centre; 2015 p.160.

eye to see that the factory is in avoidance and/or evasions of tax by producing and selling their product secretly.

The researchers, moreover, observed that TRA had less success, on the other side, in collecting corporate taxes on companies which levies corporate taxes below ten million. The team of researchers met with operating industry which is not paying corporate tax and surprisingly, one of the owner of the very same industry failed to disclose even the name and profile of that industry. The owner (sic), had one thing to say, which he thought it is a defence, that it is just an infant industry and they are in the process of its registration. However, the truth is that, the very same industry is found around Gofu industrial area at Mwanzange ward in Tanga and it is dealing with grinding plastic bottles.



Picture 20: A research assistance in during data collection in one of the factory visited

Companies do not have Tax Identification Number (TIN). This was confirmed by an officer at the Tanga TRA regional office (name withheld) who said that there are many companies and individuals in Tanga eligible and obligated to pay tax but they still operate without having Tax Identification Number (TIN). LHRC was not provided with records of tax avoidance by companies in Tanga region. Tax clearance compliance is a legal requirement whereby under section 3(3) of *the Business Licensing Act, 1972*, which requires every business man to have Tax Clearance Certificate before being given a business license.

Again the essence of establishing the Export Processing Zones (EPZ) in different areas is termed as one way of tax avoidance. In district council where EPZ have been established there is constant friction between the investors and the local authorities. The good example to illustrate this was observed in Shinyanga. The records show that Shinyanga region has two companies which enjoys tax holiday used in Export Processing Zone (EPZ), one of them is JAI LONG HOLDINGS owned by Chinese and they are in a serious conflict with Shinyanga Municipal Council for avoiding to pay Service Levy and other municipal tax their defence being the fact that they are operating under EPZ. TRA Manager for Shinyanga region, in an interview with our researcher, reiterated that Jai long and the other company, both operated by Chinese, have tax incentive under EPZ but that does not mean they are warranted by the law to avoid paying Municipal taxes. Basically, it is an offence to avoid paying tax and the municipal tax department added that, despite the efforts by the municipal authority in encouraging peaceful settlement with these companies still they are not willing to respond and involve themselves in settlements. The municipal concluded, therefore, that they had to take them to court for further decisions.

LHRC recommends that the TRA and Local Councils should embark on constant negotiation and experience sharing on issues of tax holidays and exemptions. The experience LHRC obtained from field especially in Shinyanga region shows that there is knowledge gap on tax administration between the TRA and District Councils.

4.3 Public Sensitization to Pay Tax

The situation on the ground revealed that though the authority is vested power to deal with the tactics of tax evasion and tax avoidance the year 2016 a number tax payers complied with the Tax required to be paid by an

authority. Dr. Magufuli pressure against tax evaders resulted into collections of Tanzania shillings 1.4 trillion tax revenue within a month of December 2015/January 2016, compared to an average Tshs.900 billion shillings per month in previous months.¹⁸⁹ In November 2015, being less than one month after Dr. Magufuli took over the presidency of Tanzania; the total monthly collections by TRA were Tshs. 1.3 trillion revenues.

The researcher during an interview TRA Tanga Regional Manager noted that; *the compliance level of business community towards paying taxes in Tanga has been improved. For example, people are now reporting business transactions to TRA even before agreed upon. However to enhance compliance TRA has been creating friendship environment to business community by awarding the tax payers as a mean of motivating them.*

The researcher finds that though the Authority proud itself that there is high compliance level of taxpaying surprisingly some industrial companies, when responding to our questionnaire failed to answer which kind of tax they pay to the government and how much they remit to the government. This was evidenced by researcher in TANPESCA FISHING INDUSTRY and TANGA MINING COMPANY LTD.



Picture 21: Tax Payers in a queue during TIN verification exercise in Mwanza

¹⁸⁹ Human Rights and Business Report 2015 P.148.

The exercise to verify TIN was successful in a number of regions where it was conducted. However experience from Mwanza zone as case study reveals that; only 3,426 companies are active in complying with tax requirement. Therefore there is need to continue with TIN verification exercise to register all companies operating in Mwanza and lake zone region in general. During the study the following were observed to be the reasons for failure to register as tax payers;

- (a) Lack of knowledge and education (taxpayer, registration, business management practices),
- (b) Lack of proper business premises and facilities,
- (c) Cumbersome procedure,
- (d) Bureaucracy and corruption,
- (e) Poor Development Agreement entered between the government and big investors,
- (f) Poor system in taxes collections especially using EFDs and high taxes.

4.4 Fast Track Tax Services (Collaboration between Banks and TRA)

Looking at the present and perhaps continued relationship and/or collaboration between Banks and TRA, we observed that TRA in Tanga region is accommodating Banks within their building in order to assure business community access bank services in a most convenient way. This is a reflection of post and continued relationship between the two institutions with the view of ensuring that services are accessed timely and effectively. For instance; one of the NMB bank is erected beneath to regional office of TRA in Mwanza region. According to TRA customers commend for these initiatives as there is increased efficiency and it's a time saving arrangement that a client needs not to waste time.

4.5 Dropping of Tax Rate for the Breweries Companies

The study shows that there has been a drop in tax rates for breweries companies which make a drop down in tax collection. LHRC survey revealed that tax collection in Mbeya has dropped down immensely. This was also confirmed during the survey by one of the officers of TRA. For instance; the drop down in collection of tax from Mbeya Breweries Ltd (TBL) was reported to be aggravated by the time whereby the time for opening the bars and the places where drinks are sold is limited to after working hours. The owner of the bars are mandated that they must be

opening the bars only as from 1000 Hrs, something that makes their return to be low and hence a drop down in tax rates. The TBL correspondent was recorded stating that *“Tax payment is not friendly exercise at most cases leads to price increase and results into low sales.”*¹⁹⁰ Hence, there has been drop down in rates.

The LHRC would like to recommend to the government to widen its tax base by exploring other sources of income. For the past years the annual budget has been getting substantial tax from consumable goods especially alcohol, beverages and cigarettes. The experience on dropping trends of tax from poor sales among Breweries Company would lead to substantial drop on government revenues. Therefore exploring new sources of income is must so as to build strong country’s economy whereby the tax base is wide enough.

¹⁹⁰ Corporate human right compliance assessment questionnaire filed by TBL Plant Manager , 2017.

CHAPTER FIVE

CORPORATE SOCIAL RESPONSIBILITIES

5.0 Overview of Corporate Social Responsibility

The concept of Corporate Social Responsibility(CSR) is globally recognized, companies are held responsible in contributing to the societies in need, and since the issue has been a global issue there upon there is a document guiding the issues of human rights and business and CSR being part of them, *UN Guiding Principles on Business and Human Rights, 2011* which propagates for implementation of CSR as part of the business operations by the businesses Corporate should volunteer in undertaking activities that will promote social welfare of the people by contributing in provisions of services in need. This not only will strengthen relationship among the corporate and people of the situated areas but also will flourish the sustainability of the corporate sectors because most of the services and contributions provided will also facilitate smooth operation of their businesses Therefore the Corporate Social Responsibility is defined as the relationship between corporate, government and local community (stakeholders).¹⁹¹

The UN Guiding Principles on Business and Human Rights 2011 impose the companies to respect human rights in all undertakings. It includes makes emphasis for the business community to undertake activities and commitments which may contribute to the enjoyment of basic human rights.¹⁹²

The UN Guiding Principles of Human Rights and Business, 2011 impose responsibility upon the companies to respect human rights by ensuring that they avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur. They are obliged to mitigate adverse human rights impacts that are directly linked to their operations or services by their business relationships.¹⁹³

¹⁹¹ David, C and Guller A, Corporate Social Responsibility, (2008); Ventus Publishing ApS also page 4.

¹⁹² Principle 11 of the Resolution No. 17/4 of 2011.

¹⁹³ Ibid Principle 13.

The principle on CSR ensures sustainable development to improve livelihood of the citizens in respect areas. It requires corporate to ensure that its success is reflected in improving life of the citizens and environmental are protected. There are very little motivation for local companies to implement CSR is mainly due to the traditional culture of philanthropy and charity¹⁹⁴.

However, in the country, the issue of CSR has not been prioritized by the companies because most of them do not tend to give back to the community unless there is likelihood or happening of a hazard or event that necessitates their contributions. Most companies give back very little to communities in which they operate to address their social and economic challenges.

One of the reasons CSR is not implemented or considered important by most companies in Tanzania is the absence of a legislation to enforce it. Currently, CSR is just a policy that companies are ‘encouraged’ to adhere to, thus not mandatory. Companies take advantage of this loophole to either not give back or give back very little to the community, compared to the profits they make.

The National Natural Gas Policy of 2013 which states that:

“The Government will encourage all parties to jointly prepare and implement CSR programmes for their mutual benefit and ensure maintenance of harmony and good relations between them”¹⁹⁵.

As clearly stated in the policy above, the key word is ‘encourage’, which does not suggest CSR as a mandatory requirement. If there was a legal obligation for companies in the natural gas sector to implement the CSR policy, greater achievement would have been made as the sector generates big profit for companies. Absent legal enforcement of CSR, these companies will continue to make huge profits but give back to the community very little.

With regards to this, stakeholders have urged the government in co-operation with other stake holders to establish a legal framework for CSR practices as

¹⁹⁴ Mader,K (2012) Corporate Social Responsibility in Tanzania: An Overview. Dar es Salaam. Page 4.

¹⁹⁵ Para. 3.1.8.

to ensure its effective implementation and compliance for the benefit of both national and international interests¹⁹⁶.

Another reason that contributes to poor implementation of CSR policy by companies is poor knowledge about CSR. Through its surveys on business and human rights, LHRC has been able to observe that most company officials and leaders have not grasped the essence of CSR benefits of giving back to the community. There is thus a need for continued sensitization of corporate officials and directors on CSR and importance and advantages of respecting human rights in the business sector in general.

5.1 The Trends of CSR in the Country

CSR aims at strengthening the relationship between companies and members of the community within which the companies are operate. The essence of CSR is that companies should be responsible for contributing to the social needs of the people around them.

Development like infrastructure construction, building schools and hospitals, water provisions and also conservation of the environment as a way of respecting human rights so as to enable people of the area to live in a healthy and suitable environment for living. However, since companies are not bound by the law in contributing to the social development of the areas then there has emerged a trend upon which the companies provides the very same services in areas which would have provided other services in need.

For instance in Dar es Salaam city, different companies have provided booths to the traffic police in places where there are even other booths with the same purpose. Instead of figuring out on what other problems do the residents have, like construction of streets roads and solving the issue of scarcity of water, they concentrate on the same thing which is construction of booths for traffic police in different areas.

This trend has two sides firstly is recommendable venture where police officers now have a sitting space but secondly it can critically looked at as advertising strategy due to nature of their placement is along highways where otherwise advertisement attracts fees to local authorities.

¹⁹⁶ <http://www.policyforum-tz.org>



Picture 22: Booths donated to traffic police in Dar es Salaam vicinity

The notion of CSR is interpreted differently by the companies; they use the notion as one of the way of advertising their products to the required society which is contrary to the whole intentions of the idea of corporate social

responsibility. Corporate Social Responsibility should not aim at advertising or marketing, as the Dell Chief Customer Officer Karen Quintos was quoted saying in an article as follows:

“CSR is not a marketing strategy is a tool of building up business. CSR initiatives are often a source of hidden efficiencies and innovation in addition to providing societal benefits”¹⁹⁷.

Normally if CSR is conducted in good faith and with good intentions, consumers acknowledge and build trust between them and the companies that contribute to their social needs and may influence growth of the companies. The relationship builds trust between them and the companies through the support they provide.

“Corporate philanthropy is achieved when companies donate some of their profits or resources to charitable causes, companies that show responsibility in this way must be committed to doing so on a regular basis, if you support socially responsible causes but don’t follow through with it, the organization may quickly be regarded by the public as disingenuous”¹⁹⁸.

In the absence of viable CSR plans between investors and local communities there is tendency of increased disputes and conflicts. Community members do not feel that they are part and parcel of investments. Due to lack of CSR activities tension between companies especially mining companies and local communities in different parts of the country has intensified. During this study the following were some of the nature of conflicts that co-exist in areas where there is investment and local population.

Table 19: Nature and common types of conflicts according to LHRC survey

24

6.3

¹⁹⁷ Quintos. K. (2016) Corporate Social Responsibility is not a marketing Strategy.

¹⁹⁸ <https://www.frontstream.com> as accessed on 23rd May, 2017.

	85	22.3
	84	22.0
	17	4.5
	29	7.6
	28	5.2
	122	32.0
	381	100

The above chart is a clear evidence of existence of investment causes of conflict conflicts between the local communities and companies. The chart stipulates issues of denial to work in the investment companies, the companies by being socially responsible to the community would have been great if the employment vacancies are prioritized to the residents around the areas where their companies operates, a situation which is not happening in the real sense.

Extra-judicial killing shave also been observed in most of the investment places. Almost 55.1% of the population around the companies has agreed on the happening of the killings. Most of the killings tend to have been done by the security guards who are instructed by the authorities of their companies.

5.2 Status of Giving Back to the Community in 2016

5.2.1 Positive Trends: Some Illustrations

(a) Acacia Gold Mine's in support in Education and Health sectors

Among the most common contributions by the companies is construction of schools and provision of health services. This has also been one of the services which is needed most by the communities that is why most of the companies engage themselves in provision of such services. In ensuring that the community in need get the required service then North Mara Gold mine in Mara decided to build a school and went further to build teacher houses.



Picture 23: Teacher houses and a dispensary in Nyangoto and Nyamongo villages respectively

(b) Geita Gold Mine's (GGM) support in Geita region

Geita Gold Mine has supported a number of developmental projects in Geita region. This support is mainly in the provision of better social services in health, education, electricity supply to villages surrounding the mine site and water sectors. For instance recently the GGM has supported the following projects in Geita region;

- (i) Supported the education sector by funding the construction and completion of several secondary schools. Some of schools that benefited by their projects include Buisolwa, Bukwimba, Kamena, Katoro and Kamhanga. Each of these schools was given 15m.

- (ii) Constructed 4 classrooms, 2 teacher offices and a store at Nyakabala Primary School at the cost of 32m.
- (iii) Provision of 46 desks at Nyakabala Primary School at the cost of 10m.TShs and;
- (iv) Construction of 3 classrooms at Nyamalumbo Primary School at the cost of 10m.TShs.
- (v) Construction and rehabilitation of the male ward at the Geita District Hospital at the cost of 20m.Tshs.
- (vi) Rehabilitation of rural health Center named Bukoli, Kasamwa and Kharumwa were all supported 15m each.
- (vii) Landscaping work at the District Hospital at the cost of TShs.833,100
- (viii) Rehabilitation of Geita District Hospital Theatre TShs.25m was provided
- (ix) Rehabilitation of the District Hospital Mortuary TShs.1.9m
- (x) Rehabilitation of Geita Public Health Nursing School (PHNO) at the cost of TShs.10m.



Picture 24: Some of the projects funded by GGM

5.3 Corporate Social Responsibility to Support Initiatives on Provision of Free Education

The 5th phase Government started to implement its commitment to provide free primary and secondary education in public schools. These call increased enrolment in public schools as the result demands for more infrastructures increased as well. There was serious concern to increase the number of such infrastructures so as to meet the demand as it was observed critical shortage of classrooms, toilets and desks. Therefore the President of the United Republic of Tanzania, Hon. John Pombe Magufuli, rose up the issue of shortage of desks in the government schools and urged different stakeholders and companies to support the idea by contributing to the provisions of desks to different schools in the country. The exercise was very successful as different stakeholders contributed 61,385 desks. The desks were distributed to all regions, depending on the number of electoral constituencies as shown in the figure below.

Table 20: Number of Desks Donated around the Country

Dar es Salaam	10	5,370
Pwani	9	4,833
Morogoro	11	5,907
Lindi	8	4,296
Mtwara	10	5,370
Ruvuma	9	4,833
Iringa	7	3,789
Njombe	6	3,222
Mbeya	7	3,759
Songwe	6	3,222
Rukwa	5	2,685
Katavi	5	2,685
Unguja	32	3,200
Pemba	18	1,880
Tanga	12	6,444

Source: State House press Statement

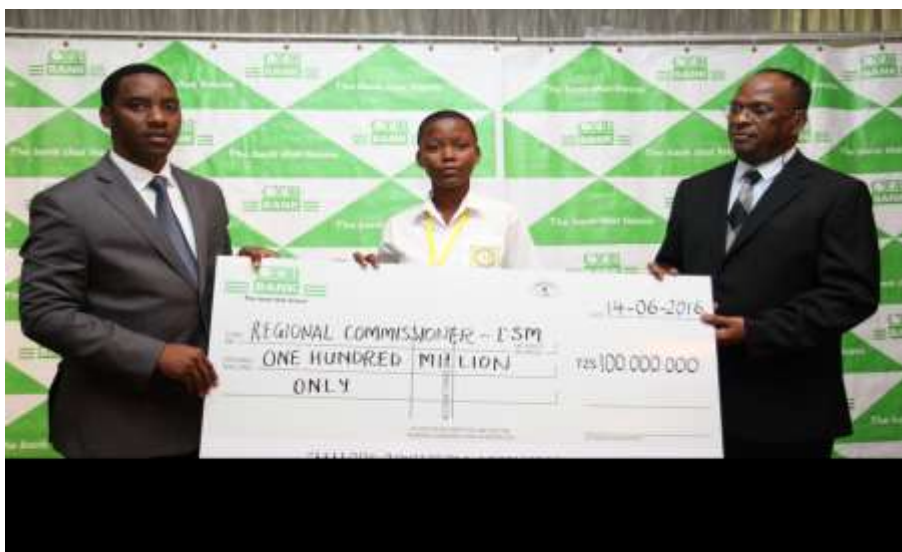
In response to the President's call a number of organizations, institutions, companies and other business entities supported the call by providing desks in primary and secondary schools in the areas where there were highly needed. Companies used such an initiative as a way of giving back to the society where as most of the companies and business entities provided desks around the areas upon which their companies are situated. Companies became socially responsible in ensuring that schools around their businesses are furnished with desks and due to that then the relationship between companies and societies grew stronger.

Local governments were supposed to coordinate the project, whereby through their initiatives, many companies agreed on contribution of desks to different schools as part of their CSR. Other companies provided monetary contribution to finance the project but most of them provided desks to the schools in need. In one way or another, the president has influenced companies to contribute into the project as a way of being responsible by giving back to the society.

This project has succeeded much because a large number of desks were collected by the Government and distributed to different schools in the country hence the government has succeeded in alleviating the problem of desks shortage in the government schools.

(a) Desks Contributed by Financial Institutions

Several financial institutions supported the government in its initiatives to empower the education sector. As a way of being responsible to the society, desks were made and handed to the schools in need. Among the financial institutions that provided monetary contribution is CRDB Bank PLC, where upon the managing director of CRDB handed the cheque in supporting the president's initiative of supporting the education sector through contribution of desks.



Picture 25: Dar es Salaam RC receiving contribution from CRDB PLC

Different financial institutions played a big role in supporting the President's initiatives within the education sector. Some of the institutions that contributed desks and distributed them to different schools, including NMB, NBC and Mkombozi Banks. NMB provided 50 desks to Upendo Primary School in Dar es Salaam, while Mkombozi Commercial Bank provided 100 desks to Ngarama Primary School in Kagera Region.



Picture 26: Different banks handled their desks contribution as shown in the pictures

(b) Desks contributed by the Telecommunication Sectors

With regard to that, several communication companies participated fully by providing their supports as follows:

- (i) Vodacom Company Ltd. has managed to provide a total of 500 desks in Dar es Salaam Region and was distributed to different schools of Mwananyamala Kisiwani.
- (ii) Tigo company Ltd. also provided a total of 1275 desks in schools within the lake zone of which some of the schools that benefitted from this project included Nyamisis, Madaraka, Pida, Shirati, Utegi, Nyasoro, Masara, Kirogwe, Bwiri, Irienyi, Tatwe, Ingri, Kibachiro, Kyangasanga, Bitiryoy, and Kyabakari.



Picture 27: Desks donated by telecommunication companies

(c) Other Companies Contributing Desks

Apart from financial institutions and telecommunication companies, other manufacturing industries responded to the President's call to contribute in education sector. For instance, the SBC Company provided 200 desks and a sum of 22 million Tsh. to different schools as a way of supporting the President Magufuli's initiative in promotion of education sector.



Picture 28: Desks donated by SBC and Startimes

LHRC calls upon all companies to develop a culture of implementing CSR policy irrespective of the Government initiatives. The culture of giving back to community should be part and parcel of company's plans and diversify it to other sectors as well. LHRC noted that most companies, especially mining companies, tend to give back to the communities surrounding their areas and give little attention to other vicinities which do not have such resources. LHRC is of the view that CSR needs to benefit all Tanzanians irrespective of their locality, both urban and rural areas.

LHRC recommends some companies which on voluntary basis upon lack of legal framework contribute or give back to community as part of CSR. It only urges such corporate also to consider other sectors apart from health and education which are more common benefiting out of CSR. At the same time LHRC calls upon the government to make law that will mandate companies to give back to the community.

5.3 Public Opinion on Corporate social Responsibility in 2016

LHRC's survey on business and human rights in 12 regions revealed that 46.1 percent do not see any benefit of investment in their areas. Whereas 16.3 were not sure on direct benefit of investment versus only 37.5 percent of the research participants responded YES.

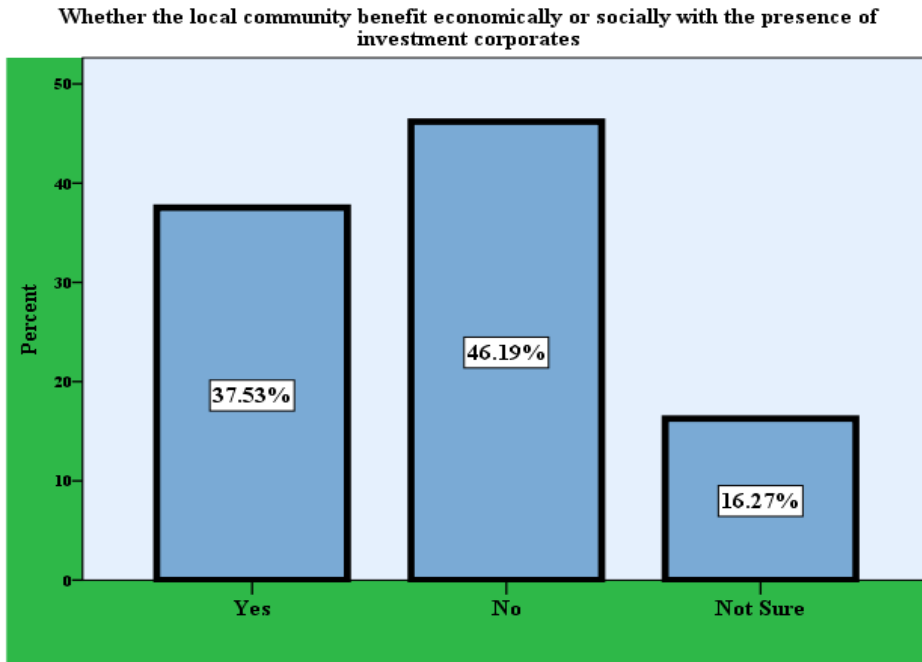


Figure 32: Public Opinion in CSR

The study also indicated that the public is not well involved in which projects funded by investment companies. In responding to the concern on which areas investment companies fund most as a way of giving back to the community, 48.3 percent said that companies do not give back to the community at all, 19.4 percent acknowledged that the investment contributes to employment opportunities and other improvement of social services delivery as shown hereunder in the chart.

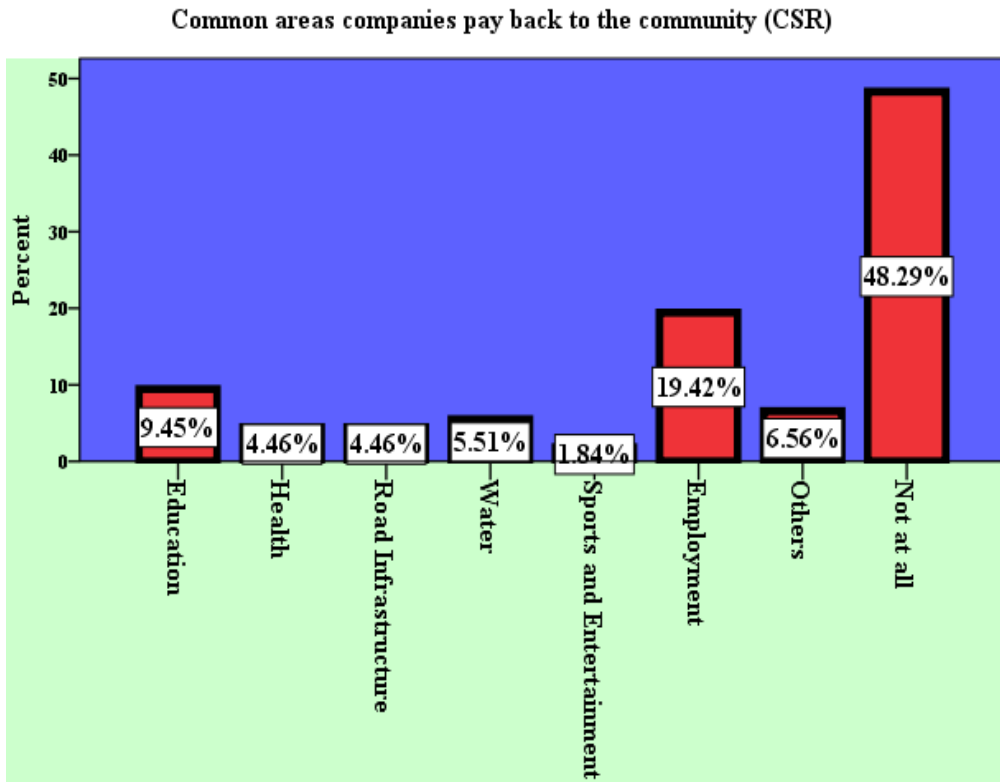


Figure 33: Common Areas that the Companies pay CSR

LHRC considers the importance of involvement of local communities in setting priorities of projects implemented as part of CSR. Community participation brings sense of ownership and guarantees continuity of such project beyond investment period. Therefore companies, through public relations departments, should strengthen community engagement in any intervention so as to build good relationship with the communities. Good relationship reduces the likelihood of conflicts.

CHAPTER SIX

PROMOTION AND PROTECTION OF GENDER
RELATED RIGHTS IN CORPORATE SECTOR

6.0 Introduction

Gender refers to the socially constructed characteristics of women and men such as norms, roles and relationships of and between groups of women and men. It varies from one society to another. Since people are born either male or female they are taught appropriate norms and behaviours, including how they are supposed to interact with others of the same or opposite sex. When individuals or group do not fit the established norms they normally face discriminatory practices or social exclusion.¹⁹⁹

The discriminatory practices faced can be in terms of sex, age, disability and HIV/AIDS status. In order to remove these discrimination barriers, the issue of gender promotion should come in place. Therefore, it is LHRC's conviction that gender equality and equity should be promoted in all aspects of life, whether political, social or economic. There should be no discrimination of any kind.



Figure 34: A poster depicting discrimination

¹⁹⁹ See <http://www.who.int/gender-equity-rights/understanding/gender-definition/en/> as accessed on 26th May, 2017.

At the global and the national levels, gender has been one of the sensitive issues that if not well addressed may lead to more problems in the society. While initiatives have been taken to promote gender equality and equity, more measures need to be taken to improve the situation, including legal reforms.

There are global initiatives to ensure that gender related rights are enhanced. These efforts are in line with non-binding and binding commitments among member states made in different human rights instruments. These instruments include but not limited to the *Convention on the Elimination of All forms of Discrimination against Women (CEDAW) 197*;, *Beijing Declaration and Platform for Action (PFA 1995)*; *The Convention on the Rights of the Persons with Disabilities (CRPD), 2006*; and the *International Labour Organization(ILO) Conventions*. Others are the *Additional Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa(Maputo protocol)*; *Convention on the Rights of the child*,²⁰⁰ and the *African Charter on the Rights and Welfare of the Child (ACRWC)*.²⁰¹

One of the initiatives taken by the international community to promote gender equality and empower women is the establishment of an entity called UN WOMEN²⁰² by the United Nations General Assembly. This UN agency seeks to promote gender equality and empowerment of women, supporting the inter-governmental bodies in the formulation of policies, global standards and norms on gender related issues. Also, the agency helps the member states in implementation of the standards and provision of suitable technical and financial support to States that request and forge effective partnerships with civil society.²⁰³

Another global initiative to promote gender equality is the formation of a bureau called Bureau for Workers Activities (ACTRAV). ACTRAV is an entity under ILO which links the International Labour Office with workers. It ensures gender related rights are protected. ACTRAV links the International labour organization and worker's organizations in the defence and promotion

²⁰⁰ 1989.

²⁰¹ 1990.

²⁰² Established under Resolution no. 2242 of 2015.

²⁰³ <http://www.unwomen.org/en/about-us/about-un-women>

of worker's rights.²⁰⁴ ACTRAV put their efforts in ensuring that there is equal treatment in terms of gender at the working place.

Due to inequalities in the society, gender rights are violated at the highest level, a situation that accelerated international organizations' efforts to ensure there is equality at the working place. PLHA face discrimination and their rights are infringed. That is why the United Nation's Security Council under (UNAIDS) has put goals for the people living with HIV/AIDS, among the strategies, one of them insists that there should not be discrimination especially in health, education and work place settings.²⁰⁵

At the national level, the Government of the United Republic of Tanzania endeavours to ensure that gender issues are addressed in accordance with the Constitution of United Republic of Tanzania, 1977. The Constitutional safeguards on equality between men and women were followed by adoption of the *Women and Gender Development Policy* in 2000, with the aim of ensuring that the gender perspective is mainstreamed into all policies, programs, and strategies.²⁰⁶ The main focus of the policy is to mainstream gender issues into plans and programs of the Government.²⁰⁷

Incorporation of provisions that protects gender equality in the Employment and Labour Relations Act, 2004 is a milestone achievement for safeguarding gender equality at work places.

6.1 Situation of Women Rights in Business Sector

Women are regarded as a group that contributes a lot in national development since they are the best producers, especially in agriculture and industries. But, apart from being the contributors of the state's economy, they face a number of gender barriers, particularly gender based violence and discrimination at workplace. As a result, there have been global initiatives promote women's rights and promote women's economic empowerment through legal reforms and adherence to existing legal frameworks. For instance, the Matupo Protocol²⁰⁸ provides for women's economic empowerment initiatives. Domestically, *the Constitution of United Republic*

²⁰⁴ See www.ilo.org

²⁰⁵ UNAIDS 2016-2021 Strategy: Target, Goals, Vision.

²⁰⁶ http://www.mcdgc.go.tz/data/Tanzania_-_National_Strategy_for_Gender_Development.pdf

²⁰⁷ In ensuring the implementation of the policy the National strategy for Gender Development (NSGD) was formed.

²⁰⁸ Article 13.

of Tanzania, 1977 prohibits discrimination of all kinds.²⁰⁹ Whereby it states that:

“All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law”.

The International Women’s day 2016, carried a specific theme on women economic empowerment which stated that; “Planet 50-50 by 2030: Step it up for gender equality”, a theme that empowers situation of women in especially in the economic sectors, insisting on engagement of women in the productive sectors of the economy.

However, despite the fact that there are policies and other efforts to bring gender balance in economic initiatives, women are still to greater extent marginalized. For instance, the statistics still indicate that unemployment rate is high among women compared to men. Tanzania’s unemployment rate is 12.3% among women compared to 8.5% among men. Despite the state laws insisting on the equality in all aspects of life,²¹⁰ in practice there is no equal opportunity in for men and women in the corporate business sector. There is quite a big margin between the number of men and women employed in the business sector. For instance, during the study it was discovered that some companies did not have or had very few female employees, for instance at TANCOAL Company Ltd in Ruvuma Region, which has only 10% total number of the female employee.²¹¹ A similar situation was observed at the following companies:

- (a) SBC Tanzania Ltd. (Mbeya Region) where out of 173 employees only 22 were women;
- (b) Coca Cola Kwanza Tanzania Ltd. (Mbeya Region) whereby out of 226 only 24 were women;
- (c) WILLIAMSON DIAMOND LIMITED in Mwadui – Shinyanga, whereby out of 570 employees only 94 are women and the remaining 476 are men;

²⁰⁹ Article 13

²¹⁰ Article 12 of the Constitution of the United Republic of Tanzania, 1977.

²¹¹ CITE Ruvuma Report

(d) JAMBO COMPANY LTD whereby out of 44 administration employees only 12 were women and on the side of factory 120 were women who are many compared to men.

Previously, in corporate and business sector, women were regarded as a weak group to the extent that they were given petty activities like cleanliness and others of the like, but nowadays the situation has changed and it is been observed that there is engagement of women in works previously believed to be done by men only.



Picture 29: Women working at Supreme Auto Garage – Tabora

Due to the perception that there are specific works which are designed for men only and women cannot do them, this made some of the women to change their identities simply because they wanted to engage in the economic activities traditionally considered being for men.

One of them is Pili Hussein who was working in the mining sector at Mererani, Arusha, as a miner. Since the work at the mining sector is regarded ‘masculine’, this accelerated Pili to change her identity and abandon her status as a woman to

pretend to be a man named *Uncle Hussein* in order to secure a chance of working at the mine. During an interview with the researchers, she stated that: “*wanawake hawakuruhusiwa kwenye maeneo ya migodi hiyo, nikajitosa kama mwanaume shupavu na mwenye nguvu. Nilichukua suruali ndefu na kuzikata zikawa kama kaptula ili kufanana na mwanaume. Hivyo ndivyo nilivyofanya.*”²¹²

“Women were not allowed to work as miners, I had to cut my trouser into a short and act mannish so as to secure a job and hide my identity as a woman”.



Picture 30: Pili Hussein in Picture who had to pretend to be a man and dress like one in order to secure a job at a mine.

Big business companies are supposed to be the pioneers of women’s economic empowerment by employing a big number of them. However, most of these corporate have a few women on their payrolls, leaving most women to be employed in small businesses.

²¹² See <http://www.bbc.com/swahili/habari> as accessed on 29th May, 2017.



Picture 31: The only woman out of seventeen employees of Gofu Mats and Packaging industry located in Mwanzange Ward, Tanga

6.2 Persons with Disabilities in the Corporate Sector

Disability can be referred to as impairments of several subsystems of the human body. It can be visual impairment, physical impairment, intellectual impairment, mental illness and other types of chronic diseases.²¹³

Persons with Disability (PWDs) continue to face a number of obstacles in the employment sector, making it difficult for them to earn a living. One of the major obstacles they face is discrimination and stigma. Lack of education or training, lack of transportation, and disability itself was wrongly regarded, by other employers as a barrier in securing chances of employment.

One of the solutions to the obstacles faced by PWDs in employment is to use vocational rehabilitation. The ILO Convention on the Vocational Rehabilitation and Employment (Disabled Persons) Conventions provides for vocational rehabilitation. It states that:

²¹³ See <http://www.ratifynow.org/>

“Each Member shall consider the purpose of vocational Rehabilitation as being to enable a disabled person to secure, retain and advance in suitable employment and thereby to further such person’s integration or re integration into the society.”²¹⁴

Rights of PWDs, including the right to work, should be promoted and protected; and PWDs must be enabled to equally and fully realize all human rights and fundamental freedoms, including respect for their inherent dignity.²¹⁵ There should be equality of opportunities and the corporate business should not entertain any kind of discrimination.²¹⁶

The study indicates that PWDs are employed in the companies. This shows that, in a slight manner, the principle of equality is enhanced in a convincing position; PWDs are promoted and to some extent are given opportunities without any kind of discrimination.



Picture 32: A PWD worker employed at Mara Press Club

The exemplary act done by the Mara Press club has implemented in line with the provisions of section 31(3)²¹⁷ of the Person’s with disabilities Act, 2010 which states that: “every employer, public or private shall where there is a

²¹⁴ Article 2 of the Convention no.159 of 1983.

²¹⁵ Article 1 of the Convention on the Rights of persons with Disabilities

²¹⁶ Ibid Article 3.

vacant post fit for a person with disability and the person applies for the vacancy, give the employment to the person with disability who meet the minimum qualification for such an employment.”

Mara Press Club to have employed PWDs, also an interview was conducted with another person with disability called Pius Mkitu, who is a workshop superintendent from SERENGETI BREWERIES LTD at Mwanza Region. He is a plant manager who has leg disability and serves a big position. He has alleged that equality Disability can be referred to as impairment of several subsystems of the human body. It can be visual impairment, physical impairment, intellectual impairment, mental illness and other types of chronic diseases.²¹⁸

Persons with Disability (PWDs) continue to face a number of obstacles in the employment sector, making it difficult for them to earn a living. One of the major obstacles they face is discrimination and stigma. Lack of education or training, lack of transportation, and disability itself was wrongly regarded, by other employers as a barrier in securing chances of employment.

The exemplary act done by the Mara Press club is in line with the provisions of section 31(3)²¹⁹ of the Person's with disabilities Act, 2010 which states that: “every employer, public or private shall where there is a vacant post fit for a person with disability and the person applies for the vacancy, give the employment to the person with disability who meet the minimum qualification for such an employment.” Is their slogan in the manner that everyone has an equal chance of being employed.

Also LHRC survey revealed a PWD working as a plant manager at the Serengeti Breweries Limited in Mwanza region. He acknowledged that everyone is given an equal chance in employment opportunity at Serengeti Breweries.

Despite the fact that some of the PWDs secured employment in the corporate sector, their rights are not well promoted and respected. LHRC study on the right to work for PWDs reveals that most of their rights are not respected and are violated to a large extent. This fact is also signified by other institutions for instance Twaweza also conducted study on situation of PWD found out that

²¹⁸ See <http://www.ratifynow.org/>

²¹⁹ Persons with Disabilities Act, 2010.

“Half of all Tanzanians witnessed job discrimination against people with disabilities. Communities and individuals also admit to not respecting people with disabilities.” Whereby 46 percent of PWDs have experienced discrimination at work place and during searching for employment opportunities.²²⁰

Another study conducted by SHIVYAWATA, 2016 on the rights of PWDs in Tanzania shows that, 73% of PWDs are engaged in income generation, home work and livelihood activities. The study done by SHIVYAWATA also indicated that 60% of individuals with communication impairment do not earn an Income. 63% of respondents reported facing difficulties in their attempts to engage in employment.²²¹

PWDs have the equal rights to secure employment in a manner and same remuneration as other people. The fact that they have body impairments does not mean that they have quite less standards compared to the abled persons. The corporate business sector should take initiatives in widening the gap observed in the employment sector. They should employ as many PWDs who have acquired the necessary/required skills as possible. This will reduce the rate of dependency among them and a chance of them being beggars in the streets. The National Policy on Disability 2004 states:

*“An individual’s capacity to work and leads an independent life is an expression of one’s dignity. In our society the capacity to work has been associated with complete functional ability of the body. Disability is associated with lack of ability and most people with disabilities see themselves in the same light. The end product of this scenario is the difficulty persons with disability find themselves in accessing work”.*²²²

In international perspectives, the States are required to take measures with a view of providing and evaluating employment and other related services to enable PWDs to secure, retain and advance in employment.²²³

The Government, on its duty to protect, is supposed to protect the rights of the disabled especially in securing employments. If only there were

²²⁰ Twaweza (2014), Protecting the Rights of Everyone: Citizens’ Views on Disabilities. Dar es Salaam.

²²¹ <http://shivyawata.or.tz> (accessed On 17th May 2016).

²²² Para 1.2.7.

²²³ Article 10 of the ILO Convention no. 159 of 1983.

conditions or initiatives made by the government in prompting the corporate business sectors employ the disabled with the required skills, this could have helped in reducing discrimination on the part of the disabled persons.

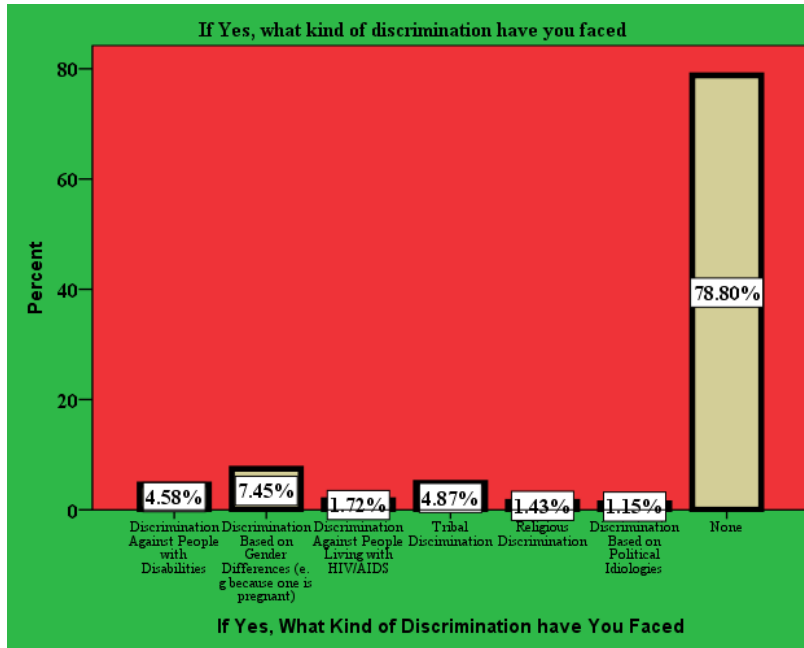


Figure 35: Rates of discrimination for the interviewed

6.3 Challenge of Child Labour in Business Sector

A child is a person below eighteenth years of age. States are required to respect and ensure the rights of the child within their jurisdiction without discrimination of any kind. In ensuring this, appropriate measures shall be taken so as to ensure that children are protected against all forms of discrimination or punishment.

A good example is the study done in Ethiopia in relation to the causes of child labour 2001,²²⁴ the study intended to reveal information that would help in exposing the worse situation of child labour in the country which are not quite different from the other African countries and the findings came out as follows:

²²⁴ <http://www.ilo.org/ipcc/Regionsandcountries/Africa> as accessed on 2nd June, 2017.

The main cause that was cited is poverty, which is forcing children to engage in hazardous works so as to contribute to the family income. This is not good for their physical and mental health.

Other causes laid down in the finding apart from poverty include cultural values; since children are considered to be assets for generation of incomes, then they are forced to engage in paid labour. The education system that prepares children for non-self-employment is also regarded as one of the factors that lead to the increasing number of the children in working sectors. Family disintegration and orphanage especially due to the rapid increasing number of the HIV/AIDS victims were also named as the contributing factors for child labour especially in the rural areas.

Though the study was done in Ethiopia but since the problems facing African countries are almost similar they may also be the main causatives of child labour in the country.

The ILO's convention on the minimum age has stipulated some of the areas in which child work if entertained may result to severe problems in relation to the growth and health of the child. It states as follows:

*“The Convention shall be applicable as a minimum to the following: mining and quarrying, manufacturing, construction, electricity, gas and water, sanitary services, transport, storage and communication, plantations and other agriculture undertakings mainly for commercial purposes.”*²²⁵

In 2002, WHO released a report on child labour,²²⁶ which indicated that almost 250 million children globally are involved in the child labour. Out of these children, 179 million engaged in the so called “worst forms of child labour”.²²⁷

The WHO report shows that 70% of the children engaged in labour are found in agriculture sector, and some hazards associated with agriculture stipulated by the report include exposure to pesticides, the use of dangerous machinery or tools, carrying heavy loads and so on.

²²⁵ Article 5(3) of the ILO Convention no. 138 of 1973.

²²⁶ ILO (2002) Global Report on Child Labour.

²²⁷ Works which endanger the child's physical, mental or moral wellbeing.

The occupational hazards causes not only short term health effects like injuries and skin problems but the long term health effects such as cancer and infertility will become evident in adulthood.

In order to support the abolition of child labour, states are required to ensure that children are protected from the economic exploitation and from performing any work that is likely to be hazardous or interfering with their education or it is harmful to their health, physical, mental, spiritual, moral or hinders the socio-development of the said children.²²⁸

The national laws tries to safeguard the child's right in terms of employment sector where upon with regard to section 5 of the Employment and Labour Relations Act,2004 states that:-

“No person shall employ a child under the age of fourteen years, the law further elaborates that, a child of fourteen years of age may only be employed to do light work, which is not likely to be harmful to the child's health and development; and does not prejudice the child's attendance at school, participation in vocational orientation or training programmes approved by the competent authority or the child's capacity to benefit from the instruction received.

The law goes further to state that employment of a child less than 14 years is an offence.²²⁹ It also grants powers on the District and the Resident magistrate court to impose penalties on those who contravene the stated provision.²³⁰ It states that:

“A District Court and a Resident Magistrate's Court have jurisdiction to impose a penalty for an offence under this Act. Any person convicted of any offence referred under section 5 and 6 may be sentenced to:

- a) A fine not exceeding five million Shillings.*
- b) Imprisonment for a term of one year.*
- c) Both to such fine and imprisonment.”*

²²⁸ Ibid Article 32.

²²⁹ Section 6 of the Employment and Labour Relations act, 2004.

²³⁰ Ibid section 102.

Data obtained from the study indicates that there are companies still entertaining issues of child labour especially in mining sites.

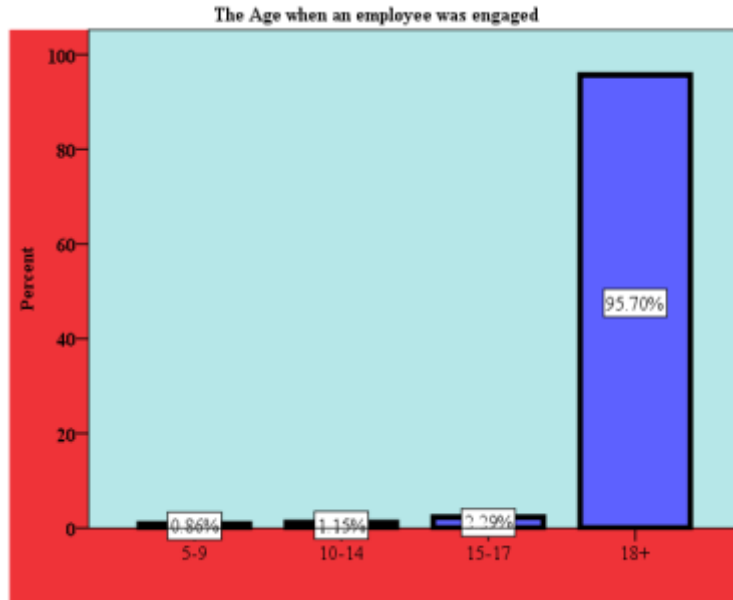


Figure 36: Age of the Child Labourers

The chart above indicates that the situation of engaging children into worst forms of child labour is still entertained, though there are advocacy for eradication of the problem but children's rights are still at stake, and this is indicated on the chart above where upon almost 1.15% of the workers interviewed agreed to have been employed under the age.

Some corporate have put adverts or warning notices in their places of business which discourages child labour. This is something which in one way or another contributes to the positive contribution in hindering child labour in the country.



Picture 33: A banner prohibiting child labour at the gate of Africado Company Ltd. in Moshi, Kilimanjaro Region (on the Left). On the right, another banner prohibiting child labour at Kibaigwa Market, Kongwa District in Dodoma Region

Also, there has emerged a habit of Parents involving children to help them in their work places on the weekend. The children are not paid by the business owners but they do part of the works which were supposed to be done by their parents, and those works, most of them are contrary to the promotion of the children's right to health.

This habit is mostly seen in the agriculture sector and mining sectors, where upon parents engage their children in their works so as they can be able to raise their allowances for the work done. This act denies not only their right to education but also endangering their health.

A mere fact of engaging them in the activities on the weekend only does not protect the rights of the children, this was observed in the study in the mining zones areas such as Shinyanga and Geita Region.

The same situation was seen in Basia Gold Mine in Shinyanga Region, children were found engaging in mining activities, for the reason that they are only helping their mothers. One of the interviewee named Mr. Hussein was quoted during the interview with the researchers that:

“Baada ya kupata leseni ya uchimbaji tulishapiga kabisa marufuku watoto huku, hawa unaowaona wamekuja tu kusaidia mama zao kwa sababu leo siyo siku ya shule (Jumamosi).”



Picture 34: Children found helping their parents at a tobacco-making industry in Tabora Region (left) and Basia Gold Mining in Shinyanga Region (right).

Despite the fact that child labour is prohibited in all aspects of life, some of the companies continue to engage in child labour. These children are not provided work contracts and conduct activities which would normally be conducted by adults. This happens mostly in mining areas and at garages.



Picture 35: Child labour is still entertained in the corporate Business Sector, as the children were found engaging in harmful works in Geita and Ruvuma region.

Therefore, child labour is a threat to the state's development; and this problem is not addressed it may result to the increased number of illiterates. The state will have a generation of the youth which is dependent on employment provided by the foreigners investing in Tanzania. This may happen as most of the youth drop from schools so as they can engage themselves into works which generates income. This situation was observed much in the regions which have mining companies especially in Shinyanga and Geita regions.

Plan International Tanzania²³¹ should be encouraged and supported on their motives to liberate the coming generation. On their efforts to eradicate the worst forms of child labour, the organization has managed to withdraw more than 12,000 children from the goldmines in Geita and Nyang'wale Districts in Geita.

In order to ensure that there is success in eradication of child labour, the organization went on further suggesting that there should be awareness rising and capacity building among parents, youth group, and small scale miners and in primary schools.

Activities like these should be appreciated and supported by the government. The mere fact of documenting them without future plans on eradication of child labour, will not give out the promising results on the fight against child labour.²³²

²³¹ An organization established for the purpose of supporting vulnerable children and their families access health care, education, safe sanitation and water, productive livelihoods and protection.

²³² <https://plan-international.org/tanzania>



Picture 36: Depicts awareness of children on abolition of Worst forms of Child labour

6.4 Persons Living With HIV/AIDS

Several studies have indicated that poverty has always been the major factor influencing the spread of HIV/AIDS. It creates vulnerability to HIV infection causes rapid progression of the infection in the individual and limits access to social and health care services. Excess poverty results due to death of the income earners and producers leaving the dependents and orphans' future at stake.²³³

The issue of HIV/AIDS affects the workplaces in so many ways. The fundamental right such as the right to work is affected in different ways by employees and employers as well. Discriminations done to people living with HIV/AIDS undermine their opportunities of obtaining decent employment.²³⁴

In work places, HIV/AIDS is identified as one of the sensitive issues that is why it is supposed to be treated like any other serious illness in the work

²³³ Para. 1.2 of the National HIV/AIDS Policy, 2001.

²³⁴ <http://ilo.org>

place, since the work force has a role to play in the wider struggle to limit the spread and its effects²³⁵.

The Code of Practice insists on the issue of discrimination at the work places whereby it states as follow:

“In the spirit of decent work and respect for the human rights and dignity of persons infected by HIV/AIDS there should be no discrimination against workers on the basis of real or perceived HIV status. Discrimination and stigmatization of people living with HIV/AIDS inhibits efforts aimed at promoting HIV/AIDS prevention.”²³⁶

In order to ensure that there is no discrimination among people living with HIV/AIDS at work places, the state is obliged to ensure that there are legislations that supports the issue of non- discrimination of the people living with HIV/AIDS at the work places²³⁷.

In implementing the fight against HIV/AIDS, the International Labour Organization in collaboration with TACAIDS has implemented a programme at the workplace in 2014. The programme aimed at getting to zero at work and VCT campaign in Iringa, Mbeya and Njombe regions where upon a series of VCT activities were taken place.²³⁸The main aim of the campaign was to utilize potentials existing in in the world of work to contribute to the UNAIDS Global goal of “Zero new infections, Zero discrimination and Zero AIDS related deaths.

The campaign focused on giving voice to those who are making a difference and those who are benefiting from the initiatives in the world of work. Also, promoted and conducted voluntary HIV testing and counselling targeting employees their families and neighbouring communities.

In implementation of ILO code of ethics, state has enacted the National Policy on HIV/AIDS, 2001 which puts emphasis on the promotion and protection of people living with HIV/AIDS especially at the workplaces.

²³⁵ Para. 4.1 of the Code of Practice on HIV/AIDS and the world of Work,2001.

²³⁶ Ibid Para. 4.2

²³⁷ Ibid Para. 5.1 (h)

²³⁸ www.ilo.org

Also, several initiatives are taken on ensuring there is no discrimination of any kind among its citizens. In maintaining that, the state has established a commission for HIV/AIDS.²³⁹

In addition to that, other strategies were supposed to be taken, where upon the suggestions were directed to the Ministry, Departments and Agencies responsible for labour and employment in ensuring that workplaces have supportive policies for people living with HIV/AIDS that are effectively implemented. These include collaborative efforts with public and private employers as well as social institution regarding social security.²⁴⁰

Several studies have already been conducted in order to reveal the status and trend of the PLHA in the country. One of the articles by Avert²⁴¹ titled HIV and AIDS in Tanzania, 2015 reveals that between 2010 and 2015, the number of new infections declined by 20%. In addition to that, the 2011-2012 Tanzania HIV/AIDS and malaria Indicator Survey (THMIS) indicated that HIV prevalence was 6.2% compared to men who form a total of 3.8% .the study done by the National Bureau of Statistics, the HIV prevalence by socioeconomic characteristics shows the following data:

The HIV prevalence among men and women aged 15-49 by socio economic characteristics prevalence is higher among individuals who are employed (6 percent) among those who are not employed (3 Percent) and is higher in urban areas by 7% than in rural areas which accounts for 4% .Among regions that were surveyed Njombe has the highest prevalence by 15% followed by Iringa and Mbeya (9 percent each), Manyara and Tanga have the lowest percent which is 2 percent.²⁴²

In business sector sectors people living with HIV/AIDS status should be promoted in all socio-economic aspects, workers living with HIV/AIDS should be given support required while at work, and they should be not discriminated in whatever manner while at works.

²³⁹ The Law establishing TACAIDS IS Act No. 22 of 2001.

²⁴⁰ Tanzania third National Multi-sectoral Strategic Framework for HIV and AIDS 2013/14-2017/18. (Pg.62).

²⁴¹ Is an organization providing HIV and AIDS information since 1986. Its vision is to create a world with no new HIV infections, and those where living with HIV and AIDS do so with equality and support they need. The organization helps in strengthening local responses to HIV in some of the most heavily affected countries in the world. The organization works closely with community based organizations in Sub-Saharan Africa who offers prevention, care and support when needed most.

²⁴² Tanzania HIV/AIDS and malaria Indicator Survey, 2011/2012.

In observing that, some of the companies have put several policies or advertisement with regard to protection and care of the people living with HIV/AIDS.

A mining company called Williamson Diamond Ltd. Of Mwadui in Shinyanga region has an HIV/AIDS policy at the work place. Since the policy is written in English language which could not be understood by the majority then the company decided to summarize the policy and put it on boards around the working places.



Picture 37: A banner on HIV/AIDS

Therefore, the issue of HIV/AIDS shall be given priorities by the government especially in the working places. Women are regarded as the most producing group and contributor of the country's development, yet it is one of the groups which are affected much by the spread of HIV/AIDS. Initiatives should be taken to provide extra care to them so that can raise the morale of them working without having an ideology of being discriminated.

Education should be provided concerning the diseases starting from the very early education and the lactating mothers should be given extra care in order to ensure that the plan of reaching to zero new infections succeeds.

6.5 Protection of Local Small Producers and Traders

Due to the reforms in the economic sector, Tanzania is committed to the market economy and the private sector being the main contributor to the country's economy. In order for the private sector to sustain there should be small medium enterprises²⁴³ which may contribute to a large extent in the provision of employment and incomes generation.

“Tanzania should have created a strong diversified, resilient and competitive economy which can effectively cope with the challenges of development and which can also easily and confidently adapt to the changing market and technological conditions in the regional and global economy”

This is the Tanzania development vision stipulated under chapter one of the Small and Medium Enterprise Development Policy, 2003. Its achievement is supposed to be done up to 2025.

Among the factors that were suggested to be done so as to develop the small Medium enterprises include the following:²⁴⁴

- i) Ensuring that the small Medium enterprises have an access to resources such as finance, land and water, technological and managerial skills;
- ii) Facilitating linking up of domestic producers with local and foreign institutions;
- iii) Creating fair competition to ensure level smooth and stable administrative and regulatory framework, guaranteeing personal and property rights and security and enforcement of contracts.

The Government on its duty to protect citizens should take necessary initiatives to empower the small medium entrepreneurs for the development of the country. Laws enacted should have direct intentions of promoting and protecting the status of the small medium entrepreneurs.

²⁴³ Small medium enterprises cover non-farm economic activities mainly manufacturing, mining, commerce and services. The common factors that characterize Small medium enterprises include number of employees, total investment and Sales turn over. In the context of Tanzania Small enterprises engages between 5 up to 49 employees with a capital amount of 5 up to 200 million.

²⁴⁴ National Strategy for Growth and reduction of Poverty (NSGRP, 2005).

Some organizations have taken initiative so as to empower small traders for the development purpose. A good example is the campaign done by the EFG called “*Sauti ya Mwanamke programme*²⁴⁵” which is established mainly for the purpose of empowering women in the market places mostly common known as “*mama lishe.*”

The main purpose of the programme is to empower women in the informal sector specifically women market traders conducting their businesses in the markets.

Women in informal sector face the most violence especially abusive languages from customers or other male traders they are working with, they also face difficulties in acquiring loans from the commercial banks then this campaign if well supported may enhance empowerment of the status of women and encourages respects among them especially in the informal sectors.

Although there is a policy protecting the petty traders or machingas, but the policy mostly covers ideas which are not implemented by the government. The Government on its position, has the duty to protect the rights of the citizens, the right to work as mentioned by the constitution shall be accorded to everybody with no distinctions.

Small medium traders should be supported by any means by the government so that they can be well accorded with the required rights.

The policy states that:

*“It is crucial to put in place strategies that will facilitate the removal of those constraints so that it can attain the desired vision and objectives, the focus should be directed to the areas which have maximum impact on the sector such as creation of the enabling business environment, developing the infrastructure, strengthening the financial and non-financial services.”*²⁴⁶

²⁴⁵ Introduced in October 2011 with the goals of empowering women in the informal sectors specifically women market traders and it was funded by the United Kingdom government through its department for International Development (DFID) and the Finnish Embassy.

²⁴⁶ Para .37 of the Small and Medium Enterprise Development Policy, 2003.

The issue of enabling business environment has been one of the controversies that hinder the development of the small medium traders in the country. The government does not show a strong position of where it stands because some other time, traders are evicted, forcefully from the places where they are used to conduct their businesses and after several decisions being made, then they are returned to where they were before. A good example is eviction of traders at Congo Street in Kariakoo, Dar es Salaam city around December 2016 who was later on returned by the president's decree. Also another eviction was done in Morogoro after the Market being demolished in November 2016.

Despite forceful eviction of traders from their long term established markets, another problem facing local small producers and traders is availability of conflicting decisions and orders. Since there are no specific principal laws that safeguard their rights in conduction of business then there happened to be orders from whoever is in power to deal with the situation for a moment, this leads to continuation of conflicting decisions from the orders makers.

A good example is the case of traders at Congo Street in Kariakoo area, if only the President did not decree on their issue that means the city and municipal council would have continued to evict them from those places because some of the municipal officers use that as one of the means of obtaining bribes from small traders.

So, due to the above mentioned problems, it is recommended that there should be harmonization of laws and orders with regards to protection and promotion of small producers and traders. By-laws, laws and regulations made should aim at protecting small producers and traders and not distress them in a way that may hinder their sustainability in the market. Since small producers and traders forms a large group compared to the big corporate, and then if there will be strategies raised to empower their status, may enhance the increasing number of taxpayers resulted from the small traders and producers.

This task will have a strong impact if it will be done with cooperation between the central government and the parliament in coming up with the law that directly protects the rights of such group. The mere act of having a policy safeguarding their rights does not have an enforced position in the courts of laws in case of any violations done by the city and municipal officers.

The city and Municipal officers should not regard small traders as one of the means of obtaining corruption and unnecessary taxes, they should set specific places for them to conduct their businesses and regard them as other traders because by not doing that the 2016/17-2020/21 plan on “*Nurturing Industrialization for Economic Development*” can never be achieved.



Picture 38: Demolition of the market and forcefully eviction of small traders at Morogoro



Picture 39: Small traders at Kariakoo, Dar es Salaam city after the president decreed on their return to their places of business.

The government has to put strong laws and penalties to those who try to demolish the status of small producers and traders in the market.

Lately, there has been increasing number on the production and supply of the fake products by small producers and traders. Although there is a law for promotion and protection of producers in the market but unfair practices seems to take over and threaten the competition of certain products in the market.

The Fair and Competition Act, 2003 aims at promoting and protecting effective competition in trade and Commerce, to protect consumers from unfair and misleading market conduct and to provide for other related matters. The Act stipulated provisions which prohibit forgery and misrepresentation in products so as to pave way for a just and equitable competition. The misleading acts and deceptive acts are strongly discouraged by the act.²⁴⁷

On making the matter much more clear, the law has identified several conducts which may consist the whole meaning of mislead and deceit when it comes to competition in the market.

Some of the issues elaborated were as follows²⁴⁸:

- i) There should be no misrepresentation on the quality, grade, composition, style or model.
- ii) There should be no false representation that the goods are new.
- iii) There should not be misrepresentation on the fact that the goods have acquired approval, performance or benefits they do not have.

The law went on further stating the following:

*“No person shall engage in conducts that is liable to mislead the public as to nature, the manufacturing process, the characteristics and the suitability for their purpose or the quantity of any goods and services”*²⁴⁹

Despite the fact that the law has stated its position on issues of misrepresentation and deceit, yet there are traders and local producers’ keeps on entertaining unlawful conducts of producing and supplying goods which

²⁴⁷ Section 15 of the Fair Competition Act, 2003.

²⁴⁸ Ibid Section 16.

²⁴⁹ Ibid Section 18 and 19.

are of no quality and its whole manufacturing process based on forgery. Bad enough most the unlawful conducts are done by foreigners who migrated into the country hiding under the umbrella of investment and trade competition.



Picture 40: Chinese traders were caught in Dar es Salaam producing fake Kilimanjaro water which a brand is owned by Bonite Bottlers, Coca Cola Company.

This issue is so serious and actions should be taken by the government so as to reduce and cease acts of producing fake and copied products, especially by the so called foreigners and other citizens as well, because at one point such acts amounts to tax evasion, kills competition in the trade market of the copied products as well as threatening and endangering health of the consumers who are the citizens.

The Immigration Department should take initiative to assure themselves on the intent of the foreigners who migrate into the country for the purpose of trade and business, they should not concentrate on ensuring flourish of business by the foreigners in the country but they have to be extra careful in providing permits. If necessary they are supposed to reassure themselves on

the nature of business to be conducted by the permit seekers. A frequent follow up on them can enable to reduce the amount of ill-motives of the foreigners.

The China-Tanzania friendship should not aim at profiting the Chinese only and kill or destroy the market of small producers and traders in the country, it should aim at empowering both in an equitable way. The influx of Chinese in the country, commonly known as “*Wachina wa Kariakoo*” has contributed to a strong competition in the market, which is good for the consumers who are the citizens but that should not lead to the employment of means of producing unqualified products and avoiding taxes.

In ensuring there is fair, just and equitable competition in the business, the small producers and traders who meet the requirements for paying tax are supposed to do so in order to assist the government in implementation of the development projects.

The law requires TRA to charge tax from a person’s income from a business for a year of income.²⁵⁰

However there is an exemption put by the Income Tax Act, where upon those who conducts business with less than 40 million turnovers are not required to pay tax. This exemption has been used wrongly by the businessmen. Basing on this, most of the traders use this option as one of the means of avoiding taxes.

A good example is the businessmen at Kariakoo, they use such loophole of avoiding taxes by distributing their goods to the small vendors who sells the items at the road sides and in front of other shops disguising themselves as local traders who are not eligible for tax payment.

Not only the citizens employ this kind of method in tax avoidance but also most of the foreigners especially the Chinese at Kariakoo they employ this kind of method where upon they import goods directly from their industries in China, distribute them to local traders with an agreement of being paid after the final sale.

Since the small vendors do not pay any kind of taxes and they do not use the EFD machines on their transactions, then they highly avoid taxes and cause loss to the government Revenues.

²⁵⁰ Section 8 of the Income Tax Act, Cap 332.

Hence, the TRA has to make follow ups on these issues and come out with the solution so as to solve the problem of tax avoidance among the businessmen which seems to grow as the days goes by.

Therefore, despite several reforms undergoing to raise the status of the small medium enterprises, there are lots of challenges facing them. Include persistent culture that has not recognized the value of entrepreneurial initiative in improving the life of the people. Other factors include complex, bureaucratic and costly legal, regulatory and administrative environment.²⁵¹

6.6 Performance Indicators on Gender Related Rights in Corporate Sector

The study reveals that there are different forms of discrimination which are conducted at the workplace, not only sex based discrimination but also discrimination on the basis of disability, discriminating PLHA as well as religious differences. Religion tends to be one of the causative of discrimination especially in the areas where there happens to have a big number of people professing a certain type of religion.

The highest form of discrimination revealed by the study indicates that political ideologies have been one of the reasons for inequalities by 21.2%. Previously political issues were not much entertained to the extent that would create differences among the society members but currently the situation has changed.

18.6% of the population especially in rural areas faces the problem of tribal discrimination; it is observed that sometime recruitment qualifications depend on the tribal differences.

²⁵¹ Ibid Para.3.

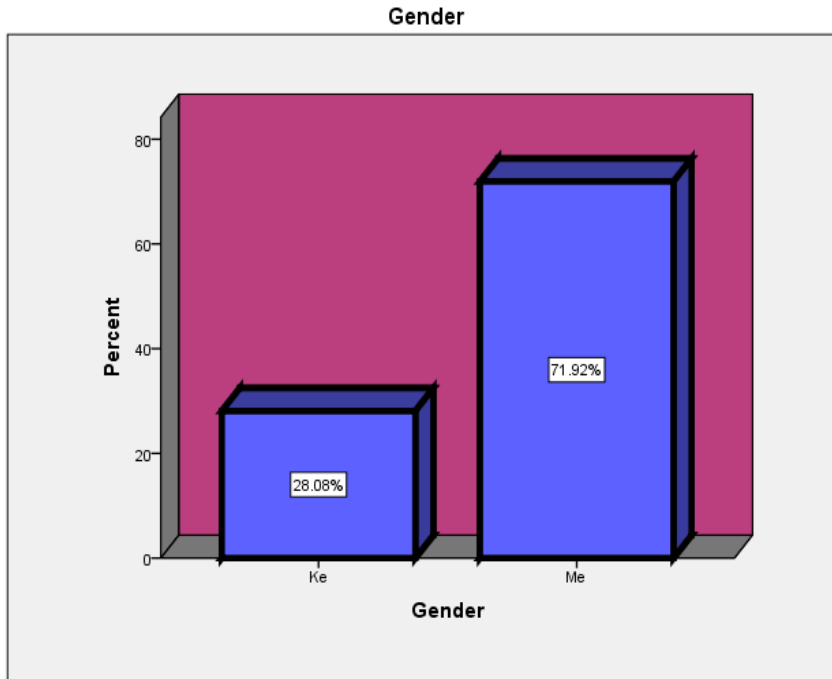


Figure 37: Gender Difference in Corporate Sector

The study reveals that, with regards to the number of workers interviewed, there is a big gender difference in terms of sex between male and female working in different corporate sectors. It seems most of the corporate sectors favour more male than female. 71.92% of the working members interviewed are male, and the rest 28.08 of the interviewers working in the companies are female. This is an issue of controversy, as female are many in numbers compared to male yet they are not given chances of securing employments.

Despite initiatives taken and awareness raised, a gender issue especially in the companies seems to be disregarded by the companies’ management.

Table 21: Kind of Discrimination Faced by workers’ at the working places

Type of Discrimination	Occurrence	Percent
Discrimination against People with Disabilities	16	4.6

Discrimination based on Gender Differences.		
Discrimination against PLHA	26	7.4
Tribal Discrimination	6	1.7
Religious Discrimination	1	4.9
Discrimination Based on Political Ideologies	5	1.4
none	4	1.1
Total	275	78.8
	349	100

Source: LHRC, Corporate and Human Rights Study (Primary data), December 2016

The national policy on HIV/AIDS prohibits among other things discrimination of PLHA in employment sectors. Employers are duty bound to adhere to human rights issues in their companies where upon the policy requires an adherence to the rights to non-discrimination, equal protection and equality before the law.

The HIV/AIDS Act in Tanzania insists that one should not be denied in employment due to the reason of HIV/AIDS.²⁵² There is a requirement for the companies to have a policy on HIV/AIDS but the study conducted reveals that out of 349 workers interviewed only 47 agreed to have the knowledge about the company's policy on HIV/AIDS and the rest 302 workers have no knowledge about the issue. Hence this indicates that rights of the PLHA are still violated at the working places.

Table 22: Workers' Knowledge of Policies on HIV/AIDS, Disability and Gender during Employment

Workers' Knowledge on HIV/AIDS, Disability, and Gender Policies.	Number	percent
Yes	47	13.5

²⁵²Section 30(c) of the HIV and AIDS (Prevention and Control) Act, 2008.

No	302	86.5
Total	349	100

Source: LHRC, Corporate and Human Rights Study (Primary data), December 2016.

CHAPTER SEVEN

EFFECTIVENESS AND EFFICIENCY OF CORPORATE SECTOR'S REGULATORY AUTHORITIES

7.0 Regulation of Business Sector as Part of Human rights Protection

The inception of liberal economy in the 1980s and 1990s has led the State to exonerate itself from active manufacturing and trade activities. The state has retained a regulatory role to ensure that business activities are conducted in accordance to the laws of the country and that Tanzanians benefit from such activities.

The Human Rights and Business Report of 2015 pointed out that the regulation of business companies are not articulated well in the international legal framework.²⁵³ This could be explained by the fact that international human rights treaties generally do not impose legal obligation on business enterprises.²⁵⁴ The national laws are largely the ones which define legal liability and enforcement for infringement by businesses.²⁵⁵

Tanzania has thus put in place institutional and legal frameworks to regulate business activities in the country. The legal frameworks have thus established a number of Regulatory Authorities (RAs) to regulate different business sectors. However, these established institutions and frameworks do not necessarily respond to responsibility by corporate to respect human rights while conducting their activities in the country. It is thus important that the RAs make sure that businesses not only respect the laws and regulations of the country but also human rights standards.

Business responsibility to respect human rights is affirmed by the Un Guiding Principles on Business and Human Rights (UN-GPBHR) of 2011 and states have the duty to ensure so. UN-GPBHR further urge states to take appropriate measures to prevent, investigate, punish and redress human

²⁵³ LHRC (2015): Human Rights and Business Report.

²⁵⁴ UN 2012: Corporate Responsibility to Respect Human Rights.

²⁵⁵ *Ibid.*

rights abuse though effective policies, legislation, regulations and adjudication.²⁵⁶ Corporate companies are also required to have some form of internal policies to address human rights.²⁵⁷ Governments are further required to mainstream human rights principles in business through legal frameworks on corporate sector and investment.

7.1 Tanzania Regulatory Framework on Business

As noted in the 2015 Human Rights and Business Report, Tanzania has conducted a number of regulatory reforms which were not necessarily to protect human rights but rather achieve objectives set out in pursuing market economy. As a result Tanzania enacted a number of business related laws under which a number of RAs were established for different business sectors. The RAs were meant to create a playing field for investors, efficient utilisation of the available resources, consumer protection, fair and competitive markets, sustainable investments and credible competition. The following are the types of RAs established in Tanzania, their governing laws and respective economic (sub-) sectors:

²⁵⁶ LHRC (2015): Human Rights and Business Report.

²⁵⁷ Article 15 of the UN Guiding Principle on Business and Human Rights, 2011.

S/No	Economic Sub-Sectors	Main Regulatory Authorities	Main Governing Laws
1.	Extraction of minerals and gas	Tanzania Mineral Audit Agency (TMAA); Tanzania Petroleum Development Corporation (TPDC)	The Mining Act, 2010; the Petroleum (Exploration and Production) Act, 1980; the Petroleum Act, 2015; the Tanzania Extractive Industry (Transparency and Accountability) Act, 2015; and the Oil and Gas Revenue Management Act, 2015.
2.	Food, Drugs and Cosmetics	Tanzania Food and Drugs Authority (TFDA)	The Tanzania Food, Drugs and Cosmetic Act, 2003
3.	Agriculture	Tanzania Dairy Board (TDB); Sugar Board of Tanzania (SBT); Tanzania cotton Board (TCB); Tanzania Coffee Board; Tanzania Sisal Board (TSB); Tea Board of Tanzania (TBT); and, Tanzania Meat Board (TMB).	Dairy Industry Act, 2004; the Sugar Industry Act, 2001; the Cotton Industry Act, 2001; the Coffee Industry Act, 2001; the Sisal Industry Act, 1997; the Tea Act, 1997; and, the Meat Industry Act, 2006.
4.	Telecommunication	Tanzania Communications Regulatory Authority (TCRA).	Tanzania communications Regulatory Authority Act, 2003;
5.	Transportation (Marine, Air, Road and Railways)	Surface and Marine Transport Regulatory Authority (SUMATRA); the Tanzania Civil Aviation Authority (TCAA); and, the Police Force of Tanzania.	The Surface and Marine Transport Regulatory Authority Act, 2001; the Road Traffic Act, 1973; the TAZARA Act, 1995; the Railways Act, 2002; and, the Shipping Agency Act,

			2002.
6.	Finance	Bank of Tanzania (BOT); the Tanzania Revenue Authority (TRA); and, the Public Procurement Regulatory Authority (PPRA).	The Bank of Tanzania (BOT) Act, 2006; the Tanzania Revenue Authority (TRA) Act, 2005; the Foreign Exchange (Bureau de Change) Act, 2006; the Banking and Financial Institutions Act, 2006; and Public Procurement Act, 2011.
7.	Tourism	Tanzania Tourist Board (TTB).	The Tourism Act, 2008.
8.	Social Security and Insurance.	Social Security Regulatory Authority (SSA); and, Tanzania Insurance Regulatory Authority (TIRA).	The Social Security Regulatory Authority, 2008; the Insurance Act, 2009.
9.	Construction and Engineering.	Contractors Registration Board (CRB).	The Contractors Registration Board Act, 1997; the Architects and Quantity Surveyors Registration Act, 1997; and, the Engineers Registration Act, 1997.
10.	Utilities (Water and Energy).	Energy and Water Utility Regulatory Authority (EWURA); and, the Tanzania Electrical Supply Company (TANESCO).	Energy and Water Utility Regulatory Authority Act, 2003.
11.	Cross Cutting (General).	Business Registration and Licensing Agency (BRELA); the National Environment Management Council (NEMC); the Occupational Health and Safety Authority (OSHA); Tanzania	The Executive Agencies Act, Cap. 245; the Occupational Health and Safety Act, 2003; the National Environment Management Act, 2004; the Standards Act, 2009; Tanzania Investment Centre Act, 1997; and, the

		Bureau of Standards (TBS); the Tanzania Investment Centre (TIC); and, the Tanzania Fair Competition Commission (TFCC).	Tanzania Fair Competition Act, 2003.
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Table 23: Regulatory authorities and Governing Laws for Economic Sub-Sector in Tanzania

Source: LHRC 2015 & 2016: Human Rights and Business Study

7.2 Assessment Standards for RAs' Performance

In order to study the status of performance of RAs in 2016 LHRC will adopt an approach involving a combination of criteria.²⁵⁸ Such criteria (performance indicator) include:

- i. Cost on government to implement regulations (monetary costs, proportion of budget, number of staff, proportion of staff, etc.);
- ii. Number of members of the public participates in regulatory decision making;
- iii. Level of public support for or perceived legitimacy of the regulation;
- iv. Effectiveness of the regulation in solving the problem it was designed to address (such as health, environment, education, water and land);
- v. Quality of the scientific analysis underlying the regulation;
- vi. An extent in which the regulated entities (corporate companies) comply with the regulation;
- vii. Cost-effective is the regulation - efficiency of the regulation (example in net benefit);
- viii. What are the impact of the regulation on the overall economy (such as jobs, competitiveness, innovation, economic development and of course, in the case here – human rights promotion and protection).

The above criteria has thus been grouped into four assessment themes, which are: (i) RAs' effectiveness of enforcing compliance standards; (ii) RAs' efficiency in the services offered; (iii) proximity, accessibility and reliability of RAs' services; and (iv) the outcomes, impacts and sustainability of the work of RAs.

²⁵⁸ There are numerous institutional and operational benchmarks or criteria which could be invoked to study the status of the performance of the RAs'. Such criteria include: (i) considering autonomous and independence of regulating economic sectors falling in their mandate; (ii) transparency which is said to be a factor for establishing a stable and accessible environment that promotes competitions, trades, and investments. It is also argued that that transparency reinforces the legitimacy and fairness of regulatory processes, despite the fact that it is not easy to establish in practice; and (iii) human rights consideration as it is insisted throughout the UN-GPBHR, 2011.

7.3 RAs' Effectiveness of Enforcing Compliance Standards

7.3.1 Scope of Effectiveness as Institutional Assessment Criteria of RAs

In the context of this report, 'effectiveness' means RAs' ability to 'do the right work' under their legal mandate; and 'efficiency' means the RAs' ways of 'doing their work right.'²⁵⁹

The assessment on effectiveness considers structural arrangement of the RAs including accessibility throughout Tanzania; operational experiences especially incidents which improve outstanding performances; and ability to engage with various stakeholders including the ordinary citizens. On the other hand, the assessment of efficiency has simply considered performance of the regulatory functions in a timely and cost effective manner - responsibilities against regulatory laws, rules and regulations.

7.3.2 Deliverable Outputs against the Objectives of RAs: A Case of Some of Sampled Sectors

The economic reforms of early 2000 saw the establishment of most of the regulatory authorities existing today in Tanzania. The establishment followed the assessment done by the World Bank and other internal initiatives which were associated with business formalization in Tanzania. These include the MKURABITA initiative which had as one of its component the Business Environment Strengthening Programme for Tanzania (BEST). This sub section makes a selection of few sub-sectors to illustrate the effectiveness of their respective regulatory authorities.

i. The Telecommunication Sector:

Telecommunication sector is one of the fastest growing sectors not only in Tanzania but in the whole of Sub Saharan Africa as well. The development is witnessed mainly in the mobile phone industry. Statistics show that the number of mobile phone operators has been increasing day after day. The increase in number of mobile phone operators go hand in hand with the increase in mobile phone subscribers. As a result mobile phone operators are challenged to improve their services to attract new subscribers as well as maintaining the existing ones.

²⁵⁹ LHRC (2015): Human Rights and Business Report.

Mobile phone communication has revolutionised the financial system of the Sub-African region. Financial transactions via mobile phone have overtaken the provision of such services which has traditionally provided by commercial banks. This is because mobile phone financial transaction are easy and faster to conduct and can even reach the most forgotten rural areas where financial bank services have failed to reach.

The growth of the telecommunication sector has also triggered growth of utilisation of internet services. This is especially true for mobile phone subscribers who can easily utilise internet services using their mobile phones.

The development and growth of the telecommunication sector has also come with a number of challenges. Among the challenges is the need to control and regulate the use of all the services provided by the mobile phone operators. The Tanzania Telecommunication Regulatory Authority (TCRA) was thus established in 2003. TCRA was established as the watchdog of the telecommunication sub sector which includes the electronic media, telephone companies and postal services. Specifically the Authority is responsible for licensing and enforcing license conditions of broadcasting; postal and telecommunications operators; and establishing standards for regulated goods and services and regulating rates and charges (tariffs).

LHRC 2016 study on the performance of TCRA in fulfilling its mandate has revealed that TCRA is still faced with concerns which mostly were also observed in the study conducted in 2015. Among the concerns that LHRC 2016 study reveals are:

- a) That, TCRA has still not been able to compel mobile phone operators to improve their network coverage in remote areas of the country. As a result mobile phone operators have concentrated in improving their network coverage mainly in urban areas, ignoring the rural outskirts;
- b) TCRA has lagged in addressing the fact that there have been number of complaints logged by mobile phone subscribers especially on airtime services offered by most of the mobile phone operators;
- c) That, mobile phone operators have improved the inter-financial transactions between different operators; that the transfer charges have been reduced to a larger extent, although they are still far

expensive from the charges provided by commercial financial institutions;

- d) That TCRA has now undertaken the responsibility of suppressing freedom of opinion and expression through the implementation of the Cyber-crime Act of 2015. This is especially true for social media platforms users;
- e) TCRA has embarked in restricting the use of social media platforms by citizens who have a different opinion from the one held by the government and its leaders. Charges involving private citizens brought before TCRA have attracted much less attention, instead more attention has been placed in regulating citizens deemed to incite the public with their use of social media platforms to air their opinion which tend to be different from the one held by the government and its leaders;
- f) TCRA has failed to establish itself in upcountry areas thus making it difficult for people living in those areas to access TCRA's services.

ii. The Food, Drugs and Cosmetics Sector:

The Tanzania Food and Drugs Authority (TFDA) regulate products which are among the most sensitive as far as human consumption is concerned. These are food, drugs and cosmetics. TFDA is established under the *Tanzania Food, Drugs and Cosmetics Act* of 2003. Among the functions of the authority include regulating all matters related to quality and safety of food, drugs, herbal drugs, medical devices, poisons and cosmetics.²⁶⁰ Other functions include regulating importation, manufacturing, labelling, etc of these products and conducting inspection of the same.²⁶¹

Tanzanian market has been filled with counterfeit products of food, drugs and cosmetics. This has been the result of the importation of these products mainly from the Asian and Middle East countries. The counterfeit and/or substandard products are also produced in Tanzania. In the financial year 2015/2016 TFDA reported seizure of a total of 226.8 tonnes of counterfeit and substandard products, most of which were reported not to be fit for

²⁶⁰ Section 4 of the Tanzania Food, Drugs and Cosmetics Act of 2003.

²⁶¹ *Ibid.*

human consumption.²⁶² TFDA destroyed most of these seized products. Among these products include cosmetics which amounted to 66.8 tonnes (29.5%); food products (liquor inclusive) which amounted to 145.37 tonnes (64.1%); medicines amounted to 14.48 tonnes (6.4%) and medical equipment amounted to 0.15 tonnes (0.1%).²⁶³

Table 24: Unsuitable/Counterfeit Products (by tonnes) Seized by TFDA in 2013-2016

YEAR	FOODS	DRUGS	COSMETICS	TOTAL
2013/14	132.00	137.00	4.83	273.83
2014/15	60.00	73.00	8.82	141.82
2015/16	145.37	14.63	66.80	226.80
TOTAL	337.37	224.63	80.45	642.45

Source: Mohsw

The amount of counterfeit and unsuitable products seized by TFDA show the magnitude of the work done by the authority in regulating these products. However, LHRC continue to show concern on the approach employed by TFDA.²⁶⁴ LHRC believes that the approach by TFDA is much of a ‘control’ approach than of a ‘preventive’ approach. That TFDA put more effort in regulating the products after they have already entered the market, through importation and/or to a lesser extent as locally produced products. LHRC had observed that financial constraints are among the reason for non-sustainable operations by TFDA.²⁶⁵ However, LHRC recommend that TFDA work in close relation with other regulatory authorities such as the Tanzania Bureau of Standards (TBS) and the Fair Competition commission (FCC) to ensure that inspections are established at the country’s border entry points thus no substandard and counterfeit products cross the borders and enter the country.

iii. The Social Security Schemes:

²⁶² Ministry of Health, Community Development, Gender, Elderly and Children: 2016 Budget Speech.

²⁶³ *Ibid.*

²⁶⁴ LHRC 2015: Human Rights and Business Report.

²⁶⁵ *Ibid.*

The social security schemes are regulated by the *Social Security (Regulatory Authority) Act*.²⁶⁶ The law establishes the Social Security Regulatory Authority (SSRA), which has powers to exercise and perform supervisory and regulatory functions over all managers, custodians, administrators and schemes.²⁶⁷ The SSRA regulates both mandatory and supplementary schemes established under respective specific laws.²⁶⁸

In 2015 LHRC pointed out that the social security policy desire has remained much more theoretical because of the structure and operation or capacity of the social security schemes.²⁶⁹ Among the challenges facing the social security sector is the low number of workers registered under the social security schemes. Until the end of June, 2016 it was reported that only 2,464,399 workers were registered as social security beneficiaries, a small increase compared to those reported in 2015 which were 2,142,350 beneficiaries.²⁷⁰ This shows that the number of registered social security beneficiaries is still very low and that more need to be done to sensitize more workers, especially at the informal sector, to join the social security schemes.

iv. The Mining Sector:

The mining sector is one of the strictly regulated sectors in the country. It is regulated by at least three state agencies, namely the mining division of the Ministry of Energy and Minerals; the Tanzania Mineral Audit Agency (TMAA); and the Tanzania Petroleum Development Corporation (TPDC). The mining sector is regulated by a number of laws. Among them the *Mining Act* of 2010 is the main law with a number of rules and regulations.

This report will embark more on discussing the TMAA as one of the major RAs in the mining sector. This is because other areas of the mining sector such as the petroleum area are still at the very preliminary stages, mostly at the exploration stage.

²⁶⁶ CAP 135, R.E 2015.

²⁶⁷ Sections 4(1) and 6(1).

²⁶⁸ These are the National Social Security Fund (NSSF); the Parastatal Pension Fund (PPF); the Local Government Provident Fund (LAPF); the Government Employees Provident Fund (GEPF); the National Health Insurance Fund (NHIF); the Public Service Pension Fund (PSPF); and the Workers Compensation Fund (WCF).

²⁶⁹ LHRC (2016): Human Rights and Business Report.

²⁷⁰ SSRA 2016: *Jarida la Hifadhi ya Jamii: Mwaka Mmoja wa Mafanikio ya Serikali ya Awamu ya Tano Katika Sekta ya Hifadhi ya Jamii.*

TMAA is very significant in ensuring that there is effective monitoring and auditing of mining operations, both in quality and quantity of the operations. TMAA also has the obligation to ensure that there is a sound environmental management in the mining sector. TMAA is also very significant in determining revenue and facilitate payment of royalties from mining activities.

In the year 2016 TMAA reported a number of achievements in determining revenue and facilitating payment of royalties from mining activities. Among these achievements are as follows:²⁷¹

- i. Major mines paid to the Government a total of USD 76.1 million and TZS 195 billion as royalty and corporate tax respectively. Additionally, a total of TZS 4.42 billion was paid as other taxes and levies for the period under review by TMAA.

Table 25: Royalties and Corporate Taxes Paid to the Government by Major Mines in 2015 and 2016

	2015	2016
Royalties	USD. 65.8 million	USD. 76.1 million
Corporate Tax	Tshs. 104.9 billion	Tshs. 195 billion
Other Taxes and Levies	Tshs. 276 billion	Tshs. 4.42 billion

Source: Tanzania Mineral Auditing Agency (TMAA) 2015 and 2016

The above figures show an increase in the revenue in form of royalties and corporate taxes paid by major mines in Tanzania. Among the reasons leading to this increase was expressed by TMAA was the fact that audit and financial records and tax review conducted by TMAA in collaboration with the Tanzania Revenue Authority (TRA), which has helped to accelerate payment of corporate tax amounting to Tshs. 194.98 billion and other unpaid Government revenues.²⁷²

- ii. Strategic audit conducted countrywide in collaboration with the Minerals Division facilitated payable royalty amounting to TZS 7.1

²⁷¹ URT (2016): Ministry of Energy and Minerals: Tanzania Minerals Audit Agency Annual Report.

²⁷² *Ibid.*

billion from production and sales of building materials and industrial minerals;

- iii. Audit of mineral processors who use “vat leaching technology” to recover gold from tailings in Mwanza, Geita and Mbeya regions facilitated payable royalty amounting to TZS 4.3 billion;
- iv. Audit of environmental issues continued to trigger improvements in compliance to environmental management requirements in mining areas. Three (3) holders of special mining licences have posted environmental rehabilitation bond to the tune of USD 41.1 million in the form of Insurance Guarantee;
- v. Monitoring of mineral exports at the major airports enabled interception of smuggled minerals worth USD 93,316.38 and TZS 151,338,374 in 11 separate incidents.

LHRC still shows concern on the contribution made by the mining sector in the country’s GDP. Royalties charged from minerals has remained relatively low as none of the minerals and gems in Tanzania is charged above 5% (as was established by LHRC study in 2015). LHRC urges the Government to make review of the laws and possibly contracts entered with mineral companies to ensure an agreement is made to increase the royalties charged.

7.4 Efficiency of Services Offered by RAs

The assessment of efficiency considers performance of the regulatory functions in a timely and cost effective manner. This regards to responsibilities against regulatory laws, rules and regulations. The situation of the above RAs reveals that generally face weakness in institutional capacity to perform statutory mandates. The assessment can be summed up as follows:

- (a) Budgetary deficits still hinders the RAs’ operations. As a result a number of activities are undertaken, such as inspection and monitoring;
- (b) Shortage of human resources. Not only that the number of human resources is insufficient but also RAs face shortage of skilled personnel.;

- (c) Shortage of facilities;
- (d) Political interference of technical work by the Ministers and other non-technical officials;
- (e) Lack of collaborations between RAs and non-RAs as well. For instance, there is an obvious bridge between the RAs' performances and those of LGAs even for common statutory functions such as monitoring management of natural resources within a particular area;
- (f) Accessibility and reliability of RAs' services. Most (more than 80%) of them are Dar es Salaam based with just a few branches in some of the regions;
- (g) Limited scope of the issues to monitor or regulate. For instance, observance of human rights issues in business activities is not made part of RAs' mandates and interventions.

7.5 Performance Indicators on Effectiveness of RAs

The following table illustrates the summary of key findings in the form of performance indicators on the effectiveness of Regulatory Authorities (RAs) which regulate the business sector in the country. This is a comparative illustration between RAs for the years 2014, 2015 and 2016. It should be pointed out that these are just a few indicators and further that some of the indicators were taken directly from LHRC SPSS data bank without being necessarily discussed in the main text of this chapter.

Table 26: Performance Indicators Regulatory Authorities - 2014, 2015 and 2016 LHRC Studies

S/No.	RAs' Issues	[Some of the] Performance Indicators			
		2013	2014	2015	2016
i.	Overall Performance (RAs' Self- Assessments)	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> It appeared that, almost all RAs consider their performances as ranging between 40% and 50% of the expected levels. Only 41.9% of RAs had in place specific performance assessment tools (to measure the outputs and outcomes or impacts) of their work. 	<ul style="list-style-type: none"> 46.4% of RAs felt that they did not have sufficient capacity to execute all mandated activities to the expected statutory standards. 55.1% of RAs had in place specific performance assessment tools (to measure the outputs and outcomes or impacts) of their work. Only 44.9% of RAs (workers) did not know exact number of corporate companies which were supposed to be registered or regulated by them. Only 31.9% of RAs said 	<ul style="list-style-type: none"> Only 34.21% of the RAs felt that they have sufficient capacity to execute all mandated activities to the expected statutory standards. That means 65.79% of RAs do not felt that they have that capacity. 71.05% of RAs had in place specific performance assessment tools to evaluate extent of compliance. An increased number of RAs (workers) at 52.63% expressed knowledge of exact number of corporate which were supposed to be registered

				that they had sufficient monitoring capacity covering all business companies across the country.	or regulated by them. ○ Only 26.32% of RAs said they had sufficient monitoring capacity to cover all business companies across the country.
ii.	Effectiveness and Efficiency of RAs' Performances	○ N/A	<ul style="list-style-type: none"> ○ 58.3% of the RAs considered that their legal mandates were sufficient for them to perform their specific duties as RAs of the corporate business sector in Tanzania. ○ At least 75% of RAs had physical accessibility of their services which was limited to less than 15% of the total regions of Tanzania Mainland. 	<ul style="list-style-type: none"> ○ 46.4% of the RAs considered that their legal mandates were sufficient for them to perform their specific duties as RAs of the corporate business sector in Tanzania. ○ Around 70% of RAs had physical accessibility of their services to all regions of Mainland Tanzania. 	<ul style="list-style-type: none"> ○ 65.79% of RAs considered that their legal mandates were sufficient for them to perform their specific duties as RAs of the corporate business sector in Tanzania. ○ 65.79 of RAs expressed that they very often conduct physical monitoring of all companies in the country/operational areas. ○ 55.26 of RAs expressed that they use physical visitation to business cites as a way to conduct monitoring to track down

					<p>status of compliance of given standard.</p> <ul style="list-style-type: none"> ○ 76.32% of RAs expressed that the efficiency of their physical monitoring process as good.
iii.	Awareness of RAs' Services	<ul style="list-style-type: none"> ○ N/A 	<ul style="list-style-type: none"> ○ Only 22.4% of the workers stated that, they knew some of the (RAs). Out of those 22.4% workers who said 'YES' they know RAs, only 9.8% of them had used such an authority to address certain challenges they had once faced as employees of the corporate companies. ○ As for the members of public, only 19.5% of them stated that they had 	<ul style="list-style-type: none"> ○ Only 11.1% of the workers stated that, they knew some of the (RAs). Out of those 11.1% workers who said 'YES' they know RAs, only 7.1% of them had used such an authority to address certain challenges they had once faced as employees of the corporate companies. ○ As for the members of public, only 12.4% of them stated that they had little knowledge of the existence of RAs. Out of those who said 'YES' to the knowledge of 	<ul style="list-style-type: none"> ○ 22.64% of workers stated that they have knowledge of the RAs. Out of those 22.64% who said 'YES' only 9.74% have engaged such authority in solving work related dispute. ○ Only 15.49% of the public stated that they have at least little knowledge of the existence of RAs responsible with types of investment taking place in their areas. Out of those who said 'YES' to the knowledge of existence (and may be function) of RAs, only

			<p>little knowledge of the existence of RAs. Out of those who said ‘YES’ to the knowledge of existence (and may be functions) of RAs, only 4.9% of the members of public claimed to have used RA’s services to sort out certain challenges.</p>	<p>existence (and may be functions) of RAs, only 5.9% of the members of public claimed to have used RA’s services to sort out certain challenges.</p>	<p>7.09% of the members of public claimed to have used RAs’ services to resolve some disputes (such as product quality or environmental degradation).</p>
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Source: LHRC, Human and Business Studies (Field Data), 2014, 2015 and 2016.

CHAPTER EIGHT

GENERAL RECOMMENDATIONS AND CONCLUSION

8.0 Introduction

This chapter will supplement specific recommendations which have been spelt out in sub-topics in each chapter on the main report. The recommendations provided in this chapter are not necessarily reflected on the findings obtained in the field but general issues to improve human rights and business in the country. Therefore LHRC would like to recommend the following as general issues for the state organs to take into account in promoting human rights and business in the country:

- (a) The government should prepare the National Action Plan on Human Rights and Business so as to implement all the principles enshrined in the UN Guiding Principles, 2011. The UN Guiding Principles obligates government to adhere to the duty to protect its citizens from human rights violations by corporate;
- (b) The Commission for Human Rights and Good Governance to consider amplifying human rights and business in the next National Human Rights Action plan. This is important because the National Action Plan 2013-2017 comes to an end;
- (c) The Ministry of Labour, Industry and Investment should ensure that companies full comply with international standards and national laws, guidelines and policies so as to improve working condition to the citizens of United Republic of Tanzania. It should include concrete initiatives to ensure that all companies investing in Tanzania develop human rights strategies;
- (d) The community is called upon to ensure that when rights are violated should be reported immediately to authorities and other stakeholders so as to have proper remedy;
- (e) The Regulatory Authorities in different sectors and sub-sectors should increase their visibility in terms of increasing operational areas. Most of the Regulatory Authorities are only available at

National level where other peripherals cannot easily access for remedies. This creates a gap on accessing services offered by these RAs;

- (f) The government should ensure that Land Use Plan is in place throughout the country especially in rural areas. This will help in minimising land related disputes with different investors and create land bank for future use;
- (g) The industrialization policy under the fifth phase regime in the country should clearly spell out legal challenges and mitigation plans. The industrialization initiatives are implemented countrywide therefore LHRC anticipate increased human rights violation in business sector. Thus the government needs to prepare mitigation plans so as to ensure industrialization development guarantees sustainable development.

Further with regard to specific recommendation based on the study on human rights and business situation in 2016 the LHRC recommends the following

8.1 Labour Rights

- (a) The Labour Department should ensure that there is full compliance on labour standards as stipulated in the Employment and Labour Relations Act, 2004. These standards will only be effectively enforceable when each and every employee gets a copy of employment contracts that spells out terms and condition;
- (b) Strengthening trade union at work place is very fundamental so as to enforce the Collective Bargaining Agreements (CBA) at work place. The study revealed that there is very weak trade unions which cannot adequately represents its members especially in private sector;
- (c) LHRC recalls its recommendation in 2015 human rights and business reports that there is need to improve performance of Workers Compensation Fund (WCF). Such initiatives to improve its performance include promoting it to its beneficiaries;
- (d) The government should ensure that all the statutory deductions from all companies especially income tax. The study observed that some

companies pay all entitlement including salary by cash or through mobile funds transfer therefore the Tanzania Revenue Authority cannot trace all the transaction.

8.2 Land Rights

- (a) LHRC recommends that the government should continue revoking titles for unused land especially in rural areas so as to increase or open up opportunities for local population in accessing land;
- (b) LHRC recommends that local authorities should promote creation of Wildlife Management Authorities (WMA) in villages surrounding conserved land such as national parks and game reserves so as to minimize conflicts with investors;
- (c) Again it recalls its prior recommendation that the government ensure that all citizens are issued with Land Titles so as to guarantee its tenures;
- (d) Undeveloped land designated for mining activities especially in Shinyanga (Mwadui) the responsible ministry should reconsider reallocation of mining licence to majority small scale miners instead of single investor who does not have capacity to utilise the land

8.3 Taxation

- (a) The government should continue with initiatives to increase the country's tax base;
- (b) The government should create enabling environment for private sector growth so as to create space for business to enhance revenues collection;
- (c) Corporate tax compliance should be as well be enforced by TRA and its information be available at district offices for transparency purposes;
- (d) Tanzania Revenue Authority should continue with sensitization programs to influence the general public to pay tax. This goes hand in hand with ensuring there initiatives for instance in order for the public to insist on paying tax certain percent can repaid back to good

tax payer individuals. Therefore every citizen should start filling annual tax return

8.4 Corporate Accountability

- (a) The government should enact the Corporate Responsibility law that will ensure that there is effectiveness of these corporate bodies in their operations and how they deal with the surroundings society;
- (b) There is a need for the giving back to the society to be a policy issue not as privilege as the way not giving back to the community is implemented

8.5 Gender Related Rights

- (a) The government through the institutions under the Ministry of works to look upon women working environment in the companies;
- (b) There is a need to focus on elimination of discrimination at the working place; and
- (c) The companies should have a clear policy which deals with child labour and protections of women's in the working place.

8.6 Regulatory Authorities (RAs)

- (a) There must be a total observance of human rights in these corporate bodies among there authorities such as OSHA, NEMC and CMA;
- (b) These regulatory authority should have branches in at least each region so as to facilitate provision of services; and
- (c) The efficiency in these authorities should be checked based on the action taken to monitor their daily task.

8.7 Conclusion

Tanzania has the long way to go in order to achieve the core principles of international standards about human rights and business as entrenched and reflected in different international, regional and national instruments. This is due to the fact that business companies profoundly had less concern in human rights protection issues of employees, consumers, and communities

wherever they operate negative impacts arose such as polluting the environment, underpaying workers, or forcibly evicting communities. Therefore, government and NGO's should collaborate together in order to ensure human rights standards as reflected in different international, regional and national instruments are upheld by corporate companies.

The weakness in law enforcements and ineffectiveness in monitoring and assuring the legal standards are being followed by the corporate companies are failing the citizens from the human rights infringement from the corporate business. The majority of workers together with the community members are unaware of their rights in relation to business practices of the corporate companies, and this is due to the fact that the appropriate regulatory authorities are not reaching out to them to understand their concern or even provide them with the knowledge to help them fight for their rights.

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