LEGAL AND HUMAN RIGHTS CENTRE

HUMAN RIGHTS AND BUSINESS REPORT 2015

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

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LEGAL AND HUMAN RIGHTS CENTRE

HUMAN RIGHTS AND BUSINESS REPORT 2015

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Important Message of the Year 2015
LHRC endorses the United Nations' call to all nations (and everyone) to promote sustained, inclusive and sustainable economic growth, with full and productive employment and decent work for all as it is implied under Goal 8 of the United Nations Strategic Development Goals (SDGs) 2030.

DISCLAIMER

The opinions expressed by the sampled respondents in this report do not necessarily reflect the official position of the Legal and Human Rights Centre (LHRC). Therefore, no mention of any authority, organization, company or individual shall imply any approval as to official standing of the matters which have implicated them. The illustrations used by inferring some of the respondents are for guiding the said analysis and discussion only, and not constitute the conclusive opinion on part of LHRC.

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The collection of data and initial analysis were done by 29 researchers.[1] Their individual reports have formed a large component of this report and hence the LHRC feels so indebted to them for work they did. Moreover, special thanks to Adv. Clarence Kipobota for writing this report; Adv. Imelda Lulu Urion and Adv. Masud George for good coordination of the field work and the editorial body for insightful comments onthe draft report shared.

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[1] These were (listed randomly): Denis Frank; Asha J. Bundara; Paul Damian; Irene Mvungi; Yvone Guido; Joyce Msoffe; Patrick Roman Soka; Ruth J. Masongo; Raphael Ngonde; William Mtwazi; Laura Philipo Macha; Mbwana Ally; Anna Nicas Maregesi; Robert Mwangamila; Verynice Mushi; Richard Kinawari; Evodia Matagi; Bakari Muya; Gerald Ranga; Irene Pantaleo; Humphrey Josia; Sophia Makanza; Frank Mposso; Khalid Hashim; Collether Huntchson; Elly H. Ramadhani; Ngussa Kinambala; and Vedasto Christopher

LIST OF ABBREVIATIONS AND ACRONYMS

AIDS	Acquired Immune Deficiency Syndrome
BOT	Bank of Tanzania
CAG	Controller and Auditor General
Cap.	Chapter of the Laws of Tanzania
CHODAWU	Conservation, Hotels, Domestic and Allied Workers Union
CMA	Commission of Mediation and Arbitration (Labour Court)
COTWU	Communication and Transport Workers' Union of Tanzania
COWTU	Communication and Transport Workers Union
CROs	Customary Right of Occupancy
CSR	Corporate Social Responsibility
DC	District Commissioner
Dr.	Doctor of Philosophy
EEZ	Exclusive Economic Zone
EFD	Electronic Fiscal Device
ELRA	Employment and Labour Relations Act, 2004
FDIs	Foreign Direct Investments
FGDs	Focus Group Discussions
G.N	Government Notice
GBV	Gender Based Violence
GDP	Gross Domestic Product
GGM	Geita Gold Mines
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
KII	Key Informant Interview
KINAPA	Kilimanjaro National Park
KM2	Square Kilometres
LGAs	Local Government Authorities
LHRC	Legal and Human Rights Centre
MKUKUTA	Mkatati wa Kukuza Uchumi na Kuondoa Umaskini(National Strategy for Growth and Reduction of Poverty)
MUWASA	Moshi Urban Water and Sewage Authority
NAFCO	National Agriculture and Food Corporation
NAOT	National Audit Office of Tanzania
NBS	National Bureau of Statistics
NHIF	National Health Insurance Fund
NIT	National Institute of Transport
No.	Number
OSHA	Occupational Safety and Health Authority of Tanzania
PCCB	Prevention and Combating of Corruption Bureau
PWDs	Persons with Disabilities
RAAWU	Research, Academicians and Allied Workers Union
RAs	Regulatory Authorities
RC	Regional Commissioner

SADC	South African Development Community
SDGs	Sustainable Development Goals 2030
SPSS	Statistical Package for the Social Sciences
SSRA	Social Security Regulatory Authority
SUMATRA	Surface and Marine Regulatory Authority
SuQ	Survey Questionnaires
TABOA	Tanzania Bus Owners Association
TALGWU	Tanzania Local Government Workers Union
TAMICO	Tanzania Mining and Construction Workers Union
TAROTWU	Tanzania Road Transport Workers Union
TATOA	Tanzania Truck Owners Association
TDWU	Tanzania Drivers Workers Union
TIC	Tanzania Investment Centre
TMAA	Tanzania Mineral Audit Agency
TPAWU	Tanzania Plantation and Agriculture Workers Union
TRA	Tanzania Revenue Authority
Tshs	Tanzanian Shillings
TTDA	Tanzania Truck Drivers Association
TTU	Tanzania Teachers Union
TUCTA	Trade Union Congress of Tanzania
TUICO	Tanzania Union of Industries and Commercial Workers
UN-GPBHR, 2011	Guiding Principles on Business and Human Rights of 2011
UNIDO	United Nations Industrial Development Organization
URT	United Republic of Tanzania
USD	United Stated of America Dollars
UWAMATA	Umoja wa Madereva Tanzania
VLUP	Village Land Use Plan

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PREFACE

The Legal and Human Rights Centre (LHRC) celebrated a double decade of its existence in 2015, as it was registered in 1995. The centre operates under the laws of Tanzania, in particular the Companies Act, Cap. 212. The LHRC, which is a non-partisan, non-profit sharing, non-governmental organization, envisages a just and equitable society. It thus works in all human rights aspects including the business sector, a subject matter for this study. LHRC is guided by a number of core values that govern the way its members, board, staff and partners interacting with each other. The values are; equality, accountability, transparency, integrity, professionalism, volunteerism and voluntarism.

A number of strategic interventions have been adopted by LHRC as a means towards realizing it vision stated above. Some of such strategies include provision of legal and civic education and information; conducting legal researches and advice; monitoring and follow up of human rights violations; and advocacy for reforms of policies, laws and practices to conform to international human rights standards.

This study wastherefore, aimed at assessing the status of human rights compliance in business sector, as one of the said approaches. This study is specifically planned as one of the deliverables under strategic outcome number four of the current Operational Plan of 2013-2018. Once again, LHRC brings out this report, which narrates the extent of compliance to human rights standards by corporate companies operating in Tanzania. As it was the case in the previous years for similar studies carried out, thesaid compliance assessments have been made against the national and international standards governing corporate business sector, in particular, regarding labour rights, land management, taxation, corporate social responsibility, environmental justice, gender and the performance of the regulatory authorities.

The LHRC is grateful that, despite the fact that this study has been carried out for less than 5 years in a row, its findings have already sparked strong fire to the effects that, some of the illegalities in business sector's practices are being rectified by government authorities; employers; workers as well as members of the public. For instance, the 2013 and 2014 findings on workers' compensation resulted into operationalization of the Workers Compensation Fund (WCF) in July 2015. Moreover, following the deep analysis of illegal foreign workers and lack of sufficient protection of local workers and traders, a law to regulate foreigners working in Tanzania was enacted in 2014. Other success stories are mentioned by implications in the main text of this report.

LHRC cordially invites you all to take time and read allthe chapters in this report as they are interdependent to some of the issues. It will be greatly appreciated if you can provide feedback regarding the form, contents and usefulness of this report as well as suggestions for further improvements.

Prof. Geoffrey Mmari
LHRC Board Chairperson

ABOUT THE STUDY AND REPORT

This is the fourth time the LHRC is issuing the human rights and business report, which it has consecutively published since 2012. As theLHRC's Board Chairperson remarked, publication of this report is part of the deliverables of the current Operational Plan 2016-2018 of theLHRC.

The report saves as an advocacy tool; educational material to everyone wishing to learn or understand the concept of human rights in the business sector. The report is an authoritative academic material for academicians. The way in which this report is prepared in terms of its form and contents, makes it relevant for all the purposes stated above. Its essence is to assess and analyze status of human rights compliance by the Tanzanian based corporate business companies and then, make some recommendations for positive reforms. This is a notable work which LHRC has tirelessly executed in two decades and countless reforms in response to the findings of previous reports can be seen and sensed.

While guided by the reality that, different business activities have different human rights impacts as it was stated by one of the human rights scholars,[2] the assessment of the human rights-business situation for the year 2015 was based on the specific international and local human rights and legal standards governing the four main themes of this report's coverage. Such themes are, labour, land, taxation, corporate social responsibility and environmental justice. Moreover, gender and business regulatory authorities were co-opted as cross-cutting themes. The assessment on all these covered 14 sampled regions plus 2 extra regions to make a total of 16 regions - slightly above 50% of all regions in Tanzania Mainland.

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

LHRC invites comments and opinions on this report. It also calls upon all companies, government agencies and workers to take theirpart in the implementation of the recommendations contained in this report.

Dr. Helen Kijo-Bisimba
Executive Director, LHRC

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[2] Namely; Schutter, Olivier et al (2012) Human Rights Due Diligence: The Role of States. Accessed on 27th March, 2016, from: http://humanrightsinbusiness.eu/wp-content/uploads/2015/05/De-Schutter-et-al.-Human-Rights-Due-Diligence-The-Role-of-States.pdf

EXECUTIVE SUMMARY

This is the human rights and business report of 2015. It is the forth in a row, following the initial publication on the same subject matter in 2012. It presents the analysis and findings on the status of human rights compliance in business sector in Tanzania. Five main themes have been picked up for this analysis and those are ; labour rights; land management; taxation; environmental justice; and gender rights. The latter is a crosscutting issue, but it has a specific chapter. Moreover, the assessment of the effectiveness, efficiency and generally the performance of the business regulatory authorities (RAs) is included.

Publication of this report is aimed at widening the human rights jurisprudence in Tanzania by touching base on business corporate economic sector, which was not directly involved in human rights discussions at country level. Owing to an increase of flows of foreign and local investments due to liberalized economy, there is a potential risk that some groups will be adversely affected if their practices are not well regulated basing on, among other standards, human rights norms. Therefore, this study intended also to assess status of such monitoring of compliance and how the companies as well as the workers and community members were responding on the same.

A total 14 regions of Mainland Tanzania were sampled for this study; whereby, along the way 2 more regions were added for some of the studies focuses areas to make a total of 16 regions, which was equal to 53% of the total regions of Tanzania Mainland. A total of 722 workers; 153 members of the communities; 55 corporate companies; and hundreds of government and officials were consulted by 29 field research assistant – all of whom were graduates of first degrees and above. The tools used for data collection included questionnaires of five different sets; and the focus group discussions.

The study revealed that, there were some changes on areas which previous similar studies and editions of this reports recommended for reforms. Some of the recommendations implemented by the government and other institutions or individuals were:-

(i) Reduction of tax exemptions which were massively granted to the large investors. This was recommended from 2013 and 2014, and eventually, the previous VAT law of 1997 was repealed and replaced with 2014 VAT legislation. The new law has restricted such exemptions – but not yet below 1% of GDP as LHRC and CAG suggested. More discussion on this is found in chapter four of this report.

(ii) Implementation of the Workers Compensation Act, 2008; by, among other things, the operationalization of the Workers Compensation Fund (WCF) from July 2015 as it is explained in chapter two of this report.

(iii) Enactment of the law to regulate foreign workers who wish to work in Tanzania. This was recommended in 2013 and 2014 editions of this report and eventually, that law, as discussed in chapter two of this report, has been enacted.

(iv) Controlling of land hoarding by investors. It was recommended in 2013 and 2014 as well that, there was a need for the government to alienate unutilized land from the investors. The 2013 edition of this report revealed that, most of the investors were unable to utilize even 50% of the land granted to them while the host communities were scrambling for a few remaining. This report, chapter three, has indicated that, the government has started to implement this recommendation, whereby, some of the dormant investors' lands have been acquired back by the government. Moreover, there is a strong statement by the current leadership on this same subject matter.

(v) As for the critical challenge of preferring 'cheap' and 'informal' labourers which was also one of the recommendations, there have been a number of government directives to the employers, requiring them to give their workers written contracts. An example of the December 2015's letter from the government to the employers is portrayed.

It is generally found that, apart from a few changes indicated above and elsewhere in the main text of this report, more is desired than what has been achieved so far in the promotion and protection of the business related rights in Tanzania. The main obstacles appeared to be; i) presence of legal and institutional frameworks which are 'blind' of human rights standards in business practices as it is propounded under the international and regional human rights standards including the UN Guiding Principles on Business and Human Rights of 2011 and Goal 8 of the UN Strategic Development Goals (SDGs, 2030); and, ii) weakness in enforcement of the existing laws. For instance, today is the 11th year sincethe employment laws were enacted in 2004; but at least 71.5% of the workers were still not aware of their rights; and that, trade unions, labour officers and even labour tribunal (CMA) were having some institutional capacities such as lack of funds and facilities.

Some of the key findings, which this study quantified for easier understanding of the 2015 situation as opposed to previous years are that:-

(i) Labour Rights

(a) A total of 63.8% of interviewed workers did not have written contracts. About 90% of the reviewed copies of contracts of different employers had missed certain labour standards or had negative standards against workers. This is slight improvement from 80% and 75.1% of workers who had no written contracts in 2013 and 2014 respectively.
(b) Only 44.6% of the workplaces randomly sampled had trade unions' branches established but such branches were ineffectual. For instance, only 9.7% of workers ranked their trade unions as 'very active'; while, 28.3% ranked the same as 'average' in their performances. In 2013, a total of 12.1% of workers ranked their trade unions as 'very active' and 15.9% ranked the same as 'average.'
(c) Only 21.3% of the workers felt that there was discrimination at their workplaces in 2015 as opposed to 15.0% of the workers of the same feeling in 2013. In 2014 tribal or ethnicity was mentioned to be main form of discrimination (31.1%); while in 2014, disability was the main form (71.6%); and, 2015, pregnancy was named as the main course 22.5%.

(d) Still less than 10% of Tanzanian workforce had joined formal social security schemes in 2015. Same situation for 2013 (only 3.5% were members of such schemes); and same trend for 2014.
(e) As for the statutory leaves, only 6.4% of the interviewed workers were allowed maternity leave in 2015 (as opposed to 10.0% and 11.0% in 2013 and 2014 respectively). About 5.8% were granted paternity leave in 2015 (as opposed to 1.7% and 3.3% in 2013 and 2014 respectively). 36.3% of were given annual leave in 2015, which was less by almost 50% if compared with 2013 and 2014 years. Sick leave was 17.2%, 17.9% and 24.2% in 2015, 2014 and 2013 respectively.
(f) A total of 71.6% of workers said they were not aware of the law governing their labour rights in 2015, as opposed to 76.5% in 2014 and 66.8% in 2013. Less than 1% of the employers had implemented Section 16 of the ELRA, 2004 which requires display of labour rights statements at workplaces.

(ii) Land Right

(a) Land alienation from local owners was ongoing in 2015 while little efforts were taken to acquire back dormant lands from 'lazy' investors. At least 50% of the land allocated to the investors was not developed as per 2013 and 2014 findings.
(b) Land pressure is onthe increase and attributed to population growth – estimated to be 47 million in 2015; and increased investment projects in Tanzania. It was estimated that the current population density is more than 49 persons per KM^2.
(c) Village land isnot secured. 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.
(d) 62.1% of the respondents reported lack of (effective) participation during land acquisitions. Moreover, only 3.9% of the respondents claimed to receive fair compensation; 13.7% did not receive any after their lands were being acquired.

(iii) Taxation

(a) Domestic tax revenue collections steadily increasing. Tshs 10,957.8 billion (being 86.7% of the target) was collected in 2014/ 2015 financial year (FY). The collections for 2013/2014 FY were Tshs 9,856.9 billion; and the year before (that is 2012/2013) the revenue collections amounted to 8,031.1 billion. Such an increase were equal to 18.5% between 2012/2013 and 2013/2014; and, 10.0% between 2013/2014 and 2014/2015.
(b) Tax evasions and illicit financial flow are still realities. Tanzania loses around USD 1.25 billion (Tshs 2.8 trillion) a year in revenue, the amount which was about 5% of its GDP – through corporate tax evasion, and corruption.
(c) The new VAT law was enacted in 2014 and it is anticipated to boost VAT collection by 30% in recent years.
(d) More tax collections are expected with the zeal of the 5th phase government under H.E Dr. John Pombe Magufuli. For instance, through his directives a total of Tshs 1.3 trillion and Tshs 1.4 trillion were collected in November and December 2015 respectively, less than 60 days of his Presidencyin Tanzania. Previously monthly collections were around Tshs 800

and Tshs 900 billion. However, strategic engagement with business operators is called for in order to create friendly as opposed to intimidating business environments in future in order to create or enhance a culture of voluntary tax complience.

(e) Introduction of Electronic Fiscal Device (EFDs) has simplified tax compliance; but, some of the traders were still reluctant to use them (EFDs) because of: i) lack of awareness on the importance of these machines (14.1%); ii) some of the traders negatively influence others to reject EFDs (1.4%); iii) EFD machines are very expensive to purchase (28.9%); iv) feeling that such machines are exploitative to the traders' businesses – reduce profits (20.4%); and, v) other reasons (16.2%). Such responses (i) to (v) were responded as 30.8%; 10.3%; 28.2%; 20.5%; and 10.3% respectively in 2014 during similar study by LHRC.

(iv) Corporate Social Responsibility (CSR) – Paying Back to the Community

(a) Still no law on CRC in Tanzania.
(b) Therefore, giving back to the community by the corporate companies remained to be an optional – mostly for social licensing.
(c) 60.1% of the local residents hosting investment projects felt that there were no tangible benefits of having investors in their areas.
(d) The nature and types of supports as CSR included; i) employment (47.7%); education (11.1%); road infrastructures (3.9%); water (3.9%); and, health care (2.0%).

(v) Environmental Justice

(a) The Occupational Safety and Health Agency (OSHA)'s coverage of workplaces' inspections remained to be at an average of 57.5% of the expected targets. In 2015, inspection coverage of workplaces by OSHA was estimated to be around 40% only. However, excellent work was done on part of medical examinations by more than 10% above the target.
(b) Only 47.3% workplaces sampled had displayed some precaution measures rules on walls at workplaces.
(c) 61.8% of employers against only 36.6% of workers interviewed said that, there were in-service (on-job) trainings on OHS.
(d) A total of 1,347 projects were issued with the environmental impact assessments (EIA) and environmental audit (EA) certificates between 2005 and 2014.
(e) NEMC's is having some institutional challenges mostly due to low budget allocated to facilitate its statutpory functions. For instance, NEMC's zones had managed to inspect less than 20% of the mining facilities.
(f) Involvement of community members and workers in EIA/ EA processes is an issue of concern. Only 3.3% of members of public said to have been involved in the EIA when investment projects were initiated; while, only 9.4% of the workers claimed to have been involved in the monitoring or inspection of the working conditions of the companies they were working with.
(g) 47.3% of the companies had an internal policy or strategy on sustainable utilization of the environments.

(vi) Gender Rights

(a) 94.5% of the companies sampled had less than 50% of female workers.
(b) Women were dominantly (by 81.0%) employed in the accommodation and food service activities; by 54.9% in financial and insurance activities; by 57.0% in human health and social work activities; and, by 85.7% in household activities (NBS, 2014).
(c) Incidents of violence against women (VAW) at workplaces persisted and have fluctuated between 2013 and 2015. Bullying was most common in 2015 (32.4%); while sexual harassments were most common in 2014 (53.4%). Such incidents were not widely reported due to fear of losing jobs or lack of awareness on due legal processes to seek redress.
(d) As for persons with disabilities (PWDs), 12.5% of the respondent workers said the working environments were 'very good' for PWDs; 8.9% (fairly good); and, majority 32.4% said bad environments – unsuitable for various forms of disabilities. The 2014 responses were 31.9% (worse); and 15.1% (very good). 60% of the members of the management in corporate companies seemed to be completely unaware of the disability law of 2010 let alone itsthe contents.
(e) As for child labour, there were at least 5 million under 18 year old children who were employed according to NBS, 2014. Most of such children (84%) were employed in rural settings. Notorious sectors in child labour being agriculture 92%; trade 3.1% and domestic work 2.6%.
(f) 56.4% of the companies sampled claimed to have a policy regarding minimum age for employment.

Following those and other findings and concerns, some legal reforms; and a scale-up of efforts to implement the existing laws are highly recommended. The political will, for instance against tax evasion and financial illicit, could be part of proposed efforts. Besides, all stakeholders should take their parts to implement the issues and concerns raised in this report. It is until all these are fullyimplemented, then the workers and Tanzanians as well as the government can benefit from the investments in this country.

PART ONE

GENERAL INTRODUCTION

1.1 TANZANIA'S GEOGRAPHIC AND DEMOGRAPHIC FEATURES

1.1.1 Political Governance of Tanzania

The United Republic of Tanzania (URT) is one of the countries found in East Africa. Other countries in the region include Kenya, Uganda, Burundi, Rwanda and recently the invited South Sudan. The URT is a union of Tanganyika (now Tanzania Mainland) and Zanzibar (comprised of Unguja and Pemba islands), attained its independence in 1961. The said union occurred in 1964. There are matters which are regarded as union matters and others remain to be independently managed by each side of the union. The union matters include finance, citizenship, currency, international relations and political parties. The business activities such as investments are regulated individually by each side. However, there are some regulatory authorities such as on revenue collection, security and aviation which cut across the URT.

The founder of the nation was the Late Julius Kambarage Nyerere, who to a large extent propagated a country and its people which are self-reliant under the Ujamaa (African socialism) philosophy. However, the 'socialism' slowly dropped from mid 1980s due to world-wide economic reforms. Today, the country which is under the 5th presidency rule, is implementing liberalized economy whereby corporate private sector, which this report targets, is the main player and the government is the 'referee' of the game.

1.1.2 Demographic Features and Implications to Corporate Investments

The current population size of URT was said to be 44.9 million people by the 2012 national population census. Owing to the annual growth rate 2.7%, it is estimated that, the country could have a total population of around 47 million in 2015. Around 51.3% of the total population is female; and the remaining 48.7% are males.

Tanzania Mainland has a total of 43,625,354 occupants while Zanzibar has 1,303,569 occupants. The population size has increased from only 12.3 million people in 1967 when Tanzania carried out its first national census to, about 33 million people within 45 years.

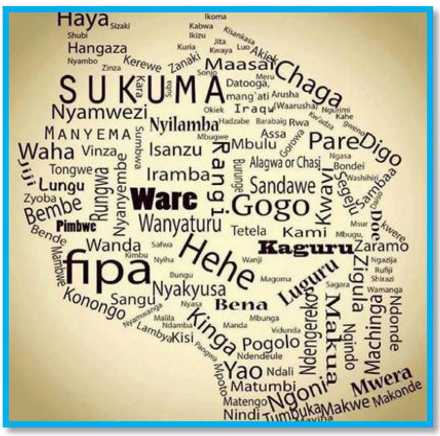


Figure 1. 1: Tanzania Map showing location of ethnic groups per each geographical location.

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

As it was argued in the 2014 similar report to this one at hand, the increase in number of people has direct implication to investment activities. For instance such an increase of people intensifies the scramble for land and land related resources as it can be proved by considering a number of land related conflicts which occur all over the country at the moment. The current population density of Tanzania Mainland is estimated to be more than 49 per KM^2 owing to an increase of the country's population to around 47 million as said earlier. It should be noted that, major cities like Dar es Salaam have higher density due to urbanization. Chapter three of this report explains more about land and investments. The other implication of population growth to investments could be assurance of (cheap) labour and local market of the investors' products and services.

The 'cheap' labour as it is further explained in chapter two of this report is almost guaranteed due to an increase rates of unemployment[3] especially amongst the youth. The latest integrated labor survey, which was conducted by the National Bureau of Statistics in 2014 showed that, most of the labor force aging 15 years and above was absorbed by the private sector, whereby out of 20 million able persons, 13.3 million (being 66.5%) were employed by private sector agriculture; while, 1.6 million (being 8.0%) were engaged in non-agricultural private sector's activities. The share of the government as an employer was only around 3.5% in total. Table 1.1 below explains more:

Table 1.1: Employed Population Aged 15 Years and Above by Sex and Sector, 2014

Sector	Male	Female	Total
Central and Local Government	365,568	260,844	626,412
Parastatal Organization	59,306	12,899	72,205
Private Sector Agriculture	6,402,954	6,882,189	13,285,144
Private Informal Sector	2,126,349	2,218,230	4,344,580
Private Sector Non-Agriculture	1,130,688	442,641	1,573,329
Household Duties	58,534	69,935	128,469
Total:	**10,143,400**	**9,886,739**	**20,030,139**

Source: NBS, Integrated Labour Survey of 2014 (Table 5.4).

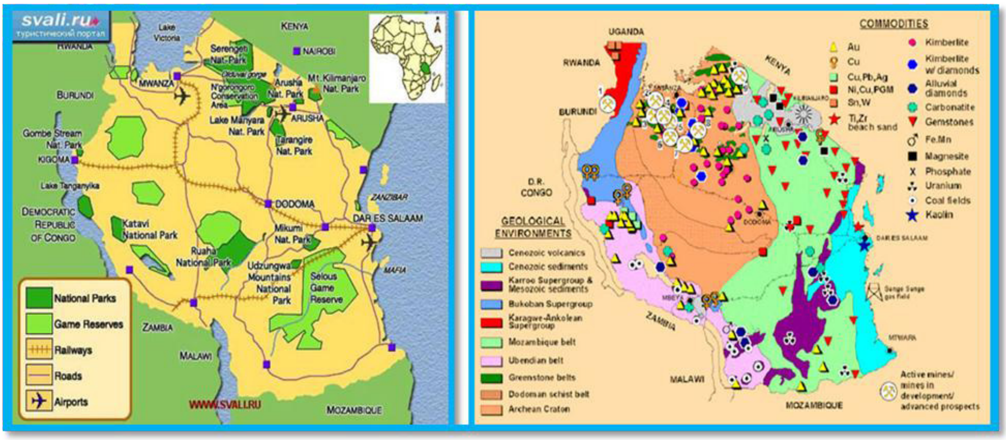
As the Legal and Human Rights Centre (LHRC)'s field data presented below could suggest, most of the 'cheap' workers in the private sector were persons whose levels of education were either ordinary secondary school or primary school levels. However, owing to the current unemployment rate against a number of granduants produced by the higher learning institutions, a number of graduate 'cheap' or 'informal' labor is on increase.

[3] URT (2015), Environmental Statistics 2014. NBS, September 2015: Dar es Salaam. Pages 147 and 148.

1.1.3 Topographic Features and Impacts to Corporate Investments

The country is endowed with abundant natural resources including mountains such as the 'roof of Africa' (Mount Kilimanjaro); some of the 'seven wonders of the world' (Serengeti National Park and Ngorongoro Crater); other national parks and variety of mineral as a combined Figure 1.1 shows. Some of the national parks and game reserves in Tanzania are Katavi, Mikumi, Tarangire, Lake Manyara and Serious. There are about 10 major mining projects taking place in Tanzania including the ones for Tanzanite gems in Mirerani, Manyara region; gold in Geita, Mara and Shinyanga regions; coal in Ruvuma region; diamond in Shinyanga region; and natural gas explorations in Mtwara region.

Figure 1.2: The Tanzania Topography – National Parks, Game Reserves and Minerals



Source: Various Internet Sources, 2015.

Moreover the country is a home of three important lakes in Africa which include Lake Victoria, Lake Tanganyika and Lake Nyasa which cover about 5.7% of the total area of the country. Lake Victoria, the second largest freshwater lake in the world shared with Tanzania, Kenya and Uganda. Lake Tanganyika, the second deepest lake in the world is also shared by Tanzania, Burundi, Democtratic Republic of Congo and Zambia; and Lake Nyasa is shared by Tanzania, Malawi and Mozambique. The percentage of the area owned by Tanzania is indicated in Table 1.2 below.

Table 1.2: Percentage of Water Areas Owned by Tanzania, 2014

Water Body	Total Area (km^2)	Tanzania Share (area in km^2)	Percent
Lake Victoria	68,800	35,088	51
Lake Tanganyika	32,900	13,489	41
Lake Nyasa	30,800	5,760	19
Marine (Territorial sea)	64,000	64,000	100
EEZ	223,000	223,000	100

Source: URT (2015), Environmental Statistics 2014. NBS, September 2015: Dar es Salaam. Page 101.

Therefore, the country has a territorial sea of 64,000 KM^2(6.4 million ha), an Exclusive Economic Zone (EEZ) covering an area of about 223,000 KM^2 (22.3 million ha) and a coastline of about 800 km stretching from Mtwara region in the south to Tanga region in the North.[4]

It is obvious that, presence of such resources mentioned above and others were part of foreign investments in Tanzania. The World Investment Report of 2015, which was launched in Dar es Salaam on 24th June, 2015 said that, the growth of 0.5% foreign direct investments (FDI) inflows has helped Tanzania to maintain its position as the leading destination for FDIs in East Africa. The said report shows that, the natural gas discoveries account for the largest chunk of FDIs. However, according to the Tanzania Investment Centre (TIC) and the United Nations Industrial Development Organization (UNIDO) report of 2014,[5] around 60% of foreign companies operate in the manufacturing sector, and almost 31% in the services.

Furthermore, in terms of contributions to the gross domestic product (GDP), the Bank of Tanzania (BOT)'s Annual Report of 2014/2015 shows that, construction economic sector was leading as it contributed to nearly 19% of the GDPs in 2014, followed by trade and agriculture. Figure 1.3 below explains more.

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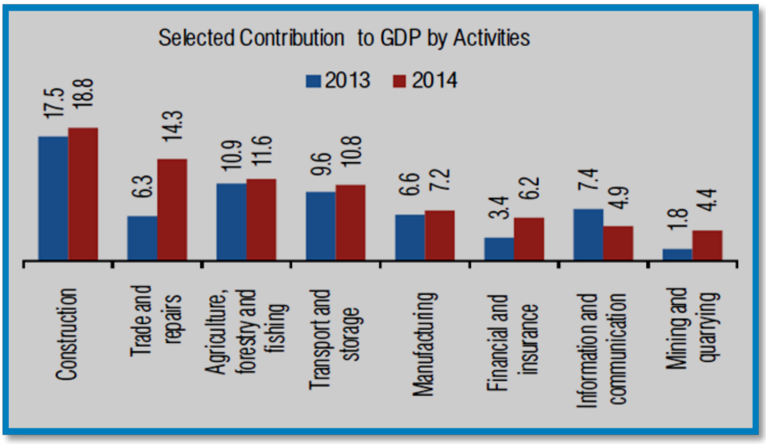
4 URT (2015), Environmental Statistics 2014. NBS, September 2015: Dar es Salaam. Page 101.

5 TIC and UNIDO, 'Tanzania Investor Survey: Understanding the Impact of Domestic and Foreign Direct Investment.' Accessed on 22nd April, 2016 from: https://www.unido.org/fileadmin/user_media_upgrade/Resources/Publications/Tanzania_investor_survey_report.pdf

Figure 1.3: Selected Sectors' Contributions to GDP in Tanzania



Source: BOT's Annual Report 2014/ 2015, Page 6.

The statistics of the growth of the real gross domestic product (GDP) in the east African community region show that, Tanzania's GDP was on increase though fluctuating as Table 1.2 below shows:

Table 1.3: Real Gross Domestic Product (GDP) in the East African Region, 2015

Percent

Country	2006	2007	2008	2009	2010	2011	2012	2013	2014
Tanzania	4.7	8.5	5.6	5.4	6.4	7.9	5.1	7.3	7.0
Kenya	6.3	7.0	1.5	3.3	8.4	6.1	4.5	5.7	5.3
Uganda	9.5	8.6	10.4	8.1	7.7	6.8	2.6	3.9	4.9
Burundi	5.4	4.8	5.0	3.8	5.1	4.2	4.0	4.5	4.7
Rwanda	9.2	7.6	11.2	6.2	6.3	7.5	8.8	4.7	7.0
EAC	7.0	7.3	6.7	5.4	6.8	6.5	5.0	5.2	5.8

Source: National Statistics Offices and IMF, World Economic Outlook Database, May 2015

As chapter seven of this report discusses further, there are both positive and adverse effects of the foreign or large investments to the local economy as well as the life of the individual Tanzanians. For instance, the way in which some of the companies carry out their businesses do affect the livelihood of the host local communities as chapter six of this report explains more. Issues of environmental pollutions and a failure to upgrade the socio-economic livelihoods of the communities are some of the issues discussed in some parts of this report. Moreover, due to some weaknesses in revenue collection or fiscal planning, the macro-economic developments which are, to a large extent, caused by an increase of investments, majority of individual persons were still poor economically as some household survey and other anti-poverty reports could prove.

As such, LHRC calls upon the economic planners to ensure that, the growth of investments in Tanzania is translated to benefit the poor community and that, business activities are undertaken in such a way that, they would not infringe the rights of local people and small economic actors as well.

1.2 RATIONALE, AIM AND OBJECTIVES OF THIS STUDY

1.2.1 Rationale of the Study

The issue of business impact on human rights has been placed on the agenda of the United Nations (UN) due to increase of corporate sector nationally, regionally and internationally. Over the years, the United Nations human rights machinery has been considering the scope of business' human rights responsibilities and finding ways for corporate sector to be accountable for the impact on human rights caused by their operations.[6]

In 2011, the UN came up with the Guiding Principles on Business and Human Rights (UN-GPBHR, 2011), with its main role being to make sure that every country implements them in the way that it respects, protects and provides for the remedy. This is due to the fact the corporate sectors in each country is growing and thus these sectors are to be accountable for the impact on human rights activities caused by their operations and hence be responsible.

Moreover, this year, 2015, the UN adopted the Sustainable Development Goals 2030 (SDGs, 2030) which are regarded as scale-up global development goals picking up from the just ended Millennium Development Goals (MDGs). Goal 8 of SDGs, 2030 calls for all nations, Tanzania inclusive, at promoting sustained, inclusive and sustainable economic growth, with full and productive employment and decent work for all. In regard to this SDGs targeted at:-

(i) Ensuring that by 2030, the world achieves full and productive employment and decent work for all women and men, including for young people and persons with disabilities (PWDs).
(ii) Ensuring equal pay for work of equal value.
(iii) Developing and operationalize a global strategy for youth employment and implement the Global Jobs Pact of the International Labour Organization (ILO)by 2020.
(iv) Protecting labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.

As forthe African context, Tanzania being among the members of South African Development Community (SADC) has to respect and be guided by the labour and employment principles stipulated under the SADC Protocol of Employment and Labour of 2014. Article 2(1)(c) of this protocol calls for recognition that labour is not a commodity and that decent work and social security can contribute to economic development, poverty, eradication and improvement of the standard and quality of life in the SADC region.

Therefore, based on UN's essence on business and human rights as well as SADC and other legal instruments which impose some obligations on the same subject matter, LHRC finds it imperative to assess the extent of compliance of business human rights standards by not only the

[6] LHRC (2014) Human Rights and Business Report of 2014. LHRC: Dar es Salaam. Page 5.

corporate companies; but also, government's regulatory authorities (RAs), and everyone including private employers and individuals. In particular, a focus of the said assessment is made to employment and labor rights; gender; land rights; sustainable utilization of resources - environmental management; accountability; transparency in tax payments as well as performance status of RAs.

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

1.2.2 Aim and Specific Objectives of the Study

This study was aimed at finding out policies and laws that lead to bad practices by corporate sector in particular environmental, land, labour rights, and revenue remittance. The gender related issues and performance of various regulatory authorities also formed a large part of this assessment. The assessment is based on the international and legal instruments governing those themes as well as a comparative analysis basing on the 2013 and 2014 LHRC's findings on human rights and business studies similar to this one.

The specific objectives of this study and the report were:-

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

Therefore, the study was to come up with information which will help both state and non-state actors in making sound decisions with regard to allocation of resources, accountability (at all levels), and directing efforts towards improving compliance on the four themes (labour, tax, environment and land rights) and the cross-cutting issues, namely; the gender and performance of regulatory authorities.

1.3 METHODOLOGY FOR DATA COLLECTION

1.3.1 Study Approaches

The study focused on the comparative, descriptive and evaluation of the status of compliance of the business and human rights standards in Tanzania's corporate sector. As it was a case for previous similar studies, this one too, applied a normal survey approach[7] in data collection and analysis components,such as participatory qualitative and quantitative methods.

Picture 1.1: Researchers and respondents in descriptive interviews in different Regions.

The rationale of choosing qualitative (descriptive) method was to ensure that in-depth information and analysis of the issues intended to be collected from the field are obtained. The quantitative (numerical) method was intended to collect opinion of the respondents on various issues entailed in the four main themes mentioned above.

1.3.2 Tools and Mechanisms for Data Collection

The study used almost the same data collection tools or mechanisms it has been using since 2013. Such tools used were an interview guide and the survey questionnaires (SuQ) prepared in an assortment of five sets for managers of corporate companies; workers; members of the community; and RAs. Additionally, there were 2 special SuQ for Dar es Salaam which were aimed at investigating on status of service provision by business companies; and, an inquiry about small traders' access to profitable markets in this era of competitions with prominent business companies. The SuQ incorporated both opened and close-ended questions.

The second tool used was focus group discussions (FGDs), whereby, an average of 4 FGDs were expected to be organized in each region, to give a total of 56 FGDs. In each group discussion, it was intended that, between 4 and 8 persons will be selected. This was successfully done as about 60 FGDs were conducted.

The third tool was key informant interviews (KII), which targeted unspecified number of companies' managers, local government officials, RAs, community members, workers and others mentioned elsewhere in this chapter. At least 100 KII persons were interviewed in the sampled regions.

Fourthly, the study relied on observation of the situations and documentary reviews as well. Sources of secondary data are acknowledged in each area of the report where they are used. They include reports, academic papers, laws and policies from the UN agencies, government, NGOs, and internet sources.

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

1.3.3 Study Samples: Types and Rationale

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

(i) Geographical Samples

The study covered 14 regions, being about 50% of all regions of Tanzania Mainland. The regions sampled were Morogoro; Ruvuma; Geita; Tabora; Arusha; Shinyanga; Kilimanjaro; Dar es Salaam; Mbeya; Tanga; Mtwara; Mara; Mwanza; and Dodoma regions. Manyara and Lindi regions were also covered on a few specific issues only. For instance, Manyara was for visiting Mirerani Tanzanite Mine; while Lindi was to assess a land conflict which was ongoing during the study in December 2015.

About 80% of the sampled regions were the same as what the 2014 similar study sampled; and again, about 75% of such regions, were also covered in the 2013 similar study by LHRC. This was purposefully done in order to assess the trend of changes of some issues. Moreover, it was unavoidable to do so due to the sample criteria mentioned above and previous editions of this report.

As it was the case for the previous studies, an average of 2 districts in each region was visited. Therefore, the study reached more than 28 districts (being about 20% of all districts in Tanzania Mainland). Additionally, a minimum of 50 administrative wards (around 2 for each district) were reached during the study.

(ii) Individual Samples

The study managed to interview a total of 946 sampled individual persons, who were individual workers, community members, representatives of corporate companies, some officials from regulatory authorities, judiciary, law enforcers, non-governmental organizations (NGOs) and local government.

As for the individual workers of the corporate companies, a total of 772 of them were interviewed physically as individuals, and about 115 of them were interviewed as members of FGDs. However, at least 70% of the said 115 were interviewed as individuals and later as FGDs' members. This was purposefully done in order to validate some of the responses obtained from individual interviews.

Table 1.4: Number of Interviewed Workers by Sex

		Frequency	Percent
Valid	Males	444	61.5
	Females	278	38.5
Total		**722**	**100.0**

Source: LHRC, Human Rights and Business Study (Primary Data), 2015.

Out of that number, only 17.2% were college graduates and majority of them (33.5%) were standard seven leavers; and the remaining number were secondary (ordinary and high school leavers). Only 3.3% were completely illiterate, and majority of them were women. As for the age groups, workers of age ranged between 18 and 25 years were 174 (being 24.1%); while, between 26 to 35 years were 41.8%; between 36 to 60 years were 28.0%; and 2.5% were consulted workers with 61 years and above.

As for the members of the communities, a total of 153 of them were individually consulted of whom, 55 (being 35.9%) were females; and the remaining 90 (being 58.8%) were males. The gap of 8 respondents of 5.2% was a 'missing system.' That is, the questionnaires did not indicate the sex of those respondents. A total of 53.6% of the community members were persons whose level of education was standard seven; while, 22.9% form four leavers; 2.0% high school leavers; 7.2% graduates from various levels of collage; and, 10.5% were completely illiterates. Age-wise, all were adults, 43.8% aged between 26 and 35; while the young persons of 19-25 were 19.0% in total. The elderly (from 61 years) were 3.3%; and the remaining age group, 36 to 60 were 30.7%. This sample, despite being randomly picked up, had more peasants or farmers followed by traders by 39.2% and 28.1% respectively.

Around 95% of these community members were from upcountry regions (outside Dar es Salaam). The respondents were followed to their homesteads (households); their farms; and elsewhere as a combined Picture 1.2 below shows:

Picture 1.2: Research teams in Mtwara, Tanga and Geita Regions, December 2015.

Such respondents as Picture 1.1 above shows, included persons of all age groups from 18 years; various socio-economic activities; marital status; and so on. They were interviewed as individuals and as groups as well. In this way, every voice of a common citizen was heard and recorded.

(iii) Sample Size by Institutions and Companies

The institutions consulted during the study included government departments; law enforcers; judicial officers; management of corporate companies; academic institutions; RAs; and others. A total of 71 workers of about 15 different RAs were interviewed in the 14 sampled regions and those included directors, accountants, corporate secretaries, legal officers, engineers, technicians, environmental officers, labour officers, social compliance officers, trade officers, and zonal or regional managers.

As for the companies, a total of 75 companies were reached out for this interview and they included all economic sectors such as transportation, communication, manufacturing, processing, services, and mining.

In each region, the study team endeavours to meet the Regional and District Commissioners (RCs and DCs); district executive directors (DEDs); municipal directors (MuDs) and their technical officers such as the heads of the departments of land, environment, trade, legal affairs, health and community development. In some places like Shinyanga, Tabora and Dar es Salaam, the study also met non-governmental organizations; and, trade unions.

1.4 DATA ANALYSIS AND VALIDITY OF INFORMATION

1.4.1 Data Analysis

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

1.4.2 Validity (Authenticity) of the Information

The sample size and types were sufficient to justify findings of this study due to the reasons stated above. Secondly, the triangulation of data collection methods, approaches and tools, has enabled the team to verify information collected. The FGDs and KII were used as on-spot ways of verifying data collected through questionnaires and other tools. Thirdly, the study was undertaken by researchers who are university graduates.

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

1.5 LIMITATIONS OF THE STUDY

The study was commissioned a bit late this year due to national elections which were scheduled in October 2015. LHRC anticipated that most of the authoritative government and other officials could not have a good attention to this study due to the nature of this year's election – which was quite sensitive for the reasons stated in election reports. The delayed processes rendered it difficult to finalize this work before end of the year. This is why, some of the references indicate to have been referred from January 2016.

Secondly, some of the respondents especially the Tanzania Revenue Authority (TRA) and the Prevention and Combating of Corruption Bureau (PCCB)'s upcountry branches continued to be hesitant in sharing information, even for normal ones such as statistics and nature of issues they were dealing with basing on the geographical locations. This situation raises some doubts about the 'transparency' policies each one of them claimed to have been using as its working style. Some of the managers or leaderships of the corporate companies were also not ready to corporate with the study team – a situation which rendered it difficult for this report to balance some of the information alleged by the workers of such companies. As for this issue in particular, LHRC has included a disclaimer statement at the beginning of this report that, what is indicated as examples, were purely respondents' views and in no way couldit be interpreted as implying LHRC position. Moreover, the phrasing of the arguments has been designed in such a way that each of unbalanced issue is highlighted as an allegation and not a conclusion of the observation seen or heard.

> As for this matter, LHRC suggests that, corporate and some of the 'hard-to-talk' government officials or departments be changed to be open and willing to share their views. In this way, they could; (i) clear some doubts about any information inferring them; and, (ii) contribute to the needed reform by sharing their best or other practices.

1.6 ETHICAL CONSIDERATIONS

All ethical considerations such as informed consent and confidentiality were observed. No respondent below 18 years was allowed to participate in this study because that would have compelled researchers to seek parent or guardian's consent. In only two occasions that two children were asked simple questions to explain about their involvement in child labour in Kilimanjaro and Tanga regions.

The respondents were not compelled to give their names. They were also not compelled to respond to all questions posed to them. This is why there is *'missing system'* in some of the SPSS tables presented in this report. As such, participation to this study was an option and not mandatory. Moreover, all interviews were conducted in Kiswahili language and that, the SuQ for workers and community members were written in Kiswahili language. This was aimed at allowing respondents to give their informed consent to participate in the survey as well as availing reliable information.

Lastly, research assistants were advised to secure permissions from the regional office or headquarters of the respondents they wished to interview.

CHAPTER TWO

EMPLOYMENT AND LABOUR PRACTICES

2.1 INTRODUCTION: LABOUR RIGHTS AND STANDARDS

The employment or labour standards are claimable rights connected to or associated with labour relations between workers and employers (and of course, the government as the regulatory authority of the said relations).[8] The International Labour Organization (ILO) produced the Declaration on Fundamental Principles and Rights at Work in 1998, which, among other things, urges the ILO member states to respect, promote, and realise core labour standards – notwithstanding the fact that, such standards have been ratified or not by a particular country.[9]

According to the same source referred to above, the core labour standards consist of five standards, laid out in eight conventions, focusing on, (i) the elimination of discrimination in respect of employment and occupation;[10] (ii) the elimination of all forms of forced and compulsory labour;[11] (Convention No. 29 & No. 105); (iii) the freedom of association and the effective recognition of the right to collective bargaining;[12] and, (iv) the effective abolition of child labour.[13]

The Freedom of Association and Protection of the Right to Organize Convention, 1949 (No. 87); the Right to Organize and Collective Bargaining Convention, 1949 (No. 98); the Forced Labour Convention, 1930 (No. 29); the Abolition of Forced Labour Convention, 1957 (No. 105); the Equal Remuneration Convention, 1951 (No. 100); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); and others not mentioned earlier in this report, principally call upon employers and everyone (including the employees) to respect, among other entitlements, the right to a living wage based on a regular working week that does not exceed 48 hours; humane working hours with no forced overtime; a safe and healthy workplace free from harassment; and a recognised employment relationship with labour and social protection.

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8 Note that, the ILO is a tripartite organisation consisting of trade unions (for workers), companies (as employers), and governments (as regulators). This is why, most of ILO's concentions and declarations address the trio together. The effective relationship between the stated parties is what determines an enforcement of the standards. The Tanzanian legal framework on labour rights and duties has also tried to follow this thread, whereby, the three parties are bound together in the enforcement of the labour standards as it is further explained in this and other chapter of the report.

9 ILO (Undated) 'What are the ILO Conventions and Core Labour Standards?' Accessed it on 22nd February, 2016 from: http://www.cleanclothes.org/issues/faq/ilo

10 This is well articulated under the Equal Remuneration Convention, 1951 (No. 100); and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

11 The core ILO conventions on this are the Forced Labour Convention, 1930 (No. 29); and the Abolition of Forced Labour Convention, 1957 (No. 105).

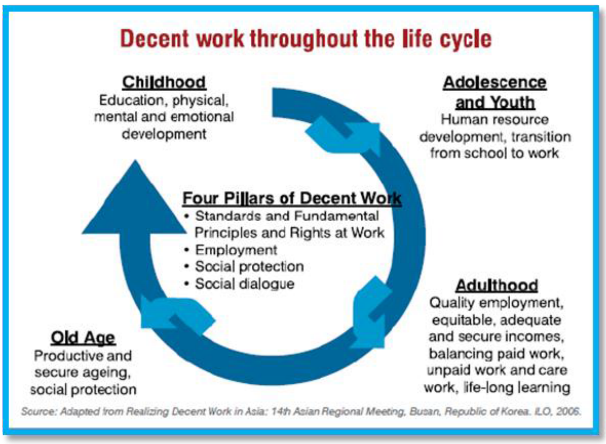
12 Under ILO conventions namely the Freedom of Association and Protection of the Right to Organize Convention, 1949 (No. 87); and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

13 Especially under the Minimum Age Convention, 1973 (No. 138); and the Worst Forms of Child Labour Convention, 1999 (No. 182).

Article 1 of the ILO Employment Policy Convention, 1964 (No. 122); and Article 8 of the ILO Recommendation Concerning Promotion of Cooperatives, 2002 (No. 193) require all states, including Tanzania, to declare and pursue an active policy designed to promote full, productive and freely chosen employment in response to above mentioned ILO standards. Besides, there are a number of regional treaties and declarations which oblige countries to uphold and promote said standards. One of such treaties is the South African Development Community (SADC) Protocol of Employment and Labour of 2014, which had just a year of its existence when this study was carried out. Article 2(1)(c) of the SADC Protocol firmly declares that, *'labour is not a commodity and that decent work and social security can contribute to economic development, poverty, eradication and improvement of the standard and quality of life in the SADC region.'*

ILO describes decent work's pillars to include assured employment tenure and social security as **Figure 2.1** below shows. According to this concept, decent work seems to be a result of early preparations, in terms of education and other factors which develop a person into a certain social level. The thread goes that way to the adulthood level. Probably, this is why most of casual and indecent workers in the field which this study interacted with during the survey in 2015, were actually persons whose level of education was lower than secondary school. Chapter one of this report explained in details.

Figure 2.1: ILO's Concept of Decent Work



Source: ILO 2006 as indicated in the Figure.

Article 5(1) of the said 2014 Protocol requires SADC countries (including Tanzania) and other institutions, employers, trade unions as workers to recognize the universality and indivisibility of basic human rights proclaimed in the ILO conventions, the United Nations Declaration of Human Rights of 1948; and other UN or African Union (AU) legal instruments.

Tanzania has responded to those international and regional obligations quite positively by, among other things, designing the legal and policy frameworks, which to a large extent; reflect required labour standards on the promotion and protection of the employment rights and duties. For instance, the country's mother law, Constitution of the United Republic of Tanzania of 1977 provides under Article 22(1) that everyone has the right to work. Sub-Article 2 of Article 22 as well as Article 23 of the 1977 constitution qualifies this 'right to work.' The two provisions put requirements of equality in terms and remuneration. The freedom of association is enshrined as a right under Article 20 of the constitution. Other international and labour standards are not coming out clearly in the current constitutional framework. However, the Employment and Labour Relations Act (ELRA), 2014;[14] the Labour Institutions Act, 2004;[15] the rules under these two laws;[16] the Occupational Health and Safety Act, 2003;[17] the Workmen Compensation Act, 2008;[18] the Non-Citizen (Employment Regulation) Act, 2014; and the policies such as the National Employment Policy of 2008;[19] the Tripartite Code of Conduct on HIV/AIDS at the Workplace in Tanzania Mainland of 2008; and the National Strategy for Gender Development of 2005.

From the outset on the labour standards as briefly highlighted above, it is clear that such rights or rather standards are broad issues which could not be easily exhausted in this report. Therefore, only some of them have been picked up for illustration (in this chapter) to explain enforcement of the standard during the year 2015. The standards have been streamlined into five main components, namely; the rights to job security; equal and fair working environments; freedom to associate; social protection; and legal remedy once one's rights are infringed. The benchmarks for this assessment are the international, regional and national laour instruments, some of which have been listed above.

2.2 GENERAL TREND OF ENFORCEMENT OF LABOUR STANDARDS

The year 2015 brings no big surprise on the effectiveness of labour standards. Almost same issues as witnessed in LHRC's previous assessments of similar nature seem to have been happening during this year. However, as indicated in Table 2.20 on performance indicators (at the end of this chapter) notable progress especially on awareness of some of the labour rights on part of workers and adherence of labour standards on part of employers (in this study, corporate companies) have been sensed.

The general trend which this study draws a conclusion is the fact that, despite the existence of national and international legal frameworks governing labour in Tanzania, ineffective and practical enforcements of the same has remained to be serious issue of concern. Most of the restrictions on exercising labour rights such as discrimination especially against marginalized gender groups; right to association; compensation upon injury or death; obtainment of leaves; and job security, which were unsurfaced by similar reports in the past, have not been accorded

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[14] Act No. 6 of 2004. This is the authoritative labour legislation in Tanzania. It generally provides, among other things, for fundamental rights and protections related to labour, employment standards, organizational rights, collective bargaining, and strikes and lockouts.

[15] Act No. 7 of 2004. This one establishes various governmental institutions mandated to administer labour laws and resolves labour or employment-related disputes. Currently all labour disputes are supposed to be channeled to special labour tribunals discussed in coming sections of this chapter.

[16] For instance, the Employment and Labour Relations (Code of Good Practice) Rules, G.N. No. 42 of 2007.

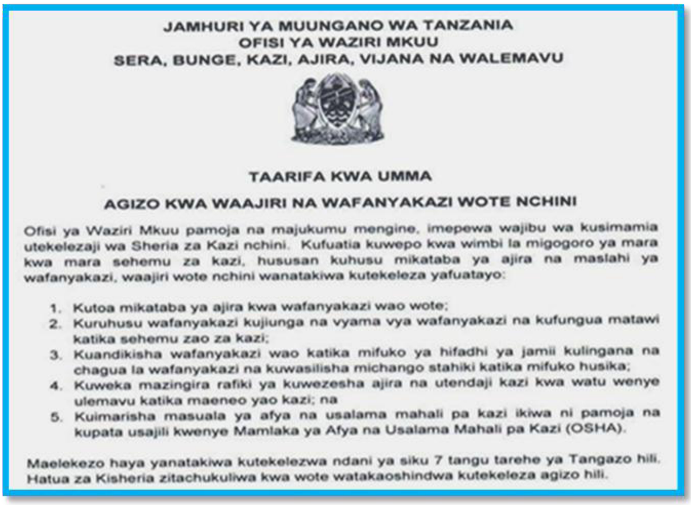
[17] Act No. 5 of 2003, which is extensively discussed under chapter seven of this report.

[18] Act No. 20 of 2008.

[19] For instance, policy issue number 3.21 of this policy mentions improvement of employment conditions and respect for labour rights as one of its focus. The policy statement number 2 says, the government will safeguard the basic rights and interests of workers, with regard to international labour standards, including those on forced labour, freedom of association and the right to organize and bargain collectively; the principle of non-discrimination and equality of treatment and opportunities will be pursued.

sufficient attention to rectify them. The National Human Rights Action Plan (2013-2017)[20] finds out that Tanzania is still facing challenges in eradicating discriminatory labour practices and efforts toward improving labour standards. It went further by acknowledging that privatization and free market have weakened the welfare of workers as they have been subjected to substandard working conditions such as long working hours, forced overtime and poor remunerations.

Obviously, due to that unpleasant situation, the newly appointed Minister for Labour, Ms. Jenista Muhagama issued a public notice or circular (‘*taarifa kwa umma’*) on 14th December, 2015 ordering all employers to adhere to some of the labour standards. Picture 2.1 below explains more about the ministerial order.



JAMHURI YA MUUNGANO WA TANZANIA
OFISI YA WAZIRI MKUU
SERA, BUNGE, KAZI, AJIRA, VIJANA NA WALEMAVU

TAARIFA KWA UMMA

AGIZO KWA WAAJIRI NA WAFANYAKAZI WOTE NCHINI

Ofisi ya Waziri Mkuu pamoja na majukumu mengine, imepewa wajibu wa kusimamia utekelezaji wa Sheria za Kazi nchini. Kufuatia kuwepo kwa wimbi la migogoro ya mara kwa mara sehemu za kazi, hususan kuhusu mikataba ya ajira na maslahi ya wafanyakazi, waajiri wote nchini wanatakiwa kutekeleza yafuatayo:

1. Kutoa mikataba ya ajira kwa wafanyakazi wao wote;
2. Kuruhusu wafanyakazi kujiunga na vyama vya wafanyakazi na kufungua matawi katika sehemu zao za kazi;
3. Kuandikisha wafanyakazi wao katika mifuko ya hifadhi ya jamii kulingana na chagua la wafanyakazi na kuwasilisha michango stahiki katika mifuko husika;
4. Kuweka mazingira rafiki ya kuwezesha ajira na utendaji kazi kwa watu wenye ulemavu katika maeneo yao kazi; na
5. Kuimarisha masuala ya afya na usalama mahali pa kazi ikiwa ni pamoja na kupata usajili kwenye Mamlaka ya Afya na Usalama Mahali pa Kazi (OSHA).

Maelekezo haya yanatakiwa kutekelezwa ndani ya siku 7 tangu tarehe ya Tangazo hili. Hatua za Kisheria zitachukuliwa kwa wote watakaoshindwa kutekeleza agizo hili.

Picture 2.1: An Extract of the Minister for Labour’s Public Notice to Employers, December 2015.

The ministerial circular directed, inter alia, that all employers should; (i) issue employment contracts to all workers; (ii) allow worker joining trade unions and opening unions’ branches at workplaces; (iii) register their workers into social security funds basing on workers’ own choices of funds; (iv) create friendly working environment for persons with disabilities (PWDs) in their workplaces; and, (v) to improve occupational heathy and safety issues, by among other things, register their work stations with the Occupational Safety and Health Authority (OSHA). On 5th of January, 2016 another Minister, Mr. Charles Mwijage, who is the Minister for Industry, Trade and Investments ordered employers to offer employment contracts.[21] Mr. Mwijage issued this order when he visited one of the fishing processing companies in Kagera region.

There are several attributing factors to the failure of enforcing labour standards in Tanzania. Such factors, which are distinctively discussed in each section below include, weaknesses on part of regulatory authorities to enforce the statutory standards; corruption; lack of awareness of the laws by some of the majority of workers example to seek legal redress once their rights are infringed; and income poverty, which subjects workers into indecent and unlawful working

20 Published by the Government of Tanzania through the Ministry of Constitutional and Legal Affairs, December 2013.

21 The Minister was quoted by several media including the Tanzania Daima newspaper of 6th January, 2016.

conditions such as forced and child labours. Again, as it is discussed further below, each one of these and other attributing factors has a root cause or causes.

Furthermore, the study found that, the working 'relationship' between employers and workers as the ELRA, 2004 tries to enforce is in a sour taste as it was noticed in almost all corporate companies visited during the study. For instance, while the study team was interviewing a staff at the Agro Processing Africa Limited (ETG Export Trading Group), Dodoma region in December 2015, one of the workers who passed nearby the place where the interview was taking place whispered to the assistant researchers that *'naona mpo na hao wanyama ...'* (*'I see you are with those beasts'*). The worker clarified later that, he namedhis factory supervisors as '*beasts'* because they were using impolite language when communicating to the workers and that, they (business owners) do not offer employment contract to all workers except a few basing on their discretion. He also stated that, the workers do not have proper protective gears; instead, they wear sandals inside this milling factory. He said further that, *'mabosi wetu wanaangalia faida zaidi kuliko hali ya wafanyakazi na utendaji kazi kijumla'*(*'our bosses prioritize profit accretion more than workers' welfare and performance in general'*).[22]

LHRC is of the view that, there is a long way to go in order to realize a situation whereby, all labour standards are effectively promoted and protected in favour of every worker and employer as well. A decade of enforcement of ELRA, 2004 suggests that, more is desired than what have been achieved so far. The effective enforcement needs to go beyond mere public circulars. It needs sufficient resources for monitoring of the compliance of labour standards; also, resources for conducting public awareness and follow-ups of various initiatives as suggested in the coming sections of this chapter. The best way to go about with all these suggestions is to enhance the tripatite relationship between the government as law enforcer, employers as duty bearers, and workers as right holders. Currently, the known forums which are supposed to bring the trio together are either unknown or ineffectual.

2.3 EMPLOYMENT CONTRACTS

2.3.1 Essence of Employment Contracts and Legal Requirements

The employment contracts are what create legal relations between employers and workers after a clear understanding and consideration of the matter which brings the two sides together. The agreements of this nature create obligations[23] that are recognized and therefore enforceable at law.[24] The contracts are supposed to be voluntary, and deliberate oral or written or implied terms[25] on how the two or more sides would reach out intended objectives of the agreement. Therefore, forceful agreements or ready-made contracts are generally contrary to the principles governing contractual agreements. Such principles and standards are contained in the international, regional and national laws as it has been indicated above.

22 Corporate Human Rights Compliance Assessment, Dodoma Field Report of 2015 (LHRC's Report II). Page 22.
23 Abbott, Keith *et al* (2002) Business Law, 7th Edition. Ashford Colour Press: Hampshire, UK.
24 Garner, B. A (2004) Black's Law Dictionary. Thomson West: New York. Page 566.
25 'Business Dictionary.' Accessed it on 3rd January, 2016 from: http://www.businessdictionary.com/definition/contract.html

There are three types of contracts under which a worker can be employed, namely; (i) the contract for specific duration, whereby, when the specified duration ends, such agreement automatically ends too; (ii) contract for a specific task, mostly for professionals like consultants; and (iii) contract for an unspecified duration also known as permanent contract.

Section 14 of ELRA, 2004 requires an employment contract to be given to an employee by an employer. Section 15(1) of this law, specifies minimum contents of the employment contract to include; (i) name; (ii) age; (iii) permanent address and sex of the employee; (iv) place of recruitment; (v) job description; (vi) date of commencement; (vii) form and duration of the contract; (viii) place of work; (ix) hours of work; (x) remuneration and how it is calculated; and, (xi) other benefits, payments or relevant matters. Furthermore, ELRA, 2004 directs under Section 15(3) that, employment contracts must be written in a language understood by the employee and that, the employer has a duty to clarify any matter or term of contract which is not understood by worker. The rights (and duties) of the workers are supposed to be indicated in the contract and also, according to Section 16 of ELRA 2004, at workplace.

The extent and manner in which the corporate companies adhered to the legal requirements on contractual agreements are subject matters for this sub-part. As briefly highlighted above on the general trend for the year 2015, the situation of offering employment contracts which are reckoning with the laws is still not promising. The study ascertained that, there are at least five issues of concern on the enforcement of the employment contract as one of the labour standards. Such issues include, (i) offering written contracts but in short, wrongful and uncertain terms; (ii) written contract with restraining clauses; (iii) written contract with 'standard' or 'dictated' terms; (iv) written contract without including specific basic labour or legal rights; (v) written contract with legal jargons – technical language or generalized terms; (vi) written contract without job descriptions; (vii) contract with uncertainty terms; and, (viii) sign written contract but not given copies of the deeds. Each one of these issues of concern is discussed with illustrations below under paragraph 2.3.2.

2.3.2 Practices of Individual Employment Contracts

(a) Mixed Trends and Perceptions for the Year 2015

The 2015 study came out with quite interesting findings, whereby, some of the regions such as Dodoma[26] and Mbeya seemed to have improved a lot in terms of offering written contracts which comply with legal standards (basing on sampled companies). Some of the sampled corporate companies in Mara and Tanga regions, which were previously found to have been in violation of labour laws – especially on employment contract issue, were noticed to have been improving especially by considering the number of complaints heard from the workers interviewed in December 2015. In Ruvuma too, 45.9% (that is 17 out of 37) of the workers who were randomly interviewed in December 2015 said that, they had written employment contract.[27] However, most of the sampled Dar es Salaam and Mtwara based companies failed once again to rectify the situation, as most of the complaints on employment contracts were heard from these and other remaining regions. Specific examples of all these are given below.

[26] For instance, majority of workers of the Modern Mattress Company Limited and Tanzania Meat Company both of Dodoma region said in December 2015 that, they were all given employment contracts at the time they were employed by these companies.

[27] Corporate Human Rights Compliance Assessment, Ruvuma Field Report of 2015 (LHRC's Report I). Page 16.

There are several factors which influence the positive and negative trends on enforcement of employment contracts. Such factors include presence or absence of effective trade unions; effective monitoring by the regulatory authorities; level of income poverty – and therefore, desperate need of 'any kind of employment;' and, level of awareness of labour rights amongst workers as well as employers.

The employers, who do not offer employment contracts to their workers, have different reasons stated. The owner of Mchele Market, a wholesale shop in Tabora urban, said that, his business was 'small' to offer employment contract to his workers because of mobility of workers and taxes. He said:

> *... kwanza hawa wafanyakazi unaweza ukamchukua leo kesho akaamua kuacha kazi. Lakini pia hizi si biashara za kusemani kubwa kama haya makampuni ya ATTT, sisi ni wadogo sana; hivyo ni vigumu kuwapa mikataba maana. Kodi zitatubana ...* (...first, you can hire these workers today but they quit job tomorrow. But also, these are not big business such as ATTT, we are very small; therefore, not easy to offer employment contract. Taxes are stringent ...).[28]

Other employers mentioned ignorance of the law as attributing factor to their failure to offer employment contracts to all workers. For instance, the owner of the Geita region based Hotel (K.M Hotel) claimed that, he understands that other business owners do not offer employment contracts because they are not aware about such legal requirement let alone understanding of the laws and procedures governing their particular business venture.[29]

Thirdly, workers are not aware or not confident enough to claim for their right to written contracts. The study noticed that, some of the workers interviewed were 'contented' with the situation of working without contract, because what matters more for them was the job and salary they receive from employers. Due to ignorance of the law and desperation of earning a living (abject poverty), questioning an employer about a need to have an employment contract was the highest risk they can dare to try. For instance, most of the workers of Yurap Company Limited of Mtwara region feared even to talk to the researchers of this study because they were afraid that they would be fired if the boss noticed that they have interacted with the researchers. The lady, in jolt mood told the researchers that, '*maswali maswali gani unataka kuuliza? Nenda ukamwulize meneja bwana, usije ukatumwagia ugali wetu. Sisi tukionekana tutapoteza kibarua chetu. Kama unashida msubiri meneja afike utamwuliza, sisi hapa hatuna tatizo lolote' ('what kind of questions do you want to ask us? Go and interview the managaer. We don't want to lose our job. If we are seen (with you) we will lose our job. If you have an issue, wait for our manager to come. We do not have any problem here').*

It also appears that, some of the workers do not consider having written employment contracts as important entitlement for them simply because such documents do not help them to claim their rights once they are in trouble with the employers. For instance, some of the workers of the Dan and Associates Enterprises (DAE) Limited and Tancoal Company of Ruvuma region told the study that, their colleagues were terminated from job between 2013 and 2015 without reasonable

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28 Corporate Human Rights Compliance Assessment, Tabora Field Report of 2015 (LHRC's Report I). Page 10.

29 Corporate Human Rights Compliance Assessment, Geita Field Report of 2015 (LHRC's Report II). Page 14.

ground and legal procedures which they were somehow aware of.[30] Therefore, for them, having contract deeds is not sufficient enough to secure their job tenure and other rights.

LHRC is of the view that, there is a need to adopt and implement more practical economic empowerment policies and review the current rural development strategy in order to hasten micro-development at individual levels. LHRC has realized through this and other studies that, there is an intrinsic link between infringement of labour rights and income poverty. ILO analysis on decent work as shown by Figure 2.1 above also implies this reality. As it is illustrated further in this report, some of the corporate companies have been taking common citizens' income poverty for granted by subjecting them into indecent working environment including low pay, denial of written contract and other kinds of infringements. The economically empowered person would at least be able to argue and demand for better employment unlike the current situation whereby it is the employer who tends to dictate the working relationship. Therefore, mere orders from the Ministers or other authorities would not work out perfectly if the root cause of these labour problems is not adequately addressed. A reform of the current employment policy is inevitable.

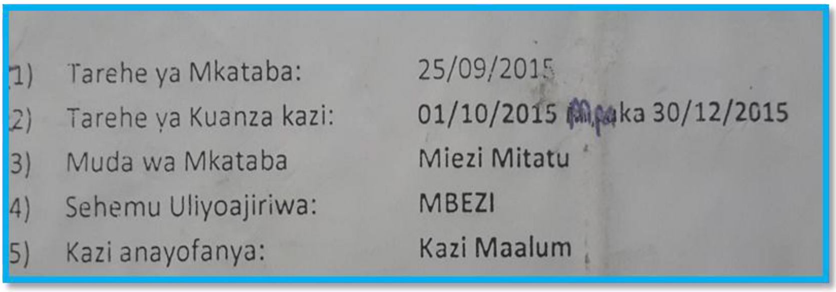
Subsequent parts of this chapter cover discussions of issues of concern relating to employment contracts.

(b) Offering Written Contracts but in Short, Uncertain and Wrongful Terms

The tendency of offering short term contract, mostly of three-month duration is very common amongst the corporate companies in Tanzania (basing on the sample of this and similar studies carried out in the past). An anonymous lawyer of one of the Mwanza based fish processing companies argued in 2014 that, the current legal framework on labour does not provide sufficient protection of workers who are in probation period. According to him, most of the corporate companies, including his employer tend to utilize that loophole by either terminating or offer another three month 'probationary contract' upon expiry of the former contract before a worker is confirmed and that, this could be the case for years.[31]

Save for a few companies met during this study, majority (more than 70%) of those who offered written contract preferred short term approach. For instance, one worker of Chemi and Cotex Industries Limited of Dar es Salaam told the study in December 2015 that, he has been working with this employer for more than ten years under the short-term contract arrangement.[32] Picture 2.2 below shows an extract sample of the Chemi and Cotex Industries Limited's contact.

[30] Corporate Human Rights Compliance Assessment, Ruvuma Field Report of 2015 (LHRC's Report I). Page 16.
[31] LHRC (2014) Human Rights and Business report of 2014. LHRC: Dar es Salaam. Pages 22 and 23.
[32] Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report I). Page 9.



1) Tarehe ya Mkataba: 25/09/2015
2) Tarehe ya Kuanza kazi: 01/10/2015 Mpaka 30/12/2015
3) Muda wa Mkataba Miezi Mitatu
4) Sehemu Uliyoajiriwa: MBEZI
5) Kazi anayofanya: Kazi Maalum

Picture 2.2: Extract of a short term contract for a worker of Chemi & Cotex Industries Limited, Mbezi Dar es Salaam which indicates the duration of the contract to be between 1st October 2015 and 30th December 2015.

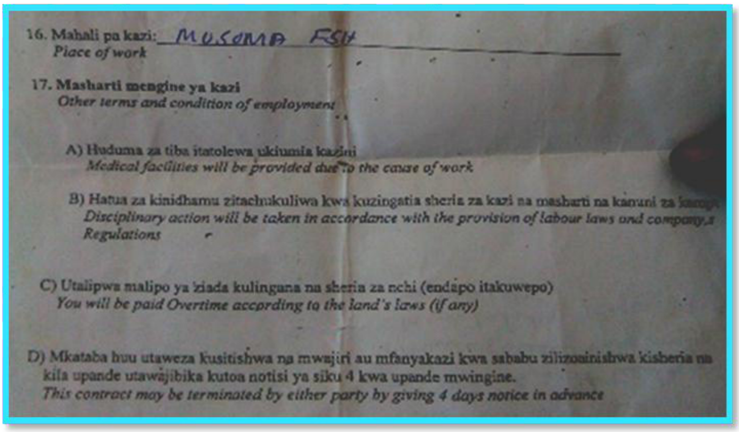
Clause 11 of the extract (Picture 2.2 above) complicates further the situation by declaring that, the work is seasonal in nature. Therefore, an engagement with the company will depend on availability of something to do on a particular day. Clause 14 of the same extract of contractual deed looks like usurping the country's labour laws. It states that *'This contract will be suspended when you violate the laws and procedures imposed by the company.'* There are several legal issues to consider in this kind of agreement, the most important one being legality of so called company's 'laws' and 'procedures' over the known country's 'laws' and 'procedures' especially when there is a contradiction between the company's and country's 'laws.'

The study heard and observed similar situation (of strategically offering short term contracts) in many places and companies sampled across the country. For instance, other companies alleged to have such kind of contracts included the Tanpesca Fish Industry Limited of Tanga region, which offer six month contracts, which after being signed by both parties, a worker is not given his or her copy of contract (according to an anonymous lady worker); the Iron and Steel Limited, MO Company and SBC (Pepsicola) both of Dar es Salaam;[33] the Speed Security Company of Mtwara region; and the Jambo Company Limited, Shinyanga region. A worker of this (Jambo) company alleged that, he has been consistently signing a three month prescribed forms of contract deeds for years now.[34] An anonymous worker of the Speed Security Company explained to the team that, they are employed under an arrangement of three month-interval contracts; whereby, the employer requires the workers to renew such contract after every three months.[35] In this way, such employees are considered as probation staff all the time – and therefore, not entitled to a number of statutory benefits including leaves.

On the other hand, the study ascertained that, some of the companies tend to understate or wrongfully stating contractual terms which are contrary to the legal standards governing employment relations. The Mara region's study team noted that, at least 80% of the workers' contract deeds which were availed to the team, had some legal entitlements for the worker missing in the deeds. The sampled companies for this assessment were Musoma Fish Processors Limited; Nyanza Bakery Limited; Mutex Company Limited; Mara Milk Limited; and Mara Coffee Limited.[36] For instance, the Musoma Fish Processors Limited's contract deeds, which

33 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report I). Page 9.
34 Corporate Human Rights Compliance Assessment, Shinyanga Field Report of 2015 (LHRC's Report I). Page 5.
35 Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report I). Page 4.
36 Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report II). Page 10.

were availed to the study team by anonymous respondents did not provide any terms on the right of leaves.[37] This is contrary to Section 29 of ELRA, 2004. Furthermore, Clause 17D of the Musoma Fish Processors Limited's employment contract template as shown in Picture 2.3 below, provides that, *'this contract may be terminated by either party by giving* ***4 daynotice*** *in advance'* (emphasis added). This is absolutely contrary to the provisions ELRA, 2014 which requires 30 day notice of the intention to terminate the contract; or, alternatively, the 24 hour notice (by paying or surrendering one month salary for the case of employer and employee respectively).



16. Mahali pa kazi: MUSOMA FISH
Place of work

17. Masharti mengine ya kazi
Other terms and condition of employment

A) Huduma za tiba itatolewa ukiumia kazini
Medical facilities will be provided due to the cause of work

B) Hatua za kinidhamu zitachukuliwa kwa kuzingatia sheria za kazi na masharti na kanuni za [illegible]
Disciplinary action will be taken in accordance with the provision of labour laws and company's Regulations

C) Utalipwa malipo ya ziada kulingana na sheria za nchi (endapo itakuwepo)
You will be paid Overtime according to the land's laws (if any)

D) Mkataba huu utaweza kusitishwa na mwajiri au mfanyakazi kwa sababu zilizoainishwa kisheria na kila upande utawajibika kutoa notisi ya siku 4 kwa upande mwingine.
This contract may be terminated by either party by giving 4 days notice in advance

Picture 2.3: An extract of Musoma Fish Processors Limited's employment contract template.

As it is argued above, some of the employers tend to curve legal standards in order to safeguard or advance their interests simply because the law enforcement machinery is not effective and that, workers could not demand proper terms due to desperation of work and ignorance of the law.

LHRC suggests that, the current phase government's enthusiasm on governance issues should also address labour rights in a more specific ways. For instance, the Minister for Labour can direct district or regional based labour officers and the district commissioners to ensure that, all companies in their areas of jurisdiction enter into collective agreements with trade unions under their supervisions. Moreover, a special task force to enforce this matter is urgently called for.

(c) Written Contract with Restraining Clauses

In relation to the aforesaid legal concerns on how written employment contracts were prepared, it is also found that, some of the employers include stringent or restrictive clauses for obvious reasons – of detecting the employment relations. The restricting clauses include the ones which forces a worker to take his or her annual leaves only during certain periods of the year (without any consensus); or restricting access to information or right to express opinion to anyone. For instance, Clause 8.1 of the contract deed of the Iron and Steel Limited of Dar es Salaam states that, *'si ruhusa kutoa taarifa za ndani ya kampuni kwa mtu au mahali popote au kuzungumzia jambo lolote au masuala yanayohusu kampuni, wateja, wafanyakazi na masuala mengine*

[37] S.29 and 30, ELRA, 2004.

yanayofanana na hayo katika muda wote wa ajira yako na hata baada ya ajira bila idhini' (simply means, it is not allowed to any worker to disclose any company information during and after his/her employment without permission).

Despite the fact that the study did not come across any incident whereby this Clause was adversely used to limit workers' right to speak, it is logically obvious that, such kind of provision would be used to conceal some information and evidence which, for instance, the regulatory authority would wish to know as part of its statutory responsibility. This situation can also be detrimental to everyone else who will like to have a balanced opinion on the state of affair of this company because a possibility of censoring opinion stands to be high.

LHRC is of the opinion that, much as it is aptful for any company to secure its confidential records, the restrictions for that purpose should not be wide to the effect of undermining worker's right to free opinion especially on issues which directly affect his or her affairs and interests as a worker. Sometimes, speaking out about something harmful is a way of redressing the situation.

(d) Written Contract with 'Standard' or 'Dictated' Terms

The 'standard' or ready-made contracts are not illegal under the Tanzanian laws mentioned above. However, for the purposes of creating mutual relationship between the employer and the worker it is imperative that some of the contractual terms are agreed upon by both parties. Of course, most of the contractual terms are be prescribed ones - basing on what the law requires (example, leaves, minimum wage, statutory deductions, etc), but still, those are minimum standards, which do not restrict the employer to open up a discussion with his or her worker in order to create more favorable working conditions.

As it is argued further in this report, LHRC is of the view that, there are so many gray areas or legal gaps which really need rectification. Therefore, having reciprocal discussion will enable forging an employment relation which suits or reflects a particular context in terms of nature of business or geographical location or even gender issues. All these are prerequisite factors for enhancing productivity of the corporate company.

The incidents of opting 'dictated' terms of employment contracts made as 'standard' or 'forms' or 'ready-made' deeds are rampant across the country as this study confirmed in 2015. Almost all companies consulted during the study (through the management or workers) preferred standard terms, which in some of the companies visited, differed from one worker to the other even if such workers were holding same positions and nature of work. Therefore, the standard contracts were not standardized. A total of 13 (being 59/1%) out of 22 workers who were randomly interviewed in Geita region during the study said that, the contract they had at the time of the study (December 2015) was decided solely by the employer. Only 4 (being 18.2%) of such respondents claimed to have bargained the terms before signing the contract deeds.

The workers of the Dangote Factories Limited (Mtwara); the Ndanda Spring Pure Drinking Water (Mtwara); Acqua Cool Company (Dar es Salaam); Goldstar Company (Dar es Salaam); CI Group of Companies (Dar es Salaam); Quaim Steel Mills Limited (Dar es Salaam); A to Z Textile Limited (Arusha); and of so many other companies in other regions claimed in different occasion but with same sentiment that, some of them were actually working without contracts;

and a few of them with such contracts, did not negotiate the terms. Some of the terms of the standard contracts were noticed to be injudiciously made by the employers. For instance, Clause 1 of the Quaim Steel Mills Limited's[38] contract deed implies that it is a contractual agreement with unspecified period of time. Therefore, a worker signed this deed will be paid only when he or she goes to the office. It does not consider sick or other leaves or holidays.[39] Therefore, getting sick and therefore failing to go to work could mean receiving less salary in a particular month. Section 28 of ELRA, 2004 prohibits any deduction(s) from an employee's remuneration unless there are justifiable legal causes. Sub-section 2 of Section 28 enlists scenarios[40] for which worker's salary could be deducted, of which, none-show up to workplace for genuine reasons is not one of such circumstances to render deductions.

A few workers, who dare to question the contents of the contract deeds that they have been offered, normally receive quite disappointing responses if not intimidations. There are employers who tell workers to turn-off the employment offer if they are not satisfied with the decided terms; and others simply say 'that is what the law requires' knowing that an ignorant worker could do nothing. For instance, an anonymous worker of A to Z Textile Limited of Arusha region told the study that, he had a contract which was already decided by the company's leaders, who told the worker that, *'the contract tallies with the employment laws of Tanzania.'*[41]Apparently, he could not do anything about it as he barely understands what the employment law is all about. The awareness section of this chapter shows statistics of the level of understanding of the governing laws amongst workers.

(e) Written Contract with Legal Jargons or Generalized Terms

It is a commendable move that most of the companies sampled for this study were found using Kiswahili language as the contractual medium. LHRC recommended in 2013 and 2014 that, there was a need of using a widely spoken and easy to understand language – Kiswahili as, the majority of workers in junior positions of the corporate sector in Tanzania have education background which is below form four. Chapter one of this report present more tails on this. It is good that things are changing, whereby, at least 95% of the companies visited for the study, had their contract deeds prepared in Kiswahili or both Kiswahili and English languages as it is the case for Tanpack Tissue Limited (extract of its contract indicated below as Picture 2.4).

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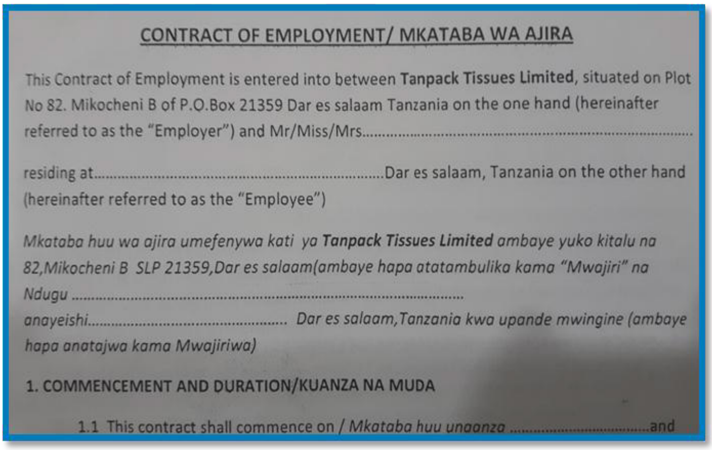
38 This company carries out its business in Dar es Salaam region.

39 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report II). Pages 4 and 5.

40 Section 28(2) of ELRA, 2004 lists the scenarios. It provides that 'a deduction under subsection (1)(b) may be made to reimburse an employer for loss or damage only if (a) the loss or damage occurred in the course of employment and was due to the fault of the employee; (b) the employer has submitted to the employee, in writing, the cause, the amount and calculation of the debt; (c) the employer has given the employee a reasonable opportunity to challenge the cause, amount or calculation; (d) the total amount of the debt does not exceed the actual amount of the loss or damage; (e) the total deductions from the employee's remuneration under this subsection do not exceed one quarter of the employee's remuneration in money.'

41 Corporate Human Rights Compliance Assessment, Arusha Field Report of 2015 (LHRC's Report I). Page 1.



CONTRACT OF EMPLOYMENT/ MKATABA WA AJIRA

This Contract of Employment is entered into between **Tanpack Tissues Limited**, situated on Plot No 82. Mikocheni B of P.O.Box 21359 Dar es salaam Tanzania on the one hand (hereinafter referred to as the "Employer") and Mr/Miss/Mrs...

residing at...Dar es salaam, Tanzania on the other hand (hereinafter referred to as the "Employee")

Mkataba huu wa ajira umefenywa kati ya ***Tanpack Tissues Limited*** *ambaye yuko kitalu na 82,Mikocheni B SLP 21359,Dar es salaam(ambaye hapa atatambulika kama "Mwajiri" na Ndugu ....*

anayeishi.. Dar es salaam,Tanzania kwa upande mwingine (ambaye hapa anatajwa kama Mwajiriwa)

1. COMMENCEMENT AND DURATION/KUANZA NA MUDA

1.1 This contract shall commence on / *Mkataba huu unaanza* ....and

Picture 2.4: An extract of Tanpack Tissue Limited showing both English and Kiswahili languages used – for easier understanding of the contract.

Despite the fact that lawyers (or employers) can have their legalistic style of drafting legal document, which is normally characterized by use of legal terms or language, it is important that the language is simplified for a 'lay-person' (non-lawyer) to grasp the contents. The aim is to have 'consensus ad idem' (meeting of minds) between employer and worker. Mutual working relationship is nurtured perfectly through consensus more than even a good salary package.

The technicality of the language used is not only about the language use (in the case at hand, Kiswahili or English); rather, it is about the clear understandingof the contents of the contract deed. There are two issues here; one, there are workers who are semi-illiterate or illiterate completely. Therefore, they cannot read the deed let alone understanding the contents. Secondly, rights and duties contained in the contract deed could be ambiguous if they are not clarified. For instance, Clause 14 of the Ndanda Springs Company Limited's contract deed (which LHRC has a copy) states that:

> *Likizo ya akina mama wajawazito ni miezi mitatu (3) kila baada ya miaka mitatu (3) ikitokea kabla ya hapo ni likizo bila malipo.* ***Haki na malipo mengine yatapatikana NSSF kwa ushirikiano*** (Maternity leave is three months after every three years. If it happens before that, it is a leave without pay. **The rights and other payments will be obtained from NSSF through collaboration**). (Emphasis supplied).

A worker in the village who secure an employment for the first time at Ndanda Spring Company Limited, which is situated in Masasi, Mtwara region, would have at least five questions to ask himself basing on the phrasing of this deed. Possible questions could be; (i) kinds of *'other payments'*; (ii) what is NSSF, and obviously, where is NSSF? How to access NSSF? etc; and, (iii) which 'collaboration'? Also, collaboration between who and who? Etc. It is obvious that the provision contains quite generalized terms. So many other corporate companies seemed to have opted for this 'fashion' of generalizing or willfully using legal jargons for obvious reasons of bewildering or mystifying the attention and understanding of the workers. For instance, Clause 17 contract deed of the Quaim Steel Mills Limited, a company based in Dar es Salaam generalized the terms by declaring that, the employment relationship will per labour laws which govern the government. In a similar way, Clause 14 of the Chemi and Cotex Industries Limited states that, *'mkataba huu utasitishwa pale ambapo utakiuka sheria na taratibu za kazi zilizowekwa na Kampuni'* (this agreement shall be terminated when you (a worker) will infringe the laws and procedures imposed by the company). The 'laws' are not specified and it is not certain if the employer implied national laws or 'company rules.'

Section 15 (3) of ELRA, 2004 makes it clear that, *if an employee does not understand the written particulars, the employer shall ensure that they are explained to the employee in a manner that the employee understands.'* A man on the street, who interacted with the researcher in Mtwara urban, December 2015, said that, he decided to quit his job at the time when the election campaigns began (in August 2015) because his employer (refused to mention the name) was bulldozing him with the uncertainty employment terms. Therefore, he opted to be a campaigner of one of the political parties. A lady worker of Aqua Cool (Kisima) Limited, a water distiller company based in Dar es Salaam, said that, she has worked with this company for more than a decade without contract deed and therefore, without clear understanding of all contractual terms. She alleged that, none of the workers of this company had signed contracts of employment.[42]

The Maweni Limestone (Rhino Cement) Limited and Tanapesca Fish Industry, both of Tanga region had more complicated contract deeds. The study team was informed that, there was a kind of language barrier between them (workers) and management team, who are mostly English speakers. The team noticed that, Maweni Limestone Limited was using English written deeds for a standard seven leaver,[43] who could, basing on the mainstream education system, not be able to speak or understand well English language as the secondary school level.

(g) Written Contract without Job Descriptions

Section 15 (1) of ELRA, 2004 which is read together with Section 19(2) of the same law provides for the contents of the contract. Such contents are listed above in this chapter. One of the contents' particulars, which the law requires an employer to indicate, is job descriptions. Due to the fact that at least 63.8%% workers are engaged without written contracts, it is logically true that, same percentage or more of the workers work without job descriptions.

This study established through interviews with trade unions, employers, and focus group discussions (FGDs) with some of the workers across the country that, denial of job descriptions facilitate an employer to twirl a worker according to his or her wish including having him performing extra-duties without additional pay. It is, indeed, an 'easy' way of avoiding legal obligations especially overtime payment for the work performed beyond statutory working hours (discussed further below). For instance, a worker of the Wilca Hotel, Tabora region, told the study team that, she was initially employed as hotel waitress, but as days passed, more responsibilities which do not relate to waitress position, were introduced to her. To make things risky and worst, she did not have specified skills on the additional duties imposed on her. Moreover, notwithstanding such overloading of work on her shoulder, her salary remained the same.[44]

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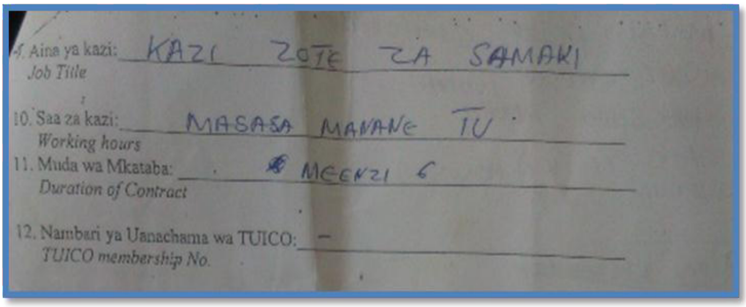
42 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report II). Page 5.

43 Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report II). Page 14.

44 Corporate Human Rights Compliance Assessment, Tabora Field Report of 2015 (LHRC's Report I). Page 10.

The above named Maweni Limestone (Rhino Cement) Limited of Tanga; the Speed Security Company of Mtwara region; Musoma Fish Processors Limited; and so many others do not embody the job descriptions when they offer contract deeds to their workers.[45] Clause 9 of the Musoma Fish Processors Limited's contract deed is on 'job title' or type of work of which an employer is engaged for. It is probably purported to be a job description. The provision (Clause 9), as Picture 2.5 below shows, assigns a worker *'kazi zote za samaki'* (*'all fish work'*) to imply all work relating to fish processing (basing on the nature of this factory).



9. Aina ya kazi: KAZI ZOTE ZA SAMAKI
Job Title
10. Saa za kazi: MASAA MANANE TU
Working hours
11. Muda wa Mkataba: MIEZI 6
Duration of Contract
12. Nambari ya Uanachama wa TUICO: –
TUICO membership No.

Picture 2.5: An extract of Musoma Fish employment contract templete.

The adverse effects of lack of or unclear scope and nature of the work are many. One of them is illustrated above. The media[46] reported in November 2015 that more than 600 G4S Company workers at the Geita Gold Mine (GGM) put down their tools and locked the main entrance of the mine in protest to poor wages and mistreatment by the management of their company, which provide security services at GGM, Geita region. The same media source quoted one of the workers, Mr. Banob Andrea saying that, they had an agreement with their employer G4S Company to work for 26 days per month. However, as a way of minimizing salary scales, the company's leadership allowed many off days in such a way that, the workers received between Tshs 75,000 and Tshs 80,000 after working between 11 and 13 days per month. The reduction happened after doing some calculations to pay for the days which a worker came to work. It is clear that, the company's leadership managed to twist around the workers in that manner because the job content and modality was not clear – apparently due to lack of job description, which would have detailed the contents of the work including working hours or days and shifts (as this is a security company). Similar claims of not complying with the terms of the contract (partially due to lack of job description) was heard by the research teams all over the county, including in Mwanza whereby, the workers of some of the fish processing companies said that their bosses have been acting quite arrogantly by compelling the workers to do things which were not in the contract.[47]

There are few companies met in the field which could be cited as best practice for providing detailed employment contracts which also embodied job description. Such companies include the

45 Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report II). Page 16; Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report I). Page 4; and, Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report II). Page 11.

46 Rehema Matowo, 'Geita mine workers stage protest.' The Citizen. 18th November, 2015. Also available at: http://www.thecitizen.co.tz/News/Geita-mine-workers-stage-protest-/-/1840340/2962994/-/13nk927z/-/index.html

47 Corporate Human Rights Compliance Assessment, Mwanza Field Report of 2015 (LHRC's Report II). Page 5.

Acacia Mining Company of North Mara, Mara region. Moreover, the Amboni Spinning Mill Limited of Tanga region; and, Moshi Leather Industries Company of Kilimanjaro region do not have job description included in their contract templates that were availed to the research teams; but, their contract formats are quite detailed and embody some elements of job descriptions.

(h) Contract with Uncertainty Terms: *Case of Truck and Bus Drivers*

What happens to truck and bus drivers in Tanzania in terms of enforcing and reinforcing their labour rights is a growing concern. There are increased road accidents of private and public transport vehicles alike. As for public transports (in this context buses and trucks), there are so many factors linked to occurrence of accidents incidents. Some of the factors, basing on various police statements include over speeding; drunkenness of the drivers; recklessness driving; and defective motor vehicles. Indeed, those are logic factors. However, this study has established that, dissatisfaction of drivers about the payments and other entitlement can be the root cause of all problems facing investment in public transportation.

According to the Dar es Salaam-Arusha-Nairobi route's driver, Mr. Hamis, the recklessness driving of buses is attributed to dissatisfaction of the working environment in which the drivers are exposed to. The grievances, according to this respondent, include undocumented employment agreements; low salary and enroute allowances; no leaves; health insurance; and all other labour standards. He said, some of the drivers steal some spare-parts from their bosses' vehicles or replace new tires with the old one or even plot an intentional accident just to get extra-money.

There is also a tendency of deducting truck drivers' salaries or mileage-allowances when a loss occurs from the cargo ferried by the lorry. For instance, it is normal (according to the truck drivers) for the fuel or gas to evaporate while on transit due to the volatility or evaporative nature they have especially when the fuel or gas tanks are exposed to hot weather for a long time. Some of the fuel companies, according to Mr. Sacha, a truck driver, do understand this reality; but, others do not consider this as a reasonable excuse. Hence, take drastic measures against the drivers. In October 2015, Mr. David Kalangula, a truck driver, was shot to death by the owner of the fuel company who was alleged to be Mr. Hussein Jatta.[48] Social media linked the incident with the claims of loss which Mr. Jatta accused the Late Kalangula to have caused. Despite the fact that these were mere allegations, still the death occurred due to owner-driver interface at the workplace; hence, casting some reasonable doubts of the boss' involvement in demise of the driver.

Such and other incidents of malpractices against the drivers seemed to have accumulated a lot of pressure. Therefore, after years of enduring the mistreatments from their bosses, the drivers endorsed startling decision to boycott their work in April and the first week of May 2015. It was a countrywide strike of the public transport drivers, which really frustrated socio-economic activities and therefore brought the country in a standstill. The main cause of the strike, as it is briefly explained above, was a long-standing labour dispute between the drivers and their employers about the salaries, allowances, and generally formalization of their work by offering them employment contracts which incorporate all labour standards. The drivers felt that, their work is not accorded respect and attention in the same manner as other sectors' workers are

[48] Press-Tanzania, 'Dereva aliyeuawa, shuhuda atoboa siri.' Accessed on 19th February 2016 from: http://presstz.net/details/global-publisher-46180.html

considered. The placards in the twin pictures below marked as Picture 2.6 present some of drivers' perspectives of their labour rights.

Picture 2.6: Cross-section of drivers with placards carrying various messages relating to their strike in May 2015 (Dar es Salaam and elsewhere).

The placard appearing in the left hand side picture has a message which reads *'tunataka heshima kwa madereva'* ('we need respect to drivers'). The placard in the right hand side picture reads, *'J.K, madereva unatuachaje? Heshima, posho, mishahara, na ajira?* ('J.K, how do you leave us drivers? Respect, allowances, salaries, and employment?). The abbreviation *'J.K'* stands for His Excellence, Dr. Jakaya Kikwete, who was the president of Tanzania until October 2015 when the election was carried out and Dr. John Magufuli took over the presidency position.

There were also other issues which agitated the drivers for a long time including the malpractices by some of the traffic police officers, who were allegedly to have been demanding bribes from the drivers; and the government order that all public transport drivers should attend upgrading or refresher course at the National Institute of Transport (NIT).[49]

The strike or strikes brought into play the prime minister, transport minister, the minister for labour, Kinondoni district commissioner, main opposition party (Chadema)'s chairperson and other leaders including the Surface and Marine Regulatory Authority (SUMATRA). Picture 2.7 below shows Ms. Gaudencia Kabaka, Minister for Labour; and, Mr. Paul Makonda, Kinondoni district commissioner clarifying issues to the crowd of drivers and other people at Ubungo Bus Terminal, Dar es Salaam, in May 2015 following drivers' countrywide strike.

[49] Early this year (2015), the government issued a notice which directed all drivers holding driving licences classes E, C3, C2, C1 and C to attend a refresher course. The drivers objected this order on the ground that, it was unnessesary as they had valid licences already. They also argued that, their work is not secured by written contracts and that, being 'casual' labourers, they could not sustain living for the time they will be attending such courses. The government suspended its order in May 2015 as part of fulfilling the drivers' demands.

Picture 2.7: Left picture, Ms. Gaudencia Kabaka, Minister for Labour; and, right picture, Mr. Paul Makonda, Kinondoni District Commissioner addressing the drivers about the strike at Ubungo Bus Terminal, Dar es Salaam, May 2015.

The leadership of the Umoja wa Madereva Tanzania (UWAMATA) – drivers association of Tanzania, was in different occasions requesting the government to prevail over the bus owners by commanding them (the owners) to offer employment contracts which also tally with the governing laws. On 4th of May, 2015 the then Minister for Transport, Mr. Samwel Sitta, formed a committee to follow-up implementation of the issues which the drivers demanded. The committee included representatives of the Prime Minister Office, Ministry of Transport, Ministry of Home Affairs, police (traffic section), SUMATRA, Attorney General (AG), the Tanzania Bus Owners Association (TABOA), the Tanzania Truck Owners Association (TATOA), and the drivers' associations which were represented by the Tanzania Truck Drivers Association (TTDA) until they register another association that will include all drivers in the country. There was a plan to register the Tanzania Drivers Workers Union (TDWU) by July 2015. This study failed to receive a formal confirmation if the TDWU was registered and how it operates at the moment.

LHRC is of the view that, the truck, bus and other drivers working in public transport sector in Tanzania need to centralize strategies for demanding rights by entrusting only one association to handle and pursue them to the respective authorities just like other workers have been doing through their respective trade unions. It was really not certain as to why the drivers needed TDWU while there is already in place the Communication and Transport Workers' Union of Tanzania (COTWU). Moreover, it is not certain if other drivers unions such as TTDA; the Tanzania Road Transport Workers Union (TAROTWU); and so many others formally or informally established by drivers would be dissolved following the establishment of TDWU (because there is a possibility of duplicating or frustrating efforts). LHRC's take on this is that, COTWU can be empowered and activated to handle drivers' grievances instead of reinventing the wheel and establishing non-statutory bodies like the said government committee, which do not have legal mandate to pursue drivers' issues into proper legal channels.

Apparently, due to the concern raised above (of not using proper trade unions or professional bodies to pursue their rights), almost same issues persisted throughout the year despite the May 2015's efforts to suppress the strikes. The only change noticed by this study is that, the drivers' actions have been mitigated due to un-institutionalization of the said committee. It was almost simple to predict that, the committee would not work systematically and productively because; (i) it did not have statutory mandate under labour legal framework to handle such kinds of disputes. It was a mere administrative or rather, political initiative; and, (ii) it comprised of high-ranked public officials who are normally pre-occupied with myriad of things due to nature of their respective positions.

As a result, a number of mistreatments occurred. This study documented some of such incidents. For instance, the anonymous truck drivers of the Dar es Salaam based in L&I Company, interviewed in December 2015, told the study team that, they did not have specified employment contract, henceforth, uncertain salaries. The employer is alleged to have been remunerating them per trip and such a pay could take more than a month due to the distance of the destination to which the cargo is ferried to. To tighten a grip of retaining the drivers on hook, the employer normally offer some allowances, which, according to these respondents, are motivating factors for them to retain the job.[50] A driver of the Xarox Company Limited of Geita region said that, his job tenure is relatively 'spongy' as it is the tendency of this company to expel an employee at any time even for trivial mistakes.[51]

There are drivers who have employment contracts. However, enforcement of such contracts was noticed to be an issue of concern during this study. Moreover, all drivers' written contracts which were seen during the study (of four different companies) did not have anything to do with health or life insurance despite the fact that their work is exposed to many risks - disabilities and deaths being the main ones. For instance, Mr. Said, the former bus driver of Kilimanjaro region said that, he got a road accident in July 2015 in the course of employment, which resulted into permanent disability of one of his hand (four figures) as Picture 2.7 below shows.

Picture 2.8: The bus driver, Mr. Rashid had his four figures mutilated as a result of a road accident.

Mr.Saidi had an agreement with his employer (refused to mention him) since April 2015, whereby, he was to be paid Tshs 200,000 per month. Such salary was not paid even for one month between April and July, 2015 when he got an accident. Furthermore, the employer has not

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50 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report I). Page 8.

51 Corporate Human Rights Compliance Assessment, Geita Field Report of 2015 (LHRC's Report I). Page 13.

assisted him of the hospital bills relating to the injury sustained let alone calling him to know how he was fairing after the accident. It was further noticed from study team's discussion with the driver that, TADWU, Kilimanjaro branch was trying to address this issue, especially by engaging with the National Health Insurance Fund (NHIF). However, the mandate of TADWU seemed to be centralized at the headquarters. Therefore, the regional branch of this trade union could do little on this matter.[52]

LHRC is concerned that, some of the truck and bus owners are using third-party insurance cover, which normally covers the vehicle and passengers only. There is an urgent need for TADWU or other drivers' union to push for mandatory comprehensive insurance, which will cover the drivers as well during compensation. Moreover, the trade union should push for full implementation and compliance of the Workers' Compensation Fund, which is discussed in details below. Thirdly, there is a need to strengthen TADWU (or other drivers' association) all over the country. Such unions or associations should have their branch offices located right at the bus stands for easier access once a driver is in need of service. Fourth, it is important that SUMATRA and other regulatory authorizes on transport sector put a mandatory requirement of seeing drivers' contract deeds and driving licenses before allowing the application for licenses or the renewal of the same. This study is informed that, this is what was supposed to be done by SUMATRA. Basing on the study team's discussion with the SUMATRA's Regional Manager of one of the northern regions, it seemed that, some of the needed information from the truck and bus owners to SUMATRA is forged. It is therefore a high time that SUMATRA tightens its law enforcement to ensure that all drivers' contracts deeds (and driving licenses) are submitted to it with pictures and bio-data of the drivers including mobile phone number for verification. Note that, SUMATRA's hands on this matter is imperative due to the fact that, TADWU and other trade unions as discussed further are relatively weak to stand for and promote their members' interests.

The third issue of concern which the drivers face is working beyond statutory time limit – due to the nature of their work, especially the trucks and buses which travel long distances. The driver of Sumry Bus Company Limited, Mbeya region, told the study team that, their Mbeya to Dar es Salaam route normally demands more than ten (10) hours. According to that driver, the situation is unavoidable due to the nature of the work (trekking long distances).[53] However, according to the bus conducter of Kilimanjaro Bus (Arusha to Dar es Salaam route), the important thing was to have a written agreement which spells out how the overtime or days off could be sorted out in legal perspective, rather than mere *'makubaliano ya kishikaji'('gentleman accord'*) as it was widely heard to be a case during the study.

The forth issue, which is also extensively covered in coming parts of this chapter is about social security. Due to the fact that most of the drivers do not have formal employment contracts, they are automatically curtailed of numerous rights they ought to have been given or demanded if they had (most preferably, written) contracts. One of theMbeya Express bus drivers in Mbeya region, was of the view that, his boss did not include him in the social security fund because his salary was too little. He did not have formal agreement anyway.[54] That means, once a driver retires from service, he starts a tough 'street life.'

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52 Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 11.

53 Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 11.

54 Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 13.

Fifthly, there is an issue of offering employment contracts to drivers which fall short of labour standards. A group of workers of the Majinjah Bus Limited and the Saibaba Bus Limited (both inMbeya) interviewed as group said that, the contract form template of their companies were bias scribed to favour the employers' side. Therefore, *'it is better to remain without a written contract than what I have, which does not help me ...'*, said one of the interviewees.[55] Some of these drivers said that, the contract template missed important legal rights such as right to social security.

As it is argued further below, it is LHRC conviction that, owing to the level of education of most of the workers in the corporate sector, including the drivers, it is important that trade unions stand between employers and workers to create a fair deal from the bargaining level. This is where the concept of collective bargain lug in it a huge weight as far as labour rights, standards and principles are concerned. Unfortunately, very few workers across the country were aware of the trade unions safeguarding their interests. A driver of NBS Classic Bus Service Limited, Tabora region, said that, he was hearing for the very first time the term *'makubariano ya pamoja'* (collective bargaining) which the research team was investigating on.[56]

(i) Sign Written Contract but Not Given Copies of the Deeds

A tendency of hiding signed contacts was also noticed to be an issue which happens on the ground. Some of the workers of the Mtwara based Yurap Company Limited claimed that, copies of their individual contracts were taken by the management. The manager of the company said that it was true, because such contracts were needed by the board of directors for 'verification.' Back to workers again, the study team was told that, the issue was not verification; rather, the contents of the contract, especially the salary level indicated in the contract, which was lower than minimum wage order.[57] Therefore, basing on there claims, it seemed that the employer was hiding his tricks from being exposed to the authorities. Moreover, the Ndanda Springs (Water) Company's management did not manage to share with the study team its employment contract sample on the reason that, 'the director's office was closed' and of course, none of the employees interviewed had a copy of such contract deeds.

Some of the workers of a Morogoro based Fabrics and Producton factory claimed that, they were also not being offered with the copies of the contract deeds they had signed until the end of their term with the company.[58] It is the same style alleged by a Fish Processors Company's workers of Musoma, who said, *'... kila inapofika miezi sita tunaomba tena kazi huku tukiwa tunaendelea na kazi lakini hatuachiwi nakala ya mkataba'('...after every six month we apply again for jobs while on service, but we are not given copies of contracts'*).[59] It looks that extra efforts are needed to compel these companies to follow the ambits of the law as the same issue of not granting workers with copies of employment contract was reported by similar study report in 2014.[60] As it was argued in that (2014) report, such tendencies can lead to loss of their (laborers') rights in terms of salary, unfair termination of job at any time and avoiding to contribute to social security

55 Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 7.
56 Corporate Human Rights Compliance Assessment, Tabora Field Report of 2015 (LHRC's Report II). Page 8.
57 Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report I). Page 11.
58 Corporate Human Rights Compliance Assessment, Morogoro Field Report of 2015 (LHRC's Report II). Page 9.
59 Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 10.
60 LHRC (2014) Human Rights and Business Report of 2014. LHRC: Dar es Salaam. Page 22.

funds because the workers could not have reference of the terms of contract against which they can base their claims.

2.3.3 Practices of Collective Bargain (of Employment Contacts)

The collective bargaining as one of the worker's rights is articulated quite extensively by numerous ILO conventions, the main one being the Right to Organize and Collective Bargaining Convention, 1949 (No. 98). But the same is also covered under some of the provisions of the Collective Bargaining Convention, 1981 (No. 154); the Freedom of Association and Protection of Right to Organize Convention, 1948 (No. 87); and, the Collective Agreement Recommendation, 1952 (No. 91). Article 1 of the 1949 convention cited above states that, *'the workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.'* The 1981 convention generally provides for the establishment of trade unions. Such requirements are translated into local context by the provisions of ELRA, 2004. Section 4 of ELRA, 2004 defines 'collective agreement' to mean a written agreement concluded by a registered trade union and an employer or registered employers' association on any labour matter.

According to Article 2 of the Collective Bargaining Convention, 1981 (No. 154), the purposes of collective bargaining are to, (i) determining working conditions and terms of employment; and/or, (ii) regulating relations between employers and workers; and/or, (iii) regulating relations between employers or their organizations and a workers' organization or workers' organizations. Section 68 of ELRA, 2004 imposes a duty to bargain in good faith.[61]

As per Table 2.1 below, only 52.7% of the companies interviewed in the sampled region said that, they engaged in some forms of collective bargaining about the working conditions of their workers with the trade unions:

Table 2.1: Practices of Collective Bargaining

Responses [N=55]	Percent
Yes.	52.7
No.	34.5
Total	100.0

Source: LHRC, Human Rights and Business Study (Field Data), 2015.
[Note, a few responses were invalid or missing system].

A fraction of more than 30% s Table 2.1 above shows it is an issue of concern. Secondly, the study found that, what the employers said (52.7%) was quite different from their workers observations, whereby only 11% of the workers were aware of the presence of collective agreement entered between their employer and trade unions. However, it could also be a reality that, since more than 75% of the workers in the corporate sector were engaged as short term ('casual') or 'informal' laborers, knowing such inside details of their labour relations was

[61] (1) An employer or employers' Association shall bargain in good faith with a recognised trade union (2) a recognised trade union shall bargain in good faith with the employer or employers' association that has recognised it or is required to recognise it under the provisions of section 67.

impossible. But again, it seems the transparency of the working relationship was an issue of concern. Absence of branch trade unions at workplaces is also an issue to consider when someone wants to discuss presence or absence or knowledge of collective agreements.

Secondly, the critical issue which this study established about collective bargaining, as a labour right, was lack of (clear) understanding among workers of its essence. This is why it was not practiced in many places. As the laws cited above stated, normally such agreements are supposed to be concluded between the workers' trade unions and employers (or employers' unions). Therefore, in almost all places where trade unions were weak, the practices of collective bargain also become unfeasible. That was witnessed in Dodoma; Mwanza (Vicfish, TFP, Tan Perch, etc as some of case studies); Geita (K.M Hotel as a case study); Ruvuma (Dan and Associates Enterprises (DAE) Limited as one of the case studies); Tabora (Kitumbo Security Company as a case study); and so many other companies in all regions that were sampled for this study.

It was established that, in each region sampled for this study, less than 30% (as an overall average) of total companies operating in a particular region had signed a collective agreement. For instance, Mr. Allan Mbwambo, the Zonal COTWU General Secretary for northern zone regions (Tanga, Kilimanjaro, Arusha, and Manyara) told the study team that, only 6 (or 21.4%) out of 28 recognized members of his union (COTWU) had collective bargaining agreements with COTWU as of December 2015. The 6 companies with such agreements were the Asana Brothers Clearing and Forwarding; the S. S Mohamed Transport; the Swiss Port; the Kilimanjaro Airport Development Company (KADCO); the Tanzania Postal Corporation (TPC); and the Tanzania Telecommunication Company Limited (TTCL).

According to the same source, Mr. Mbwambo, ony 10 (or 23.8%) out of 42 companies which are members of TUICO had signed the collective agreement with TUICO as of December 2015. The said 10 companies were the Bonite Bottlers Limited; the Kibo Match Limited; the Moshi Leather Limited; the Charan Sing Company; the Tan Mbuzi Limited; the China Peper Limited; the Five Star Hardware Company; the Bella View Company; the Shah Industries Limited; and the Moshi Urban Water and Sewage Authority (MUWASA), which is government authority.

Therefore, the generalized national trend could rough be that, at least 70% of the corporate companies in Tanzania engage with the workers out of collective bargaining.

As for the contents of the collective agreements basing on the sample of collective agreements availed to the study team, it is established that, such agreements were well drafted with detailed terms. For instance, the collective agreement of the Shah Industries Limited, which was signed on the 1st January, 2012, incorporates also issues associated with HIV and AIDS at workplace, especially formulation of the policy on HIV and AIDS at this company's workplace.[62] In similar way (detailed terms of collective agreement), the Tanga based Amboni Spinning Mills Company Limited (acting through an association of sisal sector employers (SAT), signed a deed in 2014 with the Tanzania Plantation and Agriculture Workers Union (TPAWU). The deed was termed in Kiswahili as the *'Mkataba wa Hiari wa Hali Bora kati ya Wafanyakazi wa Mashambani na Kilimo (TPAWU) na Chama cha Waajiri wa Sekta ya Mkonge (SAT) juu ya Mishahara na Marupurupu ya Wafanyakazi Sekta ya Mkonge 2014 – 2016.'* Clause 4.4 of this agreement obliged the employer to

[62] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 18.

continue providing shelters for its plantations' workers. On the other hand, the workers were obliged to maintain the houses in good order.[63]

LHRC is of the view that, a mere signing of the collective bargaining does not necessarily guarantees a worker or an employer better working conditions in the course of employment relationship. This study has established that, there was a huge gap between what has been stipulated in the collective agreement deeds (which were availed to the study teams) and the actual situation on the ground. For instance, the TUICO-Shaha Industries Limited's collective agreement of January 2012 incorporated a clause which required the Shaha Industries Limited to formulate a HIV and AIDs policy at the workplace. Four (4) years down the line, this obligation has remained to be an empty promise. Above quoted Clause 4.4 of the SAT-TPAWU agreement of 2014 about free houses for the Amboni Spinning Mill's workers has not been fully implemented. Similar finding on this (non-fulfilment of the terms of collective agreements by employers) was reported by 2014 edition of this report to signify the fact that, it is time for labour officers at regional levels to act more proactively in the monitoring of compliance of the labour standards. Secondly, it is also high time that trade unions take actions against employers or their associations for the failures of fulfilling their obligations. Thirdly, such agreements should be submitted to TUICO's district or regional or zonal or national offices and labour offices for perusal and monitoring of the status of implementation.

There are several adverse effects on part of workers to engage in employment contracts without collective agreements. Previous parts of this chapter highlighted a number of exploitative scenarios in which some of the workers in corporate sector are experiencing, including signing employment agreements which really fall short of legal standards. The porters (example, Picture 2.9 below) operating in Arusha and Kilimanjaro regions, who escort and carry tourists' luggage up and down the Mount Kilimanjaro can be cited as good example of such exploitations.

Picture 2.9: The Kilimanjaro Mountain Porter with heavy tourist's luggages
(source indicated ineth).

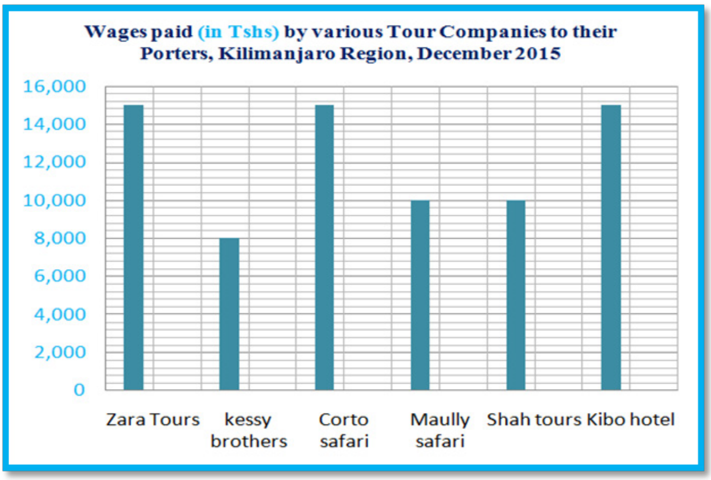
As picture 2.9 shows, such workers normally carry on their shoulders heavy luggage without good pay and any health or life insurance. Most of them work without formal contracts and

63 Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report II). Page 19.

almost all of them interviewed during the study in December 2015 said that they knew nothing about trade unions or the concept of collective bargaining. *'Sisi kila mtu anafanya kivyake, kama ni kwa kampuni moja au zaidi, ni yeye tu ... wengine tuna mawasiliano ya moja kwa moja na watalii' ('everyone has his ways of working, whether for one or more companies, it is just the matter of deciding ... others have direct contact with the tourists')*, said the porter in Moshi, Kilimanjaro region.

The study could not find a specific trade union which works for the porters interests. Probably, this is why the minimum wage or allowance paid to them (porters) individually differed a lot from one Tour Company to the other despite the fact that, are of the same level of education and probably experience, carry same size of luggage through the same route, distance and destination (Mount Kilimanjaro). The porter companies pay an average of Tshs 8,000 as daily wage amount. As Figure 2.3 below shows, the daily amount in Tshs which the porters are paid by the tour companies. Such amounts differeda lot between the tour companies (Zara Tours; Kessy Brothers; Corto Safari; Maully Safari; Shah Tours; and Kibo Hotel, both of Moshi, Kilimanjaro region.

Figure 2.2: Wage Daily Rates Paid to the Porters by Some of the Kilimanjaro based Tour Companies



Source: LHRC, Human Rights and Business Study (Field Data), 2015.

From Figure 2.3 above, one can learn that, each tour company could discretionary decide on what amount to offer to the portner at a particular time. It is unfortunate that, the porters do not have known (of active) trade unions, which would have collectively set a minimum daily or monthly pay for the work done. Most of the porters are primary school leavers to have knowledge and courage of defending for their rights.[64] It is also unfortunate that, their nature or type of work is not expressly articulated in the government's minimum wage order, which is reproduced in the coming parts of this report. The study was informed by an anonymous person that, on 19th February, 2014, the Tanzania Association of Tour Operators (TATO) held a meeting with the then Kilimanjaro Regional Commissioner (RC), Mr. Leonidas Gama, on the possibility of strike which the porters announced if their payments were not improved to USD 15 per day.

[64] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 49.

The RC formed the 'task force' of twenty people in order to address this issue. However, the outcomes of the said task force were not known at the time of this study.

The study has noted a number of incidents which how the touring business especially on this portering aspect has been undergoing. The study team was informed that, normally a person called 'tour guide' touts for the youths on the streets and then, enlist them as prospective porter, just in case a tour company will happen to be in need of them. Then, such youths, who do not have specialized skills and sometimes experience to climb up tall mountains like Mount Kilimanjaro, are picked up according to the needs. The study was informed that, due to economic hardship and therefore, desperation to secure a job, some of the unskilled porters normally bribe the 'job-recruiter' any money, such as Tshs 20,000 before being offered a job or during the work (deducting from the daily fee paid).

As if that is not enough, according to (the allegation of) anonymous porter who works for the Zara Tour Company in Kilimanjaro region, the weight of the luggage is devastating. The porter alleged that, the usual trick of some of the tour companies is to hide some of the luggage during weighing, and when the weighing is done, the hidden luggage are added by distributing them among the porters. The porters who complain about overloading are fired.

Picture 2.10: Porter weighing his load before the mountain trip to Mount Kilimanjaro.

The study was informed that, the usual weight for a porter recommended to carry is supposed to be not more than 20 Kilograms (Kg). But, the recommended weight[65] is often ignored. There are porters who lug up the mountain more than 30 Kgs. Some of the porters willingly lug up more than recommended weight in order to double the pay by reducing the number of crew porters. Some of the things which are normally carried are water, rucksacks, picknic tables, cooker, and tents. In most cases, it is the porters who cook and serve the meal for the tourists.

The forth issue of concern about porters' working environment, which is generally distressing and therefore quite miserable. Most of the porters claimed that, each one of them has to find his own way of protecting himself against the mountain's harsh weather condition. Therefore, there are no guaranteed protective gears (especially proper clothing and footwear) for the mountain trek. The worse scenario is also about what they eat before, during and after the trips up and

[65] The recommended weight is stated in the report written by: Mbwambo, C. J *et al* (May 2015) Data Summary Report 2009 – 2014 Porter Working Conditions Mount Kilimanjaro Kilimanjaro Porters Assistance Project. Kilimanjaro Porters Assistant Project: Kilimanjaro. Page 5. Accessed it on 29th February, 2016 from: http://www.kiliporters.org/KPAP%20Data%20Summary%20Report%202014.pdf

down the mountain. The usual meals, as this study was informed, are rice, vegetables and *dagaa* (small sized fishes). The meal is taken once per day – during night hours. The Mount Kilimanjaro Guide[66] states that, every year several Kilimanjaro porters die, but their death are not reported (exposed). The cause of their deaths is named to be an exposure (freeze to death), a result of the insufficient clothing, shelter and food supplied to them during the climb.

Some monetary or food tips generously offered by some of the tourists are normally *'pigwa panga'* (in porter's jargon phrase, to mean 'grabbed') by the 'chief porter' or 'guider' instead of sharing equally with the rest of the porters in the same crew.

The fifth issue of concern is compensation once a porter is injured in the course of trekking up the mountain with his tours. An experience showed that, it has been almost impossible for an injured porter to claim and obtain compensation from the tour company. In most cases, the porters channel their claims for compensation to the Kilimanjaro Porters Association (KPA), which is purported to be their 'trade union.' It is 'their' association because they pay subscription fee of Tshs 10,000 as a prerequisite condition for the portner to get an identity card from KPA, which is then used as 'compliance card' for him to work for a tour company as a porter. In theory, as this study has noted, once a porter is injured in the course of performing his duty, he can lodge a claim for compensation to KPA; and, if KPA refuses to facilitate payments for compensation, a portner can refer the matter to the Kilimanjaro National Park (KINAPA). The said national park authority can enforce the payment by withholding tour guide's license until when the claimant receive all redress sought following his injury. It is unfortunate though that, in most cases, such claims for compensation are dropped along the way because most of the porters as said above, are informally engaged and therefore, lack sufficient legal backing of their claims. Therefore, the treatments of the injured porter remain on his own or if he is luck, his porter fellows could help him out of affections. The role of TATO on this matter was not well established during this study.

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[66] The Kilimanjaro Porters, accessed it on 3rd March, 2016 from: http://www.mountkilimanjaroguide.com/kilimanjaro-porters.html

LHRC suggests that, portering services to be formalized through legal contracts with the tour companies. Secondly, the government should prohibit kind of engagement of porters with tour companies which goes through agents. This study has noted with concern that, agency system of identifying and recruiting porters for the tour operators is exploitative and unnecessary. Thirdly, porters should be facilitated by TUCTA, KINAPA, labour officers and non-governmental organizations (NGOs) to establish proper and effective trade union for porters, and compel all tour companies to sign collective agreements with the portners' trade union. Fourthly, the generous trekkers (tourists) should change the modality of offering their tips by giving the tips directly to the porter him or herself. Lastly, prospective trekkers (tourists) should be guided to sign up service agreements directly with the tour companies rather than agents; and that, they should always demand to know if the porter they are trekking with is paid his money before trekking.

2.3.4 Practices of Casual Labour: Featuring a Case of Journalists

It is obvious that the Tanzanian corporate sector is run by the casual labour in terms of supplying a real labour force to drive its productivity targets. The corporate sector relies much on the casual labour because it is not only easy to secure and engage it for a work, but, it is also relatively cheap in terms of paying low remunerations and coercing it to work below minimum labour standard, due to their desperation of earning living. Basing on the generalized perception, for an illiterate or semi-illiterate person, his or her physical muscles are only 'credentials' for earning a living. The recently released results of the Integrated Labour Survey of 2014, which was conducted by the National Bureau of Statistics (NBS) show, out of 6,251,124 persons sampled for this survey, a total of 4,344,580 (being 70.0%) depended on informal sector as their main activity for earning living. Table 2.2 below explains more:

Table 2.2: Persons Employed in Informal Sector Main or Secondary Activity by Age Group and Sex, 2014

Age Group	Main Activity			Secondary Activity		
	Male	Female	Total	Male	Female	Total
15 - 24	387,165	553,227	940,392	156,251	143,191	299,442
25 - 34	720,657	735,876	1,456,534	282,311	250,945	533,255
35 - 64	965,894	877,404	1,843,298	499,254	499,659	998,913
65 +	52,633	51,723	104,356	54,167	26,767	80,934
Total	**2,126,349**	**2,218,230**	**4,344,580**	**991,983**	**920,562**	**1,912,544**

Source: NBS, Integrated Labour Survey of 2014 (Table 6.4).

At least 2,218,230 (being 51.1%) out of the stated figure (4,344,580 sampled respondents) were females. It is further found by the same 2014 survey[67] that, a total number of 3,415,195 (being 78.6%) of the sampled persons who were engaging themselves as informal sector operators had maximum of primary school level of education or never attended any formal education.

67 NBS, Integrated Labour Survey of 2014 (Table 6.5). It is excel document, which is not paginated.

This study has documented hundreds and thousands of stories about engagement in corporate sector as casual labour, plus associated adverse effects, which have been extensively narrated above. Most of the informal sector operators tend to quit their jobs and opt for casual laboring in the corporate companies and elsewhere because it is really a challenge to work as an informal sector operator in Tanzania. The 2015 study by Kipobota[68] revealed that, such persons lack the protections and rights afforded by the law. This is due to the fact that, standards set by the laws are unaffordable and therefore, deny a large part of the informal actor the chance to participate in economic activities on equal terms as the 'formal' ones like corporate companies. Therefore, casual labour (because they do not have academic qualifications and skills) become their best available option.

LHRC's take on this is that, working as a casual labourer is in itself not a legal or human rights concern as there are a number of corporate companies noticed in from 2013's report which seemed to have complying with labour standards even for casual labourers. Therefore, the challenge or adverse effects of casual labour is mostly on how some of the companies practice it. For instance, some of the mining companies all over the country pay casual labour only when they secure gems and not according to the labour output our unit exhausted during a particular day. Therefore, if there are no gems found, then that day there is no payment at all, even though the labourer (commonly known as '*apollo'* in Mirerani Tanzanite mines, Manyara region) has entered into the mines and worked in the difficult condition.[69]

Some of the workers of the Sunflag Company Limited, which located in Njiro area, Arusha region, told the study that, they have been working under 'gentleman agreement' for more than seven years now. The risk part of this modality of working, as they said, was being fired at any time without payments of legal entitlements.[70] In a similar tone, a worker of the Nyanza Bakery Company, Mara region, said that he has been in oral contracts with this employer for past three years of which he does any work which the boss will assign him to do on a particular day. It is the same trend as informed by some of the workers of J.J Hotel; N.K Hotel (both of Tarime district, Mara region), Mutex Company, Mara region;[71] J.P Safari Hotel, Mbeya region whereby, the respondent said that, he has been in hospitability sector for more than 4 years with different hotels, but, he has never seen a hotel (of the level he has worked with) offering contracts to their workers.[72] The TPAWU official in Mbeya region told the study that, most of plantations such as the Utengule Estate Limited in the region tend to refuse offering formal contracts to their workers on the excuse that, type of investment they are engaged with is seasonal in nature.[73]

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[68] Kipobota, Clarence (2015) Challenges and Opportunities of Integrating Business Extra-Legal Practices into Policy Framework: Case of Food Vendors in Ilala Municipality, Dar es Salaam: Ardhi University's Msc. PPA Dissertation. Pages 1-4.

[69] Corporate Human Rights Compliance Assessment, Arusha Field Report of 2015 (LHRC's Report II). Page 2.

[70] Corporate Human Rights Compliance Assessment, Arusha Field Report of 2015 (LHRC's Report II). Page 2.

[71] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 10.

[72] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 7.

[73] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 7.

Other victims of this trend (of preferring casual working) are the media practitioners or workers (journalists and editors). It is established that despite the fact that media is regarded as the ‘forth pillar’ of governance due to its importance in socio-economic and political developments and that, even though the media has been mouthpiece of unsurfacing and speaking out about injustice, they (journalists) are ones of the most mistreated workers as far as labour rights is concerned. The study managed to interview some of the workers of the community-based and national radio stations also newspapers in Morogoro, Dar es Salaam and Arusha regions. Out of around 15 journalists and one editor (newspaper and TV reporters) who were interviewed in different occasions, only 2 (13.3%) said that, they had employment contracts. The rest worked with their current or multiple media houses on part-time or on what they termed as ‘freelance’ fashions.

Picture 2.11: Some of Journalists in Actions

(Internet source)

Probably, it is only state owned broadcast corporation (TBC)’s and its newspapers’ workers who had permanent employment contracts – because they are public service employees. Some of the freelance journalists told the study that, they are normally paid per published stories they have submitted to the media house. The amount paid as a wage ranges between Tshs 10,000 and Tshs 50,000 per published story. The stories which make headlines earn more ‘wage.’ A lady journalist of Tabata Dar es Salaam told the study in December 2015 that:

> [s]ometimes if not always, you will have to call the editor for your story to secure a space in the next edition of the newspaper … we have experience whereby male editors seduce us (freelancers) for certain favours about the stories we have sent to them. It happens, sometimes, that a certain institution or company has paid you some tip for their issue to be published … some of the editors know such institutions that normally push their stories to be out. Therefore, once they see the name of the institutions, they will demand a share of the tip received. Otherwise your story will not be prioritized and you will lose your links with credible sources of stories.

The editor interviewed said that, each media house has its internal policy which direct nature of the stories to be prioritized, published or rejected. He said that, for instance, the ruling party papers could not publish stories on opposition; and that, opposition-owned newspapers, cannot praise the government. However, he agreed that 'envelope journalism' (inducements) exists in Tanzania – from the source to the field journalist; and from journalist to the editor; or from source to the editor directly.

It is obvious that specific and detailed analysis is needed on this matter (journalists' laour rights). The Media Council of Tanzania (MCT) can discuss with the association of media owners of Tanzania (MOAT) on the improvement of the labour relationships with their workers. This should be done after thorough assessment of the situation of the media workers (journalists and editors) basing on this report's general findings. Secondly, the government should set minimum wage rate for freelance and other media workers in order to address the current situation as it is explained above. Thirdly, LHRC reiterates it previous recommendations that, there is a need for media workers to form their own trade union or unions. The current press-clubs cannot statutorily pursue journalists' labour rights in the manner as what the proper trade unions could have done. There are so many forums which could pursue this matter. Such forums include NGOs which advocate for labour rights; and union of press clubs. According to TUCTA's records (see a table below on the names of current trade unions), media workers attempted to register the Tanzania Union of Journalist (TUJ) in June 2001; and, the Tanzania Media Workers Union (TMWU) in May 2006. But, for reasons which were not immediately obtained, such unions were unregistered through court order. Request for further clarifications on this issue remained unanswered till when this report was finalized.

The costs of working as casual or informal worker in formal settings are high. Basing on the experience of other sectors apart from mining and journalism, the study established that, casual working exposes worker to unlawful termination from job as it is a case for the Mazava Fabrics and Production E.A Limited of Morogoro, whereby, two workers were allegedly fired from work in recent months without following proper legal procedures.[74]Apart from unlawful termination, casual labours are normally subjected to limitless works in terms of working hours and nature or kind of work to do on a particular day. These could be workers who have been 'retained' for long time on fulltime basis by the companies, but they are regarded as 'part-time' personnel. For instance, a worker at Mbeya Textile Industry told the study that, he has been with this industry for quite sometimes but throughout his engagement with the employer, his work has not been with known descriptions and scope. A worker of Speed Security Company, Mtwara region, said that, the cost of being casual worker is to work without health insurance and therefore, risk one's health or life without a possibility of being compensated once an accident occurs.[75]

The study established that, the tendency of informal (casual) working persists in Tanzanian corporate sector not because the workers do not understand the importance of working under formal arrangements; rather, there are compelling circumstances mentioned earlier on, that subject workers into forced labour, unfriendly and unlawful working environments. One of the leaders of the TUICO's branch at a Paper mill in Kilimanjaro region, has worked with the company for six (6) years without any formal contract. She said that, despite the fact that she is very well aware of the legal requirements (as one of the leaders of the trade union branch), but she could not claim for her right to formal employment contract for the fear of being expelled from work. Same stories on informality of employment relations were heard from the Aviv Company, Ruvuma Region;[76] the Vasso Agro Venture and East West Estates of Kilimanjaro region;[77] the K.M Hotel, Geita region;[78] the Premium Tanzania Limited, Mbeya region;[79]Agro Processing Africa Limited (ETG Export Trading Group), Dodoma region;[80]the Kifufu-Ovacado Company, Kilimanjaro region;[81]and, the Neelkanth Chemicals Industries Limited, Tanga region, in which out of more than 400 workers none of them (0%) had an employment contract according to the allegations of some workers;[82] a worker of a Fish Processing Company in Mara region, said that, he once tried to ask for a contract and the response from the boss was that*, 'unataka kazi au unataka mkataba ...?' ('do you want a work or do you want a contract ...?').*[83] There are so many other examples documented from sampled regions. The ones presented here are intended to depict a wide picture on the general national trend.

The TUICO General Secretary for Kilimanjaro region, Mr. Renatus Chimola gave his views on informal employment in corporate sector (at least basing on Kilimanjaro region experience), that some of the employers opt for casual informal labour because it is cheap and the strategy to avoid legal responsibilities such as income taxes attached to employees' salaries (PAYE) and

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74 Corporate Human Rights Compliance Assessment, Morogoro Field Report of 2015 (LHRC's Report I). Page 12.
75 Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report I). Page 15.
76 Corporate Human Rights Compliance Assessment, Ruvuma Field Report of 2015 (LHRC's Report II). Page 12.
77 Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report II). Page 7.
78 Corporate Human Rights Compliance Assessment, Geita Field Report of 2015 (LHRC's Report I). Page 13.
79 Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report I). Page 13.
80 Corporate Human Rights Compliance Assessment, Dodoma Field Report of 2015 (LHRC's Report I). Page 9.
81 Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 8.
82 Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report I). Page 8.
83 Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report II). Page 11.

other statutory deductions especially to the social security funds[84] and nowadays, workers compensation fund (WCF). Mr. Chimala suggested that, regulatory authorities including labour officers or inspectors should devise a different strategy of conducting their monitoring visits to the workplaces. He suggested that, it will be more useful if the monitoring officers talk to the workers as well instead of management alone.

2.3.5 Extra-Legal Employment Contracts: Case of *Daladala, Taxi, Bajaji and Bodaboda* Commuters

The commuter transport sub-sector is also an issue which needs legal consideration as far as the enforcement of labour standards is concerned. The *Daladala* (jargon for city commuter buses); *Bajaji* (the jargon for tricycle commuters); and, *Bodaboda* (the jargon for bicycle commuters) have employed thousands of males, especially the youths. According to the 2014 NBS survey on labour force,[85] there are 521,698 workers in Tanzania employed in transport sector, out of whom 504,075 (being 96.6%) are males, and the remaining 17,625 (being 3.4%) are females. The figure might be relatively higher than that by December 2015 due to an increase of youths who are self-employed in the Bodaboda business. This is viewed to be a case due to an increase of access to micro-finance services, which facilitate many youths to own motorcycles for business.

The Environmental Statistics 2014, which was published late 2015 shows that, there were at least 39 million motorcycles registered as of 2014. Despite the fact that not all these motorcycles are registered as commuters, it might be realistic to argue that, at least 50% of them are commuters. If this will be a case then, the investment in this micro-economic sector is fast growing even if it is not at the level of corporate sector. Table 2.3 below shows a number of other commuter transport registered between 2007 and 2014.

Table 2.3: Number of Imported Vehicles by Type, Tanzania 2007 - 2014

HS Code	Type of Vehicle	2007	2008	2009	2010	2011	2012	2013	2014
8701	Tractors	4,147	4,266	7,049	10,935	9,787	3,503	18,980	21,059
8702	Buses	3,616	9,166	11,724	5,776	4,522	3,666	4,421	5,585
8703	Passenger cars	34,608	39,600	88,761	43,597	42,316	54,454	68,200	83,764
8704	Lorries, trucks, etc.	19,851	15,197	18,390	13,999	16,067	17,475	28,270	26,315
8705	Special purpose lorries	306	373	525	498	398	327	239	1,098
8711	Motor cycles	51,471	87,774	240,197	421,181	428,584	247,626	210,903	39,335,444

Source: Ministry of Finace, Customs Department (Copied from: URT (2015), Environmental Statistics 2014. NBS, September 2015: Dar es Salaam. Page 80).

Despite the fact that *Bodaboda* and *Bajaji* are not widely operating as corporate business ventures, still, there are various labour issues which need (and will increasingly needing) an

84 Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report II). Page 7.

85 NBS, Integreted Labour Survey of 2014. See Table 5.2 on the Employed Popuation Aged 15+ Years and Above by Industry and Sex, 2014.

attention as said earlier on.[86] For instance, a good number of owners of those two types of commuters have registered their business names and therefore, they have become micro-corporate persons. Secondly, it is established that, some of those commuters are owned by the corporate companies or their profit is revolved to the corporate companies' businesses. The *Daladala* owners such as UDA Limited (of Dar es Salaam) and others which are owned by saving and credit cooperatives (SACCOS) are simply corporate companies.

The study has established that, commuter transportation economic sub-sector operates in its 'own world.' The drivers and conductors of the *Daladala* buses are supposed to pay 'themselves' from the work done in each day. Mr. Mudi, a *Daladala* driver who operates between Simu2000 Daladala Terminal and Kariakoo Market, Dar es Salaam, said that (translated from Kiswahili):

> [t]he agreement between me and *tajiri* (*Daladala* owner) is this ignition key of the bus and may be my uncle who happen to be the neighbor of the *tajiri*. All what the *tajiri* wants is his daily earnings, which is Tshs 100,000 for this car, which is old and therefore, needs frequent mechanical attention. It doesn't matter whether you obtained the money or not ... it is me and my conductor who fuels the bus every evening and then, put aside *tajiri's* money. What remains after fueling the vehicle in the evening is what we share with my conductor ... we earn, may be Tshs 5,000 or 15,000 or more, depending on the day and lenience of the traffic officers; vehicle's technical problems; and other reasons...

The *Daladala* drivers interviewed during the study said that, because of the daily ceiling remittance of the revenues to the bus owners, they could not take day off unless they are very sick or having critical family problems. They work up for work between 4 and 5 AM and retire for the day at around 9 or 10 PM. Because they are 'self employed', the bus owners are normally not responsible for the health or injuries of the drivers they have 'employed.' No any of the known labour standards is adhered to in favour of the drivers or conductors of the *Daladala*. They work between 15 and 18 hours a day, which exceed by an average 70% above the statutory working hours' limit as it is explained elsewhere in this chapter. Search for hard-to-secure *tajiri's* daily revenue rate and poor working conditions which the commuter bus drivers are experienced, could be some of the attributing factors for their recklessness driving especially in Dar es Salaam city. It is the same case for taxi-drivers.

The *Bodaboda* and *Bajaji* operators too, face almost the same challenges. But, at least they can now work under an agreement that, the remit to the owner certain amount of money for twelve months and then, if they meet the target, the ownership of the motorcycles is transferred to them.

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[86] Note that, the discussions about transport and media sectors are new ones. They are brought as part of LHRC's tradition of widening human rights jurisprudence in Tanzania and beyond. It has managed to introduce a number of human rights concerns through its researches and publications as well as strategic litigations. For instance, through its authoritative Human Rights Reports, several issues such as road accident as human rights; health as human rights; development as human rights; and corruption as human rights concerns have been included in the discussions to analyse human right situation in Tanzania. Through it Human Rights and Business Reports, LHRC has been able to widen a number of standards set by the 2011's UN guiding principles on human rights and business. For instance, LHRC has innovatively incorporate gender-rights discussions as cross-cutting issue into corporate sector. The LHRC has also included, in this year, an analysis on natural gas after discussion mining, forestry and wildlife as special case studies in previous editions of this report.

The study established further that, most of the drivers of the said commuter buses, taxi and motorcycles are not members of any relevant of existing trade union. It is also noted that, they were pretty aware of the general traffic rules – but, not their labour rights. Therefore, LHRC suggests that, responsible government officials, civil society organizations (CSOs) including the federation of trade unions (TUCTA) should guide these workers to join or formulate proper trade unions. They have already in place *'Chama cha Madereva'* (drivers associations), seen in Geita, Dar es Salaam, Arusha, Shinyanga and elsewhere. However, such associations were basically for coordinating themselves at the lots where they park for passengers; and, some of them to help each other when a member is having some social (not legal) issues. Probably, such initiatives (formal and informal associations) can be used as foundations and scale them up into proper trade unions which could statutorily advocate for their rights.

2.3.6 Contracts through Agents: Sub-Contraction of Human Resource Management

The Tanzanian legal framework on labour rights does not expressly recognize contractual agreements and human resource management through agency. The only organizations which are allowed to bargain for workers and employers are trade unions and employers associations. The recruitment agents or companies are allowed to advertise shortlist and interview and recommend for employment consideration prospective workers.

Contract to such legal limitations, the study noted that, there are companies in Tanzania which have their workers' affairs (human resource especially of junior staff) coordinated by other companies. The Dangote Factory and SBC (Pepsi) companies of Mtwara and Mwanza regions respectively are among such companies which were alleged to have their human resource management sub-contracted to other companies. The other notorious companies on this trend are telephone companies. For instance, the study was informed by an anonymous worker that, he was employed in November 2015 by the company known as the Unique Consultancy Services Company Limited (UCSCL), which is based in Dar es Salaam (Isman area, Upanga, Dar es Salaam) to work for Dangote Factory company, Mtwara region. Everything about management of his labour is done by UCSCL but, he was working for the Dangote Factory Company.

The study was informed further that, there was also a Chinese company which was doing work similar to UCSCL in Mtwara. The correct spelling of that company's name was not obtained for further follow-ups. A worker, who was employed as a driver at a Factory in Mtwara region, said that, he was a worker of this company for quite some time without being given a written contract. However, upon termination of his 'employment' he was asked to sign a document which purported to be the termination letter. He refused to sign it on two grounds; (i) the proposed amount of money offered (for unknown reasons) was too little; and that, (ii) there were some Chinese phrases in that letter, which he could not understand the meaning. He alleged that, the Chinese supervisors who coordinate human resources at the Factory, are 'notorious' who are well known for terminating workers without legal causes.[87]

The adverse effects of this kind of (sub-contracted or outsourced) human resource management are easy to anticipate. The effects on part of the workers employed under this arrangement can be:-

[87] Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report I). Pages 13 and 14.

(i) To have a worker who is double treated by his employer (e.g UCSCL) and employer's client (e.g Dangote Factory Company). There is an obvious possibility that double instructions would confuse or implicate the worker into problems; and,

(ii) An exploitation of the worker, because the employer's client cannot bother welfare of the worker especially if the worker is paid enough salaries and other entitlements. It is also exploitative in the sense that, the salary paid by the employer is normally less than what the employer indicated in the bidding documents or 'business case' (in the word of study's respondent in Dar es Salaam) to his client to be paying workers for whom he manages. For instance, taking Dangote Factory Company as an example again, a worker interviewed during the study said that, his salary level was calculated basing on number of days he had worked per month despite the fact that he was employed as full time worker (sometimes works till Sundays).

Kinds of these incidents seemed to have agitated Ms. Jenister Mhagama, Minister for Labour, to invalidate a licence (type of licence was unknown) of the recruitment agency worked for SBC (Pepsi) Tanzania, Mwanza branch in January 2016[88] following her upcountry visits which started in December 2015. A ground for the cancellation of the licence was not revealed. However, it seemed that there were so many complain from the workers about this agent.

2.3.7 Forced Labour

Forced labour entails some elements of slavery and trafficking in persons because it is kind of work which subject a person to do something against his or her will. The Force Labour Convention, 1930 (No. 29) prohibits all forms of forced labor from any person under the menace of any penalty and for which they said person has not offered himself voluntarily. The Abolition of Forced Labour Convention, 1957 (No. 105) prohibits forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. Furthermore there are the Protocol of 2014 to the Forced Labour Convention, 1930 and Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) which are generally aimed at advancing the prevention, protection and compensation measures, as well as to intensify efforts to eliminate contemporary forms of slavery.

There are exceptions of certain types of work which, even if they are instructed against a person's will, would not amount to forced labour. Such works are the ones associated with the military service; normal civic obligations, as a consequence of a conviction in a court of law; in cases of emergency; and for minor communal services performed by the members of a community in the direct interest of the community.

The spirit of the ILO conventions on forced labour is well repricated under ELRA, 2004. Section 6(1) of ELRA, 2004 provides for the punishment against forced labout. It states that, *'any person, who procures or demands or imposes forced labour, commits an offence.'* The said provision clarifies the 'forced labour' to something which includes bonded labour or any work exacted from a person under the threat of a penalty and to which that person has not consented.

[88] Ngollo John, 'Mhagama awasha Moto Pepsi, Kiwanda cha Samaki.' Mwananchi, 12 January 2016. Can be accessed online through: http://www.mwananchi.co.tz/habari/Mhagama-awasha-moto-Pepsi--kiwanda-cha-samaki/-/1597578/3030468/-/62a5noz/-/index.html

There are exceptional to this generality about forced labour, which are the same as detailed in the ILO conventions referred above.

As it was argued in last year's report of this nature, it seems that a concept of 'forced labour' is relatively new among the workers as well as employers. The researchers had to use extra efforts to clarify its meaning during the study for the respondents to grasp the meaning and offer their responses. Therefore, the researchers had to rely much of the facts which contained some of the elements of forced labour. A field question to the corporate companies' managements on whether they had a policy or guideline at workplace which prohibits forced labour had the following trend of responses as Table 2.4 below shows:-

Table 2.4: Presence of a Workplace Policy or Guideline which prohibits Forced Labour

Responses [N=55]	Frequency	Percent
Yes	26	47.3
No	20	36.4
Not Sure	4	7.3
Total	55	100.0

Source: LHRC, Human Righs and Business Study (Field Data), 2015.
[Note, a few responses were invalid or missing system].

The responses as shown above could imply that, at least 50% of the corporate companies did not consider 'forced labour' as an important labour issue to address in their operational policies. None of the managers interviewed, included the stated 47.3% was able to show a specific document or a provision of the policy which addresses forced labour.

Some incidents heard from the field suggested that, forced labor (at least by looking at some of its elements) was a reality. For instance, at the Jiemel Industries Limited, Dar es Salaam, the study team was informed by some of the workers that they were involuntarily compelled to do almost every work at this factory including the ones which they (workers) did not have specialized knowledge. Therefore, to them, this was forced labour because they had to do what the bosses directed with lot nervousness. Moreover, some of the workers of the Aim Steel Limited and the Tembo Paving Blocks Company both of Dar es Salaam had the same view that, they were in sort of 'forced labour' as their employers or supervisors were needing them to work beyond minimum working hours. The respondent workers of both companies alleged that, they worked for about 24 hours with the same wages.[89]

A trade union leader at China Paper Company Limited, Kilimanjaro region, was of the view that, the fact that a worker works without proper employment agreement and that person (the worker) could not demand for his or her labour rights due to fear of being terminated, that worker is also in forced labour environment. It is the income poverty which would hold him from quitting job.[90]A worker of the Nyanza Bakery Company, Mara region, alleged that, the workers of this

89 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report II). Page 8.

90 Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Pages 11 and 12.

company were working under a lot of pressure and threats of being expelled from job if they do not comply with certain employer's decision[91] (even if such decision is against their will).

A casual worker of the Kapunga Rice Project, Mbarali plains in Mbeya region claimed that, the investor at their village land used current land scarcity to indirectly force the plantation (casual) laborers to cultivate by hand hoe a chunk of land and receive in return trivial wage. It is claimed by some of the laborers that, sometimes, a piece of land to cultivate is large in such a way that, the laborers have to work even for 12 hours a day in order to finish the cultivation within two day time limit.[92]

Picture 2.12: A worker in action at one of the farms in Kapunga Rice Project, Mbarali, Mbeya region, December 2015.

But, there are so many other companies which, by implication or expression, have clearly prohibited forced labour or elements of forced labour. For instance, the Mbinga Coffee Curing Company Limited; and the Dan and Associates Enterprises (DAE) Limited, both of Ruvuma region, said that, their workers are at liberty to go home after working or even unconditionally terminate their employment agreements at anytime if they follow legal procedures.[93]

2.4 EMPLOYMENT OF FOREIGNERS: ENFORCEMENT OF NEW LAW

As it is argued in chapter one of this report, the liberal market has opened up the door for labour immigration; movements of commodities and services; technology transfer; and other things. All these happen to Tanzania as well because it is part of global 'village.' Most of the foreign companies investing in Tanzania have come with their 'experts' and they have also continue recruiting more foreign 'experts' for their projects in Tanzania.

An increase of multinational companies in Tanzania has impacted into an increase of foreigners who work in the country. Some of the immigrants are illegals. For instance, the study established that, the number of immigrants flowing to Mtwara region (where there is natural gas exploration) is steadily increasing. According to the Mtwara Region Immigration Officer (M-RIO) a total of

[91] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report II). Pages 13 and 14.
[92] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 11.
[93] Corporate Human Rights Compliance Assessment, Ruvuma Field Report of 2015 (LHRC's Report II). Page 14.

121 illegal immigrants were arrested in this region in 2014. The number of illegal immigrants arrested went up to 360 (increased by 66.4%) in 2015.[94] Such immigrants penetrate in the region from neighboring countries including Mozambique and Malawi. But, there is also a good number of them who came from Somalia.

The LHRC's 2013 and 2014 human rights and business report revealed that, Tanzanian immigration quota needed to be centralized as there were more than three government authorities each one had powers to sanction foreigners to work in the country. It was also recommended that, immigration and other authorities should improve law enforcement by ensuring that, only eligible foreigners were allowed to work in Tanzania. During the time, LHRC revealed that, hundreds of foreigners were illegally working and living in the country. For instance, the 2014 LHRC's report stated that, there were more than 300 of Asian origin undocumented immigrants employed in one of the factories in Mtwara region. Same 2014 report revealed how such illegal immigrants displaced local workers and business persons from the economic opportunities including petty trading in Dar es Salaam's local markets. The said report recommended for legal reforms in order to centralize the coordination of the foreigners working or wish to work in Tanzania.

Picture 2.13: Foreigners purported to be trading in Kariakoo Market, Dar es Salaam (Internet Source).

A need of such law proposed by LHRC was still urgently needed because the tendency of recruiting foreigners for positions or jobs which could be performed by the local citizen did not stop in 2015. This study documented a number of incidents of that nature, including the one about a Kenyan citizen who was found during the study employed as ordinary security guard by the Maweni Limestone (Rhino Cement) Limited of Tanga region.[95] It was also observed that, most of the workers of this company especially at the managerial positions were the Bangladesh and black Indians officials. It was not immediately established if these non-native workers of Maweni Limieston Limited were Tanzanian citizens or had relevant work permits.

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[94] Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report I). Page 19.

[95] Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report I). Page 15. Also, Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report II). Page 25.

The LHRC's 2013 and 2014 recommendation on law reform to coordinate foreign workers who wish to work and live in Tanzania was taken into consideration by the government, whereby on 18th March, 2015 the Non-Citizen (Employment Regulation) Act, 2014 was passed by the parliament. It was assented to by the president in May 2015 and it was anticipated to come into force from 1st of July, 2015. The Act does not apply to members of the diplomatic community or to other persons exempted by the Minister responsible for Labour and Employment Matters; and, according to Section 2 of the law, it is applicable only on part of Tanzania Mainland.

The enactment of the said 2014 has in return amended several laws which, as said above, vested different government authorities with powers to grant work permits for foreigners. The laws which have been amended include the Tanzania Investment Act, 1997; the Immigration Act, 1995; the Education Act, 1979; and the Refugee Act, 1998; The National Employment Promotion Services Act, 1999.

The expectations of having this law in place are not to prohibit foreigners who wish to work in Tanzania. Rather, the essence of it is to promote conducive environment for investment and avoid bureaucracy; putting in place proper mechanism for skills transfer or succession plan;[96] facilitating efficient compliance of regional integration, bilateral agreements and international conventions which Tanzania is a signatory; and putting in place one coordinating authority for proper issuance of work permit,[97] which is now the Ministry of Labour alone – coordinated by the Labour Commissioner.[98]

The application for a work permit is supposed to be requested from the Labour Commissioner, who before approving such an application must satisfy himself that 'all possible efforts have been explored to obtain a local expert.'[99] However, in considering an application the Labour Commissioner must take account of the regional and bilateral agreements to which Tanzania is a signatory.

The work permit has validity conditions, which include; (i) validity for a period of twenty four (24) months from the date of issue; (ii) renewal possible, but any subsequent renewals cannot exceed thirty six (6) months in total; in other words, a maximum total period of five years in Tanzania (including the initial work permit period), following which no further permit can be issued. Where an investor makes a contribution of great value to the economy or to the well-being of Tanzanians, then the total work permit period can exceed ten years. The work permit

[96] Section 7 of this law directs that, *'any person who intends to engage or employ a non-citizen in any employment or occupation shall be required to prepare effective training program of the local employees.'*

[97] These and some of the explanations under this sub-section were extracted from: PWC 'New Legislation: The Non- Citizens (Employment Regulations) Act 2014.' www.pwc.co.za/en/assets/pdf/pwc-newsletter-the-non-citizens-employment-regulation-act-2014.pdf ALSO, a PPT by Adv. Themistocles T. Lumboyo on the introduction to the Non-Citizens (Employment and Regulation) Act, 2015 http://hat-tz.org/hattzorg/wp-content/uploads/2015/06/ATE-PRESENTATION-MoLE-FINAL.pdf

[98] Section 5 of this law provides for roles and powers of the the Labour Commissioner, which are; (i)to supervise day to day implementation Act; (ii) issuance of work permit and **c**ancellation of work permit; (iii) grant extension/ renew of work permit; (iv) issue certificate of exemption; (v) to supervise the implementation of succession plan; (vi) keep work permit register; and, (vii) to advise the Minister in all matters relating to the employment of non-citizens. Note that, the Labour Commissioner may delegate any of his functions or powers to any public institution or person.

[99] On this particular matter, Section 11 of the law states, 'the Labour Commissioner shall, before approving an application for a work permit (for a non-citizen), satisfy himself that all possible efforts have been explored to obtain a local expert.

fees are as follows; a Class A permit is USD 1,000 (as compared to the current figure of USD 3,000). Class B permits is USD 1,000 (as compared to the current figure of USD 2,000).[100] A reduced rate of USD 500 will apply for medical and health care professionals, teachers in science and mathematics subjects, university professors, those engaged in registered religious and charitable activities; and a nil rate will apply for refugees.

It is unfortunate that the Non-Citizen (Employment Regulation) Act, 2014 did (does) not resolve the issue of immigration quota which, according to 2013 and 2014 LHRC reports, such quota has been used to 'smuggle' foreigners into the country – others come withmore persons who pretend to be 'family members' but, later on slowly integrating themselves into local job market. The 2014 states that, the investors granted incentives pursuant to the investment law (cited above); the Special Economic Zones Act; and, the Export Processing Zones Act, 2002 shall continue to be entitled to an initial automatic immigrant quota of up to five persons – limited to the period which an investment is commenced. LHRC suggest that, repeal of the immigration quota is still relevant.

The chief implementer of this law is the Labour Commissioner as per Section 5 of the Act. Sections 3 and 6 of the same law designate a number of law enforcers to be authorized officers to enforce its provisions. The designated officers include the labor officers; immigration officers; and, police officers.

The act of hiring of non-citizens who do not possess a valid work permit or a certificate of exemption is a criminal offence under Section 9 of this law. Moreover, non-citizen who do not have work permits or exemption certificates are prohibited to engage themselves in any labour for reward, profit or non-profit. Moreover, it is an offence, under Sections 25 and 26 of this 2014 law for an employer to hire a non-citizen who does not have a work permit

Under current law, it is an offense for an employer to hire a non-citizen who does not have a work permit or a non-citizen with a permit if the work for which he is hired is specifically reserved for citizens. However, according to Section 24 of the 2014 law, such directive does not apply to self-employed non-citizens, those employed by non-profit organizations, or those exempted by the Minister from having to obtain a work permit.

The implementation of this law was at its forth (4) month at the time this study was carried out. It obviously need intensive awareness. Despite the fact that it is too early to assess it's implementation status, still LHRC ventured to gather general understanding of this law from the employers and a few workers. Less than 5% of the respondents said that they had at least heard about it – but not conversant of the contents. LHRC suggests that, the Labour Commissioner should design public awareness of this and other labour laws. Secondly, there is a need to repeal a provision which provides for immigration quota as suggested and justified above. Thirdly, there should be a direct link between the Labour Officer and the Tanzania Intelligent Services (TISS) in order to ensure that, foreigners who are permitted to work in Tanzania do not have bad security backgrounds as far as security issues are concerned.

[100] According to Section 13 of this law, Class A permits are issued to investors and self-employed non-citizens; and Class B permits are issued to non-citizens not eligible for a Class A permit.

2.5 FREEDOM OF ASSOCIATION

2.5.1 Freedom of Association as Legal Right

Article 2 of the Convention Concerning Freedom of Association and Protection of the Right to Organize, 1948 (No. 87) states that, the workers and employers, without distinction whatsoever, have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing for furthering and defending their interests without previous authorization. However, such rights and freedoms do not apply to the armed forces and the police.

At the national level, the freedom of association is guaranteed under Article 20 of the Constitution of the United Republic of Tanzania of 1977, and it is specifically stipulated under various provisions of ELRA, 2004. Article 20(1) of the Constitution of Tanzania states that:

> [e]very person has a freedom, to freely and peaceably assemble, associate and cooperate with other persons, and for that purpose, express views publicly and **to form and join with associations or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests** (emphasis added).

The ELRA, 2004 has translated this constitutional right in the labour rights perspectives by reciting the generality of the ILO convention on the freedom of association under Sections 9, 10 and 45 to 65. Sections 9(1) and 10(1) give the workers and employers the right to form, join and participate in the lawful activities of their respective trade unions and associations. Sub-section 3 of Section 9 prohibits discrimination against an employee on the basis of his or her affiliation to a trade union or their participation in the lawful activities of the union.

2.5.2 Past and Currently Registered Trade Unions and Employers Associations

In response to the legal requirements of the need to form the worker's trade unions and employers' associations, several sectoral or thematic unions and association have been formed in Tanzania. Some of such organizations were established several decades ago. For instance, according to the Trade Union Congress of Tanzania (TUCTA), the first Tanganyikan trade union, the Motor Drivers' Union, was founded in 1927. In 1937, Asian workers founded the Asiatic Labour Union, leading to the founding of numerous unions in the country. These early organizations were not, however, involved in many industrial conflicts, their primary activity being the organizing of mutual help among its members.[101]

In 1955 the Tanganyika Federation of Labour (TFL) was formed. However, the federation was abolished in 1964 as it was not easy during the time to sustain its movements such as demand of full autonomy from the then ruling party, TANU. The National Union of Tanganyika Workers (NUTA) which was made an affiliate of the ruling party replaced TFL. Because of that affiliation, NUTA did not have powers to confront the government in trying to defend workers' interests. NUTA was followed by other trade unions such as Jumuiya ya Wafanyakazi Tanzania (JUWATA) in 1977, Organization of Tanzania Trade Unions (OTTU) in 1990 and the Tanzania

[101] TUCTA, History of Trade Union. Accessed on 5th January, 2016 from: http://www.tucta.or.tz/index.php/about-tucta/history-of-trade-unions-in-tanzania

Federation of Trade Unions (TFTU) in 1995. However all these unions were not autonomous as they were the victims of strict control from the government.[102] The Trade unions in Tanzania were legally made autonomous from 1998 when the OTTU Act was repealed by the Trade Unions Act, 1998[103] in which the TUCTA as a federation was established in 2001.[104]

During the time, trade unions were controlled by the government (state), a situation which rendered them ineffective as it is explained above. But currently, as this study established, the trade unions are in control of the corporate companies as employers. It is the same situation because in the past (before 1990s privitazation of parastatals) most of the economic activities were run by the State. Therefore, the trade unions are yet to be full autonomous.

Table 2.5 below shows the list of current trade unions, arranged chronologically by seniority (date, year and registration number, which runs from 001 for TUICO to 034 for TADWU).

Table 2.5: List of Registered Trade Unions as of June 2015 – Affiliate to TUCTA

Reg. No.	Name and Year of Registration of the Trade Unions	Reg. No.	Cont ... Name and Year of Registration of the Trade Unions
001	Tanzania Union of Industrial and Commercial Workers Union (TUICO), 11/9/2000	018	Telecommunication Workers Union of Tanzania (TEWUTA), 22/11/2004
002	Tanzania Plantation and Agriculture Workers Union (TPAWU), 11/9/2000	019	Tanzania Media Workers Union (TMWU),[105] 8/5/2006
003	Communication and Transport Workers Union of Tanzania (COTWU), 11/9/2000	020	Tanzania Pilot's UNION (TPU),[106] 10/8/2006
004	Tanzania Teachers Union TTU, 13/9/2000	021	Tanzania Agro forestry Workers Union (TAWU),[107] 7/8/2006
005	Tanzania Mines Energy, Construction and Allied Workers Union (TAMICO), 13/9/2000	022	Mufindi Paper Employees Trade Union (MPETU), 16/10/2008
006	Tanzania Railways Workers Union (TRAWU), 13/9/2000	023	The Tanzania Higher Learning Institutions Trade Union (THTU), 12/12/2008
007	Tanzania Fishing and Maritime Workers Union (TAFIMU), 13/9/2000	024	Financial, Industrial, Banking, Utilities, Commercial and Agro processing Industries Trade Union (FIBUCA), 24/7/2009
008	Tanzania Seafarers Union (TASU), 15/9/2000	025	Tanzania Road Transport Workers Union

[102] Babeiya, Edwin 'Trade Unions and Democratization in Tanzania: End of an Era?' In, Journal of Politics and Law, Vol. 4, No. 1; March 2011, Pages 123-131. Also accessible online through: www.ccsenet.org/jpl the whole of this paragraph is reproduced from page 2 of this source (with little modifications).

[103] This Act No. 10 of 1998 made trade unions as independent organizations out of the government.

[104] According to the 1998 Trade Unions law, the main objectives of TUCTA include; (i) to guarantee, promote and protect the worker's rights and liberty; (ii) to strive to achieve for the workers a better standard of living through improved wages and conditions of work; (iii) to secure the workers against occupational accidents and illnesses, invalidity, unemployment, and other hazards of life and work; (iv) to struggle for the recognition and defense of the rights of labour; (v) to promote gender equality, and ensure the integration of women into the trade union structures; (vi) to strengthen national institutions in conformity with the national way of life and aspirations commitment to freedom, justice and democracy; and, (vii) to promote youth participation and integration in the Tanzanian labour market.

[105] Unregistered process through the Court order had been wrongly lodged.

[106] Unregistered through the High Court order.

[107] Unregistered process through the Court order had been wrongly lodged. Hence, new process has been initiated.

			(TARWOTU), 21/1/2013
009	Researchers, Academicians and Allied Workers Union (RAAWU), 15/9/2000	026	Tanzania Medical Dental and Pharmaceutical Workers Union (TMDPWU), 28/1/2013
010	Tanzania Local Government Workers Union (TALGWU), 15/9/2000	027	Printing Publishing and Packaging Workers Union of Tanzania (PRIPPAWUTA), 31/1/2013
011	Conservation, Hotels, Domestic and Allied Workers Union (CHODAWU), 15/9/2000	028	Domestic Social Services Hospitality Industry and Tourism Workers Union (DOSHITWU), 21/1/2013
012	Tanzania Union of Government and Health Employees Union (TUGHE), 22/9/2000	029	National Union of Mine &Energy Workers of Tanzania (NUMET), 20/02/2013
013	Industrial and General Workers Union of Tanzania (IGWUTA), 8/6/2001	030	TAZARA Workers Union – Tanzania, 20/9/2013
014	Tanzania Social Services Industry Workers Union (TASIWU), 8/6/2001	031	Chama cha Kutetea Haki na Maslahi ya Walimu Tanzania (CHAKAMWATA), 18/03/2015
015	Tanzania Union Journalists (TUJ),[108] 8/6/2001	032	Chama cha Wafanyakazi wa Malori Tanzania (CHAWAMATA),[109] 28/05/2015
016	Dock Workers Union of Tanzania (DOWUTA), 17/6/2002	033	Chama cha Kulinda na Kutetea Haki za Walimu Tanzania (CHAKUHAWATA), 24/6/2015
017	Tanzania Union of Private Security Employees (TUPSE), 5/11/2004	034	Tanzania Drivers Workers Union (TADWU), 25/6/2015

Source: Ministry of Labour, December 2015.

There are also employers' associations, the registered ones being the Association of Tanzania Employers (ATE), which was registered on 14th January, 2003; and, the Tanzania Association of Agriculture Commerce, Industry and Mining Employers (TAACIME), which was registered on 12th December, 2008.

According to the Tanzania and Zanzibar Labour Market Profile of 2014, TUCTA, which is an umbrella of all trade unions in Tanzania Mainland,[110] there were a total of 494,584 workers who were members of the trade unions affiliated to TUCTA. The TTU takes more than one-third of the current TUCTA membership base. The stated number of workers (494,584) has increased by 5% from 2011. At least 42.1% (being 208,446) of the stated total number of members, were female workers. The number of workers joining trade unions was expected to increase more last or this year apparently due to an increase of corporate companies.

The membership base of some of the trade unions affiliated to TUCTA (according to the same source[111]) were as follows; CHODAWU 38,272 (female 10,429, being 27.2%); COTWU 6,043 (female 1,301, being 21.5%); TTU 217,761 (female 102,083, being 46.8%); DODUTA 3,410 (female 0, being 0%); RAAWU 11,945 (female 4,193, being 35.1%); TALGWU 59,903 (female 32,145, being 53.7%); TAMICO 12,071 (1,421, being 11.8%); TASU 771 (female 40, being 5.2%); TEWUTA 1,593 (female 631, being 39.6%); TPAWU 43,113 (female 14,592, being 33.8%); TRAWU 3,428 (female 976, being 28.5%); TUGHE 51,268 (female 24,409, being 47.6%); and TUICO 45,006 (female 16,226, being 36.1%).

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[108] Unregistered through the High Court order.

[109] This is 'Tanzania Union of Lorries Drivers.'

[110] Note that, Zanzibar has its own trade unions' federation known as the Zanzibar Trade Union Congress (ZATUC).

[111] Tanzania and Zanzibar Labour Market Profile of 2014.

LHRC is concerned that, the number of women who have joined (and participating in activities of) the trade unions is relatively low - basing on the statistics presented in the above paragraph. The overall average of women who have joined trade union is 29.9%. This situation might be caused by the reality that, there are a fewer women than men currently employed in corporate sector in Tanzania. The NBS' 2014 integrated labour survey report cited above implies this fact. It can also be a reality that, due to some institutional weaknesses of most of trade unions, such as absence of gender sensitivity policy to encourage more women membership and leadership, women shy away from joining these unions. On this, LHRC advises all trade unions to formulate gender policy and ensure that, it is effectively implemented. TUCTA can design a template which indicates minimum contents of the proposed gender polices. Secondly, there is a need of national trade union policy which will address all these issues in a bigger picture. Thirdly, further studies on this are highly needed in order to ascertain factors which hinder women from not being active players in the corporate sector especially on issues relating to employment relations.

It was 15 years in 2015 when the first trade unions, TUICO, TPAWU, COTWU, TTU, TAMICO, TRAW, TAFIMU, CHODAW and others were registered under current legal framework on trade unions. A lot has been done by these trade unions, to (i) mobilize workers to join their movements; (ii) rise awareness of the workers' rights and duties; and, (iii) advocate, defend and promote labour rights in Tanzania. This and previous reports have documented great efforts done by some of the unions including their contributions to the enactment of ELRA, 2004 and other laws which have reinvented and reinvigorate as well the ILO's labour standards into local context. However, it is obvious that more is desired than what have achieved to date as far as labour rights and trade unions duties are concerned.

There are several and same challenges which face or have been facing trade unions as the 2013, 2014 and 2015 LHRC studies on human rights and business can confirm. The most common challenges, which could also be regarded as attributing factors to presence of ineffective trade unions in Tanzania, are:

(i) Institutional capacity or willingness of trade unions themselves (especially their leaders) to reach out and defend and promote their members' interests or rights;
(ii) Awareness or cowardness of the workers to form or join or participate in the activities of their respective trade unions; and,
(iii) Restriction or total denial (by employers) of allowing workers to establish or participate into activities of the branch trade unions in their workplaces. These and other issues are distinctively discussed below.

2.5.3 Institutional Capacity and Effectiveness of Trade Unions

The effectiveness of the trade unions in terms of, (i) opening up braches at zonal, regional, district and workplace levels; (ii) mapping out and enrolling more members; (iii) monitoring and following up their members' rights as well as defending members' interests through collective bargaining or litigations in labour courts; (iv) rising labour rights awareness to its members and employers; and, (v) contributing to legal reforms, depends much on the institutional capacity of the trade unions. The trade unions need to have not only sufficient resources in order to full fill their obligations, but, they also need strategic, committed and bold leadership.

This study found that, the effectiveness of the trade unions (basing on the ones sampled for study) differed a lot from one region to the other, and also, from one trade union or workplace (for trade unions' branches). The findings on this have not been quantified per each trade union or region because of time limit. However, several illustrations presented below, can inform how these unions were fairing in 2015.

The first thing noted about the effectiveness of the trade unions is proximity of the trade unions' branches. Most of trade unions are regionally based with quite weak district-based branches. Probably, physical presence of offices could have not been an issue if such unions had sufficient resources. The trade unions lacked permanent staffs in almost all districts visited. The ones who appeared to be somehow 'permanently' available in the office are the general secretaries of the regional and district branches.

An insufficiency fund to run the offices was cited by almost all trade union officials interviewed during the study. This seems to be a mother of all institutional challenges. Because of limited budget (and good plans of course) district based trade unions have not been able to reach out their members to the remote areas, where most of the investments such as plantations and mining activities are taking place. For instance, some of the workers of the Aviv Plantation Company, Liganga village, Mbinga district, Ruvuma region, told the study team in December 2015 that, they had an issue with their employer about the employment contracts and remunerations. They needed someone elite to help them out but all was in vain because there was a known trade union around in their district. As such, they approached the village leadership in lieu of the trade union. However, their claims have remained unattended by the investor for two years now[112] and the village government could do nothing (as it does not have a legal mandate to pursue labour rights). This is notwithstanding the fact that, the village government was the only available option in the village setting. TUCTA in Ruvuma is active in Songea urban, where there very few investments compared with Mbinga and other districts within this region. Therefore, there is a problem of 'misplacing' or 'misallocating' trade unions, which normally complicates further a challenge of trade unions' proximity to the needy members.

The second issue of concern is about the establishment of branch trade unions at workplaces. It seems that, TUCTA and its affiliated members have not done enough to sensitize and facilitate workers to establish branch unions at their respective workplaces. The sensitization, as this study noted, is needed for both sides – workers (and their trade unions) and employers (and their associations).

As it is further discussed below, absence of trade unions'branches at workplaces is caused by several factors, main ones being restrictions from some of the employers and also, the workers' inability, lack of awareness and cowardness to do so. Some interesting facts, which are presented here as illustrations to portray a wider picture of the problem, were gathered from the field about this matter:-

(iv) The human resource officer of Dan and Associates Enterprises (DAE) Limited, Mbinga district, Ruvuma region, said that, there is no trade union at her workplace because many people are not aware of such unions in this district. She said, her company has,

[112] Corporate Human Rights Compliance Assessment, Ruvuma Field Report of 2015 (LHRC's Report II). Page 9.

innovatively, allowed workers to appoint leaders from among themselves to represent their interests to the management.

The lawyer of Mbinga district council said, *'vyama vya wafanyakazi vipo tu kijina lakini hakuna jambo lolote la kusaidia wafanyakazi ambao wana malalamiko mengi lakini hakuna hata mmoja ambaye alishawahi kusaidiwa na vyama hivi ... na sasa wafanyakazi wengi hawajajiunga na vyama hivi katika mkoa huu (wa Ruvuma).'*[113]In summary, the lawyer says that, there are mere names and not actions of trade unions in Ruvuma region. Kind of this situation despairs workers from joining trade unions. The lawyer mentioned threats from employers (to fire their workers should they actively engage in these unions) as part of the reasons of deteriorated trade union affairs in the region.[114]

(v) The respondents, who are workers of Iron and Steel Limited, Dar es Salaam, said that, trade unions were not active because they use wrong strategy or strategies to address workers' issues. For instance, according to these workers, instead of targeting workers in their periodical monitoring visits to the workplaces, they normally talk to the management and go away afterward.[115]

(vi) Trade unions do not visit their branches or workers. In most cases, they are seen to 'manage the crises instead of preventing the same. The some of the workers of Dar es Salaam based companies samples for this study (namely, the Timilings Company; Tooku Company; CI Group Company; Jiemel Industries and Quaim Steel Company) said that, they saw TUICO leaders only at once during when they (TUICO leaders) visited these companies to register members.

(vii) The claims for trade unions that they are siding with employers (against the workers) for personal gain, were heard all over the regions sampled for this study. A worker at the the Morogoro based Mazava Fabrics and Production EA Limited while in agitated mood said that, they (workers) pay monetary contributions (fees) to TUICO in anticipation that, they will receive better services in return. However, this has not been a case as TUICO is not there to help them out at the time they need its services.[116]

It is the same situation as happening in Tanga and elsewhere. For instance, the workers of the Tanga based Neelkanth Chemical Industry Limited told the study that, their efforts to bring TUICO leadership to their workplace – to monitor the working environment, which is so grimy, have never been succeeded.

(viii) In Tanga region only 1 (10%), among 10 companies sampled for this study in this region had a branch of trade union (TPAWU). The company with the trade union is the Amboni Spinning Mill Limited.[117]

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113 Corporate Human Rights Compliance Assessment, Ruvuma Field Report of 2015 (LHRC's Report I). Page 17.
114 Corporate Human Rights Compliance Assessment, Ruvuma Field Report of 2015 (LHRC's Report II). Page 13.
115 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report I). Page 10.
116 Corporate Human Rights Compliance Assessment, Morogoro Field Report of 2015 (LHRC's Report I). Page 10.
117 Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report II). Page 17.

(ix) The workers in Shinyanga urban seemed to have huge awareness of the essence of trade unions and, in deed, most of them have subscribed for membership into those unions. The existing trade unions included COWTU for drivers; CHODAWU e.g workers of the Jambo Group Company; TPAWU; and TAMICO mostly for Williamson Mining Company both around Shinyanga urban. However, majority of the workers interviewed in December 2015 in Shinyanga, as it is a case all over the sampled regions, did not see the importance of being members of the trade unions simply because the unions are not pro-active on their problems.

A worker at the Jambo Group Company told the study that, his fellow worker was expelled from job. Even after that worker reported his matter to the trade union, no action was taken by the union's leadership.[118] Therefore, this respondent did not see an essence of continuing hooking up or indulging with an ineffective 'supporter.'

(x) In Mbeya region, the study noted that TPAWU was able to enroll more than 1,600 members. But, according to the experience shared by some of the TPAWU members, who were workers of the Rungwe district based Jedee Estate Company, most of the TPAWU members were not aware of the importance of their membership to this union. In most cases, when a labour dispute arises, each individual worker fights on his or her own. They said that, sometimes persistant labour disputes, which remained unaddressed by their trade union, tend to mount pressure which results into strikes. For instance, in 2008 some of this (Jedee Estate) company's workers staged a demonstration on their own without any assistance of TPAWU.[119]

Dodoma region seems to have relatively active trade unions. The study noted that, a large section of workers interviewed in December 2015 were very much aware of trade unions and indeed, most of them were using various trade unions like TUICO, CHODAWU and TUGHE (this is for government employees). It is further gathered from Dodoma that, most of the unions were active and prompt to respond to their members' issues once reported to them. The KFS Company's manager, Mr. Charles Msola was of the view that, most of the trade unions in this region were really working for the workers and not the other side (employers). However, he advised that, rights and duties should be simultaneously preached to the workers because sometimes the trade unions fail to defend their members as it is expected because the members themselves are wrongdoers.[120] However, some of the workers of the Modern Mattress Company were not comfortable with the effectiveness of TUICO to pursue their interests.

Contrary to Dodoma's best practice, Mtwara region's companies sampled for this study (including the Ndanda Springs Drinking Water Company; the Speed Security Company; the Yurap Company; and the Blue View Hotels) had no trade unions' braches operating in their workplaces. The study was informed that, the only existing trade union branch was at the Dangote company, which was just established (therefore not yet operational) at the time of this study in December 2015.[121]

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[118] Corporate Human Rights Compliance Assessment, Shinyanga Field Report of 2015 (LHRC's Report I). Page 6.
[119] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 9.
[120] Corporate Human Rights Compliance Assessment, Dodoma Field Report of 2015 (LHRC's Report II). Page 17.
[121] Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report I). Pages 16 and 17.

2.5.4 Ignorance and Cowardice of Workers to Join or Participate in Trade Unions

It is LHRC conviction that, an unfamiliarity with the presence and functions of trade unions is yet a serious problem which does not only hinder workers from pursuing their rights in effective manner, but also, deteriorates or even halts the trade unions as it is argued above. This is due to the fact that, it is the presence of active members which legitimizes and facilitates the actions of the trade union, example, through their subscription fees. The TTU (the teachers' trade union) has been able to grow bigger and with huge investments because of the certainty of its membership base, their awareness of the importance of trade union, confidence of their leaders and their (workers') systematic contributions to the union.

> Despite that reality, it is established that, most of the trade unions have not invested much into their members in terms of recruiting more of them to join the unions; encouraging them to remit subscription fees; monitoring the workplace's environments; hearing, following-up, and seriously attending their problems in workplaces and in court of law; institutionalize trade unions by establishing union's branches at workplaces. As suggested earlier on, it is time that TUCTA as an umbrella becomes more pro-active on the current sluggish state of affair of most of its affiliates.

As for the awareness as shown below, majority of the workers, surprisingly even in urban settings, were still not aware of the importance of the trade unions to them. The causes of this situation are not hard to speculate. There is a relatively lose bond between the unions' leaders and the members. A labour at the Iron and Steel Limited, Dar es Salaam (also already cited above) said that he know that the trade union leaders were frequently coming to visit this workplace. However, they normally go straight to the employer and left without talking to the workers.[122]

The Tabora municipality awareness situation is extremely different from the Dodoma municipality situation as argued before. In Tabora, as the study established that, only 1 out of 20 workers of three different companies which were randomly picked for this study was able to say something about the trade union (COWTU). The rest of the workers met seemed to have completely unaware of what trade unions were all about, let alone knowing their names.[123] In Arusha, 7 out 10 workers of different companies, who were randomly interviewed, seemed to have a little knowledge about trade unions. But they could not explain the importance of such unions to them.[124] Same kind of observation noted in Geita region, whereby, the discussions with the workers of the K.M Hotel and Epsom Limited revealed all workers were completely unaware of the concept 'trade union.'[125]

In Mara region, a worker of the Nyanza Bakery Company said that, December 2015 was his fourth year since when he was employed in this company. But, he has never heard any trade union at his workplace. However, he hears something like that from the Mutex Company. But, the workers of Mutex did not like it (the trade union).[126] Same story were heard from the Mara Milk Company's workers who claimed that, they did not have a place to channel their grievances

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122 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report I). Page 10.

123 Corporate Human Rights Compliance Assessment, Tabora Field Report of 2015 (LHRC's Report I). Page 11.

124 Corporate Human Rights Compliance Assessment, Arusha Field Report of 2015 (LHRC's Report I). Page 2.

125 Corporate Human Rights Compliance Assessment, Geita Field Report of 2015 (LHRC's Report I). Page 14.

126 Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 13.

because there is no a trade union branch at their workplace. They did not have any idea on how they could sort this out apart from keeping quiet.[127]

Probably, the most strange scenario was noticed in Mbeya region, whereby, the the senior staff of the J.P Safari Hotel, did not know even the meaning of CHODAWU. While responding to researchers' question on the presence of a trade union branch at this hotel especially CHODAWU, he said that, *'what is Chodawu? I don't have clue whatsoever about it ...but, sometimes our manager says he is going to the meeting with Chodawu ... probably, those (Chodawu) officials will come to educate us about it and how we can be benefited from it.'*[128]

As for workers' cowardice to effectively engage into workplaces' branch trade unions, it established that, some of the employers have created intimidative environment which causes workers to fear losing their jobs should they engage with the trade unions. One of the TUICO leaders at China Paper Company, Kilimanjaro region, said that, no one could dare to speak about labour issues through the branch trade union existing at their workplace because that would cost a work losing his or her job.[129]

The Shah Industries Limited, also of Kilimanjaro region does not exert fear to workers to engage with trade unions' business; rather, it was alleged to use a 'divide-and-rule' strategy in order to abate workers' movements through trade union. It was claimed that, the employer has 'gripped' the trade union branch chairperson in his hands in such a way that, whatever is deliberated in the union's meeting, the employer's management is fully informed. In the other words, the chairperson of the branch trade union is a perpetrator of the management. Such a belief has obviously scared the rest of the workers from engaging in their branch trade union.

There is the third group of workers who seemed to have been very well aware of the essence of trade unions and that; they actually are members of the unions. However, they are not just interested (not fearing) to engage with the unions because they do not see the importance of doing so. Such workers include the Athwal Transport Company's employees (in Tabora region). They told the study that, all of them were members of COWTU. But they lost interest in their union because their leaders are not acting for them.[130] Lack of interest despite the awareness was also noted in some of the business sector's workers in Kilimanjaro region. For instance, TADWU's Chairperson, Mr. Damian Barongo, informed the study that, this (Kilimanjaro region) has more than 900 drivers who are eligible members of TADWU. But at the time of this study, December 2015, only 77 (8.6%) drivers were members of this union. One of the things which discourage the drivers from joining the trade union was noticed to be the persistence of the problems that the trade unions had failed to sort out.[131]

Another issue of concern which discourages the workers from joining trade unions in bigger numbers was noticed to be the periodical deductions to support their unions of which the value for money is not seen. At least 2% of an individual member's monthly salary is deducted to

[127] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 13.
[128] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report I). Page 14.
[129] 19. December.2015 Moshi leather employees strike and it resulted to termination of 29 employees one of them being Mr. Bakari chairperson TUICO Moshi leather branch.
[130] Corporate Human Rights Compliance Assessment, Tabora Field Report of 2015 (LHRC's Report I). Page 11.
[131] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 11.

support his or her trade union.[132] However, not like government employees whose salaries are deducted directly from their salaries, remittance of the contributions to the trade unions from private sector's workers is a challenge – according to an anonymous TUICO officer interviewed in Dar es Salaam in December 2015. Therefore, once workers in private sector are pressurized to make their monthly contributions, they consider this as an unjustifiable influence on how to spend their petite salaries. Most of the workers, as said earlier on, do receive their wage on daily basis. In this way, it is really difficult for them to remit their contributions to the trade unions.

2.5.5 Restrictions by Employers to Allow Workers Enganging in Trade Unions' Activities

Despite the fact that ELRA, 2014 prohibits restrictions of trade unions at workplaces as it is indicated in an introductory part of this sub-chapter, the study has noticed that, a good number of employers do restrict their workers from engaging in trade unions activities. Some of the employers use intimidations and others apply the 'divide-and-rule' technique by inducing trade unions' leaders to side with them against the workers.

Furthermore, an anonymous CHODAWU official told the study in Dar es Salaam that, apart from common reasons on the restrictions to establish branch trade unions at workplaces, there are employers who are ignorant of this legal requirement; and some weaknesses on part of labour law enforcement machinery. Some of the workers of the Mazava Fabrics and Production EA Limited claimed that, they had a trade union branch at their workplace way back in 2013. However, the branch was closed down allegedly under pressure of the employer because of its activeness to defend workers' interests.[133] It is obvious that the mother district or regional trade union did not intervene against this closure. The branch union remained closed three years down the line.

There are other employers who do not apply forceful restriction or physical manifestation of their intent or actions to restrict trade unions activities in their workplaces. Rather, they use soft-approach or technical restriction strategy or allowing establishment of the unions' branches at their premises, but corrupt the unions' leaders to side with them. A worker of the Musoma Fish Processor Company, Mara region, told the study in December 2015 that:

> *[t]unalalamika sana hadi kwenye chama chetu cha wafanyakazi, lakini hakuna wanachokifanya. Wanakuja wanaangalia kisha wanaondoka ... kwa kweli vyama vya wafanyakazi havitusaidii chochote katika kutatua matatizo yetu, wapo kwa maslahi yao zaidi* (we complain a lot up to our trade union, but they do nothing. They come here, roam around and them go away ... frankly, trade unions are not helping us to solve our problems, they are more on personal interests).

The employees of Mutex Company, Mara region had the same claims also, that their trade union leaders side with employers even during critical moments like strikes and boycotts. However, the

132 Section 61(1) of ELRA, 2004 directs that, *'an employer shall deduct dues of a registered trade union from an employee's wages if that employee has authorised the employer to do so in the prescribed form.'* Sub-section 2 requires the employer to remit the deductions to the trade union within seven days after the end of the month in which the deductions were made failure of which an interest of 5% will be charged for un-remitted deductions. A worker can revoke his deduction authorization by giving a one month notice to the employer and his trade union. All these are not commonly practiced on the ground as this study has established.

133 Corporate Human Rights Compliance Assessment, Morogoro Field Report of 2015 (LHRC's Report II). Page 10.

assistant secretary general of Mara region, refuted the workers claims that, they normally listen to both sides in order to have a better solution.[134] The security company's worker at Pepsi Mbeya region claimed that, their employer allowed establishment of CHODAWU branch at their workplace. But, the union's branch is as good as nothing and, according to this worker it seemed that CHODAWU leadership and employer share a common interest against the workers.[135]

On the other hand, there are employers who can be cited as best practices following establishment and freedom of engagement of workers into trade unions activities. Once again, Cocacola Kwanza Limited; Mbeya Cement; and the Tanzania Breweries Limited (TBL) were noticed to persistently allowing such unions' branches and operations in their workplaces.[136] The Dodoma's case, as stated above, could also be referenced as best practice for other corporate companies to imitate.

Section 4 of ELRA, 2004 defines by summarizing the essence and functions of the trade union. It states, a trade union means *'any number of employees associated together for the purpose, whether by itself or with other purposes, of* ***regulating relations*** *between employees and their employers or the employers' associations to which the employers belong'* (emphasis added). The trae union is therefore supposed to be a bridge between the workers and employers. However, as this study affirms, the opposite to that legal spirit is is true. As argued and illustrated in this sub-part, most of the trade unions have, by their acts or omissions, created a wall and a rivalry situation between the workers (their members) and employers. As such, LHRC advise TUCTA and its affiliates as well as employers and the government to organize a forum which will redefine the roles of trade unions and use the challenges highlighted in this report as reference points for a better way forward. Otherwise, the essence of having trade unions is increasingly disregarded by the workers for lack of effectiveness, efficiency and impacts.

2.5.6 Workers' Strikes and Employers' Lockouts

At the time when things are getting worse without amicable solutions, each side (worker and employer) can take some physical actions to pursue or protect its interests. The legally sanctions actions are strikes for workers and lockouts for employers under Sections 75 to 85 of ELRA, 2004. Section 75 gives rights to workers and employers to strike and lockout. However, according to Section 76 of this law, such rights are not applied for persons in essential services. Section 77(2) of ELRA, 2004 lists such services as water, sanitation, electricity, health related services, fire-fighting, air traffic control, civil aviation, telecommunication, and any transport services required for the provision of these services.

Section 4 of ELRA, 2004 defines both terms. A '*strike*' means a total or partial stoppage of work by employees if the stoppage is to compel their employer, any other employer, or an employers' association to which the employer belongs, to accept, modify or abandon any demand that may form the subject matter of a dispute of interest; while the '*lockout*' means a total or partial refusal by one or more employers to allow their employees to work, if that refusal is to compel them to accept, modify or abandon any demand that may form the subject matter of a dispute of interest.

[134] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 12.
[135] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 9.
[136] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report I). Page 15.

The situation on the ground suggests that, the right to strike is probably the most known right among the workers. This is due to the fact that, it is part and parcel of human behavior – not to do something which a person does not like.

The study has ascertained two issues of concern regarding the strikes. Firstly, in ability of the workers to strike even if they are aggrieved and 'qualified' due to weakness on part of trade unions are discussed above, lack of confidence, and intimidations by the employers (fear of losing jobs). For instance, a worker of the Mara Coffee Limited, Tarime district, Mara region, stated that, their employer was prohibiting them to engage in strikes by allegedly telling them that, strikes would result into termination from work.[137]

The second issue of concern noticed by the study was, organizing unlawful strikes which are contrary to Section 80 of the 2004 labour law.[138] For instance, the G4S Company's workers organized a strike without their trade union and they also locked out their employer (and his client) from entering into the workplace contrary to the law as discussed further below. The countrywide drivers' strikes of April and May 2015 were also done without trade unions.

Several strikes happened in 2015 due to various reasons. Such strikes include the one organized by the workers of Geita region based G4S Company, which sub-contracted by the Geita Gold Mine (GGM) to supply security services; the Dar es Salaam based Tanzania-China Friendships (Urafiki) Textile Company Limited; the Vasso Agro Venture Company, Kilimanjaro region; and the countrywide drivers' strike already discussed above.

The strike by the G4S Company's workers was organized by the workers themselves without their trade union.[139] Despite being 'unlawful' strike basing on the legal requirement, in particular, Section 80(1)(d) of ELRA, 2004 which directs strikes to be called by a trade union, the nature of their grievances compel them to endure no longer than they had already done. As such, on 18th November, 2015 more than 600 employees of this company put down their tools and locked the main entrance to the mine (GGM) in protest to poor wages and mistreatment by management.[140]

In November 2015 over 1,200 workers of the Tanzania-China Friendships (Urafiki) Textile Company Limited organized a strike as a way of demanding salary increments as well as a

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137 Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report II). Page 12.

138 Section 80(1) of ELRA, 2004 states that, an employee may engage in a lawful strike if, (a) the dispute is a dispute of interest; (b) the dispute has been referred in the prescribed form to the Commission for mediation; (c) the dispute remains unresolved at the end of period of mediation; (d) the strike is called by a trade union, a ballot has been conducted under the union's constitution and a majority of those who voted were in favour of the strike; and, (e) after the applicable period referred to in paragraph (c), they or their trade union have given forty eight hours' notice to their employer of their intention to strike.

139 As it is stated above, some of the workers of this company alleged that, their employer was restricting them from establishing a branch trade union at their workplace.

140 Rehema Matowo, 'Geita mine workers stage protest.' The Citizen, 18th November, 2015. According to this media report, the workers reached the decision after their complaints that were presented to their leadership failed to bear fruit, expressing that any worker demanding their rights respected face expulsion. One of the workers noted that G_4S leadership had been paying salaries to the workers contrary to their job contracts, saying they have agreed to each received 150,000/= per month but instead they received sh. 75,000/= to 80,000/= per month. This kind of situation if the government continues not to work on it, workers will continue be affected by the bad conducts from their employers.

conducive working environment. This latest development came after winning a civil case filed in 2008 against the employer who failed to comply with new basic salary announced by the Government in 2007. A twin Picture 2.13 below shows the strike as it happened in 2015.

Picture 2.14: Urafiki Workers on strike.[141]

The impacts of strikes, whether lawful or unlawful are of two sides; in most cases, strikes create antagonism relationship between workers and employers, especially for the employers who do not easily compromise with their workers. Two things normally happen. One, neglect of workers' demands by the employers; or, intimidation or even termination from job of all workers who happen to be ring-leaders of strikes. For example, the 2013 strike by some of the Kilimanjaro region drivers, who demanded to be given employment contracts, did not yield any positive results to date, even after the establishment of TADWU in 2015[142]and the April-May 2015's countrywide strikes. The bus owners simply neglected to heed to the workers claims despite the huge strike. In 2006, 160 TPC workers (Kilimanjaro region) lost their jobs due to a strike. The case on this matter was still pending in court of law as of December 2015.[143]

Moreover, the previous strike (years not mentioned) by the worker of Maweni Limestone (Rhino Cement) Limited, Tanga region, led to dismissal of about 400 workers.[144] The 19th December 2015's strikes of the workers of the Moshi Leather Company, which demanded Christmas or end of the year bonus resulted into termination of 28 workers from job. One of the victims of this termination was the Chairperson of TUICO Moshi Leather Company's branch union.[145]

However, some of the strikes resulted into positive changes. For instance, the July 2015 strike by the Vasso Agro Venture Company's workers to demand for wage increment from Tshs 512 per hour to Tshs 564 per hour resulted into an increment of wage as demanded in November 2015.[146] Moreover, the 22nd of December 2015 strike by the Mutex Company workers against low pay

141 Source of these Pictures: Othman Michuzi, 'Mkuu wa Wilaya ya Kinondoni azungumza.' Re-accessed on 24th March, 2016 from: http://othmanmichuzi.blogspot.com/2015/12/mkuu-wa-wilaya-ya-kinondoni-azungumza.html

142 Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 12.

143 Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 11.

144 Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report I). Page 14.

145 Corporate Human Rights Compliance Assessment, Dodoma Field Report of 2015 (LHRC's Report I). Page 11.

146 Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 17.

resulted into re-negotiation whereby, on 24th of December 2015, the workers resumed working after agreeing on the matter they bargained before.[147]

Employers are, once again, advised to understand that, strikes and lockouts are legal rights under the law. Therefore, all lawful strikes should not be prohibited by intimidations or termination or use of force. On the other hand, LHRC urges the workers to follow the legal requirements on organizing strikes for their own and employers' benefits. It is advised further that, trade unions should act promptly on workers concerns so that they can be guided through legal procedures if they insist to strike.

2.6 DISCRIMINATION AT WORKPLACES

Discrimination at workplace is prohibited various international declarations and conventions including the ILO's Convection Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value,1951 (No.100); and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

At the national level, Article 13 of the Constitution of the United Republic of Tanzania of 1977 provides for the equality before the law, without any discrimination. Section 7 of ELRA, 2004 requires every employer to ensure equal opportunity is promoted in employment. Moreover, employers are obliged to eliminate discrimination in any employment policy or practice. Sub-section 4 of Section 7 of ELRA, 2004 lists discrimination scenarios to include nationality, ethnicity, health status, disability and detailed above.

Mixed sentiments on discrimination and the status of implementation of the legal requirement against discrimination at workplace was observed and discussed during the study. It is generally found that, most of the foreign companies or rather, companies which belong to foreigners were still discriminating local personnel from senior managerial positions even for positions such as security guard, accounts, record keeping, store management, and the like which could be handled by ordinary Tanzanian citizens.

The lack of sufficient control of the immigration quota as argued earlier on, could be one of the reasons for which so many foreigners have immigrated in the country and took job opportunities which ought to have been for Tanzanians. In between December 2015 and January 2016, a crackdown operation to get rid of the illegal immigrants (workers) was launched by the Ministry of Home Affairs. However, the operation lasted for less than a month. The law enforcement authorities did not communicate to the public number of illegal immigrants who have been nabbed, arraigned or repatriated back to their countries. LHRC did not notice continuity of the crackdown at the time when this report was concluded in April 2016. Instead, the Asians, Congolese and other foreigners were still actively engaging in petty 'investments' and other activities such as beauty salon, car repairs, retail trades in Kaliakoo market and elsewhere. The ad hoc crackdown lacked sustainability strategy just like similar operations launched in the past.

[147] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 17.

There are companies which expressly or in practice prohibit discriminations at workplaces. Most of the telecommunication, mining, plantations and beverages companies were noticed to have a mixture of Tanzanians and foreigners in the management positions. Probably, this is due to the nature of their businesses which demand a direct touch with the customers, something which a local manager can conveniently perform than a foreigner because of the language and other cultural reasons.

The field findings on presence of discrimination at workplace indicate that, majority (552 out of 722 or 72.3%) of the workers interviewed felt that, there was no discrimination of any kind at their workplaces. Table 2.6 explains more:

Table 2.6: Workers' Opinions on the Presence of Discriminations at their Workplaces

Responses [N=722]	Frequency	Percent
Yes	108	15.0
No	522	72.3
Not Sure	92	12.7
Total	722	100.0

Source: LHRC, Human Rights and Business Study (Field Data), 2015.

The figures in Table 2.6 above could imply that, most of the employers have put in place good strategies to ensure that no discrimination practices happened in their workplaces. The study wishes to single out the Dan and Associates Enterprises (DAE) Limited, the Mbinga district (Ruvuma) based coffee curing factory as the best practice, with an outstanding strategy of enforcing the anti-discrimination rules at workplaces. As Picture 2.14 below shows, the company has published and glued on walls of the factory what it calls *'Sera kwa Wanyakazi'* (Policy for Workers). A one page document declares that, the employer works with everyone and prohibits all forms of discriminations on basis of sex, religion, ethnicity, colour, nationality, political ideology, pregnancy, marital status, disability, health status, and economic status.


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Southern Highlands of Tanzania

SERA KWA WAFANYAKAZI:

DAE LTD: INAFANYA KAZI NA WATU WOTE NA INAKATAZA UBAGUZI WA AINA YOYOTE ILE WA

- JINSIA
- DINI
- KABILA
- RANGI
- UTAIFA
- MTAZAMO WA KISIASA
- UJAUZITO
- HALI YA NDOA
- ULEMAVU
- UGONJWA
- HALI YA MAISHA

NA HATULAZIMISHI AJIRA KWA NGUVU AU KUCHUKUA VYETI HALISI VYA TAALUMA AU MALI WATU WOTE NI SAWA UTAAJIRIWA NA UTAFANYA KAZI NA DAE LTD ,ELIMU YAKO,UZOEFU WAKO NA UELEDI WAKO NDIO VIGEZO VIKUBWA VYA KUPATA AJIRA.

TUNAFANYA KAZI KWA KUFUATA SERA NA SHERIA ZA KAZI ZA NCHI NA KAMPUNI.

N:B HAKUNA AJIRA CHINI YA MIAKA 18

Picture 2.15: DAE Limited's Policy displayed on the workplace walls.

The second paragraph of the DAE Company's policy reads (in literal translation) that *'[a]nd we do not impose forced labour or confiscate original academic certificates or property. All persons are equal. You will be hired by the DAE Limited basing on your education, experience and professionalism as main prerequisite factors for securing an employment position.'* The last sentence in bold prohibits labour for persons below 18 years.

It is certainly a wish of every human rights activist to see that, every workplace follows this thread as demonstrated by the DAE Company. However, it is not the case. Some of the companies including the Alkovintage Company of Dodoma region; the Maweni Limestone (Rhino Cement) Limited of Tanga region; the Mtibwa Sugar Company of Morogoro region; the Musoma Fish Processors Company, the Mutex Company, and Mara Coffee Limited (both of Mara region); Williamson Diamond Company of Shinyanga region; and Pepsi Company of Mbeya region, were observed by researchers (and others alleged by some of the workers of those companies) to have full pack of foreigners in their management position even for simple managerial tasks.

The Alkavintages Company was said to be full of Haya tribesmen.[148] It was not immediately established whether this was a family company. But, whatever the case, the dominance of one ethnicity group in the workplace could imply presence of discrimination against other tribes especially when the company operates in Dodoma, where the dominant tribes are Gogo and Rangi. Moreover, most of the top administrative official of the Maweni Limestone (Rhino Cement) Limited were noticed to be Asians and Kenyans.[149]

The Mtibwa Sugar Company seemed to have made some reforms to reduce or eradicate previously reported (by similar study) discrimination especially between local and asian-origin workers. This time around, nothing was heard or noted as discrimination based on ethnicity or nationality. However, like many factories based, extraction and plantation companies, women are excluded from not only senior positions, but also junior ones. The common defence heard in all these places was that, women were unfit due to the nature of the work. Moreover, pregnant casual labourers are normally not considered for more engagement in an employment at Mtibwa Sugar[150] and other companies as some of the respondent workers alleged.

In Mara region, most of the prominent business companies were found to be in full control of Asians investors. It was claimed by the respondents that, it was Indian-origin personnel who occupied the top layer of the Management of the Musoma Fish Processors, Mutex and Mara Coffee companies. A worker at Musoma Fish Processors Limited alleged that, there were Tanzanians (of not Asian-origin) who had the same level of education, experience and professionalism but, they were treated differently with Indians especially in terms of salary scales.[151]

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148 Corporate Human Rights Compliance Assessment, Dodoma Field Report of 2015 (LHRC's Report I). Page 11.

149 Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report I). Page 13.

150 Corporate Human Rights Compliance Assessment, Morogoro Field Report of 2015 (LHRC's Report II). Page 12.

151 Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report II). Page 12.

2.7 WORKMEN COMPENSATIONS

2.7.1 Legal Protection against Hazardous Working Conditions

According to ILO estimates, 2.3 million people die every year from work-related accidents and diseases.[152] The national statistics on this situation at Tanzania's country level were not obtained during this study. However, basing on the state of working environments as it is explained in details in chapter six of this report, it is obvious that, a number of workers and people residing around investment areas do face some health complications and death as a result of hazardous working and production conditions. For instance, Tanzania Human Rights Reports of 2005-2014 editions have constantly reported about harmful chemicals from the mining sites to the water streams which are main sources of water for the surrounding communities. The 2013 and 2014 Human Rights and Business Reports had also similar coverages.

There are several ILO Conventions on workers' compensation. Those conventions include, the Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18); the Workmen's Compensation (Accidents) Convention, 1925 (No. 17); the Equality of Treatment (Accident Compensation) Convention, 1925 (No.38); and, the Convention Concerning the Protection of Workers against Hazardous in the Working Environment due to Air Pollution, Noise and Vibration, 1977 (No. 148).

Note that, Article 1 of the said 1925 (No. 17) convention imposes a duty on member states, Tanzania inclusive, to ensure that workmen who suffer injury due to industrial accident are compensated. Articles 7 and 9 of the same convention demand for the injured workman to receive constant help in case of incapacity and medical aid. On the other hand, Article 4 of the 1977 (No. 148) convention directs the national laws and regulations to prescribe 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.

Tanzania has responded quite positively to those international requirements by not only enacting laws and formulation of rules, regulations and guidelines; but, also designed an institutional framework which addresses some prevention, control and remedies relating to occupational hazards and surrounding environments. For instance, Section 61(f) of the Labour Institutions Act, 2004 requires employer to supply a worker with working tools in order to protect him or her against the hazardous working conditions. Several other laws bear similar spirit on proper working conditions.[153] Moreover, the Workmen Compensation Act, 2008 coordinates remedial procedures in case a worker is injured or dies while he or she is in the working environment vicinity. This sub-part concentrates more on compensation issues.

2.7.2 General Trend of Compensations upon Injuries or Death

It is generally established that, the employers and workers were full aware of the legal requirement to have safe working environments as well as the right to compensation once a

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[152] Heijden, Paul van der and Ruben Zandvliet (2014) Enforcement of Fundamental Labor Rights. The Network Approach: Closing the Governance Gaps in Low-Wage Manufacturing Industries. Policy Bief No. 12. The Hague Institute of Global Justice: Hague. Page 11.

[153] For instance, the generality of the Occupational Health and Safety (OHS) Act, 2003; the National Environmental Act, 2004; and specific sectoral laws (depending on the nature of production) call for safe working environment.

worker is injured in the course of performing his or her duties. However, there are two main issues which hinder realization of the right to compensation, namely; (i) delayed compensation processes; and, (ii) denied compensation. These two issues of concern as found by this study are simultaneously dispose of below by way of illustrations.

The employers seemed to be ready to grant compensation if the worker's injury is vividly seen. As such, in most cases, the employers prefer offering protection to physical manifestation of hazardous work in order to reduce risks of physical injuries. But this study noted that, there are non-physical or visible hazardous working conditions which are actually more harmful. For instance, the study team observed dusty working environments at the Maweni Limestone (Rhino Cement) Limited and the Neelkanth Chemical Industries Limited, both of Tanga region but the workers were working without mask and ear protectors against the thunderous sound of the machines. It is the same situation observed in so many other companies which were sampled for this study across the country. Picture 2.14 below shows some of the workers of one of factories visited in the sampled regions.

Picture 2.16: Dusty-workers without proper protection gears.

An anonymous worker of one of the Tanga based companies alleged that, some of the workers had become deaf due to noisy machines that they operated without proper protections, and that others ended up with tuberculosis (TB) and they were not compensated – simply because TB and ear effects were latently occurring as adverse effects of the poor working conditions. Therefore, it was difficult to link them directly with the employer's working environments.

However, Section 23 of the Workers Compensation Act of 2008 has a solution for this kind of tricks. It provides for presumption of the cause of occupation disease that, where an employee who has contracted an occupational disease was employed in any work involving the handling of or exposure to any agent mentioned in the Schedule in respect of that disease, it shall be presumed, unless the contrary is proved that the disease arose out of, and in the course of the employee's employment. Therefore, LHRC advises the workers and their trade unions as well as employers to take note of this provision.

A lady worker of Neelkanth Chemical Industries Limited, Tanga region said that, she has lost proper sight as a result of a piece of limestone which hit on her left eye while working. When she reported her matter to the management, the boss offered her Tanzanian Shillings Five Thousands (Tshs 5,000) equal to around USD 2. The employer said that is a 'generous' support he could offer for this worker who he did not have a contract with.[154] Such amount of money (Tshs 5,000) can not even pay for a mere consultation fee of an optician let alone a transport fare to the referral hospital.

Some of the workers of the Steel and Iron Industries Limited of Dar es Salaam said that, the nature of their work expose them to high risk of being injured; and, indeed as a combined Picture 2.15 below shows, the irons materials which they handle easily cut them because of having insufficient protection gears. The employer normally gives them money for medical attention once they are injured. However, as they alleged, the amount of money paid as 'compensation' or 'medical fees' is deducted from their salaries.[155] Therefore, it means they 'compensate themselves.'

Picture 2.17: Iron and Steel Limited workers in wounds and scars.

The A to Z Textile Industry Limited of Arusha region has never released itself from the allegations of mistreating its workers once they are injured. The 2013 and 2014 editions of this report had some stories about the workers of this industry who claimed to have been neglected and reported incidents death due to poor working conditions. This time around too, a middle aged male worker who is the former employee of this company told the study that, he was involved in an accident which resulted into his hand being chopped off. It is claimed by that worker that, the employer acted quite slackly in such a way that, he had to use his little saving to pay for medical bills. When he started to recover well he approached the employer once again for compensation. It took him a year or so to secure Tshs. 108,000 (USD 51) as full compensation for his medical expenses incurred and his lost left arm.[156] Probably, the A to Z's worker was 'luckier' to have that little money paid by his boss. In Kilimanjaro region, the study came across an incident whereby a worker of the Serengeti Breweries Limited alleged that his fingers were chopped off as he was operating a machine at his workplace. When he brought his case for compensation to the management, he was given two options; namely, to be compensated and quit the job or, to retain the job and waive his compensation claims (rights).[157] The employer's side of this allegation was not immediately secured. Therefore, the worker's story illustrated here as a mere allegation.

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154 Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report I). Page 12.

155 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report I). Page 11.

156 Corporate Human Rights Compliance Assessment, Arusha Field Report of 2015 (LHRC's Report I). Page 3.

157 Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 15.

It should be noted that, Section 32 of the Workers Compensation Act, 2008 prohibits threats and compulsion - meaning that no employer shall threaten an employee or in any manner compel or influence him to do anything resulting in or directed at the deprivation of his right to compensation. However, LHRC is concerned that, this provision has been violated due to the fact that, some of the employers take advantage of the state of workers' income poverty. The employers know that a worker would prefer continue working and then, terminate him or her in few days to come on the grounds of 'poor performance' or 'unfit' for a particular position as it has been a case. It is hightime that the law enforcement agents take this as an emerging threat to workers' rights to compensation; and, degrading of reputation on part of the employers in the corporate sector. Secondly, Workers Compensation Fund (WCF) should now come out of its shell to reach out workplaces with education about its mandates, so that the workers could refer their matters to WCF is the employer is unwilling to pay compensation.

Some of the workers of the Polister Company, Morogoro region said that, their colleague who got disabilities as a result of injuries obtained in the course of employment with this company was allowed to resume work. However, the employer did not create enabling or friendly environment to accommodate them back as disabled person. As a result, they ended up losing their jobs.[158]

Mr. Said, who claim tobe a driver of one of the local airline companies' vehicles got an accident along Tarekea to Moshi road, Kilimanjaro region. He said that, after that accident he tried to communicate with his employer (did not wish to disclose the name) about compensation in vain. He alleged, his employer has never contacted him from July 2015 to the time of an interview with him on 21st December, 2015 and the employer does not know how he was fairing after the accident. He said that, because of this permanent disability he could not easily work for gain to suport his family.[159]

Picture 2.18: Mr. Saidi had his finger chopped as a result of the road accident.

He obviosuly needed an awareness on how to pursue his rights in the state of this condition. However, it could not be easy for him to do so because of being undocumented (informal) worker of the company, and also, a pauper person, without means of hiring a lawyer to handle his case.

158 Corporate Human Rights Compliance Assessment, Morogoro Field Report of 2015 (LHRC's Report I). Page 13.

159 The owner of the car violated section 19(1) of workers compensation act of 2008, NO.20 as well as section 34(1-3) of workers compensation act of 2008.

The TAMICO Officer of Geita region was of the view that, mining sites are the most dangerous workplace, whereby, workers do contact diseases and got time to time accidents which either leaves them with disabilities or deaths. According this official, in most cases, those who are injured in mining activities either receive little compensation or totally denied of the same or receive compensation but expelled from job. He has the view that, the mining activities have increased a number of disabled persons instead of improving the welfare of the people who host such mines. He inferred the 16 years of investments in mining as horrible moments, which, if not checked well, the country will have so many persons with man-made disabilities. This could be an exaggerated remark from the trade union leader; however, it carries a lot of truth of issues on the welfare of the people, who depend on mining activities to improve their wellbeing instead of ruining their health and livelihood.

Some incidents of non-compensation by mining companies were heard in all regions which host such investments. For instance, a worker in one of the mining company which operates in Kwale village, Mbeya region, alleged that, he was injured in the course of his employment with the company. However, the company refused to take care of his medical treatments. Instead, he was stopped from continuing with the employment and was paid alump sum of Tshs 300,000 as 'compensation' and 'retirement benefit.'[160] Same kinds of stories were heard elsewhere including in Shinyanga region, whereby, the workers of a company, which operates in Mwadui diamond mines, claimed to have suffered injuries without being compensated by their employer.[161]

There are, however, some best practices documented from some of the companies, which were praised by their workers as being prompt and of sense of humanity to offer compensation and other humanitarian assistances to their workers once they are injured. For instance, a 21 years young man, Mr. Joseph Peter, who resides at Ibadakuli area, Mpera 'C' Street, Shinyanga urban, was a casual worker at the Jambo Group Company where he worked for ten months before an accident which claimed part of his left leg. He said that, despite the fact that he was a casual worker, still the company took care of his medical treatments plus retaining his salary tillhe was released from hospital; and that, the company still takes care of him.[162]

Picture 2.19: Mr. Joseph Peter who was well treated by his employer after an accident.

[160] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report I). Page 17.
[161] Corporate Human Rights Compliance Assessment, Shinyanga Field Report of 2015 (LHRC's Report I). Page 9.
[162] Corporate Human Rights Compliance Assessment, Shinyanga Field Report of 2015 (LHRC's Report I). Page 9.

A resident of Tarime district, Mara region, said that, he was a worker of the North Mara Gold Mine which operates in this region. His leg was chopped a situation which necessitated his resignation from job. His employer paid him Tshs 300,000 per month as compensation and he was happy about this arrangement[163] apparently because he did not fight for it the way workers of other companies mentioned above did.

The National Ranching Company (NARCO) of Dodoma region has a policy that, once a worker is injured at work, he or she will continue receiving his or her salaries throughout his or her life if the injury results into his or her inability to work. The branch manager, Mr. Elisa Binamungu gave an example of the young man who was grazing the company's cattle. That worker will continue to receive his salary tillhe dies despite the fact that he is no longer working for the company due to the injury sustained in the course of his work as an employee.[164]

It was also noted that, most of the Ruvuma region's corporate companies have adopted a similar culture of paying fair and prompt compensations to their workers who are injured in the course of employment. This was heard to be a case from the workers' own statements in all companies visited for this study, including, the Aviv Tanzania Limited; TANCOAL; and, the Dan and Associates Enterprises (DAE) Limited.[165]

2.7.3 Enforcement of Workers' Compensation Fund

The Workers Compensation Act, 2008 provides for workers[166] to be compensated in case of injuries sustained during work. The Act seeks to ensure employees who suffer occupational injuries or contract occupational diseases in the course of employment obtain adequate and equitable compensation; and enjoy proper rehabilitation to restore health. In case of death, their dependents receive the compensation. Such rights are stipulated under provisions of Sections 19[167] and 22[168] of this law. Section 34(4)(b) of the Workers Compensation Act, 2008 clarifies compensation includes the cost of medical aid and any other amount paid.[169] The scenarios of nature of compensation per each type of injuries are stated under Sections 46, 48, 52, 53 and 61 (2) of this law.

The organ entrusted with the statutory duty to coordinate compensations in Tanzania is the Workers Compensation Fund (WCF), which is established under Section 5(1) of the 2008

[163] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 15.

[164] Corporate Human Rights Compliance Assessment, Dodoma Field Report of 2015 (LHRC's Report II). Page 19.

[165] Corporate Human Rights Compliance Assessment, Ruvuma Field Report of 2015 (LHRC's Report II). Page 18.

[166] The Act applies to all employers and employees from both the private and government sector in Mainland Tanzania, and employees who ordinarily work outside Mainland Tanzania but have been stationed in Tanzania for more than 12 months.

[167] Which provides where an employee has an accident resulting in the employers disablements or death ,the employee or the dependents of the employee shall subject to the provision of this Act, be entitled to the compensation provided under this Act.

[168] It provides for the right to compensation for occupational diseases.

[169] For instance, Section 61(1) of the Workers Compensation Act, 2008 states that, *'where an employee meets with an accident which necessitates the employee's conveyance to a hospital or to a medical practitioner or from hospital or medical practitioner to the employee's residence, the employer shall, without delay, make the necessary conveyance available.'*

legislation.[170] The WCF came into operation from July this year 2015. The Fund is managed by the Director-General and governed by the Board of Trustees of WCF established under Section 12(1) of the 2008 law. According to Section 13(1) of this law, one of the functions of this Board is to control and administer the Fund. All employers are required to contribute to the WCF. All private sector employers must now contribute 1%, and public sector employers must contribute 0.5% of their annual tax bill for one year from 1 July 2015. Contributions are due on a monthly basis.

Picture 2.20: The Sign-board of WCF Headquaters, Dar es Salaam.

The objectives of WCF as per its 2015 profile document are, (i) to provide adequate and equitable compensation to employees; (ii) to implement the National Social Security Policy of 2003 which require having a system in place to cover contingencies for work –related injuries diseases and death; (iii) to provide a framework for effective, prompt and empathetic consideration, settlement and payment of compensation benefit; (iv) provide a framework for control and administration of contributions to and payments from the fund; (v) to promote the prevention of accidents and occupational diseases; (vi) to provide rehabilitation services; and (vii) to comply with international obligations with respect of workers compensation.

According to the WCF officers interviewed in December 2015, the Fund shall offer a number of benefits, namely; medical aid, compensation for temporary and permanent disabilities, constant attendant of care grant, dependents' grants, funeral grants and rehabilitation benefits. The payments of benefits will start from 1st of July, 2016. Before this date, payments for compensation shall continue under the current arrangements.

The WCF's officials were not at the position to indicate a number of employers who have started contributing to this fund as well as the extent to which the Fund has been able to reach out the workers and employers in order to inform them about the Fund. This study has found that, sufficient resources and effective communication strategy will be needed from now on because almost all workers and most of the employers interviewed about this Fund were not aware of it.

[170] The main purpose for the establishment of the fund is to provide for adequate and equitable compensation for employees who suffer occupational injuries or contract occupational diseases arising out of and in the course of their employment and in case of death, for their dependents. The scheme is operated under social security and insurance principles.

Less than six months from now to 1st of July, 2016 seems to be unrealistic time to have everything in place before effective implementation of the law.

LHRC suggests that, for WCF to be effective, efficient and of feasible results, it needs to have; (i) branch offices at least at zonal or regional levels, in order to enhance the proximity of its services; (ii) to create a network with other government or non-government institutions such as LHRC's paralegals and monitors, who could collaborate with the trade unions or employers association to assist some of the WCF's activities which can be delegated; and, (iii) ask the government to appropriate sufficient funds as initial 'seed-money' for this Fund (WCF) to hit the ground running.

2.8 ENFORCEMENT OF SOCIAL SECURITY SCHEMES OR BENEFITS

The social security, which is increasingly regarded as 'insurance' is an important human rights aspect in corporate sector. It is, essentially, a strategy of safeguarding the worker's wellbeing especially when that worker could no longer depend on his or her physical energy to earn a living due to age, disability or any other reasons. It is provided for under a number of international legal instruments, main ones being; the Social Security (Minimum Standards) Convention, 1952 (No. 102); the Universal Declaration of Human Rights (UDHR), 1948; the International Convention on Economic, Social and Cultural Rights (ICESCR), 1966; and, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979.

Article 22 of UDHR, 1948 states that everyone should have the right to social security. Article 9 of ICESCR, 1966 provides for the same. In addition of 'social security,' the said provision adds 'social insurance.' Article 11(1)(e) of CEDAW provides for the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work. The generality of the above cited ILO Convention No. 102 is the coverage of several schemes or contingencies including the old age benefits; employment injury benefits; medical benefits; unemployment benefits; maternal benefits; invalidity benefits; and, survivor benefits.

At the national context, the current schemes cover all of these and other benefits including the funeral grants. The country's legal framework on social security makes social security as compulsory schemes for every worker in public or private sector. Moreover, the framework gives a worker freedom to make his contributions to the scheme of his or her choice.

Currently, there are at least five social security funds or schemes, namely, the National Social Security Fund (NSSF); the Parastatal Pension Fund (PPF); the Local Government Authority Pension Fund (LAPF); the Government Employees Pension Fund (GEPF); and, the Public Service Pension Fund (PSPF). Each of these funds has its governing law, rules and regulations. However, they are all regulated by the Social Security (Regulatory Authority) Act, 2008,[171] which establishes the Social Security Regulatory Authority (SSRA). Other related schemes are WCF discussed above and the National Health Insurance Fund (NHIF). The functions, status of contributions, success stories, coverage of the funds and other related information on SSRA as a regulatory authority are covered under chapter eight of this report. Therefore, this section maps out some practical

[171] Act No. 8 of 2008 as amended by Act No. 5 of 2012.

incidents of concern about the enforcement of the social security schemes as gathered from the field.

There are several issues of concern about the enforcement of social security schemes in Tanzania. Such issues as it is generally established during the study included:-

(i) The workers who are regarded as '*vibarua'* (casual labourers) were not registered for social security funds in almost all companies sampled for this study despite the fact that most of the current funds allow even informal workers to make their contributions.

(ii) There are few companies which include a clause on social security in the employment contract deeds, but in reality, they do not remit the contributions to the funds. They take workers' ignorance and trade unions' weaknesses into granted. Detailed explanations and illustrations about contractual agreements are covered above.

(iii) There are also companies which do not offer employment contracts at all. Therefore, it is difficult for the workers or law enforcement agents to enforce statutory deductions including monthly contributions to the social schemes. For instance, in January 2016, the Deputy Minister for Labour, visited the Leopard Tour Company in Arusha region where he found out that, some of the workers of this company were not offered employment contracts, and therefore, the employer was not remitting statutory deductions to the revenue authority (TRA) and social security funds.[172] Some of the workers of TPC and China Paper Company both of Kilimanjaro told the study that, they have short employment contracts without a clause on social security schemes.[173] The workers of the Nyanza Bakery Company, Mara region, said that they were not in any of the social security funds and did not have employment contracts which could have dictated such entitlements for them.[174]

The implication of not offering employment contracts is that, most of those who are employed without employment contracts are not registered to social security funds – because, normally the employment contracts are one of the basis of calculating amounts of contributions for each worker. This is why, despite the fact that around six (6) million persons (basing on NBS' statistics indicated earlier on in this report) are currently engaged in formal working environments, less than 30% of them were currently registered for social security schemes (basing on SSRA statistics presented in chapter eight of this report).

(iv) There are companies which do register their workers in social security funds but they do not remit the deductions to the funds. The workers of the Moshi Leather Company and the Bonite Bottlers Company (both of Kilimanjaro region), and Mara Milk Company, Mara region, are among the complainants of this tendency. The NSSF Director for Mara region, Mr. Francis Mahenge told the research team that, incidents of not remitting

[172] Source: Nipashe 7th January, 2016.
[173] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report II). Page 15.
[174] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 16.

contributions are living realities in his jurisdiction and there were so many claims of this nature.[175]

An ex-worker of the Bonite Bottlers alleged that he recently realized that, his employer did not remit contributions to his account fund of more than Tshs 500,000 from August 2014 until when he went to cross-check with NSSF in February 2015. The respondent further alleged that, having informed his bosses about this omission, he lost the job and that, the management of the company refused to fill in NSSF claim form for him to access his contributions.

Kind of this situation rise doubts on the effectiveness and efficiency of some of the funds to enforce or monitor contributions from its members. It is bizarre to see that, an employer could stop for such a long time from remitting contributions without being noticed and taken into task as the laws require. Probably, the non-remittance of contributions would have continued was it not personal efforts by the employee to follow it up with the NSSF. LHRC urges the funds to adopt a more pro-active approach of securing contributions rather than relying on the papers submitted to them by the employers. One of the strategies could be to work together with trade unions, which could have list of employees of different companies; or, labour officers, who are aware of the situation of all workplaces.

(v) There are companies which offer long term contracts but just neglect to make contributions for their workers to the social security funds. An employee of the Shaha Industries, Kilimanjaro region, claimed that, he has worked with this company for 35 years now, but his employer has never made any contribution to the fund. He said that, his life after retirement will certainly be disastrous.[176] However, he can still use available legal channel to claim all contributions ought to have been made from day one of his employment.

(vi) There are also workers who really wish to contribute to these funds but they consider their salaries as trivial. For instance, the labourers who are paid on hourly or daily basis feel that the Tshs 500 received per hour; or, Tshs 5,000 receive per day is too little and difficult to deduct for social security – unless the employer volunteer to remit the contributions without deducting the workers' salary. An ex-worker of Mbeya Textile Mills told the study that, *'if someone works as a casual labourers, who receives very low wage, it is obvious that person could automatically narrow his thinking - that such deductions to the funds will make his earnings more smaller and therefore, impossible to sustain his life ...'* The respond imposes a challenge on how a person who receive a hand-to-mouth ('subsistence') income could have a surplus to make deductions, because for an employee, both (tax and social security) deductions go together. Same line of notion on the correlation between trivial salary and failure to contribute to social security funds was heard in Mbeya region, whereby a driver of the Mbeya Express Bus Company said that, many drivers do not join such schemes because of their low salaries and lack of employment contracts as basis for remitting contributions to the funds.[177]

[175] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 16.
[176] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report II). Page 15.
[177] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 13.

(vii) There workers who are not comfortable with the funds which their employers chose for them. For instance, a worker of the A to Z Textile Company of Arusha said that, his employer (or management) compels employees to use PPF instead of NSSF scheme. He alleged that, the workers do not prefer PPF because upon termination, their contributions made are paid through their employer, who unreasonably reduces it before handling it to the beneficiary worker.[178]

Other schemes include health or medical insurance, which this study found to have been not effectively offered for the workers. Some of the workers of the Speed Security Company, Mtwara region claimed that, despite the fact that the nature of their work is risky no any arrangement has been made by the employer to cover them against risks including being injured or killed in the course executing their work. The workers said that, they do not have health insurance covers nor good pay to cover themselves in lieu of health insurance.[179] Similar situation was noted all over the sampled regions and companies.

However, there were a few companies which demonstrated outstanding practices of at least designing their own medical schemes or arrangements to help their workers who would need medical attention. One of such few companies is the Chemicotex Industry Company, which is located at Jogoo area, Mbezi Dar es Salaam. The company, as Picture 2.21 below shows, has an ambulance which is placed in a standby mode outside the entrance just in case an emergence occurs. The ambulance is essentially for the use of the workers of this company.[180]

Picture 2.21: An Ambulance at Chemicotex Industry, Dar es Salaam.

Other companies could adopt similar practices, which sometimes could be a motivation strategy for the workers.

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178 Corporate Human Rights Compliance Assessment, Arusha Field Report of 2015 (LHRC's Report I). Page 3.

179 Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report I). Page 15.

180 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report I). Pages 20-21.

2.9 LEAVES, FRINGE BENEFITS AND OTHER ENTITLEMENTS

2.9.1 Essences of Leaves and Other Entitlements

As it was stated in the 2014 edition of this report, there is no specific ILO instrument on various leaves for workers apart from the Maternity Protection Convention, 2000 (No.183), which only covers women. The 2000 convention generally states that, women who are absent from work on maternity leave, shall be entitled to cash benefit which ensures that they (women) can maintain themselves and their child in proper conditions of health and with a suitable standard of living.

At the national level, Constitution of the United Republic of Tanzania of 1977 is silent on rights to leaves. However, they are extensively explained under the provisions of ELRA, 2004. Annual leave is provided for under Section 31 of this law; sick leave under Section 32; maternity leave under Section 33; and the paternity leaves under Section 34 of ELRA, 2004. The quotation of each of these sections is provided under each sub-part of this part of the report.

Note that, the annual leave accounts for 28 days; the sick leave accounts for first 63 days full wage is paid and the rest 63 days half wage is paid; the maternity leave which accounts for 84 days, 100 days if a mother gives birth to more than one child at the same time; and, the paternity leave (only for fathers) it accounts for three days. In most cases, the employers failbto calculate the sick leave and some of them tend to mix it with annual leave, whereby, if one takes a sick leave, the days he spent out of work for treatments are deducted from annual leave. LHRC suggests that, more awareness should be given to the workers and employers in order to have a clear understanding of these leaves.

It should be noted that, an employee with less than 6 months of service and who has worked more than once in a year for the same employer, is entitled to paid leave if total period worked for that employer exceeds 6 months in that year. This legal requirement is against the widely practiced misconception that a casual worker does not deserve any leave and that, if it is necessary to offer him or her a leave, then that would be at employers own discretion as a privilege instead of the right. For instance, the study was informed by some of the workers of the Musoma Fish Processors Limited and Mara Coffee Company, both of Mara region that, leaves were for workers with permanent contracts only. The casual workers are not entitled to the leave or leaves because they are paid according to the days they had worked.[181]

The general trend about the granting of leaves by the employers shows that, many employers (36% of them according to the workers' responses) were 'ready' to allow annual leaves for their workers; while only 6.4% of the workers said that their employers were willing to 'allow' maternity leaves. More workers' responses on the right to various types of leaves were as indicated in Table 2.7 below:

Table 2.7: Types of Leaves Mostly Granted by Corporate Companies

Responses [N=722]	Frequency	Percent
Annual Leave	262	36.3
Maternity Leave	46	6.4

[181] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 16.

Paternity Leave	42	5.8
Sick Leave	124	17.2
No Leaves	248	34.3
Total	722	100.0

Source: LHRC, Human Rights and Business Study (Field Data), 2015.
[Note: a few responses were invalid or missing system].

The field records show that, responses to maternity and paternity leaves were filled in by only female and male workers respectively. Therefore, basing on the total number of women interviewed during this study, which was 278 out of 722 being 38.5% as Table 1.4 of chapter one shows, it seems that, only 46 out of 278 total women interviewed were allowed to break for maternity leave by their respective employers. Such a number (46) means only 16.5% of the interviewed women said that they were allowed to break for maternity. However, at least two-third (70%) of them indicated a doubt that, the employers would replace other workers if they go for a leave. At Dar es Salaam region, the study met a female worker, Cassino attendant, who decided to 'hide' her pregnancy status so that she cannot be expelled by her boss. She approached the senior researcher's office for a legal advice in November 2015.

2.9.2 Annual Leaves

Section 31(1) of ELRA, 2004 states that, an employer shall grant an employee at least 28 consecutive days' leave in respect of each leave cycle, and such leave shall be inclusive of any public holiday that may fall within the period of leave. Such days are inclusive of any public holiday falling within it. During this period, a worker is entitled to remuneration as usual.

The study has established that, the right to annual leave is still surrounded with so many obstacles despite the fact that there is a huge improvement and awareness about it as field statistics presented above have shown. The obstacles include; total denial of the annual leaves by some of the employers; confusion between administrative arrangements and annual leaves; confusion between annual and other leaves; non-payment of leaves; and willful reduction of leave's days or money.

(i) Annual Leave as 'Privilege' and 'Diminution' of Production

As it was noted in previous reports of this nature, some of the employers still consider annual and other leaves as privilege and not part of basic rights of the workers. As such, they tend to mix it up with other administrative plans such as staff shifts and reshuffles. A worker of the Geita region based hotel, K.M Hotel, said that, a number of his annual leave to be taken per a year depends on the number of days off taken as a result of the shifts (day and night). Therefore, when it happens that he has taken so many days off as a result of the shifts, his annual leave is automatically reduced into fewer days.[182] Same unlawful arrangements were heard in Arusha, Mtwara and other regions sampled for this study and mostly involved the hospitality and security economic sub-sectors.

[182] Corporate Human Rights Compliance Assessment, Geita Field Report of 2015 (LHRC's Report I). Page 14.

On the other hand, there are employers who just refuse to offer annual leaves to the workers because the workers are engaged as casual labourers or they are in 'essential portfolios' of the company's production system in which, taking days off could mean diminution of production, outputs and therefore little profit. So many claims were heard about this practice from the workers of the Mwanza based fishing processing factories. Some of the workers participated in the focus group discussions said that, if someone insists on getting an annual leave, that worker could risk losing his or her job.[183] An anonymous chief supervisor of one of such companies in Mwanza said that, *'the workers are paid 'stunning' allowances such as above statutory overtime rates which can benefit them more than just spending unproductive days at their homes ... I think most of the workers are comfortable with this arrangement ...'* To this man, a leave is all about money, which is an ill-perception indeed.

Similar claims of being denied of the annual leaves were heard in other places visited including Tanga region, whereby, some of the workers of the Amboni Spinning Mill Limited said that, they have never had such entitlement happened in their carriers with this employer.[184]

(ii) Annual Leave Payments at Bosses' Discretions

Some of the companies do offer annual leaves as the law requires. However, there is a tendency of reducing or not paying a worker his 12th salary of the year on the ground that, a worker takes 28 days off and therefore, his gap left behind should be replaced with someone while a worker is away. On this tendency of reducing annual leave's payment rate, a worker of the Dar es Salaam based Iron and Steel Limited alleged that, they are indeed sign leave papers which indicate that he will receive, in addition to his 12th month salary, Tshs 110,000 for the annual leave. However, their human resource officer, who is in charge of coordinating the leaves, reduces Tshs 10,000 from every worker for '*vocha'* (airtime for mobile phone). *'Ukimkatalia jambo hili anakufanyia visa unaweza hata kufukuzwa kazi' ('if you don't accept this deduction, he will fix to the point of losing your job')*, claimed the respondent in December 2015 at Dar es Salaam.[185]

Moreover, there are some employers who allow annual leaves for their workers by only paying the money but continue retaining the workers at the workplaces. The Moshi Leather Industries Limited and the China Paper Company of Kilimanjaro region[186] are some of such companies with that practice.

The TPC Company of Kilimanjaro region has its own practice which is unprecedented all over the country basing on the sample of this study. It was noted from the discussions with the workers that, the workers are paid Tshs 10,000 in addition to their monthly salary (which is Tshs 186,000 for each worker) as an advance of the 'annual leave payment.' There is another group of workers who are allegedly granted leaves with some money (not fixed), but they are supposed to

183 Corporate Human Rights Compliance Assessment, Mwanza Field Report of 2015 (LHRC's Report I). Page 7.
184 Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report II). Page 19.
185 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report I). Page 12.
186 Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report II). Page 15.

repay the money given (in this sense 'borrowed').[187] It was not immediately established as to why this employer had chosen this arrangement which is quite unique and of course, unlawful.

(iii) Annual Leave could Mean Suspending a Worker's Salamary

As if it is an 'innovation' of the Kilimanjaro based companies – to have their own ways of granting annual leaves and payments, other companies in this region had devised own distinctive leave procedures and standards. For instance, the Bonite Bottlers Company is alleged to give its workers a tune of Tshs 90,000 for an annual leave; and that, the money is paid after a worker comes back and resume working. Moreover, it is claimed that, a worker is not paid his or her salary for the duration he or she is away for the leave. Same practice by the Vasso Agro Venture Company in Kilimanjaro region, whereby instead of being given an annual leave's proper payments, the workers are given Tshs 44,500 as a 'thanks-giving' gesture for the good work done during the year.[188]

There are also a good number of corporate companies which can be regarded as best practices for offering annual leaves and payments exactly in accordance with the legal requirements. In these companies, some of the workers who were interviewed seemed to have been comfortable with their employers' practices. Such companies included, the Mormar Son's Construction Company of Tabora region;[189] the Epsom Limited of Geita region;[190] theNMGM, Mara region;[191] and, the Export Trade Group (ETG) Limited of Mtwara region.[192]

2.9.3 Maternity and Paternity Leaves

According to Section 33(1) of ELRA, 2004 the female employees are entitled to maternity leave upon giving notice to employer at least 3 months before expected date of birth, supported by medical certificate. The duration of the maternity leave is indicated above. On the other hand, the paternity leave, according to Section 34(1)(a) of ELRA, 2004, is granted to male employees who have fathered a new born baby; and lasts for 3 days.

The right to maternity leave is increasingly become known to the employers and workers as well. Unlike the situation which was observed in the past through similar studies, this time around (2015) almost 8 (80%) out of 10 respondent workers were aware that, maternity leave is one of the labour rights to claim. However, this is one of the labour and gender-related right which is widely not accorded a due attention and acceptance by majority of the employers even of the prominent corporate companies. The reasons for its denial are easy to speculate, and they include a dire need to have consistent labour force in order to enhance productivity; and secondly, averting of some maternal costs, which some of them are supposed to be paid by the employers. In this way, some of the employers (in fact, majority of them) find some tricks to break away

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187 Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 19.
188 Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 19.
189 Corporate Human Rights Compliance Assessment, Tabora Field Report of 2015 (LHRC's Report I). Page 13.
190 Corporate Human Rights Compliance Assessment, Geita Field Report of 2015 (LHRC's Report I). Page 14.
191 Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report II). Page 16.
192 Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report II). Page 13.

from their responsibilities. This is why some of the companies such as Moshi Leather Company[193] are said to prefer male workers more than female workers.

Some of the respondents, who are workers of the Mazava Fabrics and Production EA Limited, Morogoro region; and, the TPC Company, Kilimanjaro region claimed that, their employers do allow pregnant women to take maternal leaves upon request. However, once such women go out for their leaves, their positions are replaced by other workers, and that becomes the end of their tenure with their employers.[194]

As for the paternity leave, this one is still regarded as a mysterious right as it was uncommon for the father to have a direct role in the child-delivery processes. This is due to stereotypic practices which engulf majority of people in Tanzania.


Picture 2.22: A man walking with a child on his back

A worker at the Modern Mattress Company of Dodoma region said that, such kind of leave (paternity) is not granted because it was a bizarre for a father of the child to nurse and infant along with the wife. This is why even himself could just forego this leave when the wife delivers. Moreover, it is noted that, most of the workers who are paid on hourly or daily basis do 'volunteer' themselves not to take this leave because, a day off means having empty pockets in return. This is particularly an issue due to the fact that, most of the casual labourers, as argued above, are 'not entitled' for such benefits the way in which permanent or 'formal workers' are normally treated.

2.9.4 Sick Leaves

Section 32(1) and (2) of ELRA, 2004 states that, the sick leave is granted for at least 126 days in a leave cycle, during which the employee is entitled to receive full wages on the first 63 days and half wages on the last 63 days. As it is already discussed above, some of the employers tend to confuse sick and other leaves in such a way that, a worker who was allowed to take sick leave, say for 3 day, would have his or her annual leave deducted to 25 days. The second issue of

193 Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report II). Page 16.

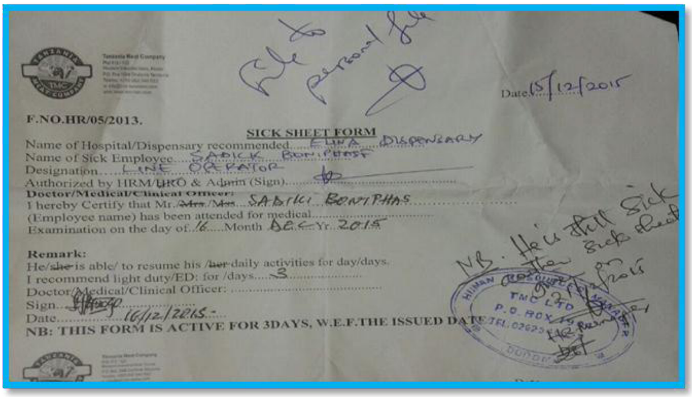
194 Corporate Human Rights Compliance Assessment, Morogoro Field Report of 2015 (LHRC's Report I). Page 15; and also, Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 19.

concern about sick leave as noted during the study was that, some of the employers were unwilling to pay for medical costs of the worker who is sick.

An employer of the K.M Hotel, Geita region, said that, normally a sick worker is allowed to take 3 days off. However, that worker is responsible for his or her medical bills.[195] A worker of the A to Z Textile Company, Arusha region alleged that, the employer deducts Tshs 15,000 from the worker's salary for the days that a worker would not turnout to work regardless whether he was sick or otherwise.[196]

An officer at Tanzania Meat Company, Dodoma region, confirmed that, it is true that leaves are issues of concern in most of the companies. She said that, it is true that leaves are huge challenges especially on part of female workers who normally require more leaves than male workers. She said that, in most cases all leaves are limited to only twice a year. Same line of thought was heard from the leadership of the KFS Limited, Dodoma region on 18th December 2015.[197]

Despite the challenges which the officer of the Tanzania Meat Company highlighted, it was established that, its workers were more comfortable with the sick leave arrangements than the workers of other companies sampled for this study. As Picture 2.21 below of the sick-sheet shows, a worker of this meat company can be granted a sick leave and additional days off is he or she is not feeling well.


F.NO.HR/05/2013.

Date 15/12/2015

SICK SHEET FORM

Name of Hospital/Dispensary recommended ELINA DISPENSARY
Name of Sick Employee SADICK BONIFASF
Designation LINE OPERATOR
Authorized by HRM/HRO & Admin (Sign)
Doctor/Medical/Clinical Officer:
I hereby Certify that Mr./~~Mrs~~/~~Ms~~ SADIKI BONIPHAS
(Employee name) has been attended for medical
Examination on the day of 16 Month DEC Yr 2015

Remark:
He/~~she~~ is able/ to resume his /~~her~~ daily activities for day/days
I recommend light duty/ED: for /days 3
Doctor/Medical/Clinical Officer:
Sign
Date 16/12/2015
NB: THIS FORM IS ACTIVE FOR 3DAYS, W.E.F.THE ISSUED DATE

Picture 2.23: Sick-sheet of the Tanzania Meat Company, Dodoma region.

The Tanzania Meat Company is considered as a best practice because in some of the other companies visited in December 2015, such leaves were not allowed at all, and if a worker forces a day off for medical check-ups, he or she loses his or her position. For instance, it was alleged by an anonymous worker that, two workers of the Ntakato Steel Limited, Mwanza region, were terminated from work because they took leave to treat themselves following the injuries sustained in the course of performing their duties.[198]

[195] Corporate Human Rights Compliance Assessment, Geita Field Report of 2015 (LHRC's Report I). Page 11.
[196] Corporate Human Rights Compliance Assessment, Arusha Field Report of 2015 (LHRC's Report I). Page 4.
[197] Corporate Human Rights Compliance Assessment, Dodoma Field Report of 2015 (LHRC's Report II). Page 21.
[198] Corporate Human Rights Compliance Assessment, Mwanza Field Report of 2015 (LHRC's Report I). Page 10.

2.9.5 Working Hours

Section 19(1) of ELRA, 2004 prohibits working beyond 12 hours per day. Sub-section 2 of this section sets maximum number of hours an employee works per week to be 45 hours. Any extra time should be regarded as 'overtime' and shall be agreed by the two parties (employer and worker) through a separate agreement and shall be accompanied by the overtime pay.[199] If an employee is engaged in a work on a public holiday, he or she is also entitled for an extra pay for each hour worked according to Section 25 of ELRA, 2004.

But according to ILO regulating their working time is a contentious issue in current policy debates. Although the eight-hour working day is now an internationally accepted legal norm, domestic workers are most often exempted from this standard. Their exclusion exists even in countries where domestic workers are covered by other labour standards. The main argument given for excluding domestic workers from the coverage of general working time regulations is that their tasks are different from standard office and factory jobs because the needs of household members are not always predictable, have no defined limits or, in some cases, demand 'round-the-clock' service (Ref: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/travail/documents/publication/wcms_156070.pdf).

It is a common experience for some of economic sub-sectors to work beyond the statutory time limit as explained above. The notorious sub-sectors on this trend were found by this study to be private security companies; extraction; tourism (hotel attendants, porters, drivers, etc); and construction especially civil engineering. The issue of concern here is not working beyond time limit; rather, overtime payments upon spending more hours in work that what the law limits.

Two challenges associated with overtime payments were noticed during the study, namely; (i) working beyond time limit and not receive a single cent of overtime (total denial of overtime payments); and, (ii) miscalculation of overtime by underpaying the workers. The two challenges are simultaneously illustrated below.

Table 2.8 below shows that, about 40% of the workers interviewed said that, they were being paid for the extra hours worked – but most of them did not understand the formula used to pay them. Moreover, the amount paid for the same duration of hours tended to defer from one day to the other, a fact which suggests that, the standard provided by the law is not necessarily followed to calculate rates of overtime.

Table 2.8: Whether Workers were paid for Extra-Hours Spent at Workplace

Responses [N=722]	Frequency	Percent
Yes	288	39.9
No	358	49.6
Not Sure	76	10.5
Total	722	100.0

Source: LHRC, Human Rights and Business Study (Field Data), 2015.

[199] Section 19(3) and (4) of ELRA, 2004.

On this matter, some of the workers of the Musoma Fish Processors Company, Mara region claimed that, they did not know the formula used by their employer to come at a pay rate of Tshs 1,000 (USD 0.45) as an overtime for three (1) hours worked for a day. In other words, this employer pays around Tshs 330 (USD 0.15) per every overtime hour worked. It is obvious that this rate was haphazardly arrived upon instead of following the formula as indicated in the table annexed to ELRA (it is a long table, not convenient to reproduce it here).[200] Probably, the Musoma Fish Processors' workers could 'lucky' persons to receive at least those few cents. For other companies like the Aim Steel Limited and the Tembo Paving Blocks Company (both of Dar es Salaam), working 'beyond the clock' (24 hours) is seemingly to be almost ordinary trend as some of their workers alleged during the study in December 2015. The serious part of this practice is that, such overtime-working employees receive same daily rates of wages which range between Tshs 4,000 and Tshs 5,500.[201] The TFP Company's workers (in Mwanza region) said that, their reporting time to the workplace is 6.00am and they end up their day from work at 6.00p.m, being 13 hours.[202]

Moreover, some workers at the Agro Processing Africa Limited (ETG Export Trading Group), Dodoma region had the same claims that, they were not paid for extra hours (overtime).[203] A security guard who worked at the Kapunga Rice Project, Mbeya region, said that, his on-duty responsibilities consumed more than 12 hours throughout the year. Worst enough, he had never been granted a leave. The only thing that bound him to continue working under such conditions is poverty and absence of alternative means of survival. He could have search for green pasture somewhere else but, the nature of his work denied him of an opportunity to do so. It is the same case for a lady worker, who worked with a tobacco where house located at the former structures of the Mbeya Textile Mills Limited, Mbeya region. The lady told the research team that, she normally reports at the workplace at 6.00am every day, and remain on hold for more than 12 hours. Of course, the employer allowed her to take short break. An overtime payment was a new thing that she heard from the researchers. She receives a wage of Tshs 7,600 per day and that is all.[204]

It should be noted that, some of the workers force to work overtime without overtime pay in order to get some tips. The employers know this. As it was argued in 2013 similar study to this one, given the difficulties in landing a job nowadays, it suffices to say that employers may ask employees to work beyond hours of work set by law, without any overtime pay, knowing that they would be afraid to say no because of the prospect of losing their jobs (Reference: LHRC (2013) Human Rights and Business Report of 2013. LHRC: Dar es Salaam. Page 33).

The Acacia NMGM's workers who responded to this study alleged that, they did not know how much were they paid (and also a formula applied) for the overtime because such payments are engrossed in their salary.[205] This situation implies that, there was no negotiation between the employer and workers about overtime arrangements contrary to what the law requires. The El-

[200] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 14.
[201] Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report II). Page 8.
[202] Corporate Human Rights Compliance Assessment, Mwanza Field Report of 2015 (LHRC's Report II). Page 7.
[203] Corporate Human Rights Compliance Assessment, Dodoma Field Report of 2015 (LHRC's Report II). Page 8.
[204] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 12.
[205] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 14.

Hillary Company's workers (Mwadui, Shinyanga region) claimed that, they do not know even the exact time limit for them to finish working per a day.[206]

The Tanga based Neelkanth Lime (Chemical) Industries and the Tanpesca Fish Industry seemed to have been able to twist the workers' working mentality that, the more the work, the more wage. Through this strategy, it is said that, the worker work 'tirelessly' regardless of the holiday breaks. They received wages per day output and not extra-hours spent at the workstations.[207]

Some of the workers of the Nyumbani Hotel and Resort, Kilimanjaro region, claimed that, they were bound not only over-working hours duties, but also over days duties. For instance, they are required to work even during public holidays without extra payments. Even the normal wages are delayed for about 15 days. The workers further alleged that, no employee is allowed to leave the workplace after ordinary working hours until all tasks are collectively executed. A worker, who takes night shift, is locked in the hotel until the worker whose shift follows in the morning reports to the duty station. This lockout does not consider the risk of fire break outs.[208]

There are a few companies who were, according to the workers, been able to compy with the legal requirement quite perfectly. A group of workers at the Tanpack Tissue Limited, Dar es Salaam, said that, they work for only 7 hours and 30 minutes per day, and that, should a situation necessitates to work beyond ordinary statutory time, they are agreeing with the supervisors and then, paid one and half times the basic hourly wage for the extra-time. Morever, during holidays, the payment is double the basic hourly wage. This is what the law directs.

The Dan and Associates Enterprises (DAE) Limited, Ruvuma region is singled out once again as the best practice whereby the management decided to draw on the wall the working hours chart or timetable on the industry's conspicuous place as Picture 2.22 shows.

Picture 2.24: The Dan and Associates Enterprises (DAE) Limited's working hours timetable places outside the factory wall.

[206] Corporate Human Rights Compliance Assessment, Shinyanga Field Report of 2015 (LHRC's Report I). Page 8.
[207] Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report II). Page 13.
[208] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 16.

The said timetable as shown above is written in Kiswahili and English languages. It also bears important messages, (i) prohibiting child labour; and, (ii) advice on unprotected sex intercourse – to avoid HIV/AIDS. Other Ruvuma region based companies had almost similar arrangement, to display announcement on the walls. However, according the observation and discussions with some of the workers of the Ruvuma's companies, it was ascertained that, such announcement have not been sufficient ways of stopping employers from instructing workers to handle their dues beyond ordinary hours.

On these issues, the Tancoal Company's Engineer (of Mtunduwalo village, Luanda ward, Ruvuma region) said that, his company had two shifts of working one being between 7.am and 6pm, and the second shift was from 7pm and 6am, which is 12 hours or more contrary to the legal limit of 9 hours per day. There was no other indication of compensating the workers for extra hours spent for the employers.[209]

2.10 REMUNERATIONS AND IMPLEMENTATION OF WAGES ORDERS

The right to fair and equal remuneration is also provided for under the provisions of various international human rights instruments. Such instruments include the Convention on Equal Remuneration, 1951 (No. 100);[210] the Minimum Wage Fixing Convention, 1970 (No. 131); ICESCR, 1966;[211] and, the African Charter on Peoples and Human Rights (ACPHR), 1981.[212]

> Such instruments generally put obligations to ensure that, states including Tanzania establish a system of minimum wages which covers all groups of wage earners and to ensure equal remuneration for equal work done. Article 23(3) of UDHR, 1948 termed this as 'just and fair remuneration.' Therefore, the minimum wage should be paid according to the state's directive and not employers' own discretions. However, according to Article 1(a) the minimum wage directed by the state's laws, shall not be a bar for any additional emoluments payable directly or indirectly, whether in cash or in kind, by the employer to the worker, which could arise out of worker's employment.

The Constitution of the United Republic of Tanzania of 1977 captures well the spirit of the international human rights instrument on the right to just and fair enumeration. For instance, Article 23(1) and (2) of the Constitution clearly states, among other things that, every person is entitled to just and fair remuneration, which is commensurate with his or her work. In a more specific way, Section 27(1) of ELRA, 2004 puts an obligation to employers to pay their employees monetary remuneration to which the employee is entitled. Moreover, an arbitrary deduction of employee's salary, which appears to be a common practice in Tanzania especially in private sector, is prohibited under Section 28 of this employment law (ELRA, 2004).

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

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209 Corporate Human Rights Compliance Assessment, Ruvuma Field Report of 2015 (LHRC's Report I). Page 22.

210 For instance, Article 2 of this Convention calls upon members to promote and ensure application to all workers the principle of equal remuneration for men and women workers for work of equal value.

211 Article 7(a)(ii) of ICESCR, 1966 requires member states to ensure everyone enjoys the right to fair wages and equal remuneration for work of equal value without distinction of any kind.

212 Article 15 of ACPHR states that, *'every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.'*

determined in accordance with the Table provided whereas 9 working hours in a day; 45 hour in a week; or 234 hours in a month.

Section 35(1) of the Labour Institutions Act, 2004[213] empowers the Minister for public service to form the Wage Board. Section 36 of this law provides for the functions of the Wage Board, which are; (i) to conduct an investigation on a minimumenumeration and other conditions of employment; (ii) to promote collective bargaining between registered trade unions, employers and registered employers' associations; and, (iii) to make recommendations to the Minister on a minimum wage and conditions of employment. The factors which the Wage Board is required to take into consideration in its deliberations include the above mentioned international instruments, relevant provisions of the Constitution of Tanzania, costs of living and the minimum subsistence level.

LHRC suggests once again that, there is a need of reviewing the minimum wage rates annually instead of after every three or four years as it is the case now. This is due to the fact that, there are fast changing economic trends around the world which directly influence the country's macro, and therefore, micro economic developments. Such trends include frequent fluctuation of the oil price which have direct implications to the costs of living. For instance, according to the National Bureau of Statistics (NBS)'s Statistical Abstract of 2014 (page 154, Table O.3 on the 'Annual Average Prices of Some Consumer Goods in Dar es Salaam 2010-2014), the market price of most of the key consumable goods hiked by more than 50% between 2010 and 2014/2015. For instance, 1kg of maize was sold at an annual average price of Tshs 559.7, but same kilo was Tshs 948.38 in 2014; 1 kg of tomatoes was Tshs 709.4 in 2010, but Tshs 1,186.31 in 2014 (and Tshs 2,000 in 2015); 1 kg of beans was Tshs 1,405.6 in 2010, but Tshs in 2,039.15 in 2014 (and Tshs 2,500 in 2015). Moreover, 1 kg of fresh fish was Tshs 4,449.4 in 2010, but Tshs 9,000 in 2014/ 2015. A kilo of beaf had almost the same trend. A kilo of sugar Tshs 1,567.9 in 2010, but Tshs 1,931.81 in 2014 (and Tshs 2,000 or 2,200 in 2015); Kelosine 1 litre Tshs 1,261.4 in 2010, but Tshs 2,031.39 in 2014; and 1 litre of petrol Tshs 1,638.3, but Tshs 2,188.04 in 2014/ 2015. Therefore, since the formation and functioning of the Wage Board are in the discretion of the Minister mentioned above, annual wage review can be possible for the benefits of both employers and workers – to reflect the reality on the ground.

The Wage Order for private sector was on 28th June, 2013 as Government Notice (G.N) number 196 of 2013. The order came into force on 1st July, 2013. Clause 7 of this order revokes the previous one which was referenced as G.N No. 172 of 2010.[214] The Wage Order, which sets minimum payment rates for various economic sectors and sub-sectors, was made under Section 39(1) of the Labour Institutions Act, 2004. Table ...below is an abstract (of some of the sectors) of the 2nd Schedule to G.N No. 196/ 2013 made under Clause 4(3) of this G.N:

Table 2.9: Minimum Wage Rates from 1st July, 2013 to 30th June, 2016

	Sector and Area	Rate	Tshs
(a)	Agriculture Services.	Hourly Daily Monthly	512.85 3,846.50 100,000.00
(b)	i. Telecommunication Services.	Hourly Daily	2,051.45 15,385.80

[213] Act No. 11 of 2004.
[214] Known as: the Labour Institutions (Regulations of Wages and Terms of Employment) Order, 2010.

		Monthly	400,000.00
	ii. Broadcasting and Mass Media, Postal and Courier Services	Hourly Daily Monthly	769.30 5,769.70 150,000.00
(c)	i. Hospitality Services (Potential and Tourists Hotel).	Hourly Daily Monthly	1,282.15 9,616.10 250,000.00
	ii. Hospitality Services (Medium Hotel).	Hourly Daily Monthly	769.30 5,769.70 150,000.00
	iii. Hospitality Services (Restaurants, Guest Houses and Bards)	Hourly Daily Monthly	666.70 5,000.40 130,000.00
(d)	i. Private Security Services (international and potential companies).	Hourly Daily Monthly	769.30 5,769.70 150,000.00
	ii. Private Security Services (small companies).	Hourly Daily Monthly	512.85 3,846.50 100,000.00
(e)	Inland Transport.	Hourly Daily Monthly	1,025.80 7,692.90 200,000.00
(f)	i. Mining and Prospecting Licenses.	Hourly Daily Monthly	2,051.45 15,385.80 400,000.00
	ii. Primary Mining Licenses.	Hourly Daily Monthly	1,025.80 7,692.90 200,000.00
(g)	Private Schools Services (Nursery, Primary and Secondary Schools).	Hourly Daily Monthly	718.00 5,385.02 140,000.00
(h)	Trades, Industries and Commerce.	Hourly Daily Monthly	512.85 5,385.02 140,000.00
(i)	Financial Institutions.	Hourly Daily Monthly	2,051.45 15,385.80 400,000.00
(j)	Fishing and Marine Services.	Hourly Daily Monthly	1,025.80 7,692.90 200,000.00
(k)	Other Sector not mentioned in this Wage Order.	Hourly Daily Monthly	512.85 3,816.45 100,000.00

Source: Extracted from the Wage Order, G.N No. 196 of 2013.

The study has noted that, the enforcement of the minimum wage order is still an issue of concern despite the fact that the awareness about the minimum wages that every worker is supposed to pay is relatively high. As it is argued earlier on, sometimes the workers are compelled to accept a wage which is below the minimum rate because they are not accorded with an opportunity to bargain the payments. They enter into 'read-made' contracts and find themselves subjected into the one-sided terms, including payment of wages which are below minimum rate set by the above quoted Wage Order.

There were other issues ascertained during this study regarding right to fair and just remuneration. They are, to a large extent similar to what previous studies had revealed. The issues were delayed payments of salaries (wages); unlawful deduction of workers' wages; payments of remunerations which do not commensurate with the work done; working for long time without salary increments; and, continue paying wages which were not reflecting the costs of living at the moment as it has been argued earlier on.

Most of the manufacturing industries across the country were paying their workers a wage which was below Tshs 5,000 per day, while the minimum wage order directs payments of more than Tshs 5,000 per day for the persons working in the manufacturing economic sub-sector. For instance, the workers of the Dar es Salaam based Iron and Steel Limited alleged that, they were individually paid Tshs 4,423 per day for eight hours, which is equivalent to Tshs 114,998 per month.[215] That amount of Tshs 4,423 per day is less by Tshs 962.02 per day or Tshs 25,002 per month of the proper amount ought to have been paid (which is Tshs 5, 385.02 per day or Tshs 140,000 per month). The gap of this 'exploitation' by the employer is equivalent to 17.7%. Same allegation on underpayment were noticed at the Aim Steel Company; the Tembo Paving Blocks Company (both of Dar es Salaam); and, the Sunflag Company Limited (Arusha region).

> The law is not quite clear whether payment of a salary below the prescribed statutory rates amounts to an offence. In most cases, the individual workers or their trade unions organize strikes to demand for salary increments, which are sometimes far above the prescribed minimum wage.

The workers of the Modern Mattress Company and the Alkovintages Company (both of Dodoma region), claimed that, they are paid Tshs 100,000 per month as a wage instead of the prescribed minimum wage of Tshs 150,000 set for the nature of their employment. If what the workers said is true, then such companies have been 'stealing' 33.3% of the workers' lawful wages. Some of the workers of the Tanpesca Fish Industry, Tanga region, also claimed to have been paid less than the minimum wage order prescribes. They said that, a monthly salary was Tshs 120,000 instead of Tshs 200,000 allocated for fishing and marine services. At least 40% of the legal wage is reduced by the employer.[216] Still on fishing industry, the Vic Fish and Tanpearch companies (both of Mwanza region), were said to have been paying Tshs 3,600 and Tshs 4,450 per day respectively[217] instead of Tshs 7,692.90 per day which the Wage Order allocated for this industry as a daily pay. As such, if the allegations against these two companies were true, then, the Vic Fish Companies 'steals' 53% of the daily wage rate which was to be paid to an individual worker, while Tanpearch Company 'steals' 42.1% of the legal daily wage rate of the workers in fishing industry.

The hotel and bar workers were generally receiving between Tshs 60,000 and Tshs 120,000 as their monthly salaries, which are also below the minimum wage standard. This was

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[215] Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report I). Page 13.
[216] Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report I). Page 14.
[217] Corporate Human Rights Compliance Assessment, Mwanza Field Report of 2015 (LHRC's Report II). Page 8.

notwithstanding the fact that, they work beyond ordinary working hours. For instance, a worker of the Gamalo Hotel, Tabora region said that, she works for more than 16 hours per day, but she receives same wage rate, which is also not paid on regular basis.[218]

As for the issue of salary increment, this one is not statutorily mandatory. It much depends on the mutual agreement between the employer and the worker. In most cases, smart employers design and incorporate salary scales into their company's human resource manuals. Salary increments are supposed to be part of the motivation and recognition of the long-serving worker. It is also important for facilitating a worker to be able meeting high costs of living.

A worker of the Abood Media Group Limited, Morogoro region, said that, he had worked with this company for more than five years, but his salary remained the same throughout. Him and other workers in this company are still paid between Tshs 100,000 and Tshs 150,000 per month, a range which fall slightly below the minimum wage prescribed by the order cited above. Moreover, a worker of Shaha Industry, Kilimanjaro region, told the study that, he had worked with this company for more than 30 years. His salary has remained to be Tshs 100,000 per month for quite sometimes.[219]

As a way of trying to 'fool' the labour inspectors when they pay a monitoring visit to them, it was alleged that, one of the companies in Morogoro region, which produces fabrics has prepared two versions of the salary slips. The first one indicates Tshs 115,000 as a montly salary of an employee; and the second version (a fake one) indicates Tshs 180,000 as a monthly salary of an employee of the same company. Therefore, when the labour inspectors pay a visit, the management of the company shows the salary slip of Tshs 180,000 to pretend that what the workers are paid.[220] It is not certain how the labour inspectors are easily 'fooled' like that. It is also strange to note that, such inspectors do not bother to verify information provided by the management, for instance, by asking the workers on the authenticity of the records they have been supplied with the management of the company.

The study also found that, there were workers whose payments depend on how much the employer earned in a particular day or month. Therefore, such kind of arrangement gives an employer good excuse to escape his or her responsibility. The most notorious employers who prefer this modality are mining and plantation companies. The Kapunga Rice Project, Mbeya region; the Malmo (E) Mining, Mbeya region;[221]also, Mererani mining companies, Manyara region;[222] the Micronix Limited, Mtwara region;[223] the China Paper Company, Kilimanjaro; and, the MCCCO, Ruvuma region[224] are just some of companies mentioned by the workers in the sample regions. The China Paper Company is alleged to pay Tshs 100 per carton which is produced by a group of 10 workers. That mean, an individual worker earns Tshs 10 per cartoon.

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[218] Corporate Human Rights Compliance Assessment, Tabora Field Report of 2015 (LHRC's Report I). Page 13.
[219] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 17.
[220] Corporate Human Rights Compliance Assessment, Morogoro Field Report of 2015 (LHRC's Report II). Page 11.
[221] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report I). Page 19.
[222] Corporate Human Rights Compliance Assessment, Arusha Field Report of 2015 (LHRC's Report I). Page 1.
[223] Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report II). Page 14.
[224] Corporate Human Rights Compliance Assessment, Ruvuma Field Report of 2015 (LHRC's Report II). Page 9.

Each individual is required to complete at least 1,200 cartons per day.[225] The MCCCO pays Tsh 90 and Tshs 70 to male and female workers respectively per each bag of coffee – for the same weight of bags as Picture 7.4 in chapter seven shows. Therefore, amount to be paid per day, depends on the number of bags which a worker has managed to carry. The study did not receive a concrete response as to why female workers are paid lesser than male workers. The Dan and Associates Enterprises (DAE) Limited also of Ruvuma region pays Tshs 150 per bag of coffee carried (same rate for females and males).[226]

The last issue of concern, which was observed during the study concern renumeration, was delay and deduction of wages. Some of the Mara Milk Company's workers alleged that, they were not paid their salaries since September 2015 (to December 2015 when this study was conducted).[227] The Epsom Company Limited; the K.M Hotel; and several others were mentioned to be employers who deduct the salaries of their workers especially when a worker damages company's properties. However, the Epsom Company is one of few companies which offered salary packages above the minimum wage order.

2.11 ADJUDICATION OF LABOUR DISPUTES

2.11.1 Legal Stand on Labour Disputes

Section 8 of the Labour Relations (Public Service) Convention, 1978 (No. 151) requires the settlement of disputes in relations to conditions of employment to be sought through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration.

The ELRA, 2004 and the Labour Institutions Act, 2004 establish labour dispute tribunals in Tanzania, which are distinctive from the ordinary courts of law, save for the High Court and Court of Appel, where the labour disputes are referred to from the Commission of Mediation and Arbitration (CMA) which determines all labour disputes as judicial organ of first instance. Apart from those two laws, labour disputes are governed also by the ELRA (Code of Good Practice) of 2007; judicial judgements (precedents); the Law of Evidence Act, 1967; and others.

2.11.2 Institutional Capacity and Efficiency of CMA

The CMA as the main adjudicator of labour disputes in Tanzania is established under Section 12 of the Labour Institutions Act, 2004. Section 13 of this law declares CMA as an independent department of the government, with freedom to perform its functions (mentioned under Section 14228) without any interference.

[225] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 17.

[226] Corporate Human Rights Compliance Assessment, Ruvuma Field Report of 2015 (LHRC's Report I). Page 24.

[227] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 17.

[228] The functions are: (i) to receive and coordinate labour conflicts; (ii) to mediate and rule out all conflicts which were reported at the commission according to the labour law; (iii) to go through employees policy and procedures and give advice in order to avoid/ prevent labour conflicts; (iv) to monitor trade unions elections and employers; (v) to educate employees and employers on the proper use of the labour law at their work places; and, (vi) to facilitate the formation of workers councils and registration of councils contracts at their working places.

The functions of CMA are coordinated by the Director of CMA and that, according to Section 19(1) of the Labour Institutions Act, 2004 handling of the labour disputes is done by the mediators and arbitrators.

For proper carrying out of its functions and for the purposes of creating a proximit of its service to the people all over the country, the commission (CMA) has, administratively, opened up upcountry branch offices (CMAs). As Table 2.10 below shows, currently CMAs has seven upcountry centres (or zones) which serve nearby places.

Table 2.10: CMA Zones, 2015

No.	Zone	Operational Areas
1.	Dar es Salaam	Head quarters, Temeke and Coast
2.	Tanga	Tanga, Muheza, Lushoto and Korogwe
3.	Mtwara	Mtwara and Lindi
4.	Dodoma	Dodoma and Singida
5.	Iringa	Iringa, Mufindi and Njombe
6.	Ruvuma	Ruvuma
7.	Tabora	Tabora and Kigoma
8.	Mbeya	Mbeya and Rukwa
9.	Mwanza	Mwanza, Shinyanga, Bukoba and Musoma
10.	Arusha	Arusha, Moshi and Manyara
11.	Morogoro	Morogoro and Kilosa

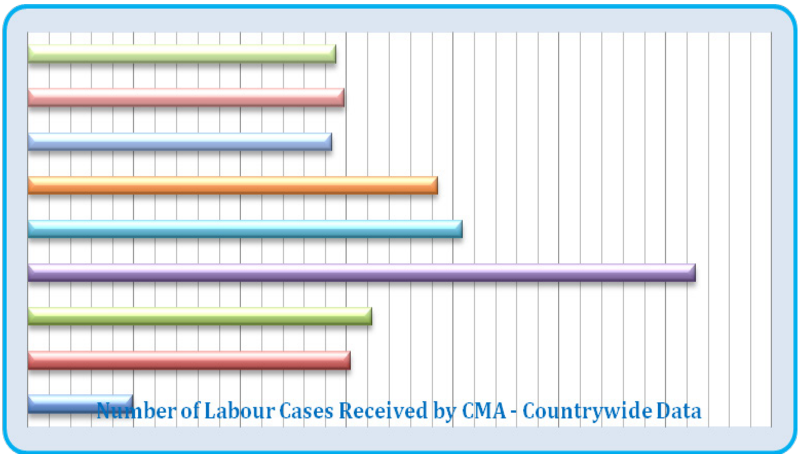
Source: CMA Headquarters – Dar es Salaam, December 2015.

Despite the fact that those zones are logically spread over all four corners, Lake Zone and central parts of the country, still more resources are needed to open up more zones, at least one for every region. Tanzania Mainland has a total of 26 regions. That means, the coverage of CMA zones in terms of administrative region was only 42.3%. It could then be argued that less than 40% of the workers have a direct and easy access in terms of proximity to the CMA branches. An old man met in Tabora urban where he went to follow-up the progress of his case told the senior researcher in December, 2015 that for him to be able to attend his CMA case at Tabora, he had to travel a day before from his home town, Kigoma. That mean, he will need at least Tshs 100,000 for one session. 'Sometimes I use a lot of money and time just to get to know the date fixed for next mention of the case,' said the old man.

It could be a fact that, less than 50% of the workers who wish to engage the labour tribunals in order to seek legal redress refrain from doing so due to a challenge of labour tribunals' accessibility. Moreover, it can be a reality that, many workers are ignorant of the legal procedures to follow for their case to be adjudicated by CMA because there are no CMA's branches around for the workers to 'learn by seeing.' Basing on this simple analysis, then, one could appreciate the fact that, it is imperative to add more CMA zones or centres. Moreover, as LHRC suggested before, it is high time that the trade unions establish some referral mechanism whereby, a worker who has reported a matter at the trade union's district branch 'A', could be referred to a trade union's district branch 'B' which is more closer to CMA.

At least 69,592 labour desputes were received from all over the country within a decade of CMA operationalization (2006 and 2015). That is an average of 6,326 disputes received per annum. The statistics obtained from the CMA head registry in Dar es Salaam show that, the number of labour dispute received has increased from only 1,977 disputes to more than 4,000 disputes in 2015. In 2009/ 2010, CMA received more than 12,000 disputes. The reasons for this unprecedent hike were not established. But could be linked with an increase of investment companies and awareness of labour rights. Figure 2.10 below shows the trend of countrywide labour disputes received by CMA over the years.

Figure 2.3: Trend of Labour Disputes Lodged at CMA 2006-2016



Source: CMA Headquaters, Dar es Salaam, December 2015.

A total of 30,095 disputes were mediated between 2006 and December 2015; and that, an overall average of the total cases which have been completed by CMA countrywide is 57.5%. Owing to the number of branches it (CMA) has countrywide, and also, owing to the number of workers (mediators and arbitrators), such overall signifies a good pace of disposing of the disputes. However, more efforts are still needed to ensure that labour cases are disposed of within 60 days as it is procedurally required by the law.

The study was informed by CMA officials at the head office in Dar es Salaam that, this labour tribunal is currently facing a number of challenges, mostly attributed to insufficient financial resources. It was revealed that, CMA needs 250 adjudicators (125 mediators; and, 125 for arbitrators). Table 2.11shows the the actual number of these officials against the needed number.

Table 2.11: The Current Number CMA Mediators and Arbitrators against the Needs

	Required	Actual	Percentage of Deficit
Mediators	125	52	58.4%
Arbitrators	125	49	60.8%
Total	**250**	**101**	**59.6%**

Source: CMA Headquaters, Dar es Salaam, December 2015.

Moreover, CMA has only 7 support staff countrywide instead of having 3 members in each zone. Therefore, at least 30 support staffs are needed, to imply that the current deficit of support staff is more than 80%. Basing on the current number of mediators (which is 52) against an average of disputes received by CMA per annum (indicated above), it could be that 1 mediator adjucates between 120 and 230 cases per annum. A huge number of judicial cases per one adjudicator can compromise the quality of justice deliverance; and, this is why LHRC considers this as a very sensitive issue to be accorded with earnest attention by the government.

As for physical resources especially the office equipments, the study was told that, CMA has only 3 computers at the moment and one is not working. The actual demand of these facilities (computers) is 39. The deficit is about 93%. Other facilities needed, according to anonymous senior staff of CMA, were printers, tables, chairs, office space, and so many others. Picture 2.13 below shows one of the mediation rooms at CMA head office. The room is shared by at least adjudicators.

Picture 2.25: One of the CMA Room Used for Mediation with several tables for Mediators.

The office space, especially at the head office in Dar es Salaam is a critical issue as the research team noted. It was observed that, one small office space (chamber) at CMA is shared by 3 adjudicators as Picture 2.25 above shows. On this, the source stated that:

> *Ufinyu wa ofisi ni tatizo kubwa hapa ... Hakimu watatu wanakaa chumba kimoja. Mashauri kama yapo mawili moja litasimama kwa sababu chumba ni kimoja. Hivyo kupishana na kusubiriana hadi mmoja amalize shauri lake. Kwa kawaida kila hakimu anatakiwa kuwa na chumba chake*

> (Insufficient office space is a critical challange here ... one room is shared by three adjudicators. If there are two cases to be judged at the same time, normally, one is suspended till the first one is completed. Normally each adjudicator is supposed to have own chamber).

Apart from the said inconviniences on part of the adjudicators and clients, it is obvious that, such arrangements delay disposition of disputes and a more critical issue is the privacy of cases and files especially for the sensitive cases. The study was informed further that, funds to CMA are irregularly disbursed (delayed and reduced). For instance the budget passed by parliament for financial year 2015/2016 was cut by 40%.

LHRC urgues the government to play its part effectively by ensuring that, CMA is given sufficient resources to effectively conduct its functions, which are very important for economic development. The exceptional attention given to the ordinary court structures should be the same also for labour tribunals.

The third factor which tends to delay adjudication of labour cases at CMA, apart from the inadequacy resources and office space, was mentioned to be appearance of advocates (practicing lawyers) at the mediation level. The Chief Mediator was of the view that, the lawyers tend to unnecessarily dillydally legal procedures which ought to have been simple one at the mediation level. He suggests that advocates should be allowed to appear from the arbitration level as it is a case for ordinary courts, where advocates are allowed to make appearance at the district level and not primary level.

On the other hand, there are other obstacles to access justice through CMA which are on the sides of workers and employers. Such obstacles include:-

(i) Ignorance of the law, especially legal procedures on how to file labour cases. For instance, some of aggrieved workers who wish to pursue their matters before CMA normally file their cases outside the time limit or fail to make a good ground of their claims.

(ii) Evidence to prove or disapprove the cases especially when an undocumented worker is obliged to prove that he was really a worker of a particular employer.

(iii) Unnecessary technicalities commonly known as 'prelimary objections' which the defence lawyers normally prefer to use as delaying tactics of the cases against their clients; and, intimidations from employers. For instance, a worker of the Dangote Company, Mtwara region, said that he could not file a case against his employer even if it is a clear one because he was is a dire need of the employment. Therefore, any attempt to challange the employer through formal means will certainly put his job at risk of being terminated and a possibility of not being employed again.[229]

(iv) Uncessary delays on part of the employers. For instance, two watchmen of the Niki Security Group Company were terminated from employment, but the management was refusing to give them termination letters which normally supposed to state reasons of

[229] Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report I). Page 16.

termination – against which a worker could build up his or her case against the employers.[230]

It was also established that about 50% of the corporate companies did not have any complaint procedures or committees to receive, hear, process and settling workplace disputes. In most cases, the companies were depending on the human resource officers or legal officers to give some orders to the workers and not necessarily to hear back what the workers were feeling. The specific frequencies and percentages on this subject matter as gathered from the field were as shown in Table 2.12 below:

Table 2.12: Companies with Internal Complaint Procedures for Handling Disputes

Responses [N=55]	Frequency	Percent
Yes	33	50.9
No	22	49.1
Total	55	100.0

Source: LHRC, Human Rights and Business Study (Field Data), 2015.

Absence of (effective) trade unions' branches at workplaces and internal dispute settlement procedures at workplace has been a cause of accumulated tension between the workers and employers even for simple labour disputes which would have been sorted out through administrative channels. Only 146 (being 20.2%) out of 722 workers interviewed said that they were complaining or enganging the trade unions' branches to solve their problems; whereas, 370 of them (being 50.2%) preferred taking their grievances to their bosses (supervisors) apparently due to absence of effective trade unions. Taking grievances to the management makes the bosses to be 'the judge of their own cases' and it is obvious that prejudiced 'resolution' would occur.

According to LHRC opinion, the best ways for employers to avoid being taken to court of law for labour disputes are, (i) to ensure that they observe all minimum labour standards especially the workers' entitlements; and, (ii) set internal dispute settlement mechanisms at work place. Such mechanisms include also allowing trade union branches at their workplaces so that they can dialogues between workers and employer's management all the time when a need arises. This and other similar studies conducted in 2013 and 2014 have noted that, in places such as Cocacola Company, Mbeya region, where there are functioning trade unions, number of labour conflicts are very few.

2.12 AWARENESS OF LABOUR RIGHTS, DUTIES, LAWS AND PROCEDURES

The aforegoing parts of this chapter have drawn an inference of occurrence of labour related problem with the workers' level of education and awareness of their rights. Moreover, poverty is also an issue of concern which adversely influences the employment relations. For instance, it is argued above that, due to dire need of means of survival, most of the people opt for any kind of

[230] This is stated under Clause 12 (1) – (4) of ELRA (Code of Good Practice), 2007.

work or working environment just to earn a bread of the day. Therefore, in LHRC's perception, lack of awareness and other socio-economic obstacles are issues of concern which have to be dealt with holistically.

As for awareness in particular, Sections 10 and 16 of ELRA, 2004 requires every employer to display (on a conspicuous place) a statement in a prescribed form on employees' rights under the law. The law further requires the employer to display a statement that lists rights of employees at workplace. There are other groups or institutions which are also required to engage into awareness rising of the workers' rights. Such groups include the labour inspectors, trade unions, and even CMA. The civil rights groups (CSOs, NGOs, CBOs, media, etc) should also part of this responsibility.

LHRC is executing this responsibility, by assessing and producing a study report of this nature, which incorporates also some provisions of the laws. It also organize mass media programme; provide legal aid services which empower some of the clients to defend for their rights; various publications such as self-help kits on employment rights and duties. LHRC also has institutionalized the labour aspect of human rights in its organization structure by designating a desk on human rights and business, which coordinate publication and dissemination of this report. Beside, LHRC has paralegals and monitors scattered all over the country, who provide 'first aid' to the clients in need of legal attention. It is suggested that, ILO and other partners could support kinds of these interventions in order to increase workers' awareness on the labour rights and duties.

The field statistics on the status of awareness have suggested same status to what the 2014's study found. In the 2014 similar study, 23.5% of the workers said that they were aware of the labour laws governing their rights and responsibilities; and that the remaining 76.5% said that they were not aware of such laws. The 2015 study did not come out with any suprising results on the subject matter. As Table 2.12 shows, only 21.7% of the workers said that, they were aware of the labour law. In most cases, they cited *'Sheria Namba 6'* (law number 6) to mean ELRA, 2004.

Table 2.13: Status of Workers' Awareness on Labour Laws

Responses [N=722]	Frequency	Percent
Yes	157	21.7
No	665	72.3
Total	722	100.0

Source: LHRC, Human Rights and Business Study (Field Data), 2015.

Such statistics connote a reality that, more efforts are required to have a large section of workers who are fully aware of their basic labour rights. The suggestions on what to go about this have been stated in the suggestion box above. There is also a need to direct the employers to translate their internal operational policies or guidelines into Kiswahili language, and hold periodical awareness sesissions with the workers preferably through their trade unions.

2.13 PERFORMANCE INDICATORS ON ENFORCEMENT OF LABOUR RIGHTS

The following is the summary of key findings in a form of performance indicators on implementation of labour rights and duties by employers (corporate private companies) and their workers. The summary depicts a comparative picture between labour rights situation for the years 2013, 2014 and 2015. It should be noted that, not all 'performance indicators' used in 2013 and 2014 were reassessed in 2015. However, at least all main indicators have been compared between the three years in order to measure the progress of implementation of stated rights and duties.It should be noted further that, some of the indicated used in this Table below, were taken directly from the LHRC's SPSS data bank without being necessarily discussed in the main text of this chapter.

Table 2.14: Comparison of Performance Indicators on Implementation of Labour Standards between 2013 and 2015 Years – LHRC Studies

S/ No.	Labor Rights	[Some of the] Performance Indicators		
		2013	**2014**	**2015**
i.	Contracts	○ At least 80% of workers had no written contracts. ○ 95% of the contract documents reviewed missed certain labour rights or had negative standards against workers. ○ Only 1.9% of workers lodged their cases to labor court (CMA).	○ Around 75.1% of workers had no written contracts. ○ At least 90% of the contract documents reviewed missed certain labour rights or had negative standards against workers. ○ Only 2.2% of workers lodged their cases to CMA.	○ A total of 63.8% of workers had no written contracts. ○ About 90% of the contract documents reviewed missed certain labour rights or had negative standards against workers. ○ Only 0.6% of workers lodged their cases to CMA.
ii.	Trade Unions	○ A total of 12.1% of workers ranked their trade unions as 'very active.' While, 15.9% ranked their trade unions as 'average', and 18.2% said their trade unions were ineffective. ○ A total of 41.6% of the workplaces had branch trade unions (Dar es Salaam's case study), of which 60% were dormant.	○ Most of the trade unions were said to be ineffective/ not active. ○ The existence of trade unions branched at workplace was between an average of 20% and 40% (cases of Tanga, Mwanza and Keera regions).	○ A total of 9.7% of workers ranked their trade unions as 'very active.' While, 28.3% ranked their trade unions as 'average', and 25.8% said their trade unions were ineffective. ○ A total of 44.6% of the workplaces had branch trade unions (countrywide responses of 722 workers of 14 sampled regions).

iii.	Discriminations	○ Only 15.0% of the respondents (mostly workers) agreed that there was discrimination in their workplace. 31.1% mentioned race, tribal and ethnicity as main forms of discrimination. ○ Majority of foreign companies discriminated Tanzanians from occupying senior positions within the companies.	○ Discrimination at workplaces was still a reality (not-quantified). 71.6% mentioned disability as most discriminated issue. ○ Tanzanians were increasingly discriminated from employment opportunities even for casual labour.	○ Only 21.3% (being 154 out of 722) of the workers said that, there was discrimination at their workplaces. Majority of them mentioned 'gender-based' discrimination e.g due to pregnancy as the main form (with 12.5% of all scores). ○ Discrimination of Tanzanians from senior managerial positions was still a reality.
iv.	Forced Labour	○ Only 24.4% of the sampled workers said 'yes' to the existence of forced labour practices in their workplaces. ○ Majority of those who said 'no' were not aware of various form of forced labour.	○ Forced labour was in existence (not-quantified). ○ Emerging incidents of human trafficking for sexual exploitation (sex workers).	○ Total of 416 out of 722 (being 57.6%) were completely unaware of 'forced labour' (*ajira shurutishi*) even after being clarified to some of them. ○ 42.4% of the workers said there were some forms of forced labour in their employments. ○ 26.9% of those who said 'yes' mentioned intimidation bosses as being common strategy or form of forced labour.
v.	Compensation	○ Only 3.5% Tanzanians were members of the social security funds. ○ Only 6.5% of Tanzanian entire workforce has joined social security fund. ○ Low amount of compensation also denial or delays – new compensation law was not operational.	○ At least 75% of the workers were working without being enrolled to social security funds because they were 'informal workers' in formal workplaces. ○ Only 41.7% of the workers believe compensation will be paid once they are injured. ○ New compensation law was not operational.	○ Still less than 10% of Tanzanian workforce had joined social security funds. ○ The Workers Compensation Fund started operating in July 2015. ○ Still same claims of delayed or denial of compensations.

vi.	Leaves	○ At least 70% of workers were not aware of other statutory leaves apart from annual leaves. ○ Only 10.0% workers were given maternity leave; 1.7% of workers were given paternity leave; 64.2% of the employers granted annual leaves; and, only 24.2% of workers allowed sick leave.	○ Said awareness was still low (not-quantified in 2014). ○ Only 11.0% workers were given maternity leave; 3.3% of workers were given paternity leave; 67.8% of the employers granted annual leaves; and, only 17.9% of workers allowed sick leave.	○ Also, said awareness was still low (not-quantified in 2015). ○ Only 6.4% workers were given maternity leave; 5.8% of workers were given paternity leave; 36.3% of the employers granted annual leaves; and, only 17.2% of workers allowed sick leave.
vii.	Remuneration/ Wage	○ Majority of workers (26.3%) and 36.5% earned between Tshs 100,000 and 200,000 respectively per month. ○ 12.6% earned below Tshs 70,000. ○ 98.0% were not aware of probable criteria used to decide on the wage to be paid. ○ Collective bargaining not widely practiced.	○ At least 80% of the workers were paid salaries which ranged between Tshs 100,000 and Tshs 300,000 per month. ○ Therefore, only 20% of the workers earned below Tshs 100,000 per month. However, the salaries of local hotels and pubs were around Tshs 50,000 per month. ○ 66.0% of the workers said that they did not negotiate terms of remunerations.	○ Between 12.5% and 16.5% of workers earned between Tshs 100,000 and Tshs 200,000 per month. ○ Majority 27.7% earned from Tshs 200,000 per month. ○ 18.4% earned below Tshs 70,000. ○ 54.3% said that the salary rate was 'superimposed' by the employers (signed as it was indicated in their standard contracts) – did not negotiate the terms of remunerations. ○ Collective bargaining not widely practiced.
viii.	Awareness of Laws	○ 66.8% were completely unaware of labor laws. ○ Out of 25.6% of those who said they were aware, only 7.4% of them tried to mention the law (ELRA, 2004) by its number and not full citation.	○ 76.5% were not aware of the laws governing labour rights and responsibilities. ○ Only 0.9% of the companies visited had implemented Section 16 of ELRA which requires display of labour rights statements at workplaces.	○ 71.6% of the workers said that they were not aware of the law governing their labour rights. ○ 70.9% of the workers did not know even internal regulations or policies governing their affairs at the workplaces.

Source: LHRC, Human Rights and Business Studies (Field Data), 2013, 2014 and 2015

CHAPTER THREE

LAND ACQUISITION AND MANAGEMENT FOR INVESTMENTS

3.1 INTRODUCTION: TANZANIAN LAND RIGHTS FRAMEWORKS

Land is a source of all material wealth.[231] The Late father of the nation, Mwalimu (Mwl.) Julius K. Nyerere once said, *'land is a free gift from God to all his living things to be used now and in the future.'*[232] It is an important asset for survival and micro (individual persons') and macro (nations') economic development. Most of the development activities, including investments by corporate companies greatly depend on land. For instance, Tanzania is regarded as the investors' point of attraction because of, among other factors, a belief that it has vast land with natural endowments on which various investment activities can take place. The investment activities which highly depend on land and its resources include mining, agriculture, tourism, and timbering. Therefore, both population growth and increased corporate investments have direct implications to the land use, as it is argued with illustrations in chapter one of this report. In most cases, the party with stronger financial muscles (in this case, corporate investors) easily eliminates the weaker party (in this case, indigenous land owners).

> 'In a country such as this (Tanzania), where, generally speaking, the Africans are poor and the foreigners are rich, it is quite possible that, within eighty or a hundred years, if the poor African was allowed to sell his land, all the land in Tanganyika (Tanzania) would belong to wealthy immigrants, and the local people would be tenants … if we allow land to be sold like a robe, within a short period there would only be a few Africans possessing land in Tanganyika (Tanzania) and all the others would be tenants …,' said Mwl. Julius Nyerere in 1958 (Reference, Nyerere, J. K (1978) 'National Property' in, Freedom and Unity, A Selection from Writings and Speeches 1952-65. Oxford Uiversity Press: Nairobi. Page 55).

The spirit of the land tenure protection against land alienation is an historical root, basing on the above quoted remarks from Mwl. Julius K. Nyerere of 1958. The freehold land tenure (hoarding chunk of land) system was abolished in 1960s for obvious justification of facilitating the local people to own land. As the country was entering into liberal economy in which most of the economic activities were to be left in the mighty hands of private sector (mainly corporate companies), it was important to reassess the current land tenure system for the reasons stated above. Hence, in 1991 the Presidential Commission of Inquiry into Land Matters, which was led by Prof. Issa Shivji was formed. The findings of the commission resulted into formulation of the National Land Policy of 1997. A few years later, the land laws (Land Act, 1999;[233] and, the Village Land Act, 1999[234]) were enacted to, among other things, enforce the policy.

The common Section 3 of the two land laws of 1999 reaffirm the land policy's principles, stating that:-

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[231] URT, Strategic Plan for Implementation of Land Laws of 2014. Ministry of Lands Housing and Human Settlements Development, Tanzania. Page 27.

[232] Nyerere, J. K (1978) 'National Property' in, Freedom and Unity, A Selection from Writings and Speeches 1952-65. Oxford Uiversity Press: Nairobi. Page 53.

[233] Cap. 113 of the Laws of Tanzania. It has been amended in 2004, 2005, 2008, 2009 and 2013.

[234] Cap. 114 of the Laws of Tanzania.

(i) All land is vested on the president of Tanzania, who acts as the trustee on behalf of all Tanzanians;
(ii) Facilitating an equitable distribution of and access to land by all, which leaves a lot to be desired given the fact that in practice only a few people own large tracts of land;
(iii) Paying full, fair and prompt compensation to any person whose right of occupancy or recognised long-standing occupation or customary use of land has been revoked or otherwise interfered with to their detriment by the State; and
(iv) Regulating the amount of lands that a person or body corporate may occupy or use.

Principles (iii) and (iv) listed above are subject matters under this chapter. In addition to those partnent issues, chapter also discusses adjudication of land related conflicts which are results of the investiment activities. The arguments on the findings have been made basing on the laws governing land management, which are the two land legislation mentioned earlier on, and several others governing land management in Tanzania, including the Land Acquisition Act, 1967;[235] the Land Registration Act, Cap. 334; the Registration of Documents Act, Cap. 117; and the Courts (Land Disputes Settlements) Act, 2002;[236] the Land Use Act, 2007;[237] the Urban Planning Act, 2007;[238] the Mortgage Financing (Special Provisions) Act, 2008;[239]the Range Land Act, 2009; and, the Unit of Titles Act, 2008.[240]

Those and other laws form the legal framework on land management and therefore, determine the modality for which land and related resources can be accessed without violating the rights of other land users. The laws also put some responsibilities in safeguarding land rights as well as adjudication when conflicts happen.

As an overview, it is generally found by this study that, even with an increase of awareness on land rights among the people as a result of interventions by LHRC and land rights organizations such as HakiArdhi and PINGO's Forum still majority of native land owners are not adequately protected to sustain their grip into land ownership and use. Some weaknesses in substantive laws, law enforcement part of it, and income poverty are some of the reasons feature to such insecurity of tenure. As such incidents of improper acquisition of land; unlawful or arbitrary evictions; selling out the land at unreasonable prices; and, delayed or unfair compensations were found by this study to be living realities, which adversely affect the communities living around the investment projects.

3.2 LAND TENURE AND SECURITY: SOME PRACTICAL CONCERNS

The ownership of land is a constitutional right under Article 24 of the Constitution of the United Republic of Tanzania. However, such provision speaks about 'right to property', which has always been interplated to include 'land.' Sections 19-23 of the Land Act, 1999 recognise the existence of three land tenure regimes. The statutory or granted rights of occupancy, the customary right and other informal rights.

[235] Act No. 47 of 1967.
[236] Act No. 2 of 2002.
[237] Act No. 6 of 2007.
[238] Act No. 8 of 2007.
[239] Act No. 17 of 2008.
[240] Act No. 16 of 2008.

The extent of land ownership has some limits basing on both definition of land[241] as well as conditions for which a plot of land is granted to the occupier and the powers of the president to acquire it for 'public purposes.' Moreover, there are other (controversial) laws such as the Wildlife Conservation Act, 2009[242] which among other things, empowers the Minister for Natural Resources to declare any land (therefore, include the village land) in Tanzania to be a game controlled area.

'The pressure for land is increasing by leaps and bounds. Infringing on customary land rights continues at fevered pitch. Professional hunters, mineral prospectors, commercial farmers, those who hunger for Canadian wheat, and foreign adventures reminiscent of, and encouraged by the spirit of Christopher Columbus, Ferdinand Magellan, and Marco Polo are on the rampage. Pastoral land is fast disappearing, and why not, if parks, graveyards, school playgrounds could be, and have been appropriated? This land grabbing mania is fuelled by politicians and their lackeys who are in the business of lining their pockets. They find ready support from a civil service that is befited of professional ethics and morality and which readily sells its conscience in return for the biblical 30 pieces of silver.' A quote from: Lobulu, B., Dispossession and Land Tenure in Tanzania: What Hope from Courts?' (1998) 22(4) Cultural Survival Quarterly (it was accessed by LHRC (2012) Human Rights and Business Report of 2011 (page 152) from: http://www.culturalsurvival.org/print/3418, LHRC accessed it on 20th November, 2011). The passage of thought by this author reflects a lot about what happens on the ground as far as land ownership and tenure are concerned. As the 2013 and 2014 LHRC's Human Rights and Business Reports found, land alienators (for investment purposes) have been using different tricks to take land from the natives. Such tricks include, extention of wildflife protected areas under the 2009 wildlife law as said earlier on; declaration of a particular land as for 'public interests' which are not defined anywhere in the current laws; creation of land banks for (foreign) investors; and, of course, forceful evictions especially when the first two tricks would not work out perfectly. It is suggested that, the government authorities and the investors should respect native land rights' tenure. It is also a hightime that the president revokes ownership of all lands which were unlawful explopriated from the people. Moreover, the land grabbers should be offered limited pieces of land so that they could not keep it unutilized while people around are really suffering from shortage of land.

The right to occupy land is generally limited to Tanzanian citizens as stipulated under Section 20 of the Land Act, 1999; whereas, the non-citizens persons or investment companies may only occupy land through the Tanzania Investment Centre (TIC),[243] which is established under the provisions of the Tanzania Investment Act, 1997.[244] The right of occupancy's tenure duration is between 33 and 99 years, subject to a number of conditions for tenureship including payment of annual rents (fees) as it is directed under Section 22 of the Land Act, 1999.

Despite the presence of legal framework on land matters, which guarantees to a large extent, the security of tenure of land ownership and management by both individual natives and corporate companies, there are still some loopholes or factors that contribute to unlawful land alienation

241 Section 2 of the Land Act, 1999 defines the land to include the surface of the earth and the earth below the surface and all substances **other than** minerals or petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to or under land and land covered by water.

242 Act No. 5 of 2009.

243 Section 25(i)(h) of the Land Act, 1999.

244 Cap. 38 of the Revised Edition of the Laws of Tanzania. This law was enacted to, among other things, enforce the National Investment Promotion Policy of 1996.

(grabbing). Such factors include; (i) presence of land rights legal framework, which contradicts with other natural resources' legal frameworks (example, village land against the game controlled areas highlighted above); (ii) presence of knowledge gap[245] on part of the land owners, who are, as argued further below, have limited awareness of land rights; (iii) usurp of statutory responsibilities on land matters by some of the government authorities or officials; and, (iv) some weaknesses in law enforcement (example, some of the individuals and investors do not manage the land in accordance with the conditionalities embodied with the certificates of occupany.

Picture 3.1: Maasai Pastoralists are some of the major victims of land alienations.

The insufficient or lack of security of tenure, which usually results into land alienation of the majority of people in favour of a few investors is found by this study to have a consistent 'hit-back.' That is after the landless community members, whose land is taken for investment concessions or otherwise (without their informed consent) fail to earn a living due to lack of land to cultivate, they naturally hit-back by 'trespassing' into the land alienated for the investors. Kinds of these incidents were so many during the year (2015) to imply that, the escalation of land-related conflicts will happen in future and thereup, wage a resource conflicts between the community members themselves or between the investors and community members. The onging conflicts between farmers and pastoralists in Morogoro and elsewhere are some of the examples of the land pressure.

As for the 'trespass' to the investors' land, the study came across several incidents in Kilimanjaro, Mbeya, Mara, Lindi and other sampled regions. The Kilimanjaro Coffee Estate Company is one of the victims of the invasion. The sources told the study that, this company had a total of 489 hectors (ha) of land, out of which, around 22 ha (being 4.5%) have been invaded by the villagers around the estate. Such invasion was stated to be attributed to shortage of land and a failure of the estate company to utilize the whole chunk of land. Other similar incidents observed in Kilimanjaro region include:-

245 Haule, Scholastica, 'Let's Talk Land Tanzania - The Land Situation in Tanzania.' Presentation to the Parliamentarians' Seminar held in Kigali from 26th -27th April, 2013. The author works with ActionAid Tanzania.

(i) The invasion of 19 has (being 8.2%) by the surrounding communities out of 230.8 has owned by the Chombo Estate. It stated that, the 19 ha lie along the river;
(ii) The Gombeni Estate, Southern Uru, which is owned by the Shimbo SACCOS KPL with a total of 270 ha. As for this one, 21 ha (being 7.8%) are said to have been invaded by the villagers around.
(iii) The Mawingu Estate had a total of 399.8 ha where by 30 ha (being 7.5%) were 'taken' by the villagers around the estate.
(iv) The Kichoni Estate in Kibosho, Mwekasungu area, is also having its unknown size of land invaded by the people around it.

The above illustrations imply a very complicated situation happening around, which all together make the purpose of investments in a particular area disastrous instead of being adventitious on parts of both investors and host communities. There are two things which seemed to have been not taken into consideration when the villagers gave away their land ownership rights to the investors; and, when the investor took the villagers' land or right of ownership of the land acquired for investment projects.

The first matter here, according to this study's observation and discussions with respondents is about the evidence of the land ownership; and the second one is about the powers of land allocation authorities. The second scenario on the powers of the authorities is distinctively discussed in the later parts of this chapter.

As for the first one, it was established by this study that, most of the village lands which are individually owned have not been properly surveyed (no village land certificates and village land use plan – VLUP), to create clear demarcations of the individual plots. Therefore, when the investor is given a land, he or she takes it at his or her own peril because the boundaries are not documented. The investor can come to the village with the papers indicating the boundaries of his or her land. But such papers become 'imaginary boundaries' if they were drawn up without sufficient consultations with the native land owners. This is due to the fact that, security of land tenure is not only having some signed papers to indicate the boundaries or demarcations of the lands acquired; rather, it include also the consensus between the potential land owners who would have an interest on the same land. For instance, the study established that, the Chibo Estate's land was invaded mainly due to the need to continue using the river, which is supposed to be communally owned. Therefore, even if the investors could have good papers to prove his legal ownership of the land, the interest of the majority land users prevails and can, in most cases, make the investors' right to land ownership a big drama; henceforth, failing investment projects.

LHRC suggests that, a reasonability taste to land tenure and allocation should always be applied to make decision on what, where, when and how much a piece of land should be allocated for investments or conservation in a particular area. This is a case due to the fact that, most of the decisions on land for investments seemed to be concluded in Dar es Salaam for the land which is located at interior upcountry village. Such decisions do not take into consideration the population size, the scarcity of land, socio-economic activities (example, pastoralism which normally demands a chunk of land for grazing). For instance, the Kibosho-Boro villagers, Kilimanjaro region, are claimed to have been trespassing into Mufindi Plantation's reserved area due to shortage of land, while the reserve area is idly left unutilized. Same situation has happened in Sangiti areain Kilimanjaro region, where there is Flower Plantation.

3.3 ASSOCIATED LAND CONFLICTS IN INVESTMENT AREAS

3.3.1 An Overview of Land Conflicts Associated to Investments

As it was found in 2014 by a similar study, there are several factors which trigger land conflicts in East Africa, Tanzania inclusive. Such factors include; (i) an increased pressure on land and natural resources both human and animal population; (ii) the global warming and climate change (land and natural resources degradation); (iii) the demarcation or reservation of land for national parks, game reserves, conservation; (iv) poor land governance systems; and, (v) the commercial pressure of land including large scale land acquisition for investments. Other (newly identified attributing factors) have been illustrated above and more others were identified by this study to include:-

(i) Large scale land acquisitions without considering a 'reasonability taste' deduced by LHRC in the remarks' box above.
(ii) A wrongful or unclear demarcation of investments' lands - as it is also briefly discussed above.
(iii) Acquisition through false pretence.
(iv) Restrictions to access unutilized lands or other resources within investment lands.
(v) Involvement and participation of local communities in land management.
(vi) Capacity to negotiate on land acquisition.

3.3.2 Land Conflicts Associated to Large-Scale Land Acquisitions

Section 3 of the Land Acquisition Act, 1967 empowers the president of Tanzania to acquire any land for public purpose. The term 'public purpose' is defined under Section 4(1) of this law to mean when a land is acquired for exclusive government use; 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; development of airfield or port; mining activities; and the like.[246] There are several laws enacted to facilitate implementation of projects which initiated for public purposes. Such laws include the Urban Planning Act, 2007; and, the Mining Act, 2010.

The most common instruments which the State has and can apply to access land are; (i) negotiations and persuasion with the current land owners; (ii)legalised force towards acquisition

[246] Section 4(1)(a) – (g) of the Land Acquisition Act, 1967.

of land needed; and, (iii) the compulsory acquisition. The latter is normally effected through the 'power of eminent domain'. This gives the state powers to expropriate private property for public use without necessarily seeking the owner's consent.[247]

Article 24(4) of the Constitution of the United Republic of Tanzania of 1977 prohibits deprivation of the property (in our case here, land) for any purpose *'without the authority of the law, which enables provisions for fair and adequate compensation.'* The Land Acquisition Act, 1967 provides for the same and puts an emphasis on 'prompt' compensation processes. Moreover, in order to avoid arbitrary acquisition of land, the 1976 legislation lies down a due legal process or processes to follow as summarized by Prof. Kombe below:

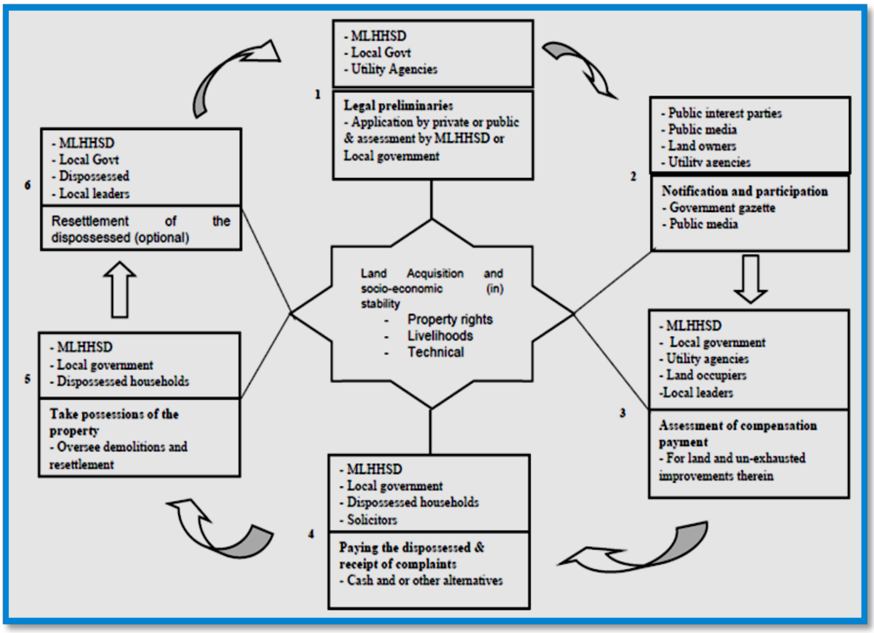

Figure 3.1: **Practical Procedures to follow in order to acquire the Land for Public Purpose.**

Sections 5 to 10 of the Land Acquisition Act, 1967 details the procedures to follow, which can be grouped into four major steps, namely; (i) planning and the decision to acquire land;[248] (ii) legal preliminaries including getting statutory authority and serving notices;[249] (iii) field investigations including valuation; and, (iv) the payment of compensation to those being dispossessed.[250]

There are other forms of land acquisitions or alienations which are justified by various laws (silent alienations of lands fron natives); and, forceful grabbing of land, which the LHRC's 2014 report termed 'open manifestation' of land alienation. The silent alienation tricks include the

[247] Kombe, Wilbard (2010) Land Acquisition for Public Use: Emerging Conflicts and their Socio-Political Implications. Working Paper No. 82, Cities and Fragile States. Published by UKAID and Crises States Research Centre. Page 7.

[248] Section 5 of the Land Acquisition Act, 1967.

[249] Sections 6 and 7 of the Land Acquisition Act, 1967.

[250] Section 11 of the Land Acquisition Act, 1967.

extension of wildlife protected areas by restricting human activities in the reserved areas while allowing creation of hunting blocks and hotels in the same. For instance, the Tarangire National Park (TNP), Manyara region, was declared as a National Park in 1970 by alienating a large size of land which was occupied by the villagers especially of the Kimotorok (pastoraists') village in Simanjiro district. At the time of this declaration in 1970, it was stated in government notice that the TNP covers 2,600 KM^2 but today, the increase of it towards village land expects to result into 2,800KM^2. As the PINGOs Forum's study of 2012 revealed, there have been gradual expansions of this and other national parks' boundaries without involvement of the villagers and their village governments.

The land is also alienated through creation of the land investment banks, which are currently managed by the Export Processing Zone Authority (EPZA); the Rufiji Basin Development Authority (RUBADA); TIC; and non-land bank's projects such as Southern Agricultural Growth Corridor of Tanzania (SAGCOT). It is therefore that, the native land which is individually or communally owned is alienated in a multi-action approaches from different authorities and strategies, while leaving behind the natives with little land to produce for increased demand of the community members as an illustration below shows.

Picture 3.2: Illustrating grabbing of native land by powerful elites.

Probably, the alienation of a chunk of land in particular areas would have not been regarded as a hitch on part of the community members if, fair and prompt compensations (plus alternative settlements to productive lands) decided upon as a result of informed consent was to be accorded the credence they deserve.This study established that, in all areas where there were land conflicts which were fueled by the reallocation of land in favour of the investors, the authorities and investors did not take sufficient time to follow the land acquisition procesures as shown in Figure 3.2 above.

The study noted further that, as a result of uncertainities on how and when their land is alienanted dissident commotion to resist the move, however useful it would be, usually takes place. For instance, it was learnt from the group discussions for this study in December 2015 that, some of the Nyakunguru villagers, Tarime district, Mara region, were in hesitant negotiation with the investor (M/s. NMGM) about their land as it was not clear to them whether they will have to sell or lease their land to the investor.

Moreover, instead of face-to-face interactions with the investor, the villagers alleged that, so many political pressures for them to release their lands were exerted from government leaders around. The claimed, at least 400 land owners were at eminent danger of being evicted from their lands without conclusion of the 'negotiations.' Same story was heard in Nyamongo village, that majority of the villagers (65%) at this village said that the evictions from their land adversely affected them due to what they term as 'unfairness' of the whole process to get them out of the land.[251]

3.3.3 Wrongful or Unclear Demarcations of Investments' Lands

There are land related conflicts noted during the study which were caused by either wrongful or imprecise demarcations between the investors' and community members' lands. That situation might be attributed to two possible factors according to the views collected from the group discussions conducted in sampled regions.

Firstly, it might be caused by lack of VLUPs mentioned above in which, the demarcation of the villagers' plots of land are hypothetically drawn up. The VLUPs, which are sanctioned under Section 58 of the Village Land Act, 1999 are part of the process for a village to acquire the VillageLand Certificate (VLC), which formalizes village land boundaries and therefore, allows the village government to issue certificates of customary right of occupancy (CROs). The June 2014 statistics on the status of land titling in Tanzania Mainland, which was quoted by the LHRC's Human Rights and Business Report of 2014[252] showed that, Tanzania has more than 11,091 villages of which 9,451 (being 85.2%) were already surveyed; but, only 1,471 villages (being 13.3%) had VLUP; and 972 villages (being 8.8%) were granted with the VLCs. The number of CROs issued was about 373,655 or 2.2% of the expected CROs.

LHRC suggests that, the government, in particular, the Ministry of Land should secure sufficient budget in order to facilitate LUP projects all over the country. The costs involved in preparation of VLUPs are considered prohibitive such that very few villages can afford without outside assistance. It is stated that, the 2011 estimate per village is put at Tshs 6 million. Also issuing rights of occupancy is costly and would amount Tshs 20,053,000 for one village (Reference: URT (2011) Report on the Study to Develop a Strategy for Establishing Cost Effective Land Use Plans in Iringa and Njombe Regions, 2011). These seem to be unafordable rates to most of the villages due to lack of sufficient financial resources. It is obvious that, once all villages are surveyed and granted with VLC and then, enable the individual accesing certificates of CROs, conflicts relating to boundaries will be mitigated to a certain extent; and, would certainly empower the individual land rights owners to defend their lands against encroachments.

Secondly, the land boundary related conflicts between the local communities and the investors are attributed to the insufficient consultations with the native land owners (superimposition of drawn up demarcation of the investors' land by the government officials, who have little understanding of the villages' situations). In all regions visited, especially Mbeya, Mara and Ruvuma, this issue came out very strongly during the group discussions with the villagers. For instance, the ongoing conflict between the villagers and the Export Trading Company ('Kapunga Rice Project'), Kapunga village, Mbarali district Mbeya region, was said to have been caused by

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[251] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report II). Page 28.
[252] Page 67 of this report.

the government decision to sell a total of 7,370 ha of the land instead of 5,500 ha, which was formerly owned by the National Agriculture and Food Corporation (NAFCO). It was further claimed by some of the villagers that, as a way of sorting this out, there was a meeting which was held in Mbeya on the 12th December, 2012 in which, it was agreed that, the investor will reduce the land to 5,500 ha and leave the remaining 1,870 ha for the villagers. This piece of 1,870 ha represented about 70% of the Kapunga village's farm land.[253] However, that remained to be an empty commitment as of December 2015 when this study was conducted.[254] The investors still holds the land even if not all of it is currently utilized as Picture 3.1 below shows. It was now on part of the government to use its powers to rescue the situation.

Picture 3.3: Part of the Kapunga Rice Project's land which an investor failed to cultivate, but still refused to release for other land users.

The land scarcity on part of the villagers has resulted into land conflicts, whereby, the villagers still insist that, about 2,000 ha is unlawfully annexed to the Kapunga Rice Project's investment land. The incidents of intimidations and torture were documented by previous reports of this nature. Moreover, as a survival strategy, some of the villagers opt to work as casual workers to this investor's farms. Sources told the study that, such workers were paid Tshs 7,000 per ha to cultivate the farms. Moreover, there are villagers who rent pieces of farms in every farm season. The latter instance is prohibited by the law because it is sub-leasing, of which, if done without pior consent of the authorities, it becomes unlawful.

There are other several incidents of land conflicts caused by unclear demarcation or intrusion into public facilities such as water, grave yards and other traditional sites. A case of the Chibo Estate, Uru South, Kilimanjaro region is an example. As it was stated above, the villagers had to invade an investors' land because of the need to access water from the river, which the investor claimed to be inits possession. The study's interviews with some of the villagers revealed that,

[253] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report I). Page 23.

[254] Note that, the media reported in September 2015 that, the government had acquired back a total of 1,870 ha from the Kapunga Rice Project and the land acquired will be allocated to the small producers in the area. The media quoted Mbarali district executive director, Mr. Adam Nyoni ordering the investor to surrender all land rights certificates for reassessment. Reference: Mwandishi Wetu, 'Serikali kugawa kwa wananchi ekari 1,870 shamba la Kapunga.' Habari Leo, 26 November 2015. Page 8. Note that, this seemed to have not been done at the time of this study in December 2015. A follow up study on this will be conducted in 2016.

even the villagers themselves were not sure of the actual boundaries of their land against that of the investor.[255]

3.3.4 Influx of Fake Local Investors into Village Lands: Case of Ruvuma Region

The study established that, there is also an influx of 'local investors' into the village lands. This happen in Kilombero, Morogoro region; Kisarawe, Mkuranga, Bagamoyo and Mlandizi, Coast region; a large part of Kilwa beach areas, Lindi region; Ruwiho, Ruvuma region; and so many other places. The investors, who are basically mere urban elites, lure the village leadership to be given a chunk of land on the ground that, they should be 'villagers' of villages they want to purchase land. Dueto the fact that the lands in the villages are still relatively cheap, say between an average of Tshs 100,000 to Tshs 1,000,000 per acre, an ordinary low income 'local investor' can buy thousands of acres under different names.

The Ruwiko ward, Ruvuma region case is an exceptional one as it happens in (peri) urban areas, where the study assumed that, the residents and authorities could have been more enlightened of the tricks played by the 'local investors' to acquire the land. According to Songea, Ruvuma region, municipal lawyer, there is a huge land track at Ruwiko ward, which was declared to be acquired by the government from the villagers in 1975 as an investment reserved area. In recent years' term, this was a 'land bank' for investments. No clear demarcations were put to show the actual size and boundaries of this area. There was no compensation paid to the villagers whose land was alienated until the years 2004 whereby, only a few claimants were compensated.

Picture 3.4: Part of the Ruwiko area, Songea, Ruvuma, which is not demarcated.

The government kept quiet again until 2010 when it formally came to re-claim possession of the land. Most of the original occupants of this area had already sold out their plots to the new 'occupants' who were not aware that, those were areas acquired for industrial investments. The 'investors' which were now offered pieces of land from the Ruhiko 'land bank' were actually ordinary elites who, according to the municipal lawyer of Songea, do no have sufficient capital to establish intended investment projects. Then, such lands are left undeveloped again, a situation

[255] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report II). Page 18.

which gives the people a leeway of occupying and using it. It was further claimed that, one of such 'local investors' is Mr. Tangafu who posses 50,000 ha. He is alleged to have some receipts from the 'National Investment Centre' to imply that he is recognized as a local investor; but, in reality, he does not have money to put some investments in the areas. Instead, such kinds of 'investors' normally sub-lease some of their lands to other 'investors.'[256]

> LHRC reiterates its previous suggestions on same matter that, there is a need to revoke ownership of lands from some of the investors who have been given a chunk of land but they have been unable to develop it, while people around really scramble for a little arable land remaining. In 2013, similar study to this one, which was conducted by LHRC, revealed that, most of the investors were able to utilize less than 50% of the land they had acquired for investment projects. In January 2013, the former Prime Minister of Tanzania, Mr. Mizengo Kayanza Peter Pinda announced that, Tanzania will start restricting size of the land that a single investor can lease for the investment use (Reference: LHRC's 2013 Human Rights and Business Report, pages 71 and 72). The best way to go about this is to have the law or guideline which limits the size of land that an individual investor can be offered after a thorough assessment of the investor's ability to utilize the size of the land he or she has applied for.

Otherwise, the encroachment to the so called investors or researved-for-investment land will continue causing conflicts between the land authorities, the 'investors' and the community members around. Moreover, keeping a land unutilized for such a long period of time can, in LHRC perspective, be regarded as a governance issue of concern because a lot of revenues which ought to have been collected from the use of land are lost.

3.3.5 Restrictions to Access Unutilized Lands or Other Resources within Investment Lands

It can be a moral obligation or part of corporate social responsibility for an investor to allow the villagers around his or her investment projects to use the land which is not utilized for the time being. As it is argued above most of the investors have been able to utilize less than 50% of their investment land for over ten years of their occupancy and use. However, save for only a few of them (the investors), the rest do restrict access to such lands and that, this decision sometimes cause manifestation of land pressure and divergence of interests between the investors and the community members as this study noticed in Mtwara, Manyara, Lindi, Tanga, Arusha and Geita regions.

Only 14.4% of the members of the public interviewed said that, they were allowed by some investors in their villages to access an idle land as Table 3.1 below shows. Majority of them (about two-third) said 'no.'

[256] Corporate Human Rights Compliance Assessment, Ruvuma Field Report of 2015 (LHRC's Report I). Page 30.

Table 3.1: Whether Investors allow Access to Unutilized Lands

Responses [N=153]	Frequency	Percent
Yes	22	14.4
No	107	69.9
Not Sure	24	15.7
Total	**153**	**100.0**

Source: LHRC, Human Rights and Business Study (Field Data), 2015.

In Lindi region, there is the Kikwetu Sisal Estate, which was owned by a swiss company from 1960s to 1974. According to the Mchinga Village Executive Officer the estate is estimated to cover a total of 16,400 ha of land.[257] The ownership of the estate was, latter on, transferred to the Ambani Sisal Estate, which is known to have been able to maintain it with good water services, hospital, market, school and electricity. The ownership of the estate was tranfered to another investor, M/s. Tanzania Sisal Company Estate in 1986 till 1999 when the title to that land was shifted to the forth investor known as the Mohamed Enterprises Limited. The new investor, who is alleged to have similar estates in Tanga region (namely Amboni Estates), did not take any effort to develop the estate. Then, it remained fallow (unused). However, despite this situation, the management of the farm did not allow the needy sorounding communities to access its land and other services inside it. Of course, people forced themselves in the farm to access resource notwithstanding the restriction, a situation which fuelled conflicts with the investors.

Picture 3.5: Some parts of the idle Kikwetu Estate's Land and other Properties pictured in December, 2015.

The mounted pressure due to the restrictions of access and the dire need of the community members to access the idle land resulted into revocation of right of occupancy (ROC) of this investor in December 2015 when this study was conducted.[258] Even after this revocation of ROC

[257] Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report I). Page 17.
[258] Reference: Saidi Hamdani, 'Dr. Magufuli afuta hatimiliki ya shamba la mkonge Kikwetu.' Mtanzania, 23 December, 2015. Page 5.

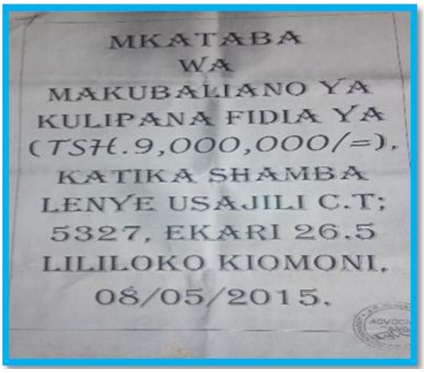
the confusion of ownership of freedom of utilizing this land is still not clear. According to Mr. Swahele Mashauri, one of the villagers, some of them (villagers) claim that, the land belongs to them and therefore, any acquisition from this time will be accepted by the villagers after being compensated and given alternative settlements.[259] It seemed that, there was insufficient communication about the status of revocation to imply existence of same problems – of not giving the community members sufficient explanation on the land management which they have vested interests. It is easy to predict that, whoever will be given the ownership of this land would face a stiff resistance from the Mchinga villagers who, as said above, they believe that they were now legal owners of this 'free' land.

The Arusha's case is quite interesting. An anonymous investor (name not indicated by the field researchers) in Olarash village, Meru district, decided to fence his land with electric wire. A large part of the investor's land is not developed for years, a situation which tempts some of the villagers to force in their livestock in order to graze. But, this is impossible because of the electrified fence. The study was informed that, an alternative decision by some of the villagers was to uproot the fence. Of course, this could not happen without a strong hitback, which exaggerated a sour relationship between the investor and some of the villagers. Other companies in Arumeru district such as the Hortroses Company Limited, had the same tendence, of hoarding a chunk of undeveloped land but prohibit landless community members to access it even for temporary uses.[260]

Picture 3.6: Part of the Hortroses Farm in Arumeru, allegedly to be left uncultivated for about 10 years.

In Tanga region, the study came across with an incident, whereby, an investor known as Hussein Abdallah Moor had entered into an agreement to purchase the villagers' land, situated at Amboni Area, Kiomoni ward, by paying them Tshs 9,000,000 for 26.5 acres of land. Soon after the May 2015's purchase, the investor decided to demolish the houses and crops inside the purchased area. An interesting part of this matter is that, the villagers were now complaining to have been unduly influenced to sell out their land, which is now left undeveloped while they remain with a little to use for cultivation and living.

[259] Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report II). Page 17.
[260] Corporate Human Rights Compliance Assessment, Arusha Field Report of 2015 (LHRC's Report I). Page 7.


MKATABA
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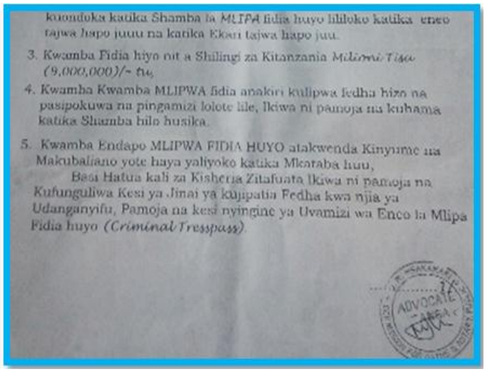
5327, EKARI 26.5
LILILOKO KIOMONI,
08/05/2015.


kuondoka katika Shamba la *MLIPA* fidia huyo lililoko katika eneo tajwa hapo juuu na katika Ekari tajwa hapo juu.

3. Kwamba Fidia hiyo ni a Shilingi za Kitanzania *Milioni Tisa (9,000,000)/- tu,*
4. Kwamba Kwamba MLIPWA fidia anakiri kulipwa fedha hizo na pasipokuwa na pingamizi lolote lile, Ikiwa ni pamoja na kuhama katika Shamba hilo husika.
5. Kwamba Endapo MLIPWA FIDIA HUYO atakwenda Kinyume na Makubaliano yote haya yaliyoko katika Mkataba huu,
Basi Hatua kali za Kisheria Zitafuata Ikiwa ni pamoja na Kufunguliwa Kesi ya Jinai ya kujipatia Fedha kwa njia ya Udanganyifu, Pamoja na kesi nyingine ya Uvamizi wa Eneo la Mlipa Fidia huyo *(Criminal Tresspass).*

Picture 3.7: One of the Sale Agreements in respect of the Kiomoni Ward's land, Tanga region.

The villagers alleged that, they acted out of ignorance and found themselves clutched into an agreement which was unfavourable to them. For instance, the purchase value per acre basing on the amount paid and number of acres acquired by the investor was around Tshs 330,000 which is relatively trivial basing on the current market value. Clause 5 of the sell agreement states that, upon this disposition by way of sale and compensation, any villager who attempts to access the farm's resources will be regarded as criminal trespasser. This is typical way in which the villagers greedly but cheaply sold out their land and then, start complaining and encroaching the same.

On this Tanga's case, LHRC is of the view that, government authorities should have been of service to advise the villagers on the market value of their lands and the repercussions of disposing of their only valuable resource – land.

The TPC Plantantion Company's conflict with the Miwaleni residents, Kilimanjaro region was not about utilization of idle land. Rather, it was on access to water resources by the Miwaleni villagers, who are typically rice farmers. The study noted that, TPC purchased its plantation from NAFCO some years back whereby, it is claimed that, the purchase agreement included the water source (part of Pangani basin) which the villager used to irrigate their rice farm plots.[261] Picture 3.7 below shows part of TPC farm which boarders a water source claimed by the surrounding villagers.

[261] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report II). Page 18.

Picture 3.8: **Part of TPC Plantation, which boarders a water source, Miwaleni area, Kilimanjaro village.**

The matter was reffered to the Pangani Basin Authority and the district government to sort it out after the initial attempts by the conflicting parties ended up in vain. The Chibo Estate, Uru South, Kilimanjaro region had the same issue of concern as it is explained above.

Other places with land-use conflicts include Mbarali and Katesh in Mbeya and Manyara respectively. The Kapunga villagers (Mbarali district) have been struggling to claim back their 2,000 ha of land, which they believe were erroneously annexed to the Kapunga Rice Project as explained above. Despite the fact that the company does not use the whole chunk of land, including the 2,000 ha in dispute, still it did not allow villagers to utilize the idle lands. The villagers regard this as the unkind situation as it has left them landless and therefore, poor economically.[262] The investor has elected an announcement or warning board as shown in Picture 3.8 below, which reads the land is owned by a private person and the trespassers will be sued. No entrance without permission and that, if someone is allowed to access the land, he or she should do so between 5am and 5pm only.

Picture 3.9: **An announcement by the Kapunga Rice Project, restricting entrance to the investment land.**

[262] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 18.

Other affected areas apart from Kapunga village include the Usambeko and Matebete villages both found in Mbarali district, Mbeya region.[263] The Katesh villagers, Hanang district, Manyara region was found by this study to be in constant claims to regain ownership of the former NAFCO plantations as the 2013 and 2014 similar studies to this one reported.

Similar situation was found in relation to an investment in other economic sub-sectors such as hunting and mining. For instance, some of the Lwamgasa ward residents, Geita region, alleged that, they were alienated from their land which they used for artisan mining in 2011. The ownership of such land was transferred to a local investor known as M/s. Backreef Limited; however, the investors did not do anything since the land was given to him in 2011after conducting an exploration procedures and securing the prospecting licence from the Ministry of Energy and Minerals.[264] Following this situation, the government gave 14 days for the Backreef Limited to start their production or else the government will revoke the licence.[265]

3.3.6 Involvement and Participation of Local Communities in Land Management

One of the issues that emerged as a finding of the Shivji's Commission of Inquiry on Land Matters (cited above) was that, there was inadequate participation of the local communities in to the land management in Tanzania. The 1995 national land policy picked it up to suggest decentralization of land management, and ultimately, the 1999 legislation designed a mechanism or mechanisms to facilitate the community members to have direct decision on their land. For instance, theVillage Land Act, 1999 was enacted which specifically stipulates that, the management of the village land is within the hands of the village council (government) and its organs including the village assembly. There are also established village land councils and village land adjudication committees. All these involve villagers themselves.

The study noted that, contrary to the spirit of land laws (including the Land Acqusition Act, 1967 discussed earlier on) and land related policies, which makes it mandatory to involve the people in decision making pertaining their lands, some of the government authorities and investors have been neglecting this responsibility when they wish to acquire or use a land. As a result, they end up in endless animosity throughout their tenure in a particular land. For instance, as Table 3.2 below shows, only 37.9% of the community members who were interviewed during the study on the extent of their involvement in land acquisition processes said that, they were not involved.

Table 3.2: Extent of Involvement of Community Members in Land Acquisition

	Frequency	Percent
Yes	58	37.9
No	95	62.1
Total	153	100.0

Source: LHRC, Human Rights and Business Study (Field Data), 2015.

263 Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 18.
264 Corporate Human Rights Compliance Assessment, Geita Field Report of 2015 (LHRC's Report II). Page 26.
265 Reporter, 'Waziri Aupa Mgodi siku 14 kuanza Uzalishaji.' Mwanachi Newspaper of 6th January, 2016. Page 32.

Moreover, some of those who said to have been 'involved' claimed to have been unduly influenced to accept the land alienation for the reasons that, it was important for their development (social lisence); and that, 'it was an order from above.'

Prof. Kombe (2010) of the Ardhi University argues[266] that:

> [t]he land conflicts have emerged because sitting land occupiers are **not being involved or educated about the rationale for the valuation process and the method used to compute the compensation payable for land and other developments therein**. Often, sitting land occupiers are not directly represented in key decision-making stages related to the expropriation of their land, leading to protracted disputes particularly between public authorities and sitting land occupiers (emphasis supplied).

The study has documented a dozen of incidents in which, land conflicts erupted between the local communities and the investors in their vicinities due to mere misunderstanding on how the decision to take their (communities') lands was reached out. Such incidents were all over the country basing on the sample of this study.

In Dar es Salaam, the Tanzania Pasta Industries Company, which was still installing its plants at Vingunguti area at the time of this study, had an issue with the local communities. The community members alleged that, they did not understand how the company was able to acquire the land it was currently investing on. However, some of the respondent stated that, the Italian investor gave them Tshs 5,000,000 as compensation for their alienated lands. This matter is complicated due to the allegation that, the place where the company was installing its plants was actually at the hub which is surrounded by three public schools, namely; the Miembeni Secondary School; the Vingunguti Primary School; and, the Miembeni Primary School. The community member was of the opinion that,if they were consulted, such investment would have not been taking place in that area where public facilities such as schools and residential houses existed for long time.[267]

It is easy to predict potential risk of community members getting into land use conflicts with the investor once the company starts to function. Vingunguti is known to be an industrial area. It is not certain on how the public schools and other related social services were constructed by the government to co-exist with the factories. On the same tone, it is also not certain how the building permit to construct a plant was granted while there are schools around. LHRC suggests that, the best way then is to consider or reconsider the environment and social impacts assessments (EIA and SIA) before it is too late to solve a bigger quandary.

Morogoro region, especially the Mvomero and Kilosa districts have never stopped from the whim of land disputes since mid 2000s when the initial conflicts arose involving the government officials and pastoralists. A hundred of incidents of crushes between the farmers and pastoralists

[266] See: Kombe, Wilbard (2010) Land Acquisition for Public Use: Emerging Conflicts and their Socio-Political Implications. Working Paper No. 82, Cities and Fragile States. Published by UKAID and Crises States Research Centre. Page 7.

[267] Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report II). Pages 10 and 11.

have been documented in volumes by the government and non-governmental organizations. However, little changes have so far been noticed. The latest crush in Morogoro occurred on the 12th December, 2015 at Dihimba village, Kanga ward, in Mvomero district, whereby one person was killed and at least four including police officer injured. In the same incident, more that 70 cows were killed and several others severely injured[268] as Picture 3.10 below shows.

Picture 3.10: Some of the cattle killed at Dihimba, Mvomero in December 2015.

The source of conflicts in Morogoro are said to be the influx of pastoralists and their flocks of animals, which is alleged to be above the region's carrying capacity. However, there are counter arguments which state that, main cause of the pastoralists-farmers conflicts is land scarcity, attributed to hoarding of chunk of lands by a few elites. The 2013 human rights and business report found out that, about 50% of the Kilosa land was alleged to be owned by about 10 tycoons. Same situations seems to happen on part of Mvomero whereby, some of the huge tracks of lands were allegedly owned by the high profile incumbent and retired public leaders. Morogoro is also surrounded by several reserved areas including the Mikumi National Park; the Mkindo Forest Reserve (Tao Hills); and, the Mlongola gourge. Table 3.3 below summarizes the type of conflicting parties in Morogoro.

Table 3.3: Some of the Related Land Conflicts in Morogoro Region, 2015

S/No.	Land with Conflict	Conflicting Parties
1.	Sumayes' farm (1000 Ha.)	Owner and residents
2.	Amin Mohamed's farm (250 Ha.)	Owner and residents
3.	Bonde la Mlongola	Farmers and Pastoralists
4.	Msitu wa Hifadhi ya Kuni	Forest reserve authority and residents
5.	Dihinda Conflict	Farmers and Pastoralists.
6.	Mkindo Forest Reserve (Tao Hills)	Government and 11 villages

Source: LHRC's Human Rights and Business Survey, 2015.

268 Various media sources.

Other places which the residents claimed to have their land alienated without their informed consent included the Hiyari village, Mtwara district; Mjimwema street, Mkindani, Mtwara municipality; Kikwetu village, Lindi region;[269] and Mererani, where about 19 mining sites of artisan miners were closed down in 2015.[270]

In Kisarawe district, Coast region, the media reported that some of the villagers of Lingato area trespassed into the investor's land (namely Mohamed Iqbal) and unlawfully started to develop it regardless of the court order restraining them from doing that.[271]

The way in which such land conflicts occur could imply that, there is inefficient or dysfunctional land management system, caused by some weaknesses on part of the institutions or individuals with responsibilities to manage the land. For instance, some of the conflicts illustrated above were caused by the village or district or even national leaders by sending the investors to the villages without sufficient transparency on how such land were acquired for investments. Corruption could be one of the driving forces behind the irregularities. A case of Ruwiko area, Ruvuma region and the plantations in Kilimanjaro, which are discussed above could be a good example to infer such an argument. Other areas (not mentioned above) which had similar land conflicts in Songea, Ruvuma region were the Lupokela village, Liganga ward; Rutukila and Mbendu areas, both in Ruvuma region.[272]

3.3.7 Capacity to Negotiate on Land Acquisition

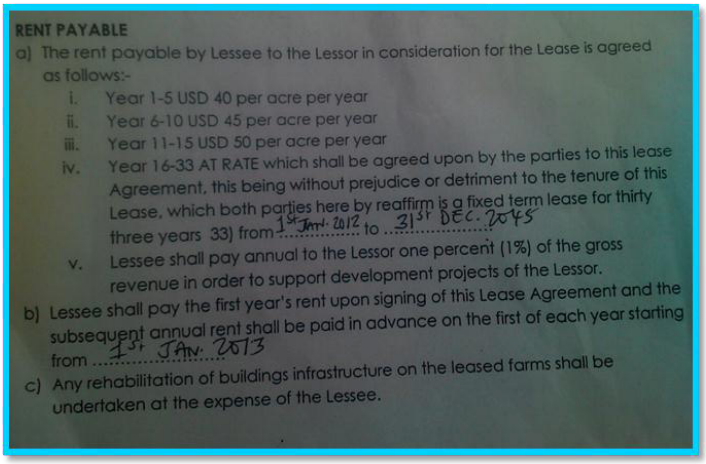
The local communities' capacity to negotiate about land alienation was also noted to be an issue of concern. The provisions of the Constitution of the United Republic of Tanzania of 1977; and, the Land Acqusition Act, 1967 call for fair compensation – basing on the current market values. In most cases, the villagers assess the value of the land to be sold basing on either; (i) the buyers proposed ceiling price; or, (ii) an 'eye-bow' estimates of value as heard from other sellers around the village.

The case of the villagers of the Kiomoni ward (Tanga region), who sold their 26.5 acres of their land for only Tshs 9,000,000 can be a good illustration here. As it is stated above, the price per acre was only Tshs 330,000 which was far below the market value of Amboni area's land. An anonymous land officer of Tanga municipality was of the view that, probably the realistic market value was to be Tshs 3,000,000 per acre. Therefore, the villagers lost about 90% of the real value of their lands.

The AMC's plantation (currently under the Kirima-Boro Rural Cooperative Society Limited) which were nationalized in 1970s from the European owners were in hands of the natives in Kilimanjaro region. However, the natives failed to produce as expected whereby instead of growing coffee, the new owners planted maize. In 1990s, the owners were given a notice by the government to do proper investment or else, their land was to be taken by the government. In a bid to comply with the warning, the owners were compelled by the circumstance to enter into an

[269] Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report I). Page 29.
[270] Corporate Human Rights Compliance Assessment, Arusha Field Report of 2015 (LHRC's Report I). Page 4.
[271] Happiness Mnale 'Wananchi wavamia eneo la mwekezaji.' Tanzania Daima 30th December, 2015. Page 18.
[272] Corporate Human Rights Compliance Assessment, Ruvuma Field Report of 2015 (LHRC's Report I). Pages 26 and 27.

agreement[273] as the weaker party in the bargaining process. Eventually, very long term lease agreement was concluded (from January 2012 to December 2045 as Picture 3.10 below shows.



RENT PAYABLE

a) The rent payable by Lessee to the Lessor in consideration for the Lease is agreed as follows:-

i. Year 1-5 USD 40 per acre per year

ii. Year 6-10 USD 45 per acre per year

iii. Year 11-15 USD 50 per acre per year

iv. Year 16-33 AT RATE which shall be agreed upon by the parties to this lease Agreement, this being without prejudice or detriment to the tenure of this Lease, which both parties here by reaffirm is a fixed term lease for thirty three years 33) from 1st JAN. 2012 to 31st DEC. 2045

v. Lessee shall pay annual to the Lessor one percent (1%) of the gross revenue in order to support development projects of the Lessor.

b) Lessee shall pay the first year's rent upon signing of this Lease Agreement and the subsequent annual rent shall be paid in advance on the first of each year starting from 1st JAN. 2013

c) Any rehabilitation of buildings infrastructure on the leased farms shall be undertaken at the expense of the Lessee.

Picture 3.11: Long term lease contract between the Kirima-Boro Rural Cooperative Society Limited and the African Plantation Kilimanjaro Limited.

The villagers of the Luanda and Mtunduwalo villages, Mbinga district, Ruvuma region alleged that, they did not negotiate about the compensation paid by the government after being asked to vacate their lands in order to pave a way for coal extraction. One of the villagers, Mr. Matembo, said that, the whole of the Mtunduwalo village was a residential land. He said (literal translation in English) that:

> Sometimes in 2010, one of the villagers saw a hill near his house burning with fire. He called his neighbours and then the village and other leaders were informed. Soon, the national leaders including President Jakaya Kikwete visited the area. Four months later, an aircraft and experts came to do some explorations. Afterwards, we were informed that, our land has coal and therefore, we were to vacate it immediately. They promised to give us compensation. Every villager who had a land plot was assisted to open up a bank account for crediting compensation money ... we had reasonable expectation that, payments were to be made soon. Two years later, the national leaders came again, this time around with copies of what we were told to be contracts. **The documents were written in English language; therefore, our member of parliament translated the contents for us**. We just signed the documents and we were informed further that, our land will be taken for 99 lease term. The extraction of coal began in 2013. When we tried to demonstrate in order to be paid compensations, FFU (police's field force unit) beat us and threaten to imprison us. After such incidents, we gave up and pave the way for the investment to take place (emphasis supplied).

The quotation of the respondent is quite clear that, there were; (i) lack of negotiation apart from the superimposition of the land alienation terms by the national leaders; (ii) no chances to bargain the prescribed terms due to language barrier and unwillingness on part of the government

[273] With the the African Plantation Kilimanjaro Limited.

officials; and, (iii) non-fulfilment of the agreed terms plus the inability to pursue the remedies before the formal legal forums.

The study also noticed that, the Lipokela villagers (Ruvuma region) did not negotiate the alienation of their land to Aviv Company Limited; instead, they were unduly influenced by their leaders to sign the papers. They said that, most of the villagers who were involved in the 'negotiations' with this company were old and semi-illiterate or illiterate villagers (elders of the households affected by the alienation).

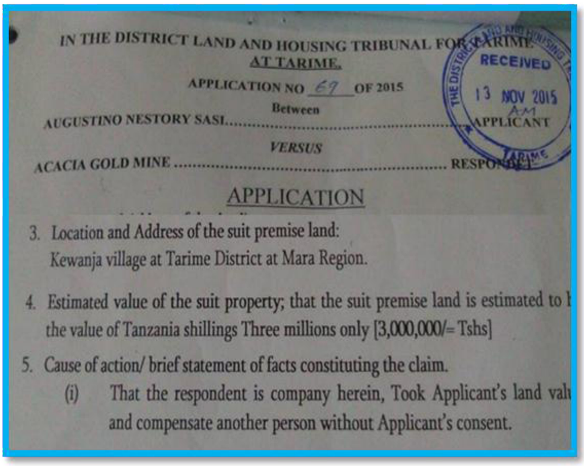
The third scenario about the capacity to negotiate land alienations by the villagers as noticed by this study was the use of 'middle-persons' to speak for the villagers, the land owners. There are two types of middle-persons. The first ones are private lobbyists who are sent by the investor to 'lubricate the processes' in many ways, including bribing the grassroots (village) leaders. A famous law firm in Arusha, whose founder died a few years ago, was mentioned by some of the respondents in Arusha, Manyara and Meatu (Shinyanga) to be notorious of this business. The law firm has sister companies which some of them own wildlife management areas (WMAs) in Meatu district. The second ones are government lobbyists, who basically use their political or administrative powers to manipulate the villagers' decisions over their lands. For instance, a villager of Nyakunguru village, Mbinga, Ruvuma region said that, he did not negotiate when his land was about to be taken away, instead, *'mwenyekiti wa kijiji ndiye mwenye kazi ya kuorodhesha watu wanaodai fidia na ukubwa wa eneo la muhusika na kiasi anachotakiwa kulipwa' ('it is the village chairperson who was jotting down the names of the person who claim compensation and the size of the land against which amount of compensation will be determined').*[274]

In Mara region, despite the fact that so many civil rights interventions have been done by civil society organizations (CSOs) about the right to land, still, a number of villagers especially residing nearby the NMGM were still crying for unfair compensation – as if they did not participate in the negotiation regarding their land.

Picture 3.12: Part of Nyamongo village that is alleged to have been alienated from some of the villagers by the Tarime-based gold mining company, Mara region.

[274] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 21.

The unfinished business about the alianeted land of the Nyamongo village remains at the same status. There are ‘victims’ of evictions who were still patient to wait for confirmation of the payments; there were also ‘victims’ who were already paid, but claim more from the investor; and, others who had decided to take their grievances before the court of law. One of such villagers is Mr. Sasi of Tarime district, Mara region, in the case of *Augustino Nestory Sasi Vs. North Mara Gold Mining.*[275]



IN THE DISTRICT LAND AND HOUSING TRIBUNAL FOR TARIME
AT TARIME.
APPLICATION NO 69 OF 2015
Between
AUGUSTINO NESTORY SASI.......... APPLICANT
VERSUS
ACACIA GOLD MINE .... RESPONDENT

RECEIVED
13 NOV 2015

APPLICATION

3. Location and Address of the suit premise land:
Kewanja village at Tarime District at Mara Region.
4. Estimated value of the suit property; that the suit premise land is estimated to b
the value of Tanzania shillings Three millions only [3,000,000/= Tshs]
5. Cause of action/ brief statement of facts constituting the claim.
(i) That the respondent is company herein, Took Applicant's land val
and compensate another person without Applicant's consent.

Picture 3.13: Land Application filed in DLHT at Tarime by one of the victim claiming for compensation.

3.3.8 Special Case of Dodoma’s CDA

The land management and allocation are in Dodoma as the capital city is in the hands of the Dodoma municipal council and the Capital Development Authority (CDA). The power to allocate land to an applicant of the right of occupancy is vested with CDA instead of the Land Commissioner, a fact which some of the scholars[276] consider as a contravention of the land laws. According to some scholars and the views gathered during this study, the arrangement to give CDA overwhelming powers to manage and allocate the land in Dodoma is one of the attributing factors to the occurrence of land-related problems in this region. For instance, unlike regular ways and terms on the land’s security of tenure, CDA offers a shorter lease period, a move which discourage large scale investments in the region.

Furthermore, despite the fact that CDA has a relative small area to manage and allocate land, still same challanges facing the mainstream land management discussed above such as lack of transparency and incidents of corruption (allegations)[277] were said to be haunting CDA as well.

[275] Land Application No. 69 of 2015 before the District Land and Housing Tribunal at Tarime District Council. This case reference was copied from the Tarime CMA Quarterly Progress Report for the period of July-November 2015.

[276] Juma Kidunga, ‘Managing Land for Developing Dodoma, the Capital City of Tanzania: Critical Analysis of the Role of Dodoma Municipal Council and Capital Development Authority,’ Journal of Sustainable Development, Volume 7, No. 5; 2014, Page 145, available at www.ccsenet.org/jsd accessed on 17th January 2016.

[277] These are extensively discussed in: United Nations Economic Commission for Africa, Natural Resources and Conflict Management: The Case of Land, Ad-Hoc Expert Group Meeting (AEGM), *14-15 February 2012*, Dar

The respondents to this study said that, only a few elites can manage to purchase plots of land through CDA as their procedures are regarded as bureaucratic. Such complicated procedures hinder even its institutional progress to extend the coverage of surveyed areas. Therefore, unsurveyed areas such as Mkanze and Chididimo cannot be utilized for commercial purposes such as to be used as collaterals for bank loans – needed for investments.

On the other hand, the prospective investors who plan to invest in Dodoma were blamed for bypassing the local communities (native land owners) and jump straight to CDA for land allocation. The acting District Administrative Secretary of Dodoma confirmed this to have been happening when he was interviewed by this study on 17th December, 2015. Such tendency has created a complicated relationship between the local communities and the investors, while CDA seemed to condone the trend to continue.[278]

As for the land acquisition for public purpose, which was the main interest of this study in its interaction with CDA, it was generally found that, there were decreased incidents of delayed or unpaid compensation upon land alienation. However, concrete statistics to illustrate the trend were not immediately obtained. The head of the Public Service Department at the Dodoma Municipality told the research team that, conflicts relating to compensation were normally propelled by the government failures to pay prompt and fair compensations.[279] Moreover, sometimes the authority refuses or delays to pay compensations due to conflict associated to the legality of land ownership of some areas (lacking proper records or evidence to authenticate ownership). The respondent officer gave an example of the areas known as Ntyuka whereby, the local communities were occupying this land for years, while at the same time CDA claims to be a legal owner of the same land since 1976. There were also minor conflicts in Bahi and Hombolo areas between the community members and some of the grape plantation companies.

Back to the issue of delayed or non-payment of compensation for the land alienated, it seemed that CDA faces a lot of resistance from the people once it wants to acquire the land even for obvious public purpose. It seems that some of the people do not trust it anymore. For instance, the Nipashe newspaper of the 6th January 2015, reported that, there were more than 1,000 Nhg'ong'ona ward's residents (in Dodoma), who refused to adhere to the CDA's needs of reallocating them in order to repair an infrastructure because they were aware of CDA's tendency of delaying or refusing to pay compensations.

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es Salaam, Tanzania, Page 48, at http://www.uneca.org/sites/default/files/PublicationFiles/land_and_conflict_study_0.pdf, accessed 4th January, 2016.

278 Corporate Human Rights Compliance Assessment, Dodoma Field Report of 2015 (LHRC's Report I). Page 18.

279 This matter seems to be a well known national issue. For instance, in September 2015 the Minister for Lands, Mr. Willium Lukuvu was quoted by media urging the urban plan officers to ensure that they grant fair compensation as required by the law to residents who are removed from their lands for development projects. Reference: Nashon Kennedy, 'Lukuvi urgues fair compensation to land victims.' Daily News, 17 September 2015. Page 5.

LHRC is of the view that, there are so many issues of concern, which CDA needs to clear in order to regain its seemingly lost reputation in land management. Some of the issues which have not discussed above include delayed issueing of certificate of occupancy to the applicants. These and other challanges need earnest and prompt attention if at all the government still wish to have its capital city developed as it was intended. It could be, subject to further analysis of the situation, better to remain with only centralized land management system under the commissioner for land, who acts through land officers down to the district level, than having a specialized authority which is not functioning as it was supposed to be.

3.4 LAND ACQUISITIONS THROUGH LAND BANKS

The creation of land banks for investment is one of the options of acquiring land in Tanzania. The first option (through the Land Acquisition Act, 1967) is extensively discussed above. There are several authorities which are mandated by laws to maintain land banks for investments. Such authorities, as mentioned above, include TIC, EPZA and RUBADA.

The study was informed by TIC that, the current demand of land for investments was above the total size which TIC can supply. The applications for such land (land banks) have gone up to about 9.6 million ha. However, TIC has so far managed to issue only 11 titled land parcels (being less than 0.03% of the total demands or applications).[280]

As for RUBADA is a body corporate established by the RUBADA Act, 1975.[281] The authority is charged with multi-sectorial responsibility of promoting, regulating, coordinating, facilitating sustainable and balanced long-term ecological and socio-economic development activities in the sector of energy, agriculture, fisheries, forestry, tourism, mining, industry, transport and environment in the basin. Currently RUBADA is dealing mainly with agriculture and energy. The RUBADA covers approximately 177,000 KM^2 of land (about 20% of Tanzania's land) and 30% of runoff water stretching throught the Coast, Morogoro, Iringa, Mbeya, part of Ruvuma, Singida, Lindi and Njombe regions. The RUBADA's suitable land bank for agricultural investments is estimated to be 622,400 ha as shown in Table 3.4 below.

Table 3.4: RUBADA's Suitable Land Bank for Agricultural Investments

S/No.	Zone	Potential Areas
(i)	Kilombero Valley	329,600 ha
(ii)	Lower Rufiji Valley	80,000 ha
(iii)	Usangu Plains	208,800 ha
(iv)	Little Ruaha	4,800 ha
	Total:	622,400 ha

Source: RUBADA Information Book, 2015.

280 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report II). Pages 10 and 11.

281 Act No. 5 of 1975.

According to the Town Planner of RUBADA, who was interviewed in December 2015, both local and foreign investors are regarded as eligible applicants of the land bank under RUBADA's management. However, they must be registered by TIC and other authorities which regulate corporate companies in Tanzania. Moreover, an investor needs to have sufficient capital as per the nature of the project which he or she wants to engage in. The 'sufficiency' of profit is not stated anywhere in terms of the actual amount. It depends on competitive bidding process whereby, an investor with capital takes the land for intended investment.

It is also established that, RUBADA does not have a direct link with EPZA, which is another authority which maintains the land banks. It seems that TIC is the chief land banking regulator, however, it does not have direct contol of the lands under control of other land bankers apart from powers to facilitate investments by announcing tenders to investors. It is also not certain whether the three land bankers have statutory or formal administrative forums which bring them together to have a holistic approach of land bank management. LHRC suggests that such forums should be created in order to centralize coordination of land banks for investments in Tanzania. One of the advantages of this will be – avoidance of dublication of efforts and to have a clear picture of the status of the land (for investment) utility in Tanzania. Such forums should also bring include the district and village level land committees as the case may be. Any future amendment of the land laws, should specifically address this matter.

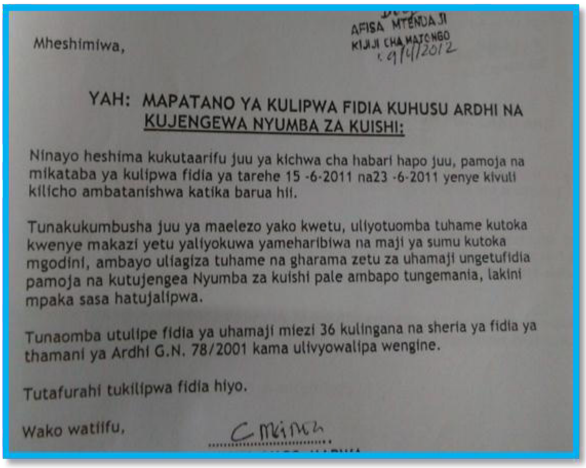
As for status of investments in RUBADA's land bank, it was gathered from this study that, there was no any investor who had invested in this areas between 2010 and 2015. Instead, the authority was making land categorization in order to get title deeds for the prospective users of the RUBADA land bank.

3.5 COMPENSATIONS FOR THE LAND ALIENATED FOR INVESTMENTS

In addition to the laws and provisions cited earlier on about compensations upon land alienation, there is also the Land (Assessment of the value of land for compensation) Regulations, 2001 which among other things, directs under Clauses 3 and 4 that, the basis for assessment of the value of any land and exhausted improvement for purpose of compensation under the land law shall be the market value of such land. Furthermore, the compensation procedures need to ensure transparency and adequate compensation rates, proper valuation and prompt payments of compensation.

The practical side of the implementation of the laws and rules on compensation proves a different trend, at least by considering the number and nature of claims which this study came across in all sampled regions visited. The incidents of delayed compensation; non-involvement of the land owners in the evaluation processes; underpayments; and denial of payments were rampant all over the country. Despite the fact that it was not easy to quantify the positive or negative trends of such incidents over years, still basing on the generalized perceptions of 2013, 2015 and 2015 as documented by similar studies, one could argue that, little or not improvement of the situation has been done.

The Nyamongo villagers, Tarime district, Mara region, have not yet stopped crying for the delayed and non-payment of the compensation after their lands were alienated for NMGM some years ago.[282] Such claims from some of Nyamongo villagers have constantly been heard and reported by a number of reports. It is really a highest level of irresponsibility on part of the government (and the investor) not to ensure that these claims are cleared out if at all they are genuine claims. The villagers, who are alleged to be victims of the land alienation in Nyamongo, had tried different methods to secure proper redress. Some of them have used administrative letters to the government officials and to the investor as Picture 3.13 shows:



AFISA MTENDAJI
KIJIJI CHA MATONGO
9/4/2012

Mheshimiwa,

YAH: MAPATANO YA KULIPWA FIDIA KUHUSU ARDHI NA KUJENGEWA NYUMBA ZA KUISHI:

Ninayo heshima kukutaarifu juu ya kichwa cha habari hapo juu, pamoja na mikataba ya kulipwa fidia ya tarehe 15 -6-2011 na23 -6-2011 yenye kivuli kilicho ambatanishwa katika barua hii.

Tunakukumbusha juu ya maelezo yako kwetu, uliyotuomba tuhame kutoka kwenye makazi yetu yaliyokuwa yameharibiwa na maji ya sumu kutoka mgodini, ambayo uliagiza tuhame na gharama zetu za uhamaji ungetufidia pamoja na kutujengea Nyumba za kuishi pale ambapo tungemania, lakini mpaka sasa hatujalipwa.

Tunaomba utulipe fidia ya uhamaji miezi 36 kulingana na sheria ya fidia ya thamani ya Ardhi G.N. 78/2001 kama ulivyowalipa wengine.

Tutafurahi tukilipwa fidia hiyo.

Wako watiifu,

Picture 3.14: Part of the letter of the villager claiming compensation addressed to the Managing Director of North Mara Gold Mine.

Other claimants have tried judicial procedures. For instance, the cases of *Augustino Nestory Sasi Vs. Acacia Gold Mine Limited*;[283] and, *Chacha Amos Marwa Vs. Acasia North Mara Gold Mine Limited*.[284] Also, a good number of them (actual number was not obtained) have decided to let it go (given up).

Same company was blamed for not effecting compensation on part of its Geita region operation where it trades as Geita Gold Mine Limited (GGM). According to the discussions with various persons in Geita, there were pending compensation payments to the land evictees particularly some of the Katoma and Nyamalembo residents in Geita. In additional to this affected communities were dissatisfied with the amount as they claimed it was very little comparing with the value of the land they have given away. Furthermore, delayed payments and lack of alternative source of livelihood seemed to 'add salt in an open wound' of these claimants. The issue of livelihood here is in terms of suspension of their artisal mining and other socio-economic activities as Picture 3.14 below shows, which they were engaging themselves with before the alienation; and, the residential houses.

[282] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report II). Page 21.
[283] Land Application No.69 of 2015 – DLHT at Tarime.
[284] Land Application No.54 of 2014 – DLHT at Tarime.

Picture 3.15: Part of the Katoma Hill that has been alienated from community in favour of GGM.

Yet still, the villagers alleged that, GGM continues with mining activities on their lands despite the fact that there were some pending cases in court of law on the subject matter (relating to the lands alienated). On its side, the mining company claims to have paid a total of Tshs 711,286 247.17 as compensation for 25 individual at Katoma in 2010; while in 2009, a total of Tshs 348,699,924.25 was paid to compensate 75 individuals at Nyamatagata; and, in 2007, a total of Tshs 116,524,976.27 was paid to compensate 553 individuals at Katoma; while in 2004 a total of Tshs 312,707,842.00 was paid to compensate 169 individuals; and in 1999, a total of Tshs 3,985,000.00 was paid to Mtakuja and other areas in Geita.[285]

According to the Mining Act, 2010 compensation for alienated land to give room for mining investment projects can be of different packages including monetary form, resettlement, and creation of livehood alternatives. Section 97(1) of the Mining Act, 2010 stipulates to the effects that, *'where the rights conferred by a mineral right cannot reasonably be exercised without affecting injuriously the interest of any owner or occupier of the land over which those rights extend as required under section 96, the mineral right holder shall, (a) advise the owner or occupier of the land to vacate the area, and consult the relevant local government authority on amendment of the land use plan; and, (b) submit a proposed plan on compensation, relocation and resettlement of the owner or occupier of the land as per the Land Act, 1999.'* LHRC urges the government authorities to excercise leadership to effectively supervise and enforce implementation of this and other laws on compensation. It is really an issue of concern to note that, same issues happening in similar fashion remain persistant over years and the responsible persons are not taken into task for their failures to promote social livelihood of the people who give away their lands for investment projects.

The second common challenge about compensation was noticed to be delayed payments. Some of the former residents where Songwe International Airport is, in Songwe region (formerly Mbeya region) were still struggling to secure their payments from the government since 2013 when similar study to this one met them in Mbeya. One of the the person, whose land was

[285] Information from: AngloGold Ashanti- Geita Gold Mine, 'Brief on Land and Compensation.' September 2013. Probably, more or less have been paid in 2014 and 2015 years. The study team was denied access to the GGM management in order to get further clarifications.

alienated but still waiting for compensation for some years now, is Ms. Ambatanisye Mejala Kalinga (Picture 3.16 below).[286]

Picture 3.16: Ms. Ambatanisye Kalinga, one of the victims of land alienation to give room for construction of Songwe Airport.

It was more than ten (10) years since the widow, Ms. Kalinga (59 years) pictured above, has been waiting to be compensated upon alienation of her 1.5 acres of land and some exhausted improvements on it. The lady claimed that, *' ... I have no one to help me out in my life and on this matter as my husband passed away ... they (authorities) have promised us our money for a long time ... it is now more than ten years ..., I have done all what I could and I don't think with all efforts exhausted,I could get the money ...'*[287] Furthermore, during the focus discussions at Songwe area, it was noted that, only 6 (30%) out of 20 respondents (randomly picked to represent their households) were paid compensation. This looks like a small or rather simple sample; but, it can be used to present a wider picture of the magnitude of the problem and a dialema in which the victims are facing.

There are so many coiled human rights and good governance issues here; first, the highest level of irresponsibility on part of the government officials to the welfare of the vulnerable people such as this old and widow victim; two, transparency and lack of proper feedbacks to the people about their claims; and three, lack of transitional or provisional measures to sustain victims' livelihoods while their issues are sorted out.

> It has happened in many parts of the country that, land alienations for whatever purposes adversely affect every member of the family including the rights of children to continue with education. This is why LHRC suggests that, because experience has shown that at least 60% of the intended compensations are delayed (basing on our random interviews), the legal frameworks on land and investment should be amended to compel those who alienate the land to either, (i) paynot less than 30% of the expected payments right before they start using the land; or, (ii) take over the full management of the land after original land owners have been paid.

Similar incidents of delayed payments were heard elsewhere. In Mara region, Mr. Kasebo, a 57 year villager of the Nyakunguru village, Tarime, Mara claimed that, he has been following up his compensation since 2008 (more than 7 years) in vain. A villager in Nyamongo village said that, once one's land is taken away, he or she can not access it for grazing or any other economic

[286] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 17.
[287] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 19.

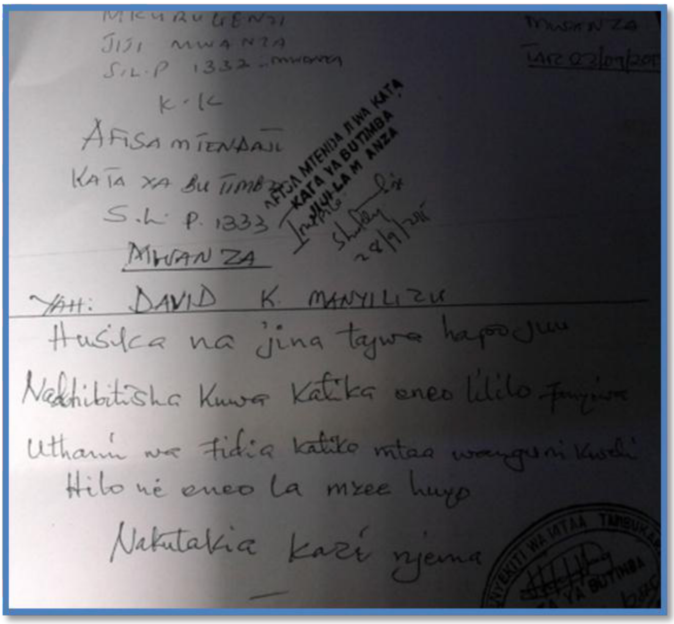
activities even if the compensation is not paid; and even if the land is left idle. He alleged that, any attempt to graze in the land alienated could even cost someone's life. *'Ukionekama maeneo hayo, unauliwa mara moja' ('if you are seen in those areas, they kill you on the spot')*, alleged the villager at Nyamongo inferring the cruelty of the mining company investing in their village.[288]

In Ruvuma region, some of the 1975 evictees of the Ruwiko village, Songea district, were compensated twenty years later (in 2010). The villagers were ordered to vacate their lands so that a part of this village could be used as industrial area. There are still so many evictees of Ruwiko who were not paid at the time when this study was conducted. Moreover, as it is reported above, the 'investment land' has remained undeveloped todate. Other residents in this region had similar claims. Those include the Lupokela villagers, Liganga ward, Songea who alleged that, they were unduly induced (by the government authorities and investor, M/s. Avivi Company Limited) to sign the contracts to relinquish ownership of their coffee farms for trivial compensation amounts, which were also paid in long term (time interval) instalments. This situation has contributed to the ongoing enmity between the community members and the investor. The study was notified of the pending case which involved the Mtunduwalo village council (Luanda ward) and the investor.[289]

Such delays do not face villagers alone as one could assume because of their low level of awareness of legal rights, and therefore inability to pursue their cases through judicial forums. The study established that, even the peri-urban and urban land rights owners do face same challanges albeit in lower magnitude compared to the rural land owners.

One of the urban incidents involved the residents of Bugarika, Luchelele, Butimba, Mkuyuni and Ilemela areas, Mwanza urban who were (some of them) asked to quit their lands for the investments (unknown to them). Mr. David Manyilizu, one of those residents, who lived at Tambuka Reli, Ilemela, Mwanza said that, the land alienation took place in the year 2000. Quater a century (25 years) down the line the old man is still struggling for his payments.[290] As if it is not clear who the responsible person is or institution to hear his case, Mr. Manyilizu has been writing letters to 'every' authority that he thinks could be of help. Picture 3.16 below shows a letter from his street chairperson to the Director of Mwanza City Council via the Ward Executive Officer (WEO), Butimba ward, which was written on 28th September 2015.

[288] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 20.
[289] Corporate Human Rights Compliance Assessment, Ruvuma Field Report of 2015 (LHRC's Report I). Page 31.
[290] Corporate Human Rights Compliance Assessment, Mwanza Field Report of 2015 (LHRC's Report II). Page 12.


MKURUGENZI
JIJI MWANZA
S.L.P 1332 MWANZA
K.K
AFISA MTENDAJI
KATA YA BUTIMBA
S.L.P. 1333
MWANZA

MWANZA
TAR 03/09/201

AFISA MTENDAJI WA KATA
KATA YA BUTIMBA
JIJI LA MWANZA

YAH: DAVID K. MANYILIZU
Husika na jina tajwa hapo juu
Nathibitisha kuwa katika eneo lililo fanyiwa
Uthamini wa fidia katika mtaa wangu ni kweli
Hilo ni eneo la mzee huyo
Nakutakia kazi njema

Picture 3.17: A letter for Mr. Manyilizu about his outstanding compensation claims.

That letter too, did not receive any (practical) response as of December 2015 and the man has to think of other possible channels to pursue his matter.[291] Of course, the most viable channel basing on this situation could be the judiciary. Meanwhile, he will continue staying as homeless person because of the said weaknesses of the the legal framework on compensation.

In Mtwara urban too, 17 (81.0%) out of 21 individual persons randomy picked up for this study said that,has taken them a lot of time to secure payments after they were removed from their lands in Mtakuja and Hiyari areas to give room for Dangote Factories' investment project. The initial arrangement was that, payments for their land were to be issued before they relinquish their ownerships. But, that promise was not honoured.[292]

Fake promises were also heard in Kahama, Shinyanga region whereby the Buzwagi Mine Company was allegedly to have promised the land owners alternative settlements of residential houses worth Tshs 40 million per owner should they relinquish their lands for the company. Indeed, the company constructed residential houses; however, as Picture 3.17 shows, the quality of the houses constructed was far below the expected standard (value of money).

[291] Corporate Human Rights Compliance Assessment, Mwanza Field Report of 2015 (LHRC's Report II). Page 11.
[292] Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report I). Page 30.

Picture 3.18: One of the houses which Acacia-Buzwagi Mine constructed.

On the other hand, the previously reported land elienations to pave way for EPZ investment schemes in Tanga region, were found to be in the same weird situation, which continue posing a critical dilemma to the communities who are predominantly fishermen and peasants. As it was reported in 2013 and 2014 LHRC's human rights and business reports, the EPZ initiative to alienate the land involved the residents around Mwambani Harbour. In September 2010, a total of 250 households of this area (Mwambani) were verbally notified to collect their cheques (from Tanga municipal council) as payments for the land they had surrendered to EPZ schemes. The announcement directed further that, such payments were to be collected within a week. It was more than 5 years later at the time of this study and payments were not yet made despite being in trivial amounts per each land owner. The most affected villages of this uncertain scheme were Ndumi (in which, its residents were to be relocated for the second time within 10 years); Kivumbitifo; Saru; Magaoni; Mzingani villages; and probably later also Mwambani; Mchukuni; Mwahako; and more other vilages. No alternative settlements have been so far earmarked as it was promised by the government in 2008 and 2010.[293]

The involvement of the affected persons was one of the conditionalities for this project, which was said to be funded by the World Bank. However, an anonymous source informed this study that, even elite stakeholders to this project, such as the Tanzanian Chamber of Commerce, Industry and Agriculture (TCCIA); and the Confederation of Tanzanian Industries CTI), have not been consulted in the planning process of the new Mwambani Harbour developments so far. It is further stated that, such partners (community members, TCCIA and CTI) were not part of the September 2008's meeting held in Dar es Salaam (under World Bank facilitation). In that meeting, theFinal Draft Tanzania Port Master Plan was deliberated. Because of this situation, the progress about this EPZ project and its impact to the people as well as status of compensation has all remained to be 'mysterious' plans; and the critical question is on the legitimacy of the project, which will be implemented to the detriment of the rights of the poor communities who still claim for the little money to revitalize their lost livelihoods.

[293] Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report II). Page 30.

LHRC calls upon the Land Commissioner to intervene into all these incidents of unlawful land acquisitions. The Ministry of Land should launch a countrywide inquiry on the state of the compensation to the people for the lands alienated to the investors. Besides, TIC and other regulatory authorities should find ways to pin-tight the investors who had acquired the land without paying compensation. It will be also useful if TIC and other authorities hold on or suspend investment licences if it is found that an investor did not pay the land owners adequate compensations agreed upon.

3.6 ADJUDICATION OF LAND RELATED CONFLICTS

The land tribunals are established under the Land Disputes Courts Act, 2002; and they are also mentioned in the 1999 land legislation cited above. There are also regulations such as under the G.N No. 174 of 2003. The organs responsible for adjudication of land disputes are the Village Land Council; the Ward Tribunal; the District Land and Housing Tribunal (DLHT); the High Court; and Court of Appeal of Tanzania. The DLHT has original jurisdiction of all civil land disputes in which the subject matter has a value of between 3 million and 50 million. Therefore, most of the investment-related land disputes are preferred to DLHT or to the High Court directly.

There were about 23 DLHT countrywide in December 2015, while a total number of districts were above 150 in Tanzania Mainland. That means, 84.9% of the districts did not have land tribunals established in their geographical locations. Such situation compels some of the districts to share DLHT. For instance, the Geita region tribunal is based at Geita urban and it was supposed to serve three districts namely Sengerema, Geita urban itself and a newly established district, Nyang'wale. At least 80% of the cases to this tribunal are from Geita urban; while, Sengerema had 15% and Nyang'wale had only 5% of the cases.[294] That trend can be influenced by various factors, some being; (i) presence of land pressure, in which Geita has GGM and other investors in need of more lands for investment; and, (ii) proximity to the tribunal. It could be a fact that, some of the people do not send their matters into land tribunals simply because it is costful (time and money) trekking all the way to Geita urban.

3.7 PERFORMANCE INDICATORS ON LAND MANAGEMENT

The following is the summary of key findings in the form of performance indicators on the enforcement of the rights pertaining land management and acquisition in Tanzania. The summary depicts a comparative picture between land rights situation for the years 2013, 2014 and 2015. It should be noted that, not all 'performance indicators' used in 2013 and 2014 were reassessed in 2015. However, there has been a comparison of all main indicators between the three years in order to measure the progress of implementation of stated land rights management. It should be noted further that, some of the indicators used in this Table below, were taken directly from the LHRC's SPSS data bank without being necessarily discussed in the main text of this chapter.

[294] Corporate Human Rights Compliance Assessment, Geita Field Report of 2015 (LHRC's Report I). Page 19.

Table 3.5: Comparison of Performance Indicators on Implementation of Land Rights Standards between 2013, 2014 and 15 Years – LHRC Studies

S/ No.	Land Issue	[Some of the] Performance Indicators 2013	2014	2015
i.	Land Size	o Only 31.3% of the total landmass is habitable as village land, while 80% of Tanzanians are village dwellers. o More than 30% of the landmass is for conservation.	o 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]. o Over 2.5 million hectares of land was established to be Land Bank and TIC. o RUBADA, which manages Rufiji basin, occupies about 20% of the country's land from Coastal region. o Private registered operators (investors) own 50.2% of the land under large scale farming.	o Land alienations from the local owners were ongoing while little efforts were taken to acquire back dormant lands from 'lazy' investors. o 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. o Presence of several incidents discussed in this report about land conflicts due to land size pressure.
ii.	Land Tenure	o Accessibility of land resources steadily decrease with an increase of investment volumes in Tanzania. o Agricultural productivity and pastoralism have gone down in recent years making both rural and urban Tanzanians live in abject poverty. o Insecure land tenure.	o The legal and traditional norms on land tenure systems have increasingly been challenged by higher demand for land for investments. o 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).	o Current population density is estimated to be more than 49 per KM^2 owing to an increase of population from 44.9 million to around 47 million people in 2015. o Therefore, more land pressure is both urban and rural settings especially due to an increase of investment projects as well. o 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.

iii.	**Land Alienations/ Acquisitions**	o 61.0% of the respondents were not (effectively) consulted during land alienations/ acquisitions. o 35% of the respondents local residents said to have been affected by land alienations/ evictions.	o 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].	o 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].
iv.	**Compensations**	o Only 3.5% of respondents said to receive fair compensation; 20.8% did not receive any. o 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).	o Only 2.7% of respondents said to receive fair compensation; 20.4% did not receive any. o 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).	o Only 3.9% of respondents said to receive fair compensation; 13.7% did not receive any. o 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).
v.	**Access to Dormant Investors' Lands**	o Total of 73.9% of the community members were denied access to dormant/ undeveloped lands of investors – even when villagers had scarcity of lands. o Law enforcers failed to take actions against lad hoarders due to impunity.	o At least 60% of the community members were denied access to dormant/ undeveloped lands of investors – even when villagers had scarcity of lands. o The guidelines to limit the size of the land for investors were not ready despite being promised in January 2013. o At least 50% of the lands given to investors were not developed/ utilized.	o Total of 65.4% of the community members were denied access to dormant/ undeveloped lands of investors – even when villagers had scarcity of lands. o Still no guidelines to limit the size of the land for investors despite being promised two years ago. o Some actions are taken by the 5th phase government to acquire back dormant lands e.g case of Lindi.

Source: LHRC, Human Rights and Business Studies (Field Data), 2013, 2014 and 2015.

CHAPTER FOUR

CORPORATE COMPLIANCE AND TRANSPARENCY IN TAXATION

4.1 INTRODUCTION TO TAX MANAGEMENT

4.1.1 Tax Management as a Human Rights Issue

The way, in which taxes are managed, determine not only the collection level; but also, how such sources of revenues are to contribute to the sustainable development. The tax expert, Lipsett[295] mentions revenue bodies as well as business enterprises (corporate companies inclusive) and individuals as important partners in the fight against poverty through taxation (and other ways).

The 'development' has, for a long time, already been recognized as part of (collective) human rights. Article 3 of the Rio Declaration on Environment and Development of 1992 makes an explicit statement about this right.[296] Moreover, Article 1(1) of the UN Declaration on the Right to Development of 1986 states, among other things, that *'the right to development is an inalienable human right.'* In the light of this, the above cited author, Lipsett suggests that, business enterprises *'need to understand that their tax planning strategies and services can negatively impact on human rights.'* This is well argued by another tax scholar, Darcy (cited in footnote) who says that, improper tax management and malpractices such as tax avoidance may have negative human rights impacts. It is further argued that, *'business enterprises that knowingly avoid paying tax are purposefully depriving countries of the resources they need to fulfil their human rights obligations.'*[297]

As it seems to have been enlightened by this principle of correlation between business activities, taxes and human rights, Tanzania has put in place legal and institutional frameworks on tax management. Such frameworks (laws and institutions) have been reformed over period of time even before the country's independence in 1961. The reforms included type of taxes charged by the State. For instance, the British colonial rule introduced poll tax in early 20th century. The sales tax was introduced in 1969;[298] while, the current income tax was introduced in 1973; export duty in 1985; local government development levies in 1980s and 1990s; excise duty tax in 1989;[299] the Value Added Tax (VAT) in 1997; and so on. The major institutional reform made was the establishment of the Tanzania Revenue Authority (TRA) in 1995.

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[295] Lloyd Lipsett, 'Tax Abuse as a Business and Human Rights Issue.' Not Dates. Accessed on 5th March, 2016 from: http://www.shiftproject.org/article/tax-abuse-business-and-human-rights-issue

[296] The said provision states that, *'the right to development must be fulfilled so as to equitable meet developmental and environmental needs of present and future generations.'*

[297] Shane Darcy, 'Corporation Tax and the UN Business and Human Rights Agenda.' February 2015. Accessed on 6th March, 2016 from: https://businesshumanrightsireland.wordpress.com/2015/02/16/corporation-tax-the-un-business-and-human-rights-agenda/

[298] Braütigam, Deborah, Odd-Helge Fjeldstad & Mick Moore (2008). Taxation and State-Building in Developing Countries: Capacity and Consent. Cambridge University Press: UK.

[299] Osoro, N. E (1992). 'Revenue productivity of the tax system in Tanzania, 1979-1989.' Journal of African Economies, Vol. 1, No. 3.

4.1.2 Legal and Institutional Management of Taxation

As it stated above, the chief tax manager in Tanzania is TRA. The authority is established under Section 4 of the Tanzania Revenue Authority Act, Cap. 399. Section 5(1) lists the functions of TRA to include:

(i) Administering and giving effect to laws on assessment, collection and accounting for revenue.
(ii) Monitoring, overseeing, coordinating activities and ensure the fair, efficient and effective administration of revenue laws (some mentioned below).
(iii) Monitoring and ensuring collection of fees, levies, charges or any other tax collected by any ministry, department or division of the government.
(iv) Advising the minister and other relevant organs on all matters pertaining to fiscal policy, policy implementation and improvement regarding revenue laws and administration.
(v) Promoting voluntary tax compliance.
(vi) Devising ways of counteracting fraud and other forms of fiscal evasions.

The TRA was formed in order to bring the functions of government revenue collection under one umbrella; impart some degree of autonomy to the function with the expectation of increasing revenue collections, improving voluntary compliance, minimizing collection costs, widening tax base and controlling evasion and frauds. Prior to the establishment of TRA, the collection of taxes was uncoordinated whereby each type of tax such as the customs and excise, income tax and sales tax were independently managed in collections.[300]

According to the interviews with the TRA officials and other sources, this authority has adopted a number of managerial reforms or strategies in order to enhance its performance including devising controls towards curbing tax evasion and avoidance. The managerial strategies include:

(i) Development of five year Corporate Plans since 1998.
(ii) Development of an interface system between TRA and other payment systems. The system is also called Revenue Gateway System (RGS).
(iii) Introducing e-filing of tax return in order to, among other things, reduce tax payers' transaction processing time (and therefore convenience payment on part of the taxpayers).
(iv) Introduction of customs automated cargo management system in order to ensure that, there are no illegal cargo transactions in between the processes.
(v) Implementation of one stop border post (PSBP) for joint custom controls between Tanzania and other countries (at their common border points). The boarders for this plan's implementation are Sirari, Rusumo, Kasumulu, Mutukula, Holili, Kabanga, Namanga, Nakonde (Tunduma), and Horohoro.
(vi) Initiation of the Electronic Fiscal Devises (EFD), under G.N No. 192 of 2010 cited above.
(vii) Adoption of automation systems in various TRA operations such as the Tanzania Customs Integrated System (TANCIS).[301]

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300 TRA, 'Central Government Taxes Administered by Tanzania Revenue Authority.' July 2013, 1st Edition. Page 1.

301 TANCIS is a customs system that is web based and accessible from anywhere globally provided that there is internet connectivity (reference: EAG, 'EAG Group Limited Congratulates TRA for TANCIS Launch.' Accessed it on 17th March, 2016 from: http://www.eaggroup.co.tz/1.html

Picture 4.1: A TRA's publicity poster of newly launched TANCIS.

The reforms include also establishment of TRA's physical offices in every district and boarder points in Tanzania, including the hard-to-reach ones such as Mafia, which is an island in Coast region.

Picture 4.2: One of the TRA's upcountry office, Ruvuma region, December 2015.

The positive and adverse impacts of these and other reforms adopted by TRA are discussed in the subsequent parts of this report. There are several incidents which this study was informed about the strictness of TRA in tax collection. For instance, on 24th August, 2015, the Mtwara TRA branch manager penalized one of the business people for his failure to issue fiscal receipt contrary to Clause 10 of the Value Added Tax (Electronic Fiscal Devises) Regulations of 2010.[302] There were also a number of cases pending before the tax tribunals (namely, the Tax Revenue Board; the Tax Revenue Appeal Board; and the Court of Appeal) as of December 2015, including the one against one of the giants mining companies in Tanzania on the allegation of tax evasion. On the other hand, the tax objections against TRA rose by some of the taxpayers, amounted to Tshs trillion 6.7 according to the Report of the Controller and Auditor General

[302] G.N No. 192 of 28th May, 2010. Clause 10(1) of this law requires all registered tax payers to use the Electronic Fiscal Devises (EFDs) in their daily business transactions. Conducting business transactions without EFDs is an offence under Clause 10(2) of this law.

(CAG) of 2014/2015. Such objections were pending before tax tribunals. The CAG report pointed out that, such amount (Tshs 6.7 trillion) was an increase of Tshs 5.2 trillion (being 75%) as compared to 1.7 trillion worth of tax revenue cases in the 2013/ 2014 fiscal year. Such a huge number of pending tax revenue appeals and value is attributed to inefficiency of the tax tribunals due to lack of (sufficient) funds and experts.[303]

However, it can be stated from the outset that, despite such reforms and strictness of TRA on tax collection, still a lot of incidents of evasion and avoidance of taxes are reported by the media and other sources. There are dubious transactions which occurred during the year, including the widely reported Tegeta Escrow Account (discussed later), a scandal which implicated government, TRA, judges and even religious leaders. TRA did not detect this ill-move until it was revealed by the parliamentary committee. LHRC suggests that, TRA should not only focus on 'control' of such kind of incidents; rather, it should also devise a prevention mechanism. Public awareness on voluntary tax compliance is a commendable strategy, however, it does not necessarily address the behaviour of elite tax payers, who know everything about the essence of taxation, but still, they chose to evade or avoid the same.

As for legal reforms, the study has established that, there are a dozen of revenue laws and regulations enacted over a period of time, include the recent (2014) VAT Act, which repealed and replaced the 1997 similar law in order to reduce tax exemptions. Some of other revenue laws are the Income Tax Act, 2004; the Stamp Duty Act, 1972; the Motor Vehicle (Tax on Registration and Transfer) Act, 1972; the Road Traffic Act, 1973; the Pools and Lotteries Act, 1977; and, the Road and Fuel Toll Act, 1985. There are also several sectoral laws which introduce tax rates. One of such laws in the Mining Act, 2010.

4.1.3 Types of Revenues Managed by TRA and other Authorities

Currently, there are two types or forms of taxes, namely the direct and indirect taxes.Direct taxes are taxes levied directly on people's or corporate company's income from employment, business or ownership of property and an investment. The impact and incidence of the tax falls on the same person or company. Kinds of these taxes include the corporate tax; the pay as you earn (PAYE); and, the withholding taxes. On the other hand, the indirect taxes the ones which are based on consumption. Such taxes include the import duty; excise duty; and VAT. These two types of taxes are collected by TRA (central government).

There are other forms of taxes or revenues which are collected by the local government authorities (LGAs) under the local government laws.[304] Such taxes, fees and levies differed from one LGA to the other due to the economic base of a particular jurisdiction. Some of the usual collected revenues by LGAs are; property taxes; service levies; hotel levies; bill board and sign fees; trading licence fees; and market fees.

[303] This CAG's 2014/2015 report summary on tax revenue appeals was extracted by this report from Faustine Kapama, 'CAG Stumbles upon 6.9 trillion Tax Objection Case Queue.' Daily News, 28th April 2016, Page 1.

[304] Namely; the Local Government (District Authorities) Act, 1982; Local Government (Urban Authorities) Act, 1982; the Local Governance Finances Act, 1982 (both as amended from time to time); and, the by-laws enacted under the provisions of those laws.

4.2 PERFORMANCE IN REVENUE COLLECTIONS

4.2.1 Link between Institutional Reforms and Improved Performance of Tax Collections

It is obvious that the introduction of the above named and other reforms by TRA and the government at large has paid off quite tremendously as the trend in revenue collections was noted by this study to be on the increase over recent years. This assumption is confirmed by the interviews with various respondents met during the study; but also, a number of reports on the same subject matter which were released in 2015. For instance, the World Bank Working Group was of the view that, introduction of EFDs has simplified tax compliance, hence, increased revenue collections performance since its introduction in 2010.[305]

4.2.2 Performance in Tax Collections at National Level

The national overall trend of revenue performance in revenue collection depends on the efficiency and effectiveness of the regional and district TRA branches; and of course, presence of sources of tax collection such as motor vehicle licences, import duty taxes, and PAYE. The study established that, most of the regions had steadily increased tax collection over the years. For instance:

(i) According to the Morogoro's TRA Regional Manager, tax collections in this region has increased from Tshs 20,166.1 million shillings in 2008/ 2009 to Tshs 23,724.1 million shillings in 2009/2010; Tshs 23,170.0 million shillings in 2010/2011; Tshs 34,225.0 million shillings in 2011/ 2012; Tshs 34,741.1 million shillings in 2012/ 2013; and, Tshs 39,080.3 million shillings in 2013/ 2014. The increase between 2008 and 2014 is estimated to be 93.8%. More collections were expected in 2014/ 2015 and subsequent financial years.

(ii) As for Dodoma region, according to the TRA Regional Manager, the collection trend of revenue was consistently going up between 2007 and 2014. The statistics obtained from TRA show that, this region collected a total of Tshs 8,938.3 million shillings in 2007/ 2008 fiscal year and that, the collections hike to million Tshs 11,433.5 in 2008/ 2009; Tshs 15,815.7 in 2009/ 2010; Tshs 17,699.7 in 2010/ 2011; Tshs 19,651.0 in 2011/ 2012; Tshs 24,608.8 in 2012/ 2013; and, Tshs 28,368.1 in 2013/ 2014. The improvement of collection gap between 2007 and 2014 is 68.5%.

(iii) The trend of Geita region's tax collection showed that, the region targeted to collect Tshs 9 billion in the 2014/ 2015 fiscal year. However, it managed to collect Tshs 5 billion in that year, being more than 50% of the expected targets. According to TRA Geita, the collection of revenues were expected to increase in 2015/ 2016 fiscal year because at least Tshs 3.1 billion taxes were already collected before the end of the year 2015. It should be noted that, Geita is still a new region, established less than 10 years. It was one of the districts of Mwanza region.

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[305] World Bank Group, Tanzania Economic Update, 'Why Should Tanzanians Pay Taxes?The Unavoidable Need to Finance Economic Development.' 7th Edition, July 2015, Page 37. Accessed on 7th January, 2016 from: http://www.worldbank.org/content/dam/Worldbank/document/Africa/Tanzania/Report/tanzania-economic-update-why-should-tanzanians-pay-taxes-the-unavoidable-need-to-finance-economic-development.pdf

(iv) The Mara's TRA Regional Manager stated that, it is corporate tax which boosts high tax base in his region. However, it was noted that, the rates of tax collections in the region have varied over period of time. For instance, the statistics obtained from TRA showed that, the collections were million Tshs 82,324.4; 55,679.2; 54,526.7; 43,486.3; and, 75,537.7 for the fiscal years 2009/2010; 2010/2011; 2011/2012; 2012/2013; and, 2013/2014 respectively.[306]

The trend of regional improvement of tax collection over years is the same to almost all sampled regions, which this study covered in December 2015. It seems that, if more investment environments will be created in order to attract more business activities in the areas, such collections would improve further.

However, LHRC is concerned that the standard of living of common residents of these areas, even where revenue collections were tremendously improving, is relatively poor. It is well understood that, revenue collections are centralized in order to bring about equal share of the 'national cake.' But, a simple proportionality formula (of the national cake's share) could be used to improve the life of the people who produce more, so that they can improve productivity, contribute more revenues and improve further their living standards. In this way, other regions too can improve productivity in order to get more returns. Another justification could be that, presence of investments in particular areas normally cause some of the people to relinquish their rights e.g upon their lands being acquired for investments. Therefore, they deserve more benefits for the sacrifice they have made to the public projects. Secondly, it is high time that LGAs within which investments are found to be allowed certain direct percentage from the revenue collections (apart from a little of what LGAs are allowed to levy as it is explained before). Again, this will encourage such authorities to be more 'innovative' in order to encourage investments in their areas of jurisdiction.

4.2.3 Performance in Tax Collections at National Level

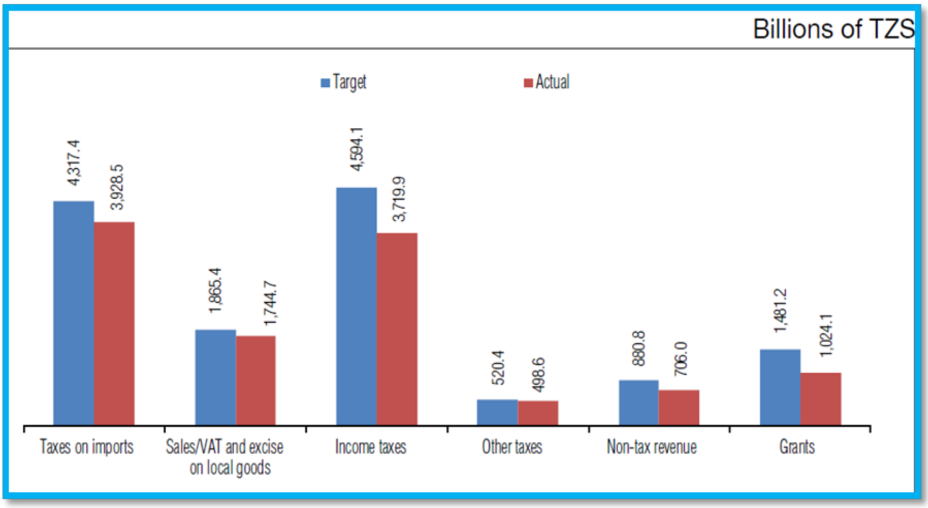
Due to centralized system of tax collection, it is obvious that, the overall trend national trend of performance in revenue collection depends much on the collections efforts by the regional and district offices. The statistics show that, domestic revenue collections, including local government own sources, amounted to Tshs 10,957.8 billion, equivalent to 86.7% of the targeted Tshs 12,636.5 billion. The domestic revenue collected by the central government was 12.5% of GDP compared with the target of 14.4% and 13.2% in 2013/14. The tax revenue amounted to Tshs 9,891.7 billion, or 87.6% of the target, with a large part collected from imports and income taxes.[307]

The total collections for the last fiscal year (2013/2014) were Tshs 9,856.9 billion; and the year before (that is in 2012/ 2013) the revenues collected amounted to Tshs 8,031.1 billion. An increase of Tshs 1,825.8 billion (between 2012/ 2013 and 2013/2014 fiscal years) was equivalent to 18.5%;[308] while, an increase of 1,100.9 (between 2013/2014 and 2014/2015 fiscal years) was

306 Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 38.
307 Bank of Tanzania, Annual Report 2014/2015. Page ix.
308 NBS, Annual Tax Performance Statistics for Fiscal Year 2013/14 Mainland Tanzania. Accessed it on 3rd April, 2016 from: http://www.nbs.go.tz/nbs/takwimu/Tax/ANNUAL_TAX%20PERFORMANCE_STATISTICS_FOR_FISCAL_YEAR_2013-2014-TANZANIA-MAINLAND.pdf

equivalent to only 10.0%. As figure 4.1 below shows, income taxes seem to be main contributor of the total annual revenue collections, followed by taxes associated with imports.

Figure 4.1: Government Resources in 2014/2015



Source: BOT Annual Report 2014/2015. Page 20.

As Chart 4.1 above shows, the actual revenue collections have been slight below the targets and it is a trend for years now. The target for the fiscal year 2014/2015 (according to the CAG report cited above) was Tshs 12,000 billion (or Tshs 12 trillion). Therefore, basing on the actual collections for the year 2014/2015 as shown above, the deficit was Tshs 1.2 trillion which is equivalent to around 13%.

The decline, or rather, inability to meet the targets was stated by BOT Annual Report of 2014/2015 to have been caused by the decline in value of imported dutiable and taxable goods, as well as decrease in transactions eligible for withholding taxes especially in mining, oil and gas activities. Further, reluctance by some traders on the use of EFDs contributed to the shortfall.[309] This study finds more factors of the shortfall some being; (i) institutional capacity of TRA despite the huge improvements it has undergone as indicated above; (ii) tax evasions, avoidance, corruption and illicit financial flow example in mining sector – coped with lack of political commitment; and, (iii) complicated procedures of paying tax – a fact which calls for further reforms. A study by the World Bank Group (of July 2015 which is cited above) indicates that in comparison with other developing, including East African neighbours, Tanzania's revenue collection is poor and its rank is among the lowest in paying taxes rankings. According to the 2013 study,[310] factors which contribute to tax evasions in some of the East African countries (in comparison with South Africa) were as indicated in Table 4.1 below.

[309] BOT Annual Report 2014/2015. Page ix.

[310] Merina Ali *et al*, 'To Pay or not Pay? Citizen's Attitudes towards Taxation in Kenya, Tanzania, Uganda and South Africa.' Afrobarometer, Working Paper No. 143, 2013. Page 15.

Table 4.1: Reasons Why some People Evade Taxes (% Sample)

	South Africa	Kenya	Tanzania	Uganda
Unfair tax system	8	8	11	11
Taxes are too high	22	23	25	28
Taxes are unaffordable	27	26	25	29
Poor public services	12	9	16	11
The Government wastes/steals taxes	11	10	9	8
People know they will not get caught	1	2	2	2
Other	20	23	12	12

Source: Merina Ali *et al* (2013).

It is argued by some sources that, compared to other developing countries, it has been reported that, Tanzania performs poorly in domestic revenue collection. While such comparisons depend on the legal framework in place in each country and the structure of each economy, Tanzania is close to the lowest rank among non oil producers in Sub-Saharan Africa. This places it in the area of countries with easily broken economies, such as Burundi, where capacities have been eroded by years of war and political instability. Tanzania was ranked 150th in PWC's paying taxes rankings, far below her East African neighbours.[311] Possible reasons for this situation are already argued above.

As for the political commitment, a less than three month thrust by the newly elected president of Tanzania, Dr. John Pombe Magufuli and the Prime Minister, Mr. Kassim Majaliwa, can prove that, a backup of high profile leadership (political will) is important for the enforcement of the revenue laws.

Picture 4.3: The Premier, Mr. Kassim Majaliwa paid a visit to Dar's Port on 3rd of December 2015 to investigate claims of clearing of more than 2,430 cargo-containers without payment of required taxes.

[311] PWC, 'Paying Taxes 2016: Overall Ranking and Data Tables.' Accessed on 22nd April, 2016 from: http://www.pwc.com/gx/en/services/tax/paying-taxes-2016/overall-ranking-and-data-tables.html

Such initiatives, including the 'micro-management' approach by the Prime Minister to visit and check records at the port resulted into more tax collections from November 2015. For instance, according to the media sources (one of which is captured as Media Clip 4.1 below), Dr. Magufuli's pressure against tax evaders resulted into collection of Tshs 1.4 trillion tax revenue within a month of December 2015/ January 2016, compared to an average of Tshs 900 billion shillings per month in previous months. 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.

TRA imekusanya Sh1.4trilioni Desemba

Fidelis Butahe na Colnely Joseph, Mwananchi

Dar es Salaam. Serikali ya Awamu ya Tano imekusanya ziada ya Sh900 bilioni kupitia kodi katika kipindi cha miezi miwili tangu aingie madarakani.

Wakati Novemba makusanyo hayo yalikuwa Sh1.3 trilioni, ikiwa ni ongezeko la Sh400 bilioni, Desemba makusanyo hayo yanayosimamiwa na Mamlaka ya Mapato Tanzania (TRA), yalifikia Sh1.4 trilioni sawa na ongezeko la Sh500 bilioni kutoka wastani wa makusanyo ya Sh900 bilioni zilizokuwa zinakusanywa kila mwezi na Serikali ya Awamu ya Nne.

Iwapo makusanyo hayo ya ziada ya Sh900 bilioni yangeelekezwa kwenye ununuzi wa magari ya

Sh11.8 bilioni Zimekusanywa kutoka kwa wafanyabiashara walioondosha makontena katika Bandari Kavu kinyume na taratibu za forodha.

Sh5.3 bilioni

lengo la kukusanya Sh6.5 trilioni.

Kidata alisema sababu za ongezeko la makusanyo hayo ni kuziba mianya ya upotevu wa mapato na kuweka mifumo mizuri ya ufuatiliaji.

Katika hatua nyingine, Kidata alisema jumla ya Sh11.8 bilioni zimekusanywa kutoka kwa wafanyabiashara walioondosha makontena katika Bandari Kavu kinyume na taratibu za forodha.

Alisema kuwa makusanyo hayo yanajumuisha Sh5.3 bilioni kutoka kwa kampuni na wafanyabiashara 19 ambao wamemaliza kulipa kodi za makonteza yao na wengine 19 ambao wamelipa sehemu ya kodi wanayodaiwa.

Yafafanua madai ya Bakwata

Wakati huohuo; TRA imefafanua

lowataka kupeleka taarifa kuhusu magari yaliyosamehewa kodi na matumizi yake ndani ya siku saba,

sheria kifungu cha 5 (3) cha TRA," alisema Kidata. Alisema TRA haina upendeleo na haibagui wala kulen-

Kaimu Kamishna Mkuu wa Mamlaka ya

Picture 4.4: That, 'TRA has collected Tshs 1.4 trillion in December 2015.'
(Source: Mwananchi Newspaper, 7th January 2016).

However, the collection thrust engineered by the new phase governance would come to a dreadlock if efforts will not be taken to educate large (and small) tax payers that the current impulsion is not for intimidating or creating unfriendly business environment. There were unsubstantiated stories that some of the companies were closing down their businesses in reaction to the government's onslaught of tax dodgers in November and December 2015. The 'anxiety' seemed to push the president to hold a meeting with some of the business persons (through the Tanzania Private Sector Foundation (TPSF), CEO Round Table, Tanzania National Business Council (TNBC), and other forums) in Dar es Salaam on the 3rd of December 2015.

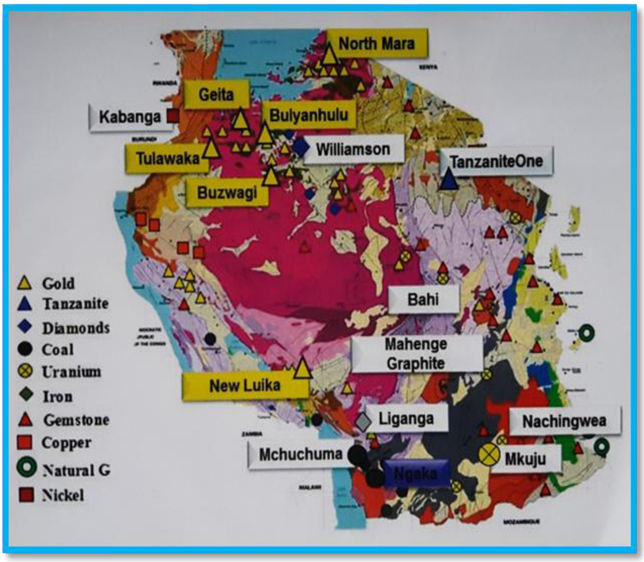
Picture 4.5: President, Dr. John Magufuli with the Chairperson of TPSF, Dr. Reginald Mengi in December 2015's Meeting.

The unsubstantiated information went further to predict the downfall of custom taxes as some of the business persons would refrain from using the biggest port in East Africa, Dar es Salaam; and therefore, the cargo clearance can drop to almost 50% of the usual volume. Probably, it can be serviceable to have a few tax-honest corporate companies using the port than having a dozen of them who dodge their tax liabilities. A deeper analysis of this dilemma is called for.

LHRC believes that, the fate of human development and part of human rights is largely determined by the country's economic planning whereby, taxation is one of the determinant factors. The government budgetary operations have been experiencing some shortfalls due to, among other reasons, insufficient revenue collections. For instance according to the 2014/2015 BOT Annual Report (Page 20), the government expenditure for this year was 84.9% (of the collection which hit 86.7% as said above). Therefore, the fiscal deficit was 3.3% of the GDP against the target of 3.6% for the fiscal year 2014/2015. Normally such deficits are financed by borrowing which hikes the national dept; hence, more burden on taxpayers' shoulders. Besides, failure to collect sufficient revenue has direct impact to social services provision – henceforth, increased income poverty, gender related violence, and other human rights concerns. For instance, according to the LHRC's Human Rights Report of 2015 (pages 108-110), an overall number of health workers in Tanzania was estimated to be 64,500, while 113,000 more were needed. The Muhimbili National Hospital alone had a shortage of 58 medical doctors, 96 medical assistants and a staggering 825 nursing officers. However, the budget allocation for the Ministry of Health for essential medicines and medical supplies has been growing down from 23.8% to -28.4% for the fiscal years 2010/2011 and 2014/2015 respectively. The overall budget for the health sector has consistently been less than 15% of the national budget, a situation which is contrary to the Abuja Declaration of 2001 signed by the heads of the states. LHRC calls TRA and the government at large to critically address all factors which cause low tax collection and deficit of budget allocations to key socio-economic sectors. The drive by H.E Dr. Magufuli is recommended to continue; but, should also be backed up with structural reforms as well as observance of the good governance principles.

There are also other factors which fail the government to meet its revenue collection targets; or rather, securing sufficient revenues from the abundant natural resources which the country is endowed with. One of the areas which the government can reconsider is the rates of royalties charge in extraction industry especially minerals. According to the Mining Act, 2010 and its regulations,[312] the royalties are charged on gross value for different mineral commodities as follows; diamond and gemstone (5%); uranium (5%); precious metals such as gold, silver, copper, and platinum (4%); polished and cut gemstones (1%); and, others such as building materials, and industrial minerals (3%). Such minerals, as picture 4.6 below shows, are scattered all over the country and there are a dozen of mining companies in full extraction processes:

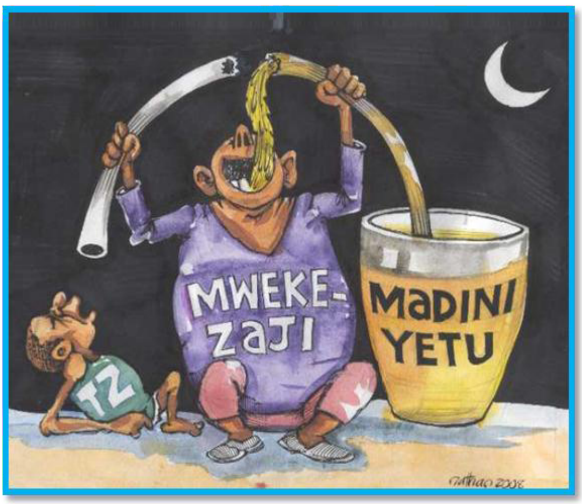
[312] Its regulations include; (i) the Mining (Mineral Rights) Regulations, 2010; (ii) the Mining (Mineral Trading) Regulations, 2010; (iii) the Mining (Mineral Beneficiation) Regulations, 2010; (iv) the Mining Development Agreement Model, 2010; (v) the Mining (Diamond Trading) Regulations, 2003; and, (vi) the Merelani (Controlled Area) Regulations, 2002.



Picture 4.6: Geographical locations of major mines and projects in Tanzania.

Note that, the mineral reserves according to the August 2015's Tanzania Mining Industry Investor's Guide[313] are; Tanzanite (12.6 million tons); coal (5 billion tons); gold (2,222 tons); rare earths (101 million tons); iron ore (126 million tons); diamonds (51 million carats); copper (13.7 million tons); uranium (160 million tons); natural gas (57 trillion cubic feet - TCF); graphite (158.2 million tons); and nickel (209 million tons).

Furthermore, the Tanzania Mining Industry Investor's Guide of August 2015 revealed that, the exploration activities are steadily increasing as witnessed in the increase of foreign direct investment (FDI) into the mining industry averaging USD 460 million (approximately Tshs 1.01 trillion). However, such earnings contribute less than 5% to GDP. Unless the government authorities clarify more about the state of mining sector's contribution to the national economic development, the perception of many people will remain to be that, the sector benefits the investors more than Tanzanians as Media Clip 4.2 below suggests:



Picture 4.7: Cartoon of an investor draining all mineral resources while the country Tanzania, remains with 'nothing.'

313 URT, 'Tanzania Mining Industry Investor's Guide of August 2015.' Ministry of Energy and Minerals: Dar es Salaam. Page 10.

On the other hand, the agricultural sector, which is generally not well supported in terms of incentives and mechanization, contributes to about 26.5% of GDP and at least 30% of the export earnings[314] and it seems to have a direct impact to the people because they are also actively engaging in agricultural activities.

4.3 TRENDS OF TAX INCENTIVES: STATUS OF ENFORCEMENT OF VAT LAW

It is stated that,[315] Tanzania recognizes the importance of investment in stimulating economic growth and development in the country and creating a potential for sustainable future revenue generations. Due to that need, a number of tax incentives have been introduced and granted to the investors in order to encourage investments. The incentive schemes were introduced in 1990s especially when Tanzania enacted the National Investment Promotion and Protection Act, 1990 (NIPP Act, 1990). This law granted tax incentives to investors in the form of tax holidays for the specific period of time. The NIPP Act, 1990 was replaced by the Tanzania Investment Act, 1997. The 1997 legislation transferred all tax incentives to the Income Tax Act, 2004; the East African Community Customs Management Act, 2004; and the VAT Act, 1997. As stated earlier on, the 1997 VAT law was repealed and replaced by VAT Act, 2014 which is, currently, operational.

The income tax holidays was abolished by the aforesaid laws. Instead, the incentives are granted in the forms of enhanced capital deductions or waiver and allowances. For instance, there is 100% capital expenditure to mining and agricultural sector waiver of taxes; 50% capital allowance in the first year of use for plant and machinery used in manufacturing processes under the Income Tax Act, 2004; also, 30% corporate tax; withholding tax on dividends 10% and also, 10% on loan interest; and 10% on rental income; and, zero rated VAT on exports, save for a few items as explained below. Note that, the VAT Act, 1997 sanctioned almost 50% of all tax exemptions and this was an issue of concern which LHRC and other stakeholders rose their voice urging the government to make some reforms.

As if it was in response to the 2013 LHRC's recommendation on the amendment of the laws governing exemptions, the Value Added Tax Act, 2014 (VAT Act, 2014) was passed by the parliament in 2014, and gazetted on 19th December, 2014. As said above, the 2014 law repeals and replaces the VAT Act, 1997. The 2013 and 2014 editions of the LHRC's human rights and business reports reported on how the country was losing a lot of revenues through tax exemptions. For instance, page 99 of the LHRC's 2014 report indicated that, tax exemptions rose from Tshs 1.48 trillion during 2012/2013 fiscal year to Tshs 1.82 trillion in 2013/2014 fiscal year. Out of those exemptions, VAT claimed nearly 50% of all exempted taxes.

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[314] URT (Undated) Investment Potential and Opportunities in Agriculture. Prime Minister's Office & Tanzania Investment Centre: Dar es Salaam. Page 10.

[315] Most of this information is extracted from: TIC, 'Tanzania Investment Guide 2013-2014.' Tanzania Investment Centre: Dar es Salaam. Pages 63-66.

Picture 4.8: A symbol on how exemptions reduce tax base.

Therefore, like many other stakeholders including the CAG and some of the members of the parliament (MPs), LHRC recommended for removal or reduction of the exemptions, which claimed nearly 5% of the GDP, ought to have been included in the national budget. The 2013 LHRC report called for amendment of the laws governing exemption. The 2014 VAT legislation was expected to come into operation by July 2015. Therefore, the analysis of its implementation could not be realistic for this year (2015) especially when, the country almost came to a standstill due to the thrilled national election in which, its actual electoral processes (campaigns) began in July 2015.

In a nutshell, the new 2014 VAT legislation is structured to capture VAT on other forms of trade which were not captured by previous VAT law. The aim is to improve government revenue collection. Special relief and zero rated supplies schedules have been removed. Non-residents carrying on economic activity without having a fixed place in Tanzania will now be required to appoint a VAT representative in Tanzania. However, some of the exports are still zero-rated. Other exports such as of raw hides and skins are VAT taxed. In fact export tax (charged under the Export Tax Act, Cap. 196) for such goods was hiked during the 2015/2016 fiscal year according to the budget speech. The Minister for Finance also proposed,[316] among other things:-

(i) To remove the income tax exemptions on government projects which are implemented through agreements signed between the government and various institutions which involve non-concessional loans financing arrangements. However, this measure will not apply to agreements signed before 1st July 2015.

(ii) To remove PVC and HDPE pipes under HS Code 3917.31.00 from the list of deemed capital goods which enjoys exemptions under the Tanzania Investment Centre. The measure is intended to protect local industries which produce these pipes, increase revenue and create employment.

(iii) To amend the Income Tax Act, 2004 and other revenue laws in order to reduce rates of exemptions granted under the current laws. For instance, Section 10(1)(b) of the Income

[316] See: English Budget Speech for the 2015/2016 fiscal year, from pages 39 onwards.

Tax Act, 2004 vested the minister concerned with jurisdiction to exempt taxes to investors.[317]

It is further noticed by this study that, there is still a huge room left for the Minister especially of finance to discretionary grant exemptions especially for non-VAT potential revenues. For instance, during the 2015/ 2016 budget speech, the Minister for Finance stated that, the government will exempt the withholding tax to the East African Development Bank when making payment in respect of bonds to bond holders in the domestic capital market. According to the Minister, such measure was expected to increase the Bank's lending capacity and therefore will provide more concessional loans to development projects in the country such as infrastructure, energy, and other things. Of course, there has been some 'justifications' which 'necessitates' exemptions.

LHRC suggests that, other revenue laws should also be analysed and where possible be amended in order to reduce the amount of exemptions per year to not be more than 1% of the expected GDP. There are still a number of laws which imply discretionary powers on part of some government officials to discretionary grant exemptions. Secondly, all exemptions should be sanctioned by the parliament. Therefore, all laws and regulations (G.Ns) should be streamlined in order to centralize decision making on exemptions. Thirdly, there is a need to have a mechanism of monitoring on how the exemptions granted are utilized (if they justify the benefits for which they have been granted). There have been allegations that some of the beneficiaries of the exemptions have been misusing. The monitoring should include also government related institutions. For instance, there are allegedly notorious workers of such institutions which act as agents of facilitating non-workers of the institutions to benefit from the goods or services which are tax exempted (subsidized prices). The proposed monitoring can be justified under the provisions of Section 5 of the TRA Act, 1995 (discussed earlier on).

The anticipated tax revenue is estimated to be 30% of the current VAT collections, which are projected to total Tshs 2.6 trillion in the 2013/14 fiscal year. The increase of 30% of VAT collections following removal of the exemption would narrow the budget deficit.[318]

As it has been argued by LHRC in support of other similar perspectives, tax exemptions are, indeed, good incentives to influence flow and growth of investments in Tanzania. However, it could be prudent if the decision makers take time to consider other factors to address in order to create a more favourable investment environment in the country. The 2013 report[319] revealed that, tax rates (which the incentives seek to reduce) were actually at the 6th position of the factors which the investors consider as 'problematic' for doing business in Tanzania. Figure 4.2 below (extracted from the said study) displays the percentage of responses and other problematic factors:

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317 The minister may, by order in the Gazette, provide-(a) that any income or class of incomes accrued in or derived from the United Republic shall be exempt from tax to the extent specified in such order ;or, (b)that any exemption under the Second Scheduled.

318 Eric Kabendera, 'Tanzania's law amendment seeks to boost tax collections.' The East African newspaper, 17th May 2014.

319 Schwab, Klaus (*ed*.)(2013) The Global Competitiveness Report. World Economic Forum: Geneva. This source was referred by this study from: Tanzania National Business Council (TNBC), Enhancing Business Environment for Sustainable Growth – Proceedings and Matter Arising. 8th TNBC, State House, Dar es Salaam. 2nd September, 2015. Page 60.

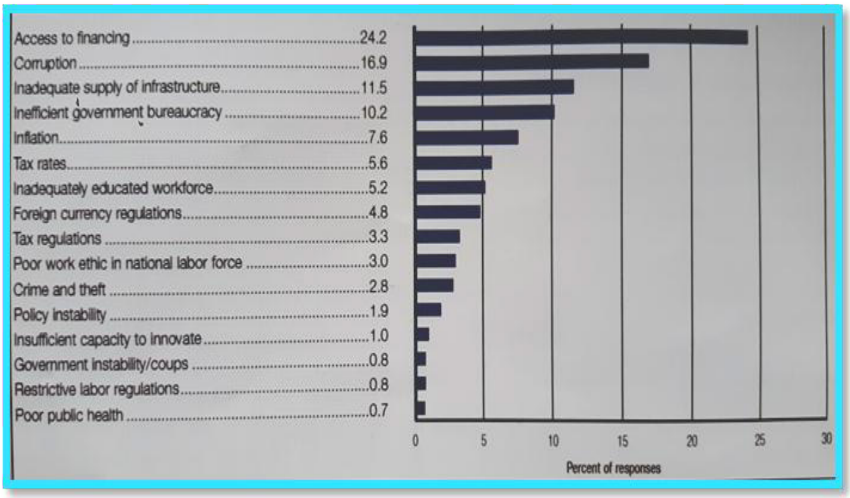


Figure 4.2: The most problematic factors for doing business in Tanzania
(Source: Schwab (*ed.*), 2013 & TNBC, 2015: 60).

Therefore, the most 'troublesome' factor was in regards to access to financing; followed by corruption; inadequate supply of infrastructure; inefficient government bureaucracy; inflation; and then, (high) tax rates follows on the list with 5.6% of total responses.

4.4 TAX EVASIONS AND ILLICIT FINANCIAL FLOWS IN CORPORATE SECTOR

The tax evasion is the basic characteristic of many developing countries, Tanzania inclusive.[320] This involves a taxpayer's deliberate contravention of the tax laws in order to minimize or eliminate tax liability altogether. On the other hand, illicit financial flows are moneys which are illegally earned, transferred or utilized, and include all unrecorded private financial outflows that drive the accumulation of foreign assets by residents in breach of relevant national or international legal frameworks.[321] The Tanzanian legal framework on taxation declares tax evasion and financial flow as criminal offences. For instance, Sections 98 to 100 of the Income Tax Act, 2004 penalize failure to maintain documents or file Statement or return of income; underestimate of tax payable; and failure to pay tax on the date required.

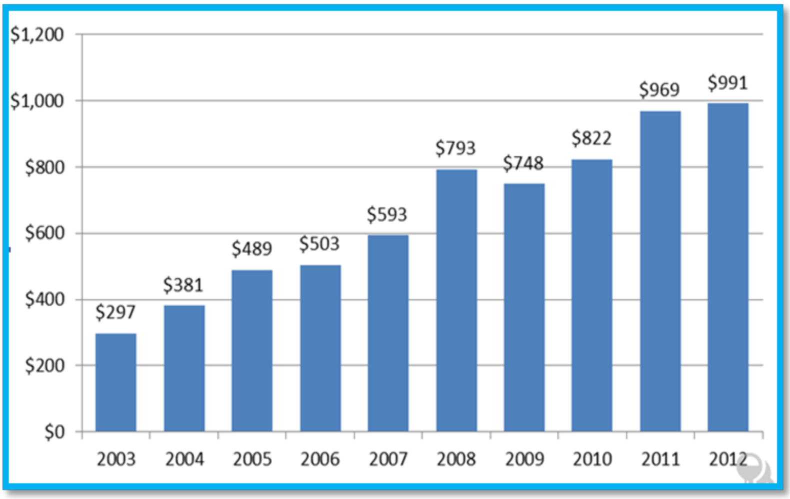
Both of these two (also tax avoidance) remain to pose a serious challenge of revenue collections as well as country's economic development in general especially in poor countries. The latest Global Financial Integrity (GFI) estimates that, developing countries, Tanzania inclusive, lost USD 991.2 billion in illicit financial outflows in 2012, a further increase of 1.8% from 2011.

[320] Manamba, Epaphra (2015) Tax Rates and Tax Evasion: Evidence from Missing Imports in Tanzania. CSAE Conference 2015: Economic Development in Africa, Center for the Study of African Economies, University of Oxford, Oxford, UK. Accessed on 29th March, 2016, from: https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=CSAE2015&paper_id=15

[321] Kar, Dev and Karly Curcio (2011) 'Illicit financial flows from developing countries: 2000–2009.' Global Financial Integrity, Washington, D.C. Page 3.

Since 2003, illicit financial outflows have increased in real terms by about 9.4%.[322] As Figure 4.3 below shows, the rates of the financial illicit flows are steadily increasing.

Figure 4.3: Illicit Financial Flows from Developing Countries 2003–2012 (Billion US$)



Source: Kar and Spanjers, Illicit Financial Flows, 2014(copied from UN report of 2015, cited above).

It was not immediately established whether the trend indicated in the figure above reflect the reality of Tanzania in particular. However, according to Hon. Zitto Kabwe, the former chairperson of the Parliamentary Committee on Public Accounts (PAC), who is currently MP of Kigoma urban constituency, once said that Tanzania was (and may be still) losing about USD 1.25 billion (about Tshs 2.8 trillion) a year in revenue, the amount which was about 5% of its GDP – through corporate tax evasion, avoidance, and corruption[323] (illicit flows). It could therefore be a fact that, about 10% of the ought to have been contributions to GDP were lost in Tanzania through tax exemptions (argued above as also about 5% of GDP), evasions, illicit flows and related factors.

According to the same source, the PAC's chairperson alleged that, seven (7) of Tanzania's top ten (10) taxpayers in the extractive and communications sectors use tax havens to the detriment of the country's economy. Furthermore, two (2) of the three (3) largest mobile phone companies in the country are registered in the tax havens of the Netherlands and Luxembourg, costing Tanzania a large amount of revenue. Despite the fact that such were not 2015 finding, still, can provide a generalized picture on how the incidents of illicit financial flows could be happening in Tanzania. However, with the thrust of the 5th phase governance, such incidents are expected to

322 UN, 'Illicit Financial Flows, Human Rights and the Post-2015 Development Agenda.' An Interim study by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky. 10th February, 2015. A/HRC/28/60. Pages 3, 5 and 9.

323 Kizoto Makoye, 'Tanzania committee says billions lost to corporate tax evasion.' Accessed on 23rd March, 2016 from: http://news.trust.org//item/20131014094858-3frio

be lessened (but, practically, not being totally eliminated due to some weaknesses of law enforcement attributed to, among other things, trivial resources).

The said thrust facilitated the detection of the tax evasion incidents (in November 2015), which were allegedly aided by some of the Tanzania Ports Authority (TPA) officials, TRA workers and business persons while clearing the containers at the Dar es Salaam port. Some of the business persons implicated to this scandal were the officials affiliated to the Azam Inland Container Depot (ICD), which was alleged to be owned by a prominent businessman Mr. Said Salim Bakhresa. The ICD officials were charged alongside with TRA (and TPA) officialsfor tax evasion.[324] The case against them was lodged before the Kisutu Resident Magistrates' Court in Dar es Salaam on the 4th December, 2015.

Picture 4.9: **Eight (8) Officials from TRA and Azam ICDs are escorted to the Kisutu Resident Magistrate's Court (Source: The Citizen, 5thDecember, 2015).**

The suspects were accused of causing a loss of Tshs 12.7 billion in unpaid taxes, aiding non-payment of taxes for 349 cargo containers at the said port which worth over Tshs 12.7 billion.[325] Note that, some of the newspapers reported the tax claims for the 349 containers to be Tshs 80 billion. Be it as it may, the issue here is that, there were cargo containers which were cleared without paying taxes. Probably, these (349 containers) were just a few which came into the attention of the Prime Minister, Hon. Kassim Majaliwa.

The allegations were brought into being after the crackdown operation by the Prime Minister, who on 27th November 2015met the TRA Director General and presented to him a list of 349 containers as Picture 4.10 below shows.

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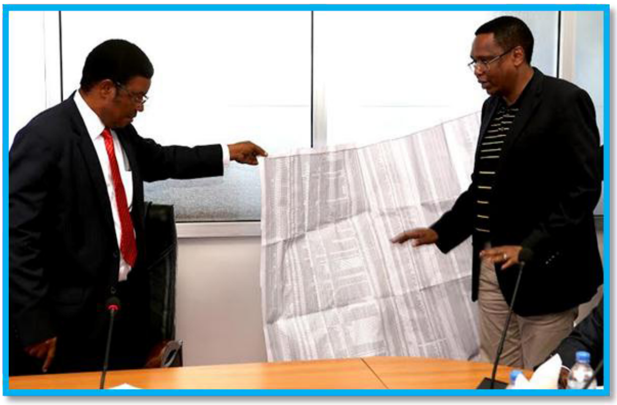
[324] The person charged were; (i) the TRA Commissioner for Customs and Excise Duty, Mr Tiagi Masamaki; (ii) the TRA head of Customer Service Centre, Mr. Habib Mponezya; (iii) the head of Customs, Mr. Burton Mponezya; (iv) the TRA Supervisor of Customs and Excise Duty at Azam ICD, Ms. Eliachi Mrema; (v) the TRA Senior Business Analyst, Mr. Hamis Omary; (vi) the head of TRA ICT, Mr. Haroun Mpande; (vii) the Manager of ICD Operations and Security, Mr. Raymond Adolf Louis; and, (viii) the Azam ICD Manager Mr. Ashrafu Khan.

[325] Unknown Reporter, 'Eight in TShs 12.7 billion Tax Evasion Court Charge.' The Citizen, 5th December 2015. Accessed it online on 3rd January, 2016 from: http://mobile.thecitizen.co.tz/news/Eight-in-Sh12-7bn-tax-evasion-court-charge/-/2304482/2984732/-/format/xhtml/-/2ml9qhz/-/index.html



Picture 4.10: Prime Minister (left) revealing to TRA Director General a list of the containers, allegedly to have dodged payment of taxes.

Following the tax evasion and corruption scandals, the president, Dr. John Magufuli suspended the TRA Director General, Mr. Rished Bade; and the Prime Minister, Mr. Kassim Majaliwa, suspended senior TRA officials. Further investigations and the case were still pending up the end of this study.

In Arusha, the study was informed that a total of 27 Tanzanite dealing firms in this region were on verge of losing their operating licenses for alleged failing to pay tax to the government. The Regional Commissioner for Kilimanjaro region, Mr. Amos Makalla, revealed that initial investigation over the gemstones business in the Northern Zone have indicated massive tax evasion among dealers or their companies. An ultimatum was given to dealers to settle taxes and keep record straight before 5th January, 2016 when the state machinery is to be activated against tax payment defaulters. The same deadline apply to all foreigners who have infiltrated to Mirerani hills especially Asians, Kenyan and Congolese to vacate the mining fieldsbefore the government takes further action against them. Worse enough the Indians Nations supervise mining activities in Tanzania.[326]

The incidents of tax evasions and avoidance as this study noticed were many during the year. However, TRA and tax tribunals did not have ready-made statistics and that, most of the incidents were pending cases – not to be revealed out as yet.

The UN report of the 10th February, 2015 (cited above) states that, there are various connections between illicit financial flows and human rights. For instance, such offensive incidents deprive the governments first and foremost of resources required to realize progressively economic, social and cultural rights. They also undermine efforts to build up effective institutions to uphold civil and political rights and the rule of law in the countries of origin.

[326] Marc Nkwame, 'Tanzanite dealers face penalty.' Daily News, 21 December, 2015. Accessed on 29th December, 2015 from: http://www.dailynews.co.tz/index.php/home-ews/45276-27-tanzanite-dealers-face-penalty

4.5 VOLUNTARY TAX COMPLIANCE BY CORPORATE COMPANIES AND SMEs

As it is stated above, TRA has adopted a number of managerial strategies in order to enhance tax collections, and therefore widening the tax base. Such strategies include the introducing e-filing of tax return which is aimed at reducing the tax payers' transaction processing time. In this way, a taxpayer would find it convenient paying taxes. The previous human rights and business reports quoted TRA stating that, such reforms have facilitated more tax collection with lesser administration costs.

It seems that, voluntary tax compliance is the main drive for TRA to achieve its targets. This can be proved by looking at its vision which states *'toincrease domestic revenue through enhancement of voluntary tax compliance.'*

According to this and other studies there are several factors which incline the taxpayers' willingness to pay taxes without or with minimum push. The Merina (2013) study cited above had a variety of hypothesis as to why the East African residents were hesitant to pay taxes. As for Tanzania in particular, the assumptions and scores were; (i) unfair tax system (11%); taxes are too high (25%); (ii) taxes are unaffordable (25%); (iii) poor public service (16%); (iv) misuse of taxes by the government (9%); (v) people know they will not get caught (2%); and, (vi) other reasons (23%).

Almost similar variables were used by this study to inquire on the willingness of the corporate companies to pay taxes. A question posed was whether the taxpayers felt that the tax rates imposed by the government were 'affordable' to pay or remit to TRA. The following Table 4.2 shows the responses:

Table 4.2: Opinions of Some of Corporate Companies on Whether the Current Tax Rates were 'Affordable' to Pay

Responses [N=55]	Frequency	Percent
Yes	25	45.5
No	30	54.5
Not Sure	17	30.9
Total	55	100.0

Source: LHRC, Human Rights and Business Study (Field Data), 2015.

From Table 4.2 above, over 50% of the corporate companies' managers or representatives of the management teams were of the view that, current tax rates were 'unaffordable' and they cited presence of taxes, levies, and other charges or revenues collected by TRA and other RAs as beinga a 'nuisance.'

Hofmann *et al* (2008)[327] argue that, tax self compliance is a complicated phenomenon because there are different sentiments about it. For instance, while economists stress the relevance of external variables such as tax rate, income and probability of audits and severity of fines, psychological research shows that internal variables are of similar importance. Such variables include:

(i) The taxpayers' knowledge of tax law;
(ii) The taxpayers' attitudes towards the government and taxation;
(iii) The taxpayers' personal norms, perceived social norms and fairness; and,
(iv) The motivational tendencies to comply are psychological determinants shaping tax behaviour.

As for Tanzanian context, and especially basing on this study, most of the variables of different studies quoted above were attributing factors to lack of self compliance. The knowledge or attitudes of most of the taxpayers is that, the government imposes to them so many taxes for everything they do or use – beyond their capacity to afford paying as the Media Clip 4.3 below tries to connote as well.

Picture 4.11: Cartoon of the government imposing a number of 'kodi' (taxes) on to a taxpayer who is already overwhelmed by a number of (taxes) he is already paying.

The owner of the Geita region based hotel said that, the taxes, levies and fees imposed by TRA, LGAs and regulatory authorities were unbearable. According to him, the issue is not only taxation; but also, other statutory charges which they, as business persons, are supposed to remit to numerous authorities. Those include the periodical subscription or registration fees of various licenses; and insurance. He said that, because of this situation, *'it is like we are doing business solely for paying the government ... because, every day we think of huge amounts to remit to the authorities ... the list of taxes that one is supposed to pay is very long and, it tends to increase every time.*'

[327] Hofmann, Eva; Erik Hoelzl; and Erich Kirchler, 'Preconditions of Voluntary Tax Compliance: Knowledge and Evaluation of Taxation, Norms, Fairness, and Motivation to Cooperate.' Z Psychol. 2008; 216(4): 209–217. Accessed it on 23rd March, 2015, from: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3303158/

As suggested above, there is a need to consider both tax administration and rates especially for small and medium investors who do not enjoy incentives indicated above. TRA and other authorities can invest in 'micro-investments' instead of paying preferential attention to the so called large tax payers, who can, basing on the current business trend, decide to close or transfer their projects to other countries. That is, there is no guarantee that large taxpayers will continue trading in Tanzania due to the stiff competitions between east and other African countries to attract investments to their jurisdiction. A recent business' tag-of-war between Tanzania and one of the east African countries, over the construction of the pipeline to Uganda, can be used as an-eye opener for TIC and other authorities to think about alternative strategies of maintaining productive investments.

4.6 PERFORMANCE INDICATORS ON TAXATION

The following is the summary of key findings in a form of performance indicators on the enforcement of the responsibilities pertaining taxation in Tanzania. The summary depicts a comparative picture between taxation situation for the year of 2013, 2014 and 2015. It should be noted that, not all 'performance indicators' used in 2013 and 2014 were reassessed in 2015. However, at least all main indicators have been compared in two years in order to measure progress of implementation of stated tax management.It should be noted further that, some of the indicated used in this Table below, were taken directly from the LHRC's SPSS data bank without being necessarily discussed in the main text of this chapter.

Table 4.3: Comparison of Performance Indicators on Implementation of Taxation between 2013, 2014 and 2015 Years – LHRC Studies

S/ No.	Tax Issues	[Some of the] Performance Indicators 2013	2014	2015
i.	Revenue Collection Trends	o Increased tax collection of past 7 years. o But, incidents of under-collections from large taxpayers which amounted to 14% under-collection in past 2 years. o Tax evasions, avoidance and massive exemptions being attributing factors.	o Revenue collections expanded by 91% (from 4.05% to 7.74% in 2008/2009 and 2013/2014 respectively. o The cost associated with such collections declined from 3.8% to 2.7% respectively during the same period. o LGAs collections of own revenues were 252.5 billion being 66% of the targets.	o Domestic revenue collections, including LGAs' own sources, amounted to Tshs 10,957.8 billion, equivalent to 86.7% of the targeted Tshs 12,636.5 billion. o The total collections for the last fiscal year (2013/2014) were Tshs 9,856.9 billion; and the year before (that is in 2012/ 2013) the revenues collected amounted to Tshs 8,031.1 billion. o An increase of Tshs 1,825.8 billion (between 2012/ 2013 and 2013/2014 fiscal years) was equivalent to 18.5%; while, an increase of 1,100.9 (between 2013/2014 and 2014/2015 fiscal years) was equivalent to only 10.0%.

ii.	**Tax Exemptions/ Reduced Collections**	o Exemptions amount to more than Tshs. 600 billion or 14.1% of the expected actual collections. o They are granted to large investors. o TIC and private companies alone scoop more than 50% of the stated exemptions. o Between 2004 and 2013 the GDP has risen from 5.8% to 6.9%, being only 1.1% increase for over 10 years to exemptions (among other reasons). o Exemptions' average to GDP rose from 2.1% in 2007/2008 to 4.3% in 2011/2012. o Called for VAT law reform to reduce tax exemption to not more than 1% of GDP.	o Large investors enjoyed massive exemptions to include of luxurious things like cable TV connections; clothes; and toilet papers. o Tax exemptions rose from Tshs. 1.48 trillion during the 2012/ 2013 financial year (FY) to Tshs. 1.82 trillion in 2013/2014 FY. That mean, a total of Tshs. 0.34 trillion (being 18.7%) of exemptions was just within a year. o The VAT reliefs as stated above were estimated to claim nearly 50% of all exemptions. The relief had increased to Tshs. 676 billion from Tshs. 571 billion during the same period (2012/2013 to 2013/ 2014). Therefore, VAT exemptions were increased by Tshs. 105 billion, being 15.5% increase within a year.	o The deficit for 2014/2015 FY's revenue collections was Tshs 1.2 trillion which was equivalent to around 13%. o Inability to meet the targets was caused by the decline in value of imported dutiable and taxable goods – apparently due to evasions among other reasons. o Tanzania was (and may be still) losing about USD 1.25 billion (about Tshs 2.8 trillion) a year in revenue, the amount which was about 5% of its GDP – through corporate tax evasion, avoidance, and corruption. o New VAT Act, 2014 was enacted. o Anticipated tax revenue for coming year(s) was estimated to be 30% of the current VAT collections due to the new law.

iii.	**Evasions and Illicit Financial Flow**	○ Tanzania loses about USD 1 trillion a year through illicit financial flows. ○ The illicit flows stern from corruption among politicians and officials; international crimes; and commercial transactions involving transfer pricing. ○ Lack of political will was an issue of concern.	○ Developing and emerging economies (including Tanzania) lost USD 6.6 trillion in illicit financial flows from 2003 through 2012. ○ Further, the illicit outflows increased at a staggering average rate of 9.4% per year—roughly twice as fast as global GDP. ○ Tanzania in particular, loses about USD 1.87 billion in tax revenue every year through cheating (evasion or avoidance of taxes and smuggling of minerals) by dishonest companies in import and export. ○ Gemstones from Tanzania worth Tshs 635 billion (USD 352,777,778) were smuggled out of the country annually.[328]	○ The 5th phase governance shown a political will to fight evasions and illicit financial flow – basing on its first 2 months in power. ○ For instance, pressure against tax evaders resulted into tax revenue collection of Tshs 1.3 trillion in November 2015; and, Tshs 1.4 in December 2015. ○ The tax objections against TRA rose by some of the taxpayers amounted to (worth of tax revenues cases) Tshs 6.7 trillion in this year, from only Tshs 1.7 trillion worth of tax revenue cases in the 2013/ 2014 FY.
iv.	**Use of EFDs**	○ Not assessed.	○ The use of Electronic Fiscal Device (EFD), was highly rejected by local traders in 2014 due to the following reasons given (by this study's respondents), namely: i) low awareness amongst traders on importance of EFD (30.8%); ii) some traders influenced others to reject EFD (10.3%); iii) EFD machines are very expensive to purchase (28.2%); iv) EFF system is exploitative of our businesses, reduces profits (20.5%); v) other reasons (10.3%).	○ Introduction of EFDs has simplified tax compliance, hence, increased revenue collections performance since its introduction in 2010. ○ However, the reluctance by some traders on the use of EFDs contributed to the shortfall. ○ Reasons for the said reluctance (in 2015) were; i) low awareness amongst traders on importance of EFD (14.1%); ii) some traders influenced others to reject EFD (1.4%); iii) EFD machines are very expensive to purchase (28.9%); iv) EFD system is exploitative of our businesses, reduces profits (20.4%); v) other reasons (16.2%).

Source: LHRC, Human Rights and Business Studies (Field Data), 2013, 2014 and 2015.

[328] They smuggled through illegal channels, ending up in either Kenya or India (among other countries). Kenya imported tanzanite valued at USD 100 million while India documented annual imports of tanzanite gemstone worth USD 300 million, while the official export figures for tanzanite in Tanzania was only USD 38 million per annum which is equivalent to only 20% of the total tanzanite gemstones being mined from the Mirerani, Manyara region, Tanzania.

CHAPTER FIVE

CORPORATE SOCIAL RESPONSIBILITIES

5.1 INTRODUCTION: MEANING AND ESSENCE OF CSR

As it was found in the 2014 report, the corporate social responsibility (CSR) is not directly or specifically addressed in the international human rights treaties. Therefore, there are no binding legal obligations on business enterprises to respect human rights and that, this seems to be a good 'excuse' for some of the corporate companies of not reinforcing human rights norms in their deeds.

In a bid to address this gap, the UN adopted the Guiding Principles on Business and Human Rights in 2011 (GPBHR, 2011), which has scaled up or rather documented some norms with regards to the relationship between human rights and business. For instance, Clauses 11 and 13(a) of the GPBHR, 2011 require business enterprises to respect human rights by avoiding to cause or contributing to the adverse human rights impacts. Such responsibility includes a duty to address adverse human rights impacts with which they are involved or *'directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts'*, according to Clause 13(b) of GPBHR, 2011.

The CSR includes also an obligation to 'pay-back' to the community as a way of supporting the wellbeing of the community in which the business or an investment is located. The benefits to the communities include the charitable contributions and involvement of the company in different activities within the community,[329]including social services such as education, health and water supply.

It should be noted that, GPBHR, 2011 is not a binding human rights instrument and there is no specific binding instrument on this subject matter (CSR) at both international and national levels. However, there have been some efforts to promulgate the formulation of binding instruments. For instance, the SADC study of 2004[330] suggested that, there should be a provision for local governments (and therefore, the local people) to have a share in mineral revenues (from corporate companies) through collection of royalty like payments and also mineral wealth distribution should take into account commodity markets, mine life, location and existing infrastructure.

The only known attempt of gripping corporate companies to 'pay-back' to the community is the statement of the National Investment Policy 1996, which requires investments to be designed in such a way that they will improve the standards of social services including the increase of access to good quality of water among others.

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[329] International Institute for Sustainable Development, Corporate Social Responsibility, at https://www.iisd.org/business/issues/sr.aspx, accessed 4th January, 2016.

[330] ECA/SADC (2004) Harmonization of Mining Policies, Standards, Legislative and Regulatory Frameworks in Southern Africa.

LHRC once again, urges the government of Tanzania to facilitate the enactment of a specific law on CSR, which will translate the GPBHR, 2011's principles into national legal framework so that they could be enforceable. The essence of binding principles on CSR is well elucidated above.

5.2 GENERAL CURRENT TRENDS OF CSR

An absence of specific law or rules on CSR gives the corporate companies a wide discretion on who, how much, where, when and which things or services to offer. In most cases, as this and previous studies noted, the companies chose what is 'simple' for them to 'give-back' to the communities where they operate. It happens that, sometimes, what is given by the corporate companies is not relevant or a pressing need of the community during the time.

Moreover, the discretionary powers on what to give sometime exclude other community members due to their ethnicity or other social factors. Thirdly, the supports offered are sometimes misused by the government or other officials because of being unguided by specific legal directives. Therefore, at the moment, CSR continues to be an optional liability on the part of the investors as well as the grantees of CSR's benefits. A study question probing on whether an investor's presence in a particular community was useful to the community members received the responses as shown in Table 5.1 below:

Table 5.1: Usefulness of an Investor to the Host Community – Community Member's Perception

	Frequency	Percent
Yes	41	26.8
No	92	60.1
Not Sure	20	13.1
Total	153	100.0

Source: LHRC, Human Rights and Business Study (Field Data), 205.

That is, less than one-third of the community members interviewed considered presence of investment projects in their lands as 'useful' and supportive to their livelihood.

It is because of these and other reasons discussed further below that, the communities within which the investments have been located, have remained poor despite the number of grants offered by the companies as the media usually portrays. For instance, despite the fact that GGM and other mining or other companies have said to pour billions of monies to support community projects including road infrastructures, water and education little is noticed as development impact to the communities around their projects. For instance, the study noticed in Geita region that, the 74 KM road connecting between Geita Township and the Nyang'hwale district was in a bad shape at the time of the study despite the fact that, it was the main route to GGM and in fact, about 33% of GGM's projects are said to spread over this district. Same road also connects Geita with other regions, especially Shinyanga region. Due to this situation, socio-economic development has remained relatively low; and that, no other investments have been attracted in these areas apart from the mining projects. The other challenge noticed in this area was acute shortage of water supply despite the fact that this (Geita) region is surrounded with Lake Victoria. Due to this situation, some of the villagers have to depend on dirty and contaminated streams of water as Picture 5.1 below shows:-

Picture 5.1: **The Katoma villagers fetch unsafe water from the stream (originating from Katoma Hill, where mining activities take place), Geita Region.**

According to the Geita Urban Water and Sanitation Authority (GEUWASA), the availability of water in Geita region as a whole is only 13%; and that, GEUWASA was able to supply only 3% for a population of 510 water users. There was an anticipated water project which would cover about 6,000 water users, in which GGM has poured in more than Tshs 10 billion. GGM also intended to fix water pipes which would cover about 3 KM around this township. However, according to some respondents, there have been such kinds of promises for years now.

It should be noted that, the responsibility of ensuring presence and sufficiency of public service in the area is primarily vested on the government through its LGAs. Basing on the case study of Geita, it seems that; (i) LGAs have not been able to effectively or efficiently plan for the financial supports received from the inventors; or, (ii) there are so many socio-economic issues in their (LGAs) areas of jurisdictions; or, (iii) the investors contribute little than it was generally expected; or, (iii) what is discretionary contributed by the investors do not match with the real needs of the communities around. These assumptions and other factors are discussed in the coming parts of this chapter.

As for the third assumption listed above, Dr. Reginald Mengi, the famous philanthropist (as he is further described in the coming parts of this chapter) was quoted by media[331] saying that:-

> [t]he best way to end conflicts between investors and their communities that host them is not through deployment of police force but through facilitating the development of the communities themselves ...and in financing the corporate social responsibility the companies should not

[331] Richard Mgamba (undated) 'How investors can end hostility in mining areas.' Accessed on 13th January, 2016 from: http://www.ippmedia.com/frontend/?/=15203

> finance the projects hundred percent because by so doing you kill the sense of people's ownership as well as creating dependency syndrome ... Let the people tell you their needs and don't assume you understand their problem. Any financial and technical support should focus on making people self-reliant not beggars who depend on investors or donors in everything.

The same source (cited above) quoted Dr. Reginald Mengi arguing further that, people were a bit sceptical to receive his company, Bonite Bottlers Limited when it started to invest in the community (Moshi, Kilimanjaro region). However, efforts were done to make people feel that, the investment in their area was not just because of profit but also to support their development. *'After years of working together with the community through sound corporate social responsibility programs as well as creating employment opportunity the past opponents of the Bonite Bottlers are today the biggest custodians of the multibillion shilling soft drink plant,'* said Dr. Mengi.

Therefore, investing in peoples' needs could be the best 'social licence' for the company to operate in a particular area. LHRC is of the view that, people might not need millions of dollars or shillings support from the investors. They might just need a little support with love and appreciation of the sacrifice they have made for the company - to allow it taking away their only valuable resource (land). They also need an investor to be a reverent and not an arrogant villager in their land. This is all about CSR.

5.3 STATUS OF GIVING-BACK TO THE COMMUNITY

5.3.1 Positive Trends: Some Illustrations

It was not easy to establish whether the volume and variety of supports to the communities by the business companies have increased or otherwise. This is due to the fact that, none of the district councils keep records; or rather, follow up on what is offered by the investors. In most cases, the supports in terms of money, items or projects are received by the political leaders such as the district and regional commissioners, who are not necessarily obliged to inform the executive side of LGAs for further follow-ups. However, from the generalized trend, it seems that, more investors are coming out to support community projects as part of their CSR and business strategy as well. Some of the projects which the study came across are as explained below.

(i) Mtibwa Sugar Company: Education Support

The contributions to schools seemed to be the most preferred form of CSR by the corporate companies. At least 70% of the nature of contributions heard from the companies was on education such as construction of classrooms and purchase of desks. For instance, the Mtibwa Sugar Company, Morogoro region, contributed to the construction of some of the schools' blocks including that of the Nassoro Seif Secondary School[332] (Picture 5.2 below).

[332] Corporate Human Rights Compliance Assessment, Morogoro Field Report of 2015 (LHRC's Report II). Page 23.

Picture 5.2: Part of the Nassoro Seif Secondary School supported by the Mtibwa Sugar Company, Morogoro region.

(ii) Support to Economic Developments by NMB and GGM

In Dodoma region, it was noted that, the National Microfinance Bank (NMB) Kongwa branch donated some desks to schools in the district including bed sheets in Kibaigwa health centre.[333] Moreover, the bank has collaborated with the Rabobank Foundation to form what is known as 'the NMB Foundation for Agricultural Development (NFAD). The agricultural scheme is aimed at developing and supporting farmers especially through their corporative societies in areas of capacity building and agricultural inputs such as tractors. The NFAD had so far (December 2015) reached about 18,000 farmers in Dodoma.[334]

The GGM has also been supporting a number of community projects in Geita region. Apart from the projects which were indicated in previous human rights and business reports, this mining company had addedmore on its list of supported projected during the year. For instance, in August 2015, GGM launched three small and medium enterprises (SMEs) projects, which are aimed at empowering the communities economically. One of SME groupwhich benefited is the Nyakatoma Multipurpose Cooperative Society Limited, which runs a tailoring project as a combined Picture 5.3 below shows:

[333] Corporate Human Rights Compliance Assessment, Dodoma Field Report of 2015 (LHRC's Report I). Page 24.
[334] Corporate Human Rights Compliance Assessment, Dodoma Field Report of 2015 (LHRC's Report II). Page 33.

Picture 5.3: The Tailoring Project sponsored by GGM, Geita region.

(iii) GGM with its Grand Supports

That and other projects sponsored by GGM, including a support of the construction of 56 laboratories for the secondary school earned the mining company an award in 2015 known or described as the Presidential Award on Corporate Social Responsibility and Empowerment (CSRE) for secondary education development.[335]One of the beneficiaries of GGM's supports in the Nyankumbu Girls Secondary School (Picture 5.4 below).

Picture 5.4: The Nyankumbu Girls Secondary School supported by GGM.

This mining company could be cited as one of the best CSR if compared by others because, unlike most of the investors who support only one or two projects, GGM has supported various types of projects as Table 5.2 shows:

[335] Note that, the CSRE Award was handled over to GGM Director by H.E Vice President of Tanzania Dr. Mohammed Gharib Bilal in 2015.

Table 5.2: Nature of Some of Major Projects Supported by GGM between 2009 and 2015

S/No.	Sector	Type Of Project	Amount Contributed (in Tshs)
1	Education	Construction of Nyankumbu Girls Sec. School	10.1 billion
		Construction of Vocational Training	93 million
2	Water	Fixing of Water Pipes in Geita Town	10 billion
3	Health	Construction of Nyakabale Health Centre	330 million
		Malaria Prevention Program	1.7 billion
		HIV/AIDS Prevention Program	250 million
4	Sport	Sponsoring Geita Gold Sport Club	300 million

Source: GGM Overall Community Investment Report, 2015.

The sister companies of Acacia, Shinyanga and Mara regions have also offered numerous kinds of supports to the surrounding communities, including the construction of the 5 KM tarmac road in Kahama township;[336] construction of secondary (and primary) schools in Nyamongo, Kenkuru and Kewanja villages in Tarime district, Mara region; provision of more than 980 desks to the Nyangoto and Matare Primary Schools of Tarime; construction of a dispensary in Nyangoto village; repair of the road in Nyangoto and Kewanja village; water supply in almost all these villages; health care support for instance, Tshs 600 million was contributed recently for cancer treatments.[337] The Acacia Maendeleo Fund Annual Report of 2015 shows that, the Acacia NMGM has invested USD 12.5 million to support more than 70 key projects on health care, clean water, schools and road infrastructures.

(iv) Monetary Supports to the Village Governments

The Shinyanga region based Williamson mining company is said to have been disbursing Tshs 4 million to each of the 18 villages neighbouring the mine site. Such amount of money is paid on monthly basis and it is intended to support villages' social projects, which the mining company leaves it for the village governments to plan for themselves.[338] According to the field source, the Williamson mining company has contributed a total of Tshs 985,133,400 to the villagers, in which Tshs 58,618,000; Tshs 232,536,519; Tshs 75,162,500; Tshs 210,998,444; and Tshs 327,818,456 were paid to the villages by this company in 2011; 2012; 2013; 2014; and 2015 respectively.

Same style of paying some money to the village government was done by Tancoal Company, Ruvuma region, which pays Luanda village, Mbinga district, about Tshs 500,000 after every 3 months as its contribution to socio-economic developments.[339] The investor has also Tshs 300,000 for construction of the dispensary in the same village.

(v) Contributions to Youth Employment

336 Corporate Human Rights Compliance Assessment, Shinyanga Field Report of 2015 (LHRC's Report I). Page 22.

337 Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Pages 29 and 30.

338 Corporate Human Rights Compliance Assessment, Shinyanga Field Report of 2015 (LHRC's Report I). Page 21.

339 Gastone John Mbunda, 23/12/2105; Afisa Mtendaji kijiji cha Luanda, Mbinga- Ruvuma.

The Williamson mining company also sponsors the Mwadui FC as a strategy to create employment opportunities for the youths.

Picture 5.5: Mwadui FC Sponsored by the Willianson Mining Company, Shinyanga Region.

(vi) Collective Sponsorship by a Group of Companies

A group of companies at Ibadakuli area, Shinyanga urban organized themselves and collectively constructed the Viwandani Primary School. Such companies, most of which are industries included Gaki, Jambo Group, and Afrishers companies.[340]

(vii) Mbeya Cement with its Water and Educational Sponsorship

The Mbeya Cement company, Mbeya region, contributed to the water supply in Songwe Viwandani area (as Picture 5.6 below shows), and it has also been sponsoring some of the children of this (Songwe Viwandani) village in their studies (secondary school and university levels).[341]

[340] Corporate Human Rights Compliance Assessment, Shinyanga Field Report of 2015 (LHRC's Report I). Page 22.
[341] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 23.

Picture 5.6: A water pump supported by the Mbeya Cement Company.

The said cement company was also stated to be the main contributor of the construction of the Saruji Primary School, which was under the Mbeya district council. One of the Songwe Viwandani village leaders said that, other investors in their area including the one who owned a chicken project were of no help to the community development projects or individual members.

(viii) Tanga Based Companies on Health Care Contributions

In Tanga region, the study was informed that, the Amboni Spinning Mill has constructed a health care facility for its workers and surrounding communities. This company has also supported construction of residential houses for school teachers around the investment area.

On the other hand, another Tanga region based company, Rhino Cement Industry, has contributed to the construction of the Maweni dispensary; while the Neelkanth (Chemical) Lime Company contributed iron sheets for the construction of the community school in the area.[342]

(ix) Religious based CSR

Other companies preferred to channel their social support to religious based initiatives. For instance, the Abood Bus Company usually provides free transport for mourners during burial ceremonies[343] especially within Morogoro Township. The NBS Limited, which is the bus transport company based in Tabora region, also does the same. Apart from supporting the mourners, the NBS Company do also ferry persons with disabilities and sick persons free of charge mostly within Tabora region.[344]

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342 Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report II). Page 38.
343 Corporate Human Rights Compliance Assessment, Morogoro Field Report of 2015 (LHRC's Report I). Page 23.
344 Corporate Human Rights Compliance Assessment, Tabora Field Report of 2015 (LHRC's Report I). Page 22.

The Mtwara region based Ndanda Springs Water has, among other things, contributed to the construction of a mosque that facilitates surrounding Muslim communities to worship without trekking long distance.[345]

Picture 5.7: A Mosque of Mwena Masasi which Ndanda Spring water contributed to its construction.

Same kind of CSR support was done by the Dar es Salaam based Tanzania Pasta Industries, which trades at Vingunguti area. This company is alleged to have generously supported the construction of a Mosque, a service which benefits a number of (Muslim) community members around.

(x) Employment Opportunities and Changed Lifestyles in Some Regions

Some of the companies have local communities employedin thousands at the same time. For instance, TPC company, Kilimanjaro region, was said to have 2,000 workers most of whom came from the communities it operates (Moshi and Arusha). The company also sponsored the 'ujirani mwema' (good neighbourhood) sports bonanza which bring together residents of the Ngorika, Nyumbaya Mungu, Mwanga, Moshi Mjini and Mikocheni villages.[346] Such sports are regarded as part of skills development for the youth to employ themselves in sports.

The discovery of natural gas in Mtwara region plus other resources including lime materials, which has also attracted several corporate companies in the region, has indirectly created a number of employment opportunities especially through informal sector (petty business ventures) such as *Bodaboda* (motorcycle taxi); petty food vendors; telecommunication business (mobile phone money transfer); micro-credit institutions; and so many others.

[345] Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report I). Page 39. ALSO, Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report II). Page 26.

[346] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 32.

Picture 5.8: **One of the Petty Traders nearby the Dangote Factory, Mtwara region. Who sells petrol in bottles for the Bodaboda and soft drinks at the same time.**

However, such micro-trading are not supported by the investors. They have to fight on their own in terms of capital and business spaces. They are also vulnerable of the municipal council urban planning rules which regard anyone doing business at unspecified areas as a criminal trespasser.

One of the leaders of the Lupokela village government, Songea, Ruvuma region was of the views that, despite the fact that companies such as Aviv Plantation Company had some weaknesses on enforcing human rights standards as explained in chapter two of this report, still they have huge contributions to the welfare of the resident. He said that, one of the positive impacts of these companies is creation of employment opportunities, which in return somehow mitigate economic hardship of the households. He said, there was an increasement of houses constructed by bricks and iron sheets instead of mud and grass roofs. This started to happen from 2010 when Aviv Plantation Company came in their village. Other villages which seemed to have been benefited to a certain extent with the investments in their areas of jurisdictions included Merikebu (Songea), Luponde (Songea), Mtunduwalo (Mbinga), and Luanda (Mbinga). The Aviv Plantation Company has also contributed to the construction of residential houses for teachers of the Liganga primary school, Lupokera ward, Songea, Ruvuma region.

Picture 5.9: Ongoing construction of residential houses for the Liganga primary school teachers.

(xi) Dr. Reginald Mengi and His Companies as Real Philanthropists

Dr. Reginald Mengi, one of the renowned business giants owns the IPP Group which is comprised of several companies including media houses, body care and soft drinks. According to the sources the philanthropist has employed more than 5,000 people in Tanzania and he is known to be one of the reputable largest taxpayers in the country. He can also be termed as a pioneer of CSR in Tanzania as he was the first one to have been in frontline of promoting the welfare of the poor people through generous monetary or moral supports. For instance, the philanthropist, Dr. Mengi, hosts an annual luncheons talk with people with disabilities (PWDs) in which, PWDs use that opportunity to air their problems. Dr. Mengi's and his companies' stories on philanthropic supports need a volume of pages to finish narrating. This report is limited in space. However, a few of his companies' CSR initiatives which this study came across include the Bonite Bottlers Company's CSR water project at Shirimatunda area, Moshi, Kilimanjaro region; and the construction of a bridge at the same area as a combined Picture 5.10 below show:

Picture 5.10: The water source and bridge generously donated by the Bonite Bottlers Limited at Shirimatunda area, Moshi, Kilimanjaro region.

5.3.2 Some Issues of Concern about 'Giving Back to the Community Initiatives

There are several issues of concern about the way CSR is understood and implemented in Tanzania. The 2013 and 2014 editions of this report mentioned some of such concerns, including using CSR as a condition for acquiring land or social acceptance of the community members or consumers of the investors' products. In most cases, many companies when initiating their projects come with a lot of promises which they do not even put into writing for the local communities to hold them accountable once they fail or refuse to honour their promises. As it is argued above, the current discretionary powers on part of the investors about CSR is, to a large extent, attributed to lack of law or evena CSR policy.

This study has established a number of other concerns including:-

(i) An offering assistances which do not match with peoples' desires or benefit majority of peoples' needs;
(ii) An offering limited supports; selective community supports; and,
(iii) Misuse of CSR's supports by some of the government officials.

As for the first one, for instance, the Dangote Factory Company (Mtwara region); and the Neelkath Chemical Industry Limited (Tanga region), were in the process of initiating heath care services, sport and other facilities in the areas they operate. But, such facilities were allegedly said to be exclusive for their workers. The Tanga's company is said to have promised to construct a school outside its investment area for easier access by the rest of the community members. According to some of the villagers interviewed, this did not happen. Moreover, it seemed that, the real needs of the people in Amboni area, where this company operated was actually a heath care facility. They currently depend on the town based facilities, which are far away from Amboni area.[347]

Regarding the second concern, there are companies which do not offer any support or offer very little support. For instance, the Jiemel Industries, Quaim Steel Company, MM Industries and Aqua Cool Water Company all from Dar es Salaam were 'blamed' by some of the surrounding community members for being unwilling, hesitant or contribute very little to support community projects. The Quaim Steel Company was, in early 2015 invited to contribute into the repair of feeder-roads and school. *'It, indeed, made its contribution but that was too little',* as alleged by one of the respondents. The MM Industries was 'blamed' for not allowing its neighbors (surrounding community members) to access its dispensary, which was currently designated exclusively for its workers. The Aqua Cool Water Company was allegedly to have been 'selfish' in its support to the *Mama Ntilie* (women petty food vendors) trading around its area. In most cases, the company comes out for a help when the local government authorities try to evict such food vendors from the areas around the factory. It is claimed that the company does this not due to its love to the poor women around it; rather, to continue having cheap food supply for its low paid workers. So it is said to be a game of *'keeping well the cow in order to milk it more.'*

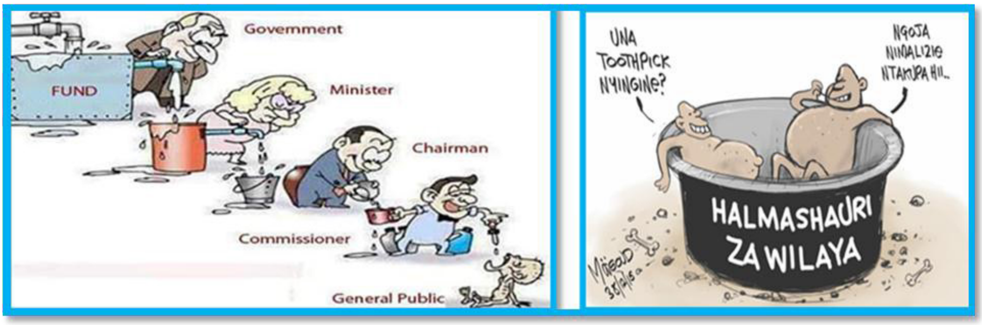
The Dodoma region based Alkovintages Company was also said to have been in support of the community members especially with regards to water supply. However, only a few of the intended beneficiaries of the support were actually accessing and directly benefiting from the water support.[348]

As for the misuse or misallocation of the supports by some of the government officials, it was noticed during the study that, some of the investors channeled their CSR supports to the

[347] Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report I). Page 26.
[348] Corporate Human Rights Compliance Assessment, Dodoma Field Report of 2015 (LHRC's Report I). Page 25.

community through government officials or departments. It is unfortunate that the investors do not always monitor the management, disbursement and utilization of the support extended to the community through the government officials. It seems that, this weakness is well utilized by some of the officials to channel the support for their personal use.

The current Geita Regional Administrator Secretary (RAS), despite of being new in the office has already noted this challenge. The RAS observed that, GGM has been dishing out a lot of financial supports to the government authorities in the region but little is seen as an impact of such supports. According to other government officials, the supports from the investors, which are normally not budgeted for in the local government budgetary plans, end up in the personal pockets of the officials through seminars and meetings (seat allowances).[349] A combined Media Clip 5.1 below illustrates well on how the investors and donors supports to the communities are misused; and, therefore, not reaching out the needy individual persons.



Picture 5.11: Misuse of Donor's (and Investors') supports by some of government officials.

The left hand side of the media clip shows how donors' funds are leaked off along the way from the central government to the needy general public; while the right side clip shows how some of the local government officials 'eat' in the *Halmashauri za Wilaya* (district councils). The left hand side 'eater' asks if there is *'another toothpick'* for him to clean-up his teeth after eating; and, the second 'eater' says *'let me finish, i will give you this'* to mean, they can still share tricks to misuse public funds and cleanup without being taken to task.

LHRC suggests that, (i) corporate companies should always demand for the accountability reports of the support they have granted to the government authorities. There is also a need for them (as union of investors) to have a collective monitoring and assessment of their contributions to the government authorities in order to avoid duplication of efforts; (ii) the CAG should be keen to identify an unbudgeted financial and other supports which the government authorities receive from the investors as part of CSR; and, (iii) an institutional assessment should be conducted by anyone to ascertain whether presence or absence of such (CSR) support has an adverse implication on the ability of government authority to collect revenues from other sources.

[349] Corporate Human Rights Compliance Assessment, Geita Field Report of 2015 (LHRC's Report I). Page 24.

5.4 SOME WORST CSR PRACTICES

It is already established above that, CSR is not only about dishing out some monies to support the local communities. It is also about respecting cultural norms as well as surrounding environments. Some of the corporate companies miss this essence in their CSR's initiatives.

The Kakola area, Msalala district, Shinyanga region is covered by gold and there are mining companies or activities taking place including the operations (Bulyanhulu and Buzwagi mining sites). Despite its richness, the area has very poor road infrastructures. The highway road network from Kahama town to this place was in a very bad shape at the time when this study was being conducted – while it ferries on it tons of mineral stones. The area, Kakola, did not have any dispensary around, a situation which necessitates the villagers to trek about 3 KMs away for the health care services.[350]

The CI Company; Serengeti Breweries; and others, which are mentioned in chapter six of this report, were alleged to be notorious environmental polluters. For instance, the sewage systems of these two companies seemed to be poor in such a way that, during rainy seasons, there is waste water outflows to the neighbourhoods which are occupied by residents. Some of the interviewees of the areas claimed that, the contaminated water flowing from the factories tend to cause some health complications including diarrhoeas, skin diseases and malaria.

The claims of water pollutions due to manufacturing activities were heard all over the sampled region as chapter six of this report illustrates. Probably one case to be reported here, which is not covered in the said chapter, is that which implicated Tancoal Company, Ruvuma region with the pollution of the water source, the Ruvuma River. This was specifically noted in Mtunduwalo village, Luanda ward, Mbinga district, where the coal mining activities of this company were taking place. One of the local leaders in Luanda ward told the study on 23rd December, 2015 that, the pollution of Ruvuma River started around 2013. The leader alleged that, the water was contaminated in such a way that, the household depending on the same found it risky to continue using it. It is further alleged that, the villagers once asked the company to install a water tank so that uncontaminated water fetched from other areas could be used by the villagers affected by the pollution. It is obvious that this was a simple CSR project for the investor to do in order to save the lives of the villagers. The tanks were brought but, it was soon discovered that the company did not bring the water from an alternative source; instead, it just pumped it in the same contaminated water from the river and that, this is what the villagers were still consuming at the time of this study. The next study of this nature will come out with more detailed and balanced information about said allegations by the villagers - having been unable to secure such information during this study in December 2015.

The TPC Plantations Company, Kilimanjaro region was alleged by some of the respondents, especially of Pasua area that, its security guards mistreat community members in many ways, including unlawful apprehensions; and assaults of the villagers who happen to be suspects of some 'offences' in the eyes of the guards. Such offences include crossing over the investor's land; and found in possession of a piece of sugarcane suspected to have been harvested from the investor's plantation. A lady respondent told the study that:-

[350] Corporate Human Rights Compliance Assessment, Shinyanga Field Report of 2015 (LHRC's Report I). Page 23.

> ... [o]ur children are really humiliated. If they are found with a small piece of sugarcane, the security guards of this company apprehend them, and then drag them to the factory where there is a detention room. They normally detain the suspects for unspecified hours or days until they pay fifty thousandshillings as a fine. If one does not have the money, he or she can be thrashed with sticks and then, take the suspect far away from the area as part of the punishment. In most cases, those who are taken and damped far away come late at home. Moreover, as you can see, the plantation is not fenced and there is no light. Some culprits use this area to hide themselves as criminals. People around here live in a lot of fear.[351]

The allegations of torture and killings (or 'missing' people) were once again heard in Tarime district, which implicated the Acacia NMGM. It is not certain why such allegations persist over years and inadequate or unknown efforts are initiated to address them. On the 24th December, 2015 the study team was told that, such incidents still continue. The lady respondent alleged that, many people, especially the youth in Nyamongo area, were killed or assaulted by the security guards of the NMGM Company. The respondent alleged further that, on the 23rd December 2015 one artisan miner was intentionally knocked down by the mining company's vehicle as he was foraging leftovers of the gemstones' sands around the mine. The claims of water pollution which some of the villagers termed a *'madini ya tembo'* (kinds of noxious wastes) is yet a long unheard cry which is yet to be sorted out in a conclusive manner.[352]

LHRC calls, once again, (i) the government authorities to reinvestigate and release the results of the allegations of water pollutions claimed to affect the local communities in mining areas all over the country; (ii) there is also a need to have effective monitoring strategies to ascertain not only adverse effects of the investments; but also, the positive side of it especially on how the CSR supports impact into social wellbeing as suggested before; (iii) the ministries responsible for investment and environmental issues should publish annual reports on the status of CSR just the way TRA does for the revenue collected from the corporate and other taxpayers; and, (iv) the companies with outstanding performances on CSR should be recognized and awarded with presidential prize similar to what it has been mentioned above.

5.5 PERFORMANCE INDICATORS ON CSR

The following is the summary of key findings in a form of performance indicators on the enforcement of CSR in Tanzania. The summary depicts a comparative picture between CSRs' rights situation for the years 2013, 2014 and 2015. It should be noted that, not all 'performance indicators' used in 2013 and 2014 were reassessed in 2015. However, at least all main indicators have been compared between the two years in order to measure the progress of enforcing CSRs. It should be noted further that, some of the indicated used in this Table below, were taken directly from the LHRC's SPSS data bank without being necessarily discussed in the main text of this chapter.

Table 5.3: Comparison of Performance Indicators on CRS between 2013, 2014 and 2015 Years – LHRC Studies

351 Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report II). Pages 22 and 23.

352 Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Pages 31 and 33.

S/ No.	CSR Issues	[Some of the] Performance Indicators		
		2013	**2014**	**2015**
i.	**Regulations**	○ No law on CRC in Tanzania. ○ Many CSRs were promises which are not documented. ○ The way in which CSRs were made raise questions as to whether it is really for giving back to the community or merely making their companies visible.	○ No law on CRC in Tanzania. ○ The 'giving-back' to the community by the companies remained to be optional.[353] ○ Mostly for social licensing.[354]	○ Still, no law on CRC in Tanzania. ○ Same situation as 2013 and 2014.
ii.	**Benefits**	○ The extent to which investors contribute through CSRs in Tanzania is unknown. ○ In most cases, CSR are social licenses.	○ The majority (78%) of the villagers and urban dwellers were not seeing any tangible benefits of having investors in their areas. ○ At least 80% of the investors did not have either the mechanism of engaging with the community to sort out social or legal disputes amicably; or their mechanisms were unknown or weak.	○ 60.1% of the villagers and urban dwellers were not seeing any tangible benefits of having investors in their areas. ○ 36.4% of the investors did not have either the mechanism of engaging with the community to sort out social or legal disputes amicably; or their mechanisms were unknown or weak. [Note: 29.1% of the respondents to this question did not responded; hence, huge gap between 2014 and 2015].
iii.	**Trends and Essence**	○ CSR were not always positive.	○ At least 90% of the companies visited, had contributed something to the community apart from employment opportunities. ○ The nature and types of supports as CSR include; i) supports are directed more on education (36.3%), followed by health (27.7%), road infrastructures (19.2%), and water (16.3%).[355]	○ Same as 2014. ○ The nature and types of supports as CSR include; i) supports are directed more on employment (47.7%); followed by education (11.1%); road infrastructures (3.9%); water (3.9%); and, health care (2.0%).

Source: LHRC, Human Rights and Business Studies (Field Data), 2013, 2014 and 2015.

353 It all depended on how members of the community or their leadership 'paraded' themselves to lure the company in order to support their developmental projects.

354 That is, in most cases, companies agree to pay it as a condition for acquiring land or social acceptance ('social licensing'); but, not as an affection to help out the communities within which the companies operate.

355 The supports were directed mostly to the 'conspicuous' areas where the visibility was higher than areas which were not considered as not visible. It was also observed that, giving to the community because the company has earned excessive or wants to clear some space for next production or reducing the 'mess' from the production sites.

CHAPTER SIX

ENVIRONMENTAL JUSTICE AND PRIVATE BUSINESS ACTIVITIES

6.1 MEANING AND ESSENCE OF AN ENVIRONMENTAL JUSTICE

Environmental justice is recognition of disparities among people in costs and benefits distribution[356] (of the natural resources). This means that it calls for equality of all human being, while also ensuring a good survival of other living and non-living things surrounding the environment. The 'equality' here is in respect of the benefits of environmental amenities and the burdens of environmental health hazards as well.[357] As it was argued in the 2014's report, the concept of environmental justice entails also a pursuit of equal justice and equal protection under the law for all environmental statutes and regulations without discrimination. This concept applies to governmental actions at all levels as well as private sector's activities.

The relationship between human health and the environment is a recognized fact. Analysis of the epidemiology of most communicable diseases such as tuberculosis, bilharzias and cholera; or vector-borne diseases such as malaria reveals that they are usually associated with changes occurring to environmental conditions. Hence, continued mismanagement of the earth's natural resources can only lead to greater land degradation and human suffering.[358]

According to the same 2015 Environmental Statistics Report of Tanzania, evidence based on statistics from routine administrative records, sample surveys and population censuses reveal that the majority of diseases found in developing countries, including Tanzania, are caused by poor environmental health conditions. Diseases such as malaria, diarrhoea, tuberculosis, and skin diseases which rank high among the top ten diseases are directly linked to poor environmental health. The magnitude and severity of the diseases differ across regions. Furthermore, over 70% of the burden of diseases in Tanzania is caused by communicable diseases. HIV, malaria, tuberculosis, diarrhoea and respiratory infections are significant contributors to the huge burden caused by communicable cases, while 23% is contributed by non-communicable disease and 7% caused by injuries.

In the context of this report, 'environment' includes both internal and external working environmental affairs of the private sector's activities – especially the corporate companies. This chapter investigates on the status of compliance to the environmental statutes and regulations by corporate companies by considering both internal and external operations of such companies. The assessment of the status of compliance uses both international and legal frameworks on environmental justice. There is also a discussion of the institutional performances of some of the regulatory authorities (RAs) responsible for environmental management. Such RAs are the Occupational Health and Safety Agency (OSHA); and, the National Environment Management Council (NEMC).

[356] Finger, M. and F. B Zorzi (2013) Environmental Justice. United Nations Environmental Programme: Model United Nations Journal. Pages 222-243.

[357] University of Washington, 'Environmental Justice.' Re-accessed on 1st May, 2016 from: http://deohs.washington.edu/environmental-justice

[358] URT (2015), Environmental Statistics 2014. NBS, September 2015: Dar es Salaam. Page 135.

6.2 LEGAL FRAMEWORKS ON ENVIRONMENTAL JUSTICE

The said relationship between environment and human rights is one of the attributing factors which compelled the international community as well as the government of Tanzania to formulate the guiding principle, which is supposed to, among other things, ensure sustainable utilization of environmental resources as well as protection of human healthy. For instance, Articles 1, 3 and 4 of the Rio Declaration on Environmental and Development, 1992 generally state that, human beings are at the centre of concerns for sustainable development through utilization of environmental resources in a sustainable way.

Owing to that human-environment-development nexus and the obligation to safeguard the interests of everything on earth, the international community – both UN and AU, had adopted a dozen of legal instruments on the subject matter. Some of the environmental related instruments adopted with their applicability to the nature of environment they regulate are as shown in Table 6.1 below:-

Table 6.1: Some of the International Legal Instruments on Environmental Justice

Regulating External Environments	Regulating Internal (Working) Environments
○ The Rio Declaration on Environmental and Development of 1992. ○ The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989. ○ The Protocol on Liability and Compensation to the Basel Convention, 1999. ○ The Vienna Convention for the Protection of the Ozone Layer, 1985. ○ The Convention on Biological Diversity, 1992. ○ The Convention on International Trade in Endangered Species, 1973. ○ The Cartagena Protocol on Biosafety, 2000. ○ The Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam), 1998. ○ The Convention on Persistent Organic Pollutants (Stockholm), 2001. ○ The Protocol on Health in the Southern Africa Development Corporation, 2009.	○ The Occupational Safety and Health (OSH) Convention, 1981 (No. 155). ○ The Occupational Health Services Convention, 1985 (No. 161). ○ The Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). ○ The Occupational Safety and Health Recommendation, 2006 (No. 197). ○ The Hygiene (Commerce and Offices) Convention, 1964 (No. 120). ○ The Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152). ○ The Safety and Health in Mines Convention, 1995 (No. 176). ○ The Safety and Health in Construction Convention, 1988 (No. 167). ○ The Safety and Health in Agriculture Convention, 2001 (No. 184). ○ The Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148).

Source: Various UN, AU On-line Publications.

The above mentioned international instruments (Table 7.1) generally require standardization of the environmental principles all over the world because environment is a global concern. For instance, the effects of ozone depletion as the 1985 Vienna convention seeks to address adversely affect all countries in the world regardless where the emissions originate. Secondly, the said instruments call upon states to formulate national policies and laws to regulate environmental affairs. For instance, Article 4 of ILO's OSH Convention 1981 calls for countries to implement and review their national policies on occupational safety and health (OSH) and the general working environments.

In a bid to comply with the international obligations on environmental management, Tanzania enacted a number of laws and regulations, which has to a large extent, localized most of the requirements of the instruments mentioned in Table 7.1 above. The laws, regulations and policies enacted or formulated include:-

(i) The Environment Management Act, 2004;[359]
(ii) The National Environmental Policy of 1997;
(iii) The Occupational Health and Safety Act, 2003;[360]
(iv) The Occupational Health and Safety National Policy of 2009;
(v) The Factories Act, 1950;
(vi) The Fire and Rescue Services Act, 2008;[361]
(vii) The Public Health Act, 2009;[362]
(viii) The Environmental Impact Assessment and Audit Regulations, 2005;[363]
(ix) The Environmental Management (Water Quality Standards) Regulations, 2007;[364]
(x) The Environmental Management (Solid Waste Management) Regulations, 2009.
(xi) The Environmental Management (Hazardous Waste Control and Management) Regulations, 2008;
(xii) The Environmental Management (Solid Quality Standards) Regulations, 2007;
(xiii) The Factories (Occupational Safety and Health Services Fees) Rules, 2001.[365]

The Constitution of the United Republic of Tanzania of 1977 is silent on the right to environmental justice. However, the right to life as stipulated under Article 14 of this constitution was inferred in the case of *Festo Balegele and 794 Others Vs. The Dar es Salaam City Council*[366] to include the right to clean and health environment. That is, the plan of the city council of Dar es Salaam to dump some wastes in the residential areas was interpreted by the court as exposing the life of residents in danger. Therefore, the court created a link between environmental protection and the right to life – this is one of the essences of environmental justice as it was explained before in this chapter. Article 27 of the constitution requires everyone to protect natural resources (environment).

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[359] Act No. 20 of 2004.
[360] Act No. 5 of 2003.
[361] Cap. 427.
[362] Act No. 1 of 2009.
[363] These are made under Sections 82(1) and 230(2)(h) and (q) of the Environment Management Act, 2004.
[364] They are made under Sections 143, 144 and 230(2)(s) of the Environment Management Act, 2004.
[365] G.N No. 111 of 15th June, 2001.
[366] High Court of Tanzania, Miscellaneous Civil Case No. 90 of 1991.

LHRC suggests that, the anticipated new constitution of Tanzania should explicitly enshrine the right to clean and health environment as one of the basic human rights. The justification of this suggestion cannot be overemphasized due to the factors mentioned above e.g the linkage between environment, development and human being survival.

As it is the case for the international legal framework, the national framework on environmental justice too generally puts an obligation for everyone (including corporate companies) to ensure sustainability and equitable use of the environment – for the benefits of the present and future generations. On the other hand, the laws which regulate internal workplace environments are aimed at ensuring that, the production processes remain sensitive of the occupational health rules and therefore, avoid hazardous effects to the workers and other persons.

The practices in which the environment justice issues were adhered to by the corporate companies, basing on the study sample, is discussed below. A few incidents, positive and negative ones have been picked as illustrations to unveil a general picture of this subject matter. The chapter has two parts; one focusing on occupational health (internal); and the other one, as said earlier on, an external side of the environments surrounding the corporate companies.

6.3 OCCUPATIONAL HEALTH AND SAFETY RIGHTS: INTERNAL WORKING ENVIRONMENT

6.3.1 Institutional Capacity of OSHA

The Occupational Health and Safety Authority (OSHA) was established under the Executive Agencies Act, 1997.[367] It was officially launched on 31st August, 2001. The primary objective of OSHA is to ensure creation and maintenance of ideal work environments which are free from occupational hazards that may cause injuries or illness to all employees in work environment. This will be achieved by promoting occupational health and safety (OHS) practices in order to reduce or prevent occupational injuries and diseases, and ultimately achieve better productivity.

The OSHA is established in response to the international obligations set forth under provisions of the legal instruments mentioned in Table 7.1 above. There were international pushing factors to a need of having OHS issues properly regulated. For instance, according to theILO's 2014 publication,[368] around 2.02 million people die each year from work-related accidents or diseases. A further 317 million people suffer from work-related diseases, and there are an estimated 337 million fatal and non-fatal work-related accidents per year. Same source reveals that, the suffering caused by such accidents and illnesses to workers and their families is incalculable. In economic terms, the ILO has estimated that 4% of the world's annual GDP is lost as a consequence of occupational diseases and accidents. As for Africa, it is estimated that, almost 13 million workers are killed in work-related accidents in the Southern Africa region per year; and,

[367] Act No. 30 of 1997.
[368] ILO, 'Rules of the Game: A Brief Introduction to International Labour Standards (Revised Edition 2014).' Accessed on 23rd April, 2016 from: http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_318141/lang--en/index.htm

more than 13 million workers are injured in accidents, and 67,000 contract occupational diseases.[369]

The magnitude of such accidents and diseases on part of Tanzania is currently unknown apparently due to poor follow-ups of the OHS issues (in all workplaces) by the responsible authorities.

Picture 6.1: Some of the OHS Warning Signs at Factories or Workplaces which required by the law.

The prime responsibilities of OSHA are to register factories or workplaces and monitor compliance in accordance with the OHS Act, 2003. Section 16 of this law requires registration of each factory or workplace before the commencement of its operation or occupation of the premises intended for operations. Moreover, Section 21 of the OHS Act, 2003 demands submission of a factory or workplace's drawing to the Chief Inspector for an approval. The rest of the provisions put requirements on the safety devises to be used, protection gears, OHS trainings at workplaces, and so many occupational health issues.

Picture 6.2: OHS Certificate for one of the workplaces qualified after being inspected and registered.

[369] Mrema, E., A. V. Ngowi, and S. H. D Mamuya (2015) 'Status of Occupational Health and Safety and Related Challenges in Expanding Economy of Tanzania', In Annals of Global Health. Volume 81, Issue 4, Pages 538-547. Accessed on 25th April, 2016 from: http://www.sciencedirect.com/science/article/pii/S2214999615012370

All these issues (registration and monitoring of OHS compliance) suggest presence of OSHA as an institution with, (i) full mandates to manage its affairs independently from any kind of interference; (ii) sufficient human and financial resources as well as facilities relevant to its mandates; and, (iii) spread of its services all over the country, because unlike other regulatory authorities, OSHA's nature of work demands a physical presence of its inspectors or other staff to all workplaces. Therefore, as it is further discussed in chapter eight of this report, the effective performance of OSHA like it is a case for other RAs, needs those three performance indicators, and others indicated in the said chapter eight.

In terms of proximity of OSHA's services (physical presence of OSHA offices), the study was informed that, there were 6 zone offices, namely:-

(i) Northern Zone (Arusha, Kilimanjaro, Manyara, and Tanga regions) with its zonal office at Arusha region.
(ii) Lake Zone (Mwanza, Geita, Simiyu, Shinyanga, Kagera and Mara regions) with its zonal office at Mwanza region.
(iii) Central Zone (Dodoma, Singida, Tabora, and Kigoma regions) with its zonal office at Dodoma region.
(iv) Southern Highlands zone (Iringa, Mbeya, Katavi, Njombe and Rukwa regions) With its zonal office at Mbeya region.
(v) Coastal Zone (Dar es Salaam, Coast, and Morogoro regions) with its zonal office at Dar es Salaam region.
(vi) Southern zone (Mtwara, Lindi, and Ruvuma regions) with its zonal office at Mtwara.

LHRC is of the view that, despite the fact that this is a good start, to have all those zones operating within 12 years of OSHA's existence, more branches are still needed especially due to geographical locations of some of the regions. For instance, a person from Kigoma region will have to spend between 12 and 24 hours in order to access the central zone's services in Dodoma region. This is an issue of concern because most of the people (workers) in rural areas do not have access to internet which would have facilitated them to make or lodge their inquiries through electronic methods such as an email. Therefore, OSHA should be facilitated further to have more branch offices opened and operating; and also, to have sufficient resources for managing the branch offices.

The second factor which hinders effective monitoring of compliance of the OHS' legal requirements is insufficient number of OSHA staff and professionals specialized in OHS' matters in Tanzania. The previous editions of this report showed that, OSHA had a deficit of 55% of the required staffing level. The current status of workforce was not secured up to the end of the study. However, no magic improvements could be expected.

The study by Mrema *et al* (2015) cited above showed that, the shortage of OHS personnel is a critical issue. Probably, even if OSHA could have sufficient budget to hire more staff, it can fail to secure the qualified ones. This reality converts the situation to be a policy issue. According to the Mrema's 2015 study, the overall human resource for OHS was as indicated in Table 6.2 below:-

Table 6.2: Occupational Health Professionals in Tanzania Mainland – An Overall Human Resource

Professionals	No. in Public Sector	No. in Private Sector	Qualification & Legal Requirements
Occupational Health Physicians.	3	7	PGD in Occupational Health.
Occupational Health Nurses.	1	2	PDG in Occupational Nursing.
Occupational Hygiene Specialists, Safety Engineers, and Technicians.	20	0	PGD in Occupational Health and Safety.
Inspectors.	53	0	PGD in Engineering Occupational Health/ Safety.
Environmental Protection Specialists.	15	0	PGD in Occupational Health.

Source: Masawe *et al* (2015).

According to the same source, only three high learning institutions were offering OHS courses at various levels. Such institutions included two public universities and one private collage. OSHA was also offering tailor-made trainings to some of the organizations.

The adverse impacts of the scarcity of OHS professionals are many, one of them being inability to effectively enforcing the OHS Act, 2003 and other laws or regulations. For instance, over the past years, according to Table 6.3 below, OSHA's workplace and factory' inspection coverage has remained to be at an average of 57.5% of the expected targets (performance indicators).

Table 6.3: OSHA's General Inspection 2010 – 2015 Trends

Year	Planned	Actual	Percentage of Actual Coverage
2010/2011	7,000	5,376	76.8%
2011/2012	7,000	5,995	85.6%
2012/2013	12,000	6,970	58.1%
2013/2014	20,000	5,459	27.3%
2014/2015	20,000	7,978	39.9%

Source: LHRC's Interview with OSHA Headquarter, 2015.

This could imply the fact that, around 42.5% of the factories and workplaces has not been inspected (basing on an average of 5 years). During the year 2015, more than 60% of the places were not inspected by OSHA. It is almost the same situation for specific inspections basing on an overall average of planned against actual places inspected. However, OSHA seems to have been doing well in terms of medical examination of the workplace or factories workers. For instance, the agency usurped the targets (by an overall average of 10.7%) all years between 2010 and 2015 by the margins of 1.8%; 22.5%; 24.6%; 3.0%; and 1.6% in 2010/2011, 2011/2012, 2012/2013, 2013/2014, and 2014/2015 respectively.

As for registration of workplaces, the statistics availed to the study in December 2015 showed that, a total of 10,400 workplaces or factories were so far being registered by OSHA as directed by the provisions of the OHS Act, 2003 referenced above. The number of registered places has been steadily increasing for instance from 1,590 per annum in 2012/2013 to 2,158 and 2,350 in 2013/2014 and 2014/2015 respectively. Dar es Salaam claimed a lion share of having 5,008 places registered (being 48.2%) of the said 10,400 places. Mwanza and Arusha regions follows with 937 (being 9.0%) and 697 (being 6.7%) of the total workplaces or factories registered. Katavi region has only 2 (0.01%) workplace registered. Other regions with less than 50 registered places were Manyara (only 27 places); Simiyu (only 22 places); Njombe (only 33 places); and Kigoma (only 39 places).

Note that, OSHA has not yet identified all workplaces and factories including those which are informally operated. An officer at registrar of companies (BRELA) told the study that there were around more than 150,000 registered companies and business names in 2015. Despite the fact that not all these companies were operating, still having only 10,400 OHS registered companies is too minimal number the could probably be less than 10% of the workplaces and factories operating as formal or informal settings. Therefore OSHA has to pull up more efforts through more supports from the government. It can also outsource some of its mandates to other RAs as suggested in chapter eight of this report.

As for presence of facilities especially motor vehicles to easy inspection movements, the study was informed that, same number of vehicles (11 cars for the whole country), which theLHRC 2014's report of this nature mentioned, they were not increased as suggested by LHRC. Apart from central zone which had 2 vehicles, the rest of the zones, namely southern, south, eastern, northern and lake zones, had only one vehicle. Again, this could suggest a heavy burden on part of OSHA to fulfil its statutory obligations of inspecting and monitoring OHS standards. However, process was underway to procure more vehicles. Poor performance is almost inevitable untilsufficient resources are made available for OSHA.

6.3.2 Some of the OHS' Issues of Concern: Taking OSHA's Absence into Granted

The institutional weaknesses on part of OSHA and other RAs as pointed our above and in chapter eight of this report, seemed to give a 'breathing space' or 'freedom' for some of the corporate companies to disregard OHS rules – in order to maximize profits. But, that happened to the detriments of their workers. Some were, as this study was informed, got injured and others died. Unfortunately, the long-awaited WCF was not of any help as it just started in July 2015 as chapter two of this report explains. The injuries at workplaces (among other challenges) are normally caused by several factors, some being; (i) absence of precaution measures; and, (ii) irregular or absence of on-job trainings at workplace about workplace health and safety skills as the OHS law cited above directs. For instance, out of 55 corporate companies sampled for this study, only 26 (being 47.3%) had displayed some precaution measures rules on walls at workplaces.

As for on-job training on OHS rules, 61.8% of the employers against only 36.6% of workers interviewed told the study that, theywere in-service (on-job) trainings mentioned above; and that, the remaining percentages claimed the opposite as Table 6.4 below shows.

Table 6.4: Employers vs. Workers Responses about the Presence of On-Job Trainings on Workplace Health and Safety Skills

Responses [N=55]	Employers [N=55]		Workers [N=722]	
	Frequency	Percent	Frequency	Percent
Yes	34	61.8	264	36.6
No	21	38.2	404	56.0
Total	55	100.0	722	100.0

Source: LHRC, Human Rights and Business Study (Field Data), 2015.
[Note: a few responses were invalid or missing system].

Picture 6.3: A worker of one of the cement companies. Collecting limestone with her bare hands, no musk and no boots as well.

The two extreme opposite responses between employers and workers on the same question asked suggests either, (i) the trainings were not institutionalized within companies' plans; or, (ii) not all workers were involved in such trainings.

Moreover, most of the OHS incidents or concerns that were heard or witnessed during the study related to absence of proper protection gears even for hazardous work which involved harmful chemicals, dust, sharp objects or high voltage industrial temperature. Some of the workers of the Maweni Limestone (Rhino Cement) Limited, Tanga Region, said that, despite the fact that the nature of their work is dusty and chocking odour from the lime, they were not supplied with sufficient musk and other protective equipments. Same situation was observed from the Neelkanth Chemical Industries Limited, Tanga region when a study paid a visit on 16th December, 2016.[370] One of the workers at Neelkanth company said that (direct translation from Kiswahili statement):-

[370] Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report I). Page 12.

> ‘As you can see here we are sifting this lime dust, which is hazardous just by looking it with naked eyes ... but, we are not supplied with milk ... the milk which they sometime give us seems to be unfit for consumption; and, we get it only twice a week. If someone tries to raise a voice on this, that would be the end of his job here ...’

The workers of the two companies said that, OSHA officials visit their workplace or factories quite often and then, hear, jot down their occupational health problems and that is all (no actions).

The Neelkanth company’s company worker said that, it was their 3rd month in December 2015 when they continued working without health care facilities (did not mention them) and payments of operating the machines.

Moreover, compliance of Section 31 of the OSHA Act, 2003 which requires employees to be given specialized trainings of the work he or she is assigned seemed to be a very serious issue as it is not widely practiced. As chapter two of the report indicated, more than 80% of the workers in the corporate companies were ‘informally’ engaged as casual and illiterate or semi-illiterate ones. Some of such unskilled workers were assigned to handle machines. Such tendency normally results into accidents and deaths. Some of the workers of the Maweni Limestone (Rhino Cement) Limited alleged that, two of their workmates died recently while the third one was severely injured in different occasions but all related to operation of the machines. The first one, a Tanzanian native, was trapped and squeezed into the machine. The second one who is an Indian native smashed onto the ground from the top. Both died. The third one had his hand ‘grinded’ into pieces. He was out of workstation curing himself allegedly without employer’s support.[371]

Picture 6.4: An example of industrial machine. Such kinds of machines can cause harm if they are not operated by skilled workers
(Source: Internet).

The Mara region depends on the Zonal office which is located in Mwanza town, being 4 to 6 hours drive. The study was informed by some of the sampled workplaces and factories that, OSHA officials visit them once per month. The most common OHS issues which OSHA found in Mara were working without safety gears. Moreover, some of the workplaces in Mara region did not have OHS policy or warning statements or features as Picture 6.1 above shows. Mara Milk and Mara Coffee companies were mentioned by some of their workers to be unfriendly as they missed some of the

[371] Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC’s Report I). Page 33.

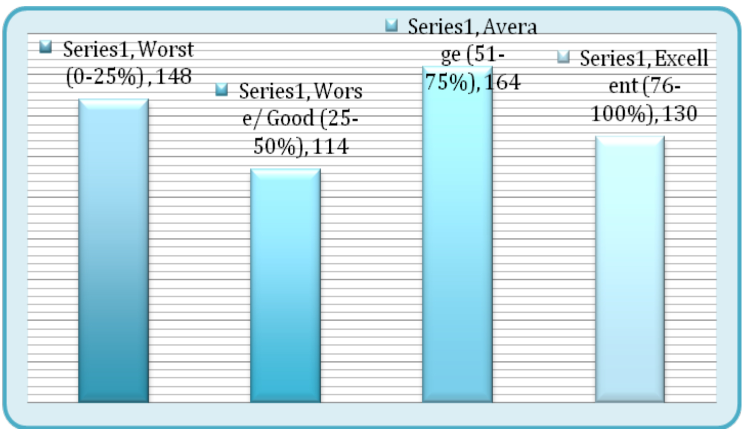
OHS equipments. Moreover, their internal and surrounding environments were alleged to have bad smell.[372]

In Mwanza, where the Lake Zone office is located, it was learnt that, OSHA officials were regularly visiting and warning workplaces to observe OHS rules. The first aid assistant at Nyanza Bottling Company Limited, Mwanza region, said that, OSHA is always at their workplace whenever something is reported to them. OSHA officials also made follow-up visits to assess whether what they ordered to be rectified was done by the management of the workplace.[373]

As for the last case study, it is LHRC view that, only a few workplaces which are closer to OSHA are visited from time to time. The Ruvuma region study team reported that, most of the workers were even unaware of what OSHA was all about let alone knowing its existence in Tanzania. This two extreme position (urban-rural situations) confirm some of the LHRC's assumptions, one of which is that, the more the RA keeps itself closer to the workplaces, the better the working environment for workers, and for the company as well. This is why, there is an urgent need to widen the coverage of OSHA and other RAs to reach at a point whereby, at least every region will have OSHA and other RAs' branch offices. Alternatively, as it is suggested further in chapter eight, is to outsource some of the responsibilities to other RAs operating on the ground.

Lack of sufficient working tools and protective gears were heard all over the sampled regions and corporate companies. As Figure 6.1 below shows, out of 722 workers, 148 of them (being 20.5%) said that, the state of working tools in terms of availability, adequacy and quality was 'very bad', while 114 of them (being 15.8%) said that, the situation was fair ok; and, majority of them (164 or 22.7%) said that, the situation of working tools was 'an average.'

Figure 6.1: Workers Perceptions of Quantity, Quality and Relevancy of Working Tools



Source: LHRC, Human Rights and Business Study (Field Data), 2015.
[Note: a few responses were invalid or missing system].

372 Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 34.
373 Corporate Human Rights Compliance Assessment, Mwanza Field Report of 2015 (LHRC's Report II). Page 24.

There were also incidents of supplying unsuitable protecting gears by some of the corporate companies. The workers of Shah Industries, Kilimanjaro region alleged that, they were using 'homemade' masks made from piece of clothes in order to cover their mouths and noses from dusts. The Moshi Leather workers claimed that, they were given 'dust' mask instead of ones which are appropriate for chemical emanations. *'Even the dust masks are provided when the management of the company hears that the government officials would visit the factory ...'* asserted one of the workers interviewed at the Moshi Leather Company. The Kifufu (Avocado) Plantation has a style of its kind. This one is alleged to shift the requirement of having protective gears to the workers. A worker is 'given' a pair of gumboots when he or she commence working with the company, but at least Tshs 8,000 is deducted from the worker's salary to cover the cost of the gumboots which the management 'purchased' for him or her.[374] Apart from the fact that this is unprocedural under the provisions of the OHS Act, 2003 it is also uncertain whether that is really the market value of the gumboots. It would appear that the employer 'steals' from its workers by overcharging the value of the boots.

The Singh and Sons Limited; the Vasso Agro Vet Company; and the China Paper Limited both of Kilimanjaro were also not spared from such allegations of supplying its workers with low quality or improper protection gears and working tools. In one of these companies a watchman said that the only security weapon he had was a mace, while he guarded companies' properties which worth billions of money. A worker of one of such companies claimed that, *'it is unfortunate that when OSHA officers visit here, they only interview the management team instead of the workers who feel the real pinch of being in this untidy working environment.'*[375]The Mtibwa sugar, which was also mentioned in one of the previous LHRC's report to have been not keen on supplying its workers with sufficient protective gears, was once again in this study's attention over the same allegations. Picture 6.5 below shows workers purported to be of this company spraying some chemicals over the sugarcane without being fully musked.

Picture 6.5: Purported the Mtibwa Sugar's workers – half protected from chemical spills.

[374] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 16.

[375] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 36.

The employers had different reasons for letting this or these conditions to occur:-

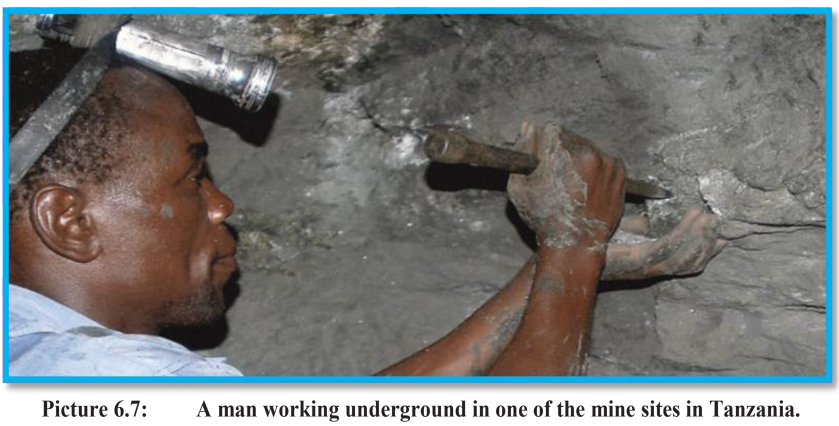
(i) That, most of the workers were temporary ones to be entitled such 'VIP' treatments; and that, it is difficult to manage such equipments in a situation where a worker comes to work for a day and then, the following day is not seen again.

(ii) That, some of the works such as packing coffee into bags or cutting small iron bars were 'light' one for the workers to have protective gears – even if the working process is dusty.

Picture 6.6: Ruvuma region's SIDO Workers or Trainees at Work, December 2015.

(iii) That, awareness of proper protection gears needed for a particular sector or industrial section is low; and that, availability of needed gears could be an issue.

(iv) That, the company's capital was too small to put in place every detail as the laws require. *'We have too many instructions from too many officials and laws ... this is really confusing'*, said one of the managers of one of the small mining companies in Mirerani, Manyara region. As a result, he allows his workers to work underground without protection equipments as the exampleshown by Picture 6.7 below.



Picture 6.7: A man working underground in one of the mine sites in Tanzania.
(Source: Internet).

Apart from improper or lack of protective gears, the condition of the interior and exterior parts of the workplaces or factories were observed to be very dirty in some of the sampled companies. For instance, the sanitation of the Epsom Company Limited, Geita region was observed to be dirty especially its toilets – despite the fact that it had quite elaborative OHS policy as it is explained further below. As the combined Picture 6.8 below shows, the walls and doors of the toilets were extremely dirty and that, there was no sufficient water supply to meet the demand of so many users of these toilet and bathroom.

Picture 6.8: The Epsom Company's washrooms for the workers.

The Dangote Factory, Mtwara region, had fancy administrative building; but, quite grimy latrines a situation which pushes its workers to opt for an alternative ways of servicing themelves – in the nearby bushes as combine Picture 6.9 below shows.[376]

Picture 6.9: One of the latrines and a bush were the Dangote Factory workers allegedly easy themselves.

Some of the workers interviewed alleged that, such a tiny latrine is used by more than 1,000 workers a situation which compels others to opt for nearby bushes. As the left picture shows, there were white toilet papers signifying that it is true that the 'open-toilet' in the bush was 'functional.' That area is found in the Hiyari Village, Mtwara region. The Kilimanjaro region's China Paper company had one toilet shared by both sexes. The toilet was dirty. A worker there

[376] Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report I). Page 40.

alleged that, there was no proper cleaning plan – it was until someone 'volunteers' to clean it up.[377]

The 21st Century Industry, Morogoro region, was also amongst the several other workplaces which had a hygienic challenge of its internal environments. The study learnt from this industry that, its toilets were very dirty and it did not have proper waste collection systems as the combined Picture 6.10 below shows:

Picture 6.10: Waste materials inside the 21st Century Industry, Morogoro region.

The interior part of the Moshi Leather Company was observed by this study to be in bad shape. As Picture 6.11 below shows, there were kind of stale liquid substances down the unprocessed leather materials.[378]

Picture 6.11: Moshi Leather Factory, Interior Environments with stagnant water.

[377] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 36.

[378] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 36.

The Mazava Fabrics and Production EA Limited, Morogoro region, had congested rooms, very hot and with poor lighting system (lights are at a very lower heights from the floor level) – which affects vision. Moreover, the water flow system was not in good order. The company is claimed to have around 4,000 workers. Therefore, sufficient working venues were needed to accommodate such a big number. Some of the Dodoma based companies, namely the Modern Mattress Company, the Alkovintages Company Limited and the Agro Processing Africa (ETG Export Trading Group) Limited were also allegedly engaging their workers without sufficient and proper protective gears such as gloves, boots, masks, uniform and ear-buds or noise cancelling headphones.

6.3.3 Some Positive Trends on OHS

It is already mentioned above that, all employers have responsibilities to, among other things, (i) conduct medical examinations for employees regularly; (ii) make sure workplace is safe and healthy; (iii) inform workers of any dangers; (iv) provide safety equipment and protective gear; (v) provide necessary training; and, (vi) ensure warnings are posted on dangerous machinery. On the other hand, the workers have a duty to take reasonable care for their health and safety and of others, report any issue regarding safety to employer, and comply with safety rules and procedures.

There were few corporate companies which can be picked as best practices on OHS compliance standards, at least by basing on some of the OHS' requirement and an eye-bow analysis by the researchers (as opposed to others which have been illustrated above). Such companies include; Bonite Bottlers, and TPC of Kilimanjaro region; Epsom Company and GGM of Geita region; the Tanzania Meat Company Limited of Dodoma region; the State Mining Corporation; Chemicotext Industry Limited, and Tanpack Tissues Limited; and, Mbeya Cement, and Cocacola of Mbeya region.

The Modern Mattress Company is quite tidy and OHS' safety rules example smoking warning places on the walls. Moreover, TPC and Bonite Bottlers had quite clear warning signs and statement of hazardous places and materials. The Tanzania Meat Company had a workplace policy which included on-the-job trainings purportedly to incorporate OHS' issues. Tanpack Tissue Limited had an occupational health and safety policy of 2013 glued on the walls of the factory. Some of the workers sampled for this study said that, most of the policy directives highlighted in the policy were effectively implemented. The State Mining Corporation (STAMICO); and the Aviv/ Olam Ruvuma company had also followed the thread as the combine Picture 6.12 below shows:

Picture 6.12: Parts of STAMICO's and Aviv/Olam OHS Policies.

The Chemicotex Company had a standby ambulance to rush its workers in hospital once an accident occurs. Picture 6.13 shows the said ambulance.

Picture 6.13: An Ambulance packed outside the gate of Chemicotex Company.

The Chemicotex arrangement to have a standby ambulance for its workers is an outstanding OHS's plan which most of other factories and workplaces were missing. Some of the deaths might be attributed to lack of prompt response to the workers' injuries. A worker of the 21st Century Industry, Mororogoro region, was seen by the study team as being transported for medical attention by a motorcycle 'ambulance' when she was injured as Picture 6.14 below shows:

Picture 6.14: An injured worker on motorcycle 'ambulance' in Morogoro region.

The lady worker had to seek an assistance of her colleague to sit behind her on the same motorcycle 'ambulance' so that she could not fall down owing to the severe pains she had.[379]

The Tanzania Meat Company which among other things runs the Dodoma abattor could be cited as a good example of the tidiest workplace visited by this study. All workers seen around the abattor were in clean and neat uniforms. Visitors, including the study team were all advised to wear proper uniforms and protective gears as Picture 6.15 below shows:

[379] Corporate Human Rights Compliance Assessment, Morogoro Field Report of 2015 (LHRC's Report II). Page 13.

Picture 6.15: The study team with the Tanzania Meat Company's worker.

The Epsom Company Limited, a construction company, had the First Aid Kit and six First Aiders to attend the workers once they are injured. They act as OHS committee at workplace directed by the law. The Epsom's OHS policy is published in English and Kiswahili languages.[380] The GGM has a policy that prioritized securing a 'harm free' workplace with a focus of reducing risk and exposure of employees to harm. In their quarter II report, it was shown that no lost time injuries (LTI) were recorded. However, there were 8 High Potential Incidents (HPI's) that were recorded, making a total of 18 in 2015 year to date. Further, one dressing case was recorded, where a security guard sustained a head wound when struck by a vehicle door. GGM Safety initiatives include continued inspections, internal audit and re-invigorated weekly safety meetings, with greater participation by staff at supervisory level.[381]

6.4 PROTECTION OF SURROUNDING OR EXTERNAL ENVIRONMENTS

6.4.1 Prerequisite Requirements of EIA and SIA

The environmental impacts assessment (EIA) is one of the best ways to ensure that, investment projects are allowed to operate after a thorough analysis of the effects which they would cause in course of their operations. Such requirement is stated in almost all international legal instruments mentioned in Table 6.1 above. Article 19 of the Rio Declaration of 1992 (cited above) mentions a rationale of doing EIA, which is generally to prevent the adverse effects of the operation of an individual or a company. Moreover, the findings of the assessment should be integrated into relevant functions and processes of the company's operations.

On the other hand, there is social impact assessment (SIA) component which is highly recommended to be made part of traditional EIA. The SIA embodies a lot of human rights principles and it is implied under the provisions of UN-GPBHR, 2011. For instance, Article 17 of the said UN-GPBHR, 2011 states, among other things that, business enterprises should carry out human rights due diligence in order to identify, prevent, mitigate and account for how they will addressadverse human rights impacts.

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[380] Corporate Human Rights Compliance Assessment, Geita Field Report of 2015 (LHRC's Report II). Page 44.
[381] GGM. 'How GGM Performed in Ouarter II. 2015.'

However, it is established that SIA is not a mandatory and prerequisite stage of an investment project. It is not specifically stated under the current legal framework on environmental management. LHRC finds this as a serious omission which calls for urgent legal reforms to incorporate it as part of EIA in a more explicit manner.

Sections 81 and 101 of the Environmental Management Act, 2004 require conducting of EIA and Environmental Audit (EA) prior to the commencement or financing of the project. Section 4 of the Environmental Impact Assessment and Audit Regulations, 2005 prohibits the conduct of any projects without EIA. Sub-section 4(3) of the said 2005 regulations prohibits all licensing authorities to issue a trading, commercial or development permit or license for any project activity before they ensure presence of EIA approval.

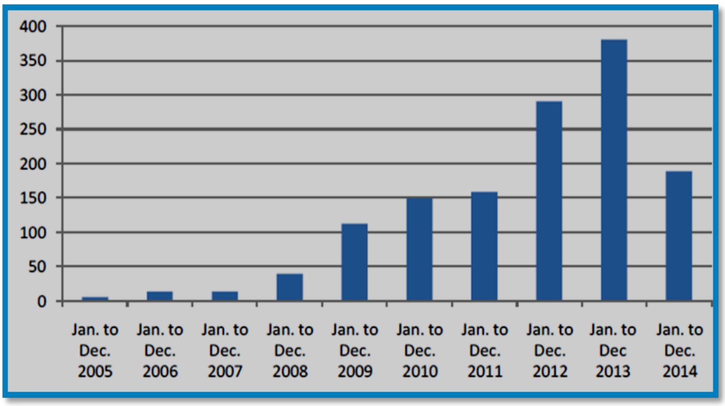
The overall manager of environmental issues in Tanzania is the National Environmental Management Council (NEMC), which was established under Section 16(1) of EMA, 2004. Section 18 provides for the functions of NEMC, which include reviewing and recommending approval of EIA; and to carry on EA.

Picture 6.16: Sample of EIA Certificate issued by NEMC

The process of EIA undergoes several stages such as application for registration at NEMC, screening of application forms, scoping if deemed necessary during screening, conducting EIA study and preliminary environmental assessment (PEA), submission of environmental impact statement (EIS) – that is EIA/ PEA report to NEMC, review of EIS, approval of EIS by NEMC, monitoring, auditing and decommissioning.

Until year 2004, NEMC was issuing Conditional Environmental Clearance (CEC) upon approval of development projects. From year 2005, NEMC is charged with recommending and preparing terms and conditions for issuance of the EIA Certificate by the Minister, as stipulated it is directed under Section 92(1) of the National Environment Act, 2004. Therefore, an approval or disapproval of EIA Certificate is done by the Minister responsible for Environment. There is a growing concern that, EIA approval process is unduly prolonged in such a way that, an investor will have to wait for days before his or her application is endorsed. Table 6.2 below show an overall trend of EIA and EA certifications:

Table 6.5: Trend of EIA Certification, Tanzania Mainland, 2005 - 2014



Source: NEMC Environment and Development Series: Release 2014.[382]

From Table 7.2 above, a total of 1,347 projects were issued with EIA and EA certificates from 2005 to 2014.[383] Despite the fact that the number of EIA/ EA registered companies has been increased over a period of time since 2005, more efforts are needed to increase the pace of getting more companies assessed and registered for EIA/ EA. A number of 1,347 suggests that so many companies have not been registered and possibly, operating without such certifications.

Apart from the bureaucratic procedures, which might be important for checks and balances purposes if improved a little bit, there might be a question of institutional capacity. According to the NEMC's officer, NEMC had 4 branches in Mbeya, Mwanza, Arusha and Mtwara regions. An availability of sufficient environmental experts certified and registered to undertake EIA or EA could also be an issue of concern. The Clause 31 of the Environmental (Registration of Environmental Experts) Regulations, 2005[384] requires NEMC to publish the list of the registered experts. The updated list of such experts was not obtained in 2015. However, the 2014 list showed that, there were:-

(i) 131 individual persons registered as environmental experts to undertake EIA. More than 95% of them were Dar es Salaam based.
(ii) 58 individual persons registered as environmental experts to undertake EA. Also, more than 95% of them were Dar es Salaam based.
(iii) 32 firms registered to undertake EIA. All (100%) were Dar es Salam based.
(iv) 16 firms registered to undertake EA. Only 2 (12.5%) were not Dar es Salam based.

A number of current workers of NEMC was also not obtained during the study. This situation has rendered it difficult to assess the institutional capacity basing on the staffing level of NEMC.

[382] Copied from: URT (2015), Environmental Statistics 2014. NBS, September 2015: Dar es Salaam. Page 128.
[383] URT (2015), Environmental Statistics 2014. NBS, September 2015: Dar es Salaam. Page 131.
[384] G.N No. 348 of 2005.

However, presence of some environmental concerns as the study witnessed in December 2015 from the sampled regions and companies, it seems that NEMC's capacity to monitor implementation of environmental protection standards and taking actions against the polluters is an issue of concern. For instance, according to the March 2015 report of the National Audit Office of Tanzania (part of its findings presented below as Table 6.5), none of the three NEMC's zones had managed to inspect more than 20% of the mining facilities, which according to the discussion of this chapter, had a lot of issues to be rectified by NEMC, OSHA and other RAs.

Table 6.6: Inspection Conducted by NEMC in the Mining Facilities by Three Zones from 2011 to 2014

Zones	Category of mine	Number of mines present in the zone	Number of mines inspected	% of mines inspected
Lake Zone (Mwanza)	Large Scale	6	1	17
	Medium Scale	70	6	9
	Small Scale Area	43	-	0
Northern Zone (Arusha)	No Categorization	0	0	0
Southern Highland Zone (Mbeya)	No Categorization	44	1	2

Source: NAOT, A Performance Audit on the Enforcement of Environmental Control Systems in the Mining Sector in Tanzania, March 2015. Page 29.

The statistical performance indicated above could, as stated above, approve some arguments on the institutional capacity of NEMC. Insufficiency of funds is an obvious attributing factor to this situation.

On this matter (financial resources), the same NAOT report of March 2015 stated that, the analysis of budgeted amounts and actual received amount of funds for Zonal Operations were found to vary greatly. Also the amount that was requested as a budget and actual amounts received were different in all three financial years (2011/12, 2012/13, 2013/14). Table 6.6 below shows the amount of funds that was budgeted by the respective zone and the amount that was disbursed by NEMC's head office in Dar e Salaam.

Table 6.7: Amount of Funds Budgeted and Actual Amount Received for the Financial Year 2011/12 to 2013/14 - NEMC

Zone	Financial year	Budgeted (Million TShs.)	Actual Fund Received (Million Tshs.)	% of Fund Received (Million TShs.)	% of Fund not Released (Million TShs.)
Lake Zone (Mwanza)	2011/12	76	10	14	86
	2012/13	40	29	72	28
	2013/14	20	16	80	20
Northern Zone (Arusha)	2011/12	102	40	39	61
	2012/13	40	29	72	28

	2013/14	194	30	16	84
Southern Zone (Mbeya)	2011/12	0	24	-	-
	2012/13	0	9	-	-
	2013/14	122	15	12	88

Source: NAOT, A Performance Audit on the Enforcement of Environmental Control Systems in the Mining Sector in Tanzania, March 2015. Page 36.

It is clear that, NEMC's branch offices or zones have been operating below budget for over three years. More updated statistics for 2015 were not obtained by this study. However, basing on the trend shown in Table 6.6 above; and the national financial trend, whereby the thrust of the budget was more on the general elections of October, 2015, it could be a reality that, no improvement was made.

An insufficiency of funds, which triggers inadequacy or absence of other resources as well, could also be the causes of the 'snail pace' of processing and issuing EIA and EA certifications. Such pace usually attracts a lot of criticisms from some of the investors. A business person in Mwanza said that, he knows about EIA but, he had the view that, one has to 'lubricate' the process with some tips (bribes) in order to 'jump the queue' of waiting for the EIA certificates. In December 2015, the Deputy Minister for Environment, Mr. Luaga Mpina ordered NEMC to finalize working on 512 applications for EIA which were pending as of that month. The Minister gave NEMC 30 days to do so.[385]

The order to finalize sorting outa total of 512 EIA applications within 30 days has a number of implications. One, it could mean that NEMC can work beyond the clock to assess an average of 17 application per day. But, it seems that, it was not keen of doing that. Two, there is lack of self motivation to work on the applications until the Minister intervened. All could be practical issues for NEMC to consider. Moreover, as it is suggested elsewhere in this report, government needs to allocate sufficient funds for proper functioning of NEMC and other RAs. One of the strategies could be to give full mandates to NEMC including ability to plan for the money it has collected.

Another critical issues, which was also raised by previous editions of this report is about effective involvement of the local communities in EIA (and SIA, which is not mandatorily done). The generality of the Rio Declaration on Environment and Development of 1992 as cited above requires effective involvement of the people in the environmental management – as a sustainability strategy. Moreover, Article 27 of the Constitution of Tanzania implies the same responsibility to everyone.

Contrary to those international and national directives, it is once again established that, corporate companies, NEMC and other RAs have not been fully involving the community members (hosts investment projects) in EIA exercises. A response to a field question, which probed the community members on an extent of involvement into EIA (and SIA) came out with the following findings indicated in Table 6.7 below:

[385] Efracia Massawe, 'Mpina avamia NEMC na Kutoa Maagizo.' Nipashe Newspaper, 23rd December, 2015. Page 8.

Table 6.8: Community Perception on their Involvement of EIA

Responses [N=153]	Frequency	Percent
Yes	5	3.3
No	118	77.1
Not Sure	18	11.8
[Missing System]	11	7.2
Total	153	100.0

Source: LHRC, Human Rights and Business Study (Field Data), 2015

That is, only 3.3% of the community members residing around the investment projects said that, they were somehow involved in the EIA processes before the investments were done. In fact, the researchers had to use extra efforts to explain the EIA concept (known as *'tathimini ya athari ya kimazingira'*) in Kishwahili language. It appeared to be a new thing to most of the villagers, even for the educated ones such as teachers. Some of the villages' environmental committees were also not aware of EIA. The NEMC should mandate the corporate companies and its officials or environmental experts who conduct EIA and EA to consult such committees especially when it is difficult to reach out individual persons.

6.4.2 Situation on the Ground: Some Environmental Pollution Incidents

The poor environmental protection by the companies and weakness on part of law enforcement agencies such as NEMC lead into environmental pollution, which is also a human rights concern as discussed at the beginning of this chapter. The land degradations, as this study confirmed, were common among the mining companies; while air and water pollutions were common among the agriculture, manufacturing and processing factories.

A response to the study's question on whether the corporate companies had an internal policy or strategy on sustainable utilization of the environment around their investment areas came out with the findings that, only 47.3% of the companies had such policy or strategy in place. As Table 6.8 shows further, the remaining responses were either 'not sure' or 'no' strategies of such kinds.

Table 6.9: Presence of an Internal Policy or Strategy on Sustainable Utilization of the Environmental Around Investment Areas

Responses [N=55]	Frequency	Percent
Yes	30	47.3
No	25	38.2
Not Sure	8	14.5
Total	55	100.0

Source: LHRC, Human Rights and Business Study (Field Data), 2015.

Again, such kinds of responses could suggest that, caring of the environments around investment areas is haphazardly done by some of the companies to suggest that, more efforts by NEMC, OSHA and other RAs are needed to sensitize the companies or investment projects to be environmental sensitive entities as the international and local legal frameworks stated above require. As for an arrangement of compensating the surrounding communities who happened to be affected (health-wise) due to companies' operations, this study found that, only 22 (being 40.0%) out of 55 sampled companies said 'yes' while 12 (being 21.8%) were not sure if what they had was 'polluter pay plans' and the remaining 21 (being 38.2%) said that, they did not have such plans at all.

The study found those, apparently due to that and other reasons, the mining activities taking place in Tarime district, Mara region; Mwadui, Shinyanga; and elsewhere in Tanzania have posed a serious threat of future land use. One of the land officers in Mara region told the study that, the way things were happening in Tarime raises some doubts on whether EIA was (properly) carried out. The environmental department officer of one of the district councils in the same region also raised doubt on the capacity of NEMC to address all these things. He said that, EIA certification processes is 'highly centralized' to the central government level, while the activities were implemented in the grassroots level. The said officer told the study team that (direct translation from Kiswahili):

> All investors in this council did not conduct EIA. Therefore, we have instructed them to do so and to submit their reports to us … but, that will also be the case for all new project, to do the environmental assessments before they start their investments.[386]

Moreover, the EIA reports are not necessarily shared to the LGAs' officials. An officer at Mtwara municipal council said that, he did not have any copy of the report of EIA of any of the gas companies which were exploring natural gas in his areas of jurisdiction. One of the officials at NEMC head office said that, some of the EIA reports were 'confidential', citing an example of those about oil and natural gas explorations. Indeed, he totally refused to share even a part of such EIA reports.

[386] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 35.

There are two issues raising here from Mara and Mtwara's experience of EIA. One could imply that, there is insufficient collaboration between NEMC and LGAs. A review of at least five by-laws on environment management of some of the district and municipal councils shows that none of them (by-laws) had a clause on EIA. This clearly affirms an assertion by one of the officers mentioned above that, EIA is highly centralized and therefore, the LGAs' structures could not easily monitor compliance of things which they were not involved from the beginning. Secondly, a principle of collective participation in environmental management is diluted by such decisions of categorizing some of the investment projects' EIA reports as 'confidential.' LHRC suggests that, since environment is one of the 'collective rights' and basing on the generality of the Rio Declaration of 1992 as well as other international legal instruments on environmental justice, NEMC and other RAs should not hide information on environment, regardless of the 'sensitivity' they we alleged it to be.

The adverse impacts of lack of EIA or monitoring of compliance of environmental principles are many especially due to the nature of an investment project. For instance, the Environmental Statistics 2014 report[387] revealed that, the environmental effects of mining depend on the type of ore, method of extraction, waste disposal and prevailing climatic conditions. Some of the ores contain elements that destroy the environment at the stages of processing or use of final products. According to that report, in Tanzania coal is an example of such minerals as its sulphur content ranges from 0.4% to 6.6% and when burnt, it emits sulphur dioxide which is harmful to the environment. Moreover, an open cast mining involves excavation of wide and deep pits which after mining may have an impact on the environment.

Picture 6.17: Open Gold Mining Pit at Nyankanga Geita demonstrates the Environment Impact of Mining.[388]

Other environmental effects mentioned were:-

[387] URT (2015), Environmental Statistics 2014. NBS, September 2015: Dar es Salaam. Pages 73 and 74.

[388] Source: URT (2015), Environmental Statistics 2014. NBS, September 2015: Dar es Salaam. Page 74.

(i) That, in underground mining ore is brought from the underground to the surface leaving holes in the ground.
(ii) That, the trucks or conveyor belts are used to transport ore from mining site to crushing plants and such activities and others, like drilling and blasting, are associated with noise and dust emissions.
(iii) That, an application of different chemicals in the processing of minerals, such as cyanide and mercury in extracting gold, generates tailings and chemicals that have a negative impact on the environment. Hence, disposal of these end products has to be done with care so as to avoid environmental degradation such as the contamination of surface and ground water.
(iv) That, during mine closure, the resultant structures are either to be turned into useful features or restored in to the original environmental status according to the law.

This study witnessed existence of most of those adverse effects highlighted in the government report of 2014, which was release in July 2015. For instance, as Picture 6.17 shows, the basting of hills or large stones allegedly by GGM resulted into the cracks on the walls of some of the villagers' houses especially the Katoma street residents, Geita region.

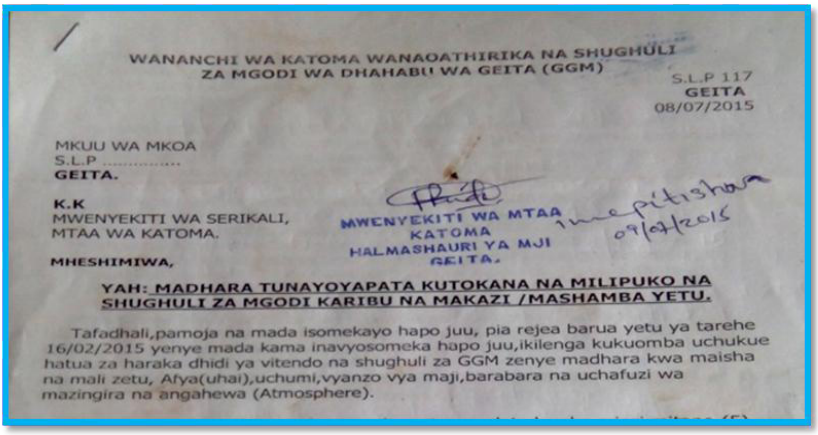
Picture 6.18: Some cracks on the walls on the house of one of the Katoma street resident alleged to have been caused by blasts and vibrations from GGM mining areas.

The Katoma streets residents (and other nearby villages especially Nyakabale and Nyanza) do face also noise pollution. One of the LGA leaders of this place told the study team that, the effects were detrimental to the health of the people as well. For instance, during the year (2015) 3 collapsed (fainted) due to heavy blasts. There was also a pregnant woman who sustained some complications and collapsed unconsciously.

The blasts in mining especially open cast mining are common. The important thing is on how precautions are taken before the blasts are let out. The precautions include issuing a public notice on the time and place of blasts. The GGM has been doing that especially in the past. For instance, on Friday 18th December, 2015 a heavy blast was done by GGM at Katoma area while this study was ongoing at the area. There was nopublic notice indicating the date and time for that blast. Instead, the public notice board/ stone when GGM usually posts blasts' arrangement indicated that, the date for the blast was '27.3.2015' at '10.00 AM' as Picture 6.19 below shows.

Picture 6.19: GGM's outdated public notice on intended blasting as it was found on 18th December, 2015.

This could be an evidence that, blasts were nowadays taking place without informing the general public as it used to be in the past. Efforts to ascertain reasons for this situation from the GGM management did not yield positive results. However, the LGAs leaders of Katoma area said that, this matter was already reported to the district level leadership, whereby the District Commissioner (DC) formed a blasting monitoring committee (BMC) to assess the magnitude of the problem. It was alleged that, the BMC was predominantly comprised of some 'experts' and representatives from GGM and that, the machine for monitoring or measuring blasts were donated by Anglo-Ashanti Gold Mines. Such a move did not satisfy the villagers, who decided to write a letter to the Regional Commissioner (RC), the Member of Parliament and the Prime Minister. Part of the said letter is indicated below as Picture 6.20.



WANANCHI WA KATOMA WANAOATHIRIKA NA SHUGHULI
ZA MGODI WA DHAHABU WA GEITA (GGM)

S.L.P 117
GEITA
08/07/2015

MKUU WA MKOA
S.L.P ....
GEITA.

K.K
MWENYEKITI WA SERIKALI,
MTAA WA KATOMA.

MWENYEKITI WA MTAA
KATOMA
HALMASHAURI YA MJI
GEITA.

imepitishwa
09/07/2015

MHESHIMIWA,

YAH: MADHARA TUNAYOYAPATA KUTOKANA NA MILIPUKO NA SHUGHULI ZA MGODI KARIBU NA MAKAZI /MASHAMBA YETU.

Tafadhali,pamoja na mada isomekayo hapo juu, pia rejea barua yetu ya tarehe 16/02/2015 yenye mada kama inavyosomeka hapo juu,ikilenga kukuomba uchukue hatua za haraka dhidi ya vitendo na shughuli za GGM zenye madhara kwa maisha na mali zetu, Afya(uhai),uchumi,vyanzo vya maji,barabara na uchafuzi wa mazingira na angahewa (Atmosphere).

Picture 6.20: Part of the Kitomana residents, Geita region, letter of complaint to the Regional Commissioner about mining blasting.

Paragraph one of the letter reads that, *'please, according to the subject matter above,and in relation to our letter dated 16/02/2015 with a theme as it is shown above, which was aimed at requesting you to take immediate actions against the GGM activities, which adversely affect our life and properties, health (livelihood), economy, water sources, roads and environmental pollutions and atmosphere in general.'* Then, paragraph two continues saying that:

> In relation tothe grievances we lodged to you five (5) months ago, whereby we complained about the GGM's misconducts and some of the government officials who do not care about humanity and human rights, as it is highlighted in the aforesaid letter of 16/02/2015, you have not yet taken appropriate action to relieve us from these dreadful hazards. No any implementation nor impacts of the agreement that we reached upon during the previous two meetings of 06/03/2015 and 01/06/2015 held at your office as part of our efforts to sort out this matter, which really affects us. Your Honor, a failure to take proper actions continues causing us to inhale (breath in) the dusty air, floods in our homesteads, environmetal pollutions around our residential areas. All these can cause outbreak of diseases.

There are several human rights, environmental and good governance issues highlighted by the villagers in this communication of 8th of July, 2015. Firstly, absence of NEMC interventions in such a way that, environmental related concerns are channeled to the administrateve and political leadership instead of the organs such as NEMC with some judicial mandates. Secondly, irresponsible government leadership even after being informed of the human rights threatening situations associated to this sage. Thirdly, irresponsible investment by GGM basing on what the villagers alleges in their letter referred above. Lastly, lack of awareness of proper legal procedures of addressing matters of this nature.

The study's further followup of this matter to the RC office, town executive director, resident mines officer and even the GGM's public relations officer did not come out with strong response to either refute or explain about the remedial measures. Instead, everyone 'blamed' the commnity members fornot being cooperative. The regional adminstrative secretary (RAS) said that, the communties in Geita were not paying attention to public meetings where social economic developmental issues are normally deliberated and endorsed. *'What complicates the matter further is their (communities') tendencies of ignoring GGM's meetings ...'*, said RAS, the second senior officer to RC. As if the officer was trying to defend GGM, he went on asserting that, Geita people were selfish as every individual person wanted to (personally) benefit from the GGM's fortunes. To this officer, 'capacity building' to create awareness on all these things was the best option to sort out all the villager's claims.[389]

[389] Corporate Human Rights Compliance Assessment, Geita Field Report of 2015 (LHRC's Report II). Pages 48 and 49.

But, indeed, other things like the proper notice for blasting – as a way of mitigating the adverse effects, were so obvious not to require meetings or consultation with GGM or public meetings. It worked in the past, why not this time around? LHRC suggests government leaders and agencies to adopt human rights based approach (HRBA) in their plans and work so that they can be able to see everything in a more detailed way. It was really an improper perception to generalize the 'behaviour' of the people of Geita, instead of dealing with each case (distinctively) on its own merit. Section 6(c) of the Public Leadership Code of Ethics Act, 1995 (No. 3 of 1995) states that *'in relation to decision-making, that public leaders shall, in fulfilling their official duties and responsibilities make decisions in accordance with law, in the public interest and with regard to the merits of each case'* (emphasis supplied). It is obvious that when a tag-of-war happens between the common community members and the investors (with financial muscles) the community members stand at a weaker position.

This looks as if it has become a tendency throughout the mining areas, in Shinyanga region too, same claims were heard by this study against the (Buzwagi) Gold Mine. Some of the villagers around the mine said that, the blasting exercises take place almost every day, a situation which causes cracks onto the walls of their houses[390] as the combined Picture 6.20 below shows:

Picture 6.21: Some of the affected residential houses and a Mosque due to the Buzwagi Gold Mine's blasts.

One villager said that, they were becoming tired of talking about this matter as a lot of people and authorities including a Minister had already heard about this matter. The Minister (he did not recall of which ministry) responded to the villagers claims that, such cracks on the walls of their houses were caused by occupiers' activities of pounding some grains inside their houses.[391]

It was gathered from the study that, Dar es Salaam city was 'floating' on tons of wastes. According to an environmental officer it is estimated that the Dar es Salaam city generates about 3,000 tons of waste per day. The wastes are from industrial areas and commercial establishments like markets and other informal sectors. According to the analysis that was carried out by the City Council, air pollution is not a very serious problem in Dar es Salaam city, but if left unchecked, it would become a serious one.[392] Table 6.9 below shows that the quantity of solid, liquid and hazardous waste for the city of Dar es Salaam is on increase.

390 Corporate Human Rights Compliance Assessment, Shinyanga Field Report of 2015 (LHRC's Report I). Page 26.
391 Corporate Human Rights Compliance Assessment, Shinyanga Field Report of 2015 (LHRC's Report I). Page 26.
392 Interview between LHRC Dar es Salaam Research Assistants and one of the (anonymous) Municipal Council's Environment Officers in December 2015.

Table 6.10: Generation of Waste by Source in the City of Dar es Salaam, 2012 - 2014

Source	Unit	2012	2013	2014
Agriculture, forestry and fishing	tonnes	111,164.40	138,681.75	125,592.12
Mining and quarrying	tonnes	71,407.69	57,104.25	80,675.49
Manufacturing	tonnes	540,382.50	432,360.75	610,517.25
Energy supply	tonnes	63,687.94	89,735.25	71,953.82
Construction	tonnes	57,126.15	73,419.75	64,540.40
Other economic activities	tonnes	185,274.00	244,732.50	209,320.20
Households	tonnes	524,943.00	595,515.75	593,073.90
Total waste generation	tonnes	**1553985.7**	**1631550**	**1755673.178**

URT (2015), Environmental Statistics 2014. NBS, September 2015: Dar es Salaam. Page 109.

The interviews with various officers in Dar es Salaam revealed that, the food and others processing industrial wastes from hundreds of industries including the 3 breweries based in Dar es Salaam namely, the Tanzania Breweries Ltd (Serengeti Brewery) at Temeke; the Chibuku Brewery at Ubungo; the Chemicotex at Mbezi as well as diary industries generate wastes which have very high biochemical oxygen demand (BOD) values. The residents around claimed that, such and other factories discharge in the river and other water streams some harmful substances.

Picture 6.22: Waste water allegedly from the Chemicotex Industry. The waste water was passing under the road to surrounding communities as seen in the picture.

The Twiga Cement Factory and Tembo Paving Blocks Company both of Dar es Salaam, were also named by anonymous city council officials to have been causes of thousands of tons of dust in some parts of the city – where such companies operate.[393] The Moshi Leather, Kilimanjaro region was blamed by the community members in the vicinity to have been a cause of waste

[393] Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report I). Page 23.

water which was collected in a pond. Such water produced bad smell at Kaloleni suburbs, which are less than 100 meters away from the waste water pond.[394]

Picture 6.23: A pond of waste water alleged from the Moshi Leather factory. Kaloleni area, Moshi, Kilimanjaro.

In Mbeya, despite the fact that the Mbeya Textile Industry was currently not functional, a spill over of dirty water from its premises was evident because there was no proper sewage system. Such waste water continues to flow over some areas around Songwe.[395]

Picture 6.24: Waste water from the defunct Mbeya textile, which is now used as a tobacco warehouse.

Same claims of water pollutions or improper discharge of water were heard and observed in this research from NMGM, and Mutext Company of Mara region;[396] Tanzania Breweries Limited (TBL) of Mabogini, Moshi, Kilimanjaro, which is alleged to discharge waste water to Kaloleni neighbourhood.

Not only corporate companies' activities which can be blamed of environmental pollutions; the micro-traders too were part of the pollutants as this study found out. For instance, there was a

[394] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report II). Page 25.

[395] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 28.

[396] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 36.

huge crowd of people at Lukaranga water stream, Shirimatunda area, Moshi, Kilimanjaro region who were washing their carrots imported from Kenya and west Kilimanjaro.[397]

Picture 6.25: Busy micro-traders washing carrots in the Lukaranga River, Kilimanjaro. Same water source is used for domestic use by the neighborhoods.

Elsewhere, incidents of other forms of environmental pollutions were heard and occurred in different ways and scales. The Symbion Powers' plant located at Njiro area, Arusha was still blamed by the local communities to have been causing noise pollution[398] as it was reported in previous reports of this nature. Claims of noise pollutions were also raised against the Dodoma based Agro Processing Africa (ETG Export Trading Group) Limited;[399] and, telecommunication companies in Tabora region by the Chemchem village – that the generators of their phone signal towers were said to be quite noisy.[400]

As for the air pollutions a few incidents were seen (by a team of researchers) from the field including the ones involving the Neelkanth (Chemical) Lime Company, Tanga region, whereby the residents around toldthe researchers that some lime powder generated from the industry affect them as well as a nearby primary school. The team noted that, even the trees around have changed – covered with lime powder.[401] Same claims against the Mara Coffee Processing Company, Mara region.[402]

The national statistics of the carbon dioxide (CO2) emission show that, transport sector was number one on percentage of emission followed by the manufacturing and construction sectors. Table 6.10 explains more:

[397] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report II). Page 28.
[398] Corporate Human Rights Compliance Assessment, Arusha Field Report of 2015 (LHRC's Report I). Page 16.
[399] Corporate Human Rights Compliance Assessment, Dodoma Field Report of 2015 (LHRC's Report I). Page 30.
[400] Corporate Human Rights Compliance Assessment, Tabora Field Report of 2015 (LHRC's Report II). Page 22.
[401] Corporate Human Rights Compliance Assessment, Tanga Field Report of 2015 (LHRC's Report II). Page 36.
[402] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 36.

Table 6.11: Carbon Dioxide (Co2) Emissions by Sector, Tanzania

Serial Number	Sector	Percentage Emission
1	Transport	50
2	Manufacturing and Construction	26
3	Domestic	16
4	Electricity and Heat production	5
5	Other Energy Industries	3
	Total	**100**

Source: Earth Trends (2003) Climate and Atmosphere, Tanzania (Copied from: URT (2015), Environmental Statistics 2014. NBS, September 2015: Dar es Salaam. Page 95).

As for the deforestation, the study established that good measures were applied in most of the places to restore some of the trees which were harvested for manufacturing processes. There was no critical situation noticed by the study team. However, Tabora region, especially Sikonge district was still in a threat of being highly deforested place if drastic measures to control the situation will not be taken. A pile of harvested trees were seen at some of the Sikonge's villages as Picture 6.25 below shows:

Picture 6.26: A pile of firewood near tobacco farm in the Sikonge District.

Such firewood is used to dry tobacco leaves as part of its 'processing' and such practices of cutting trees were mostly done by individual persons. However, the dried leaves of tobacco are sold to the corporate business companies.

6.5 PERFORMANCE INDICATORS ON ENFORCEMENT OF ENVIRONMENTAL JUSTICE

The following is the summary of key findings in a form of performance indicators on the enforcement of the environmental justice in Tanzania. The summary depicts a comparative picture between environmental justice situation for the years 2013, 2014 and 2015. It should be noted that, not all 'performance indicators' used in 2013 and 2014 were reassessed in 2015. However, at least all main indicators have been compared between the three years in order to measure the progress of implementation of stated environmental justice. It should be noted further that, some of the indicated used in this Table below, were taken directly from the LHRC's SPSS data bank without being necessarily discussed in the main text of this chapter.

Table 6.12: Comparison of Performance Indicators on Implementation of Environmental Justice between 2013, 2014 and 2015 Years – LHRC Studies

S/ No.	Env. Issues	[Some of the] Performance Indicators 2013	2014	2015
i.	**Occupational Health and Safety (OHS)**	o According to ILO, a total of 2.02 million deaths (worldwide) are caused by various types of work-related diseases every year which corresponds to a daily average of more than 5,500 deaths. o Only 24% of existing workplaces in Tanzania are currently registered by OSHA. o No effective strategies have been put in place to identify unregistered ones. o More than 75% of corporate companies operate without assurance of workplace OHS regulations for their workers. o Only 34% of workers in private companies undergo periodic medical examinations. o According to ILO, a total of 2.02 million deaths (worldwide) are caused by various types of work-related	o According to ILO, every 15 seconds, a worker dies from a work-related accident or disease; and that, every 15 seconds, 153 workers have a work-related accident worldwide. Furthermore, an estimated 2.3 million people die every year from work-related accidents and diseases.[403] o At least 75% of workplaces across the country were currently operating without being registered for OHS. o OSHA managed to visit only 3,626 (being 24.1%) out of the planned 15,000 workplaces for 'general workplace inspections.' o However, OSHA managed to visit 90.2% of the 13,565 targeted workplaces for special investigations. o Most of the companies visited during the study had OHS policies which were formulated between 2013 (30%) and 2014 (70%).[404]	o Same ILO statistics. A further 317 million people suffer from work-related diseases, and there are an estimated 337 million fatal and non-fatal work-related accidents per year.[405] o OSHA's workplace and factory' inspection coverage remained to be at an average of 57.5% of the expected targets. In 2015, inspection coverage of workplaces by OSHA estimated to be around 40% only. o However, OSHA usurped the targets of medical examinations by an overall average of 10.7% over five years between 2010 and 2015. o A total of 10,400 workplaces were so far being registered by OSHA as of December 2015. The number of registered places has been steadily increasing for instance from 1,590 per annum in 2012/2013 to 2,350 in 2014/2015. o However, basing on the number of registered companies in Tanzania, it seems that, only 10% of the workplaces have been registered so far. o OSHA had still having same number of vehicles. o Only 47.3% workplaces sampled had displayed some precaution measures rules on walls at workplaces.

403 Moreover, according to ILO, than 160 million people suffer from occupational and work-related diseases, and there are 313 million non-fatal accidents per year. In economic terms, the ILO has estimated that, more than 4% of the world's annual GDP is lost as a consequence of occupational accidents and diseases.

404 Probably in response to the legal requirements or recommendations made by LHRC last year via a similar report to this one.

405 Almost 13 million workers are killed in work-related accidents in the Southern Africa region per year; and, more than 13 million workers are injured in accidents, and 67,000 contract occupational diseases.

		diseases every year which corresponds to a daily average of more than 5,500 deaths. o Only 24% of existing workplaces in Tanzania are currently registered by OSHA. o No effective strategies have been put in place to identify unregistered ones. o More than 75% of corporate companies operate without assurance of workplace OHS regulations for their workers. o Only 34% of workers in private companies undergo periodic medical examinations.	o OSHA had inadequate workers and facilities. E.g. had only 53 workplace inspectors and 11 vehicles for the whole country for more than 27,500 workplaces to monitor. o The land degradation, and deforestation were amongst several attributing factors to environmental pollutions in Tanzania. o	61.8% of the employers against only 36.6% of workers interviewed said that, there were on-job trainings on OHS. o A total of 1,347 projects were issued with EIA and EA certificates from 2005 to 2014. o NEMC's zones had managed to inspect less than 20% of the mining facilities. o Only 3.3% of members of the public were involved in the EIA/SIA when investment projects were established in their areas. o Only 9.4% of workers interviewed stated that, they were involved in the monitoring or inspection of the working conditions of the companies they were working with. Only 47.3% of the companies had an internal policy or strategy on sustainable utilization of the environment around their investment projects.
	Occupational Health and Safety (OHS)		o Only 6.5% of members of the public were involved in the EIA/SIA when investment projects were established in their areas. Only 12.6% of workers interviewed stated that, they were involved in the monitoring or inspection of the working conditions of the companies they were working with.	o

ii.	**Environmental Pollutions, EIA, EA & SIA**	○ Mining companies and plantations are number one for land degradation. Textile and food processors/ factories are leading in water pollutions. ○ At least 85% of community members where investments have been established were not involved (EIA/SIA) and 8.3% were not aware of what was going on during the establishment of the projects.	○	○

Source: LHRC, Human Rights and Business Studies (Field Data), 2013, 2014 and 2015.

CHAPTER SEVEN

PROMOTION AND PROTECTION OF GENDER-RELATEDRIGHTS IN CORPORATE SECTOR

7.1 INTRODUCTION: GENDER ISSUES IN CORPORATE BUSINESS SECTOR

The 2014 edition of this report indicated the practical relationship between gender and business sector by arguing, among other things that, gender aspects manifest in all economic processes including in relation to work, remunerations, and employment levels.[406] However, contextual-wise, it is much difficult to coordinate gender and corporate investment because there are always justifications, for instance, on the decision to prefer men and not may be women or persons with disabilities (PWDs) for a particular section or nature of production. Such justifications as gathered from the field, are discussed in the coming parts of this chapter.

> The term 'gender' in the context of this report, refers to the social relationship or roles and responsibilities of men and women, the expectations held about the characteristics, aptitudes and likely behaviors of both women and men that are learnt change over time and vary within and within cultures. This definition is adopted from TGNP (2006) Gender Mainstreaming in Development Policies and Programmes. Presentation made during Policy Dialogue Seminar at ESRF on 11th May, 2006.

The Kipobota's study[407] on policy, gender and informal sector has narrated a number of pushing factors, which attribute to the discrimination against women and other vulnerable gender groups from accessing formal and reputable employment opportunities as they have been stated by several studies.[408] Such factors include:

(i) inability to start and run enterprises due to the expectations and demands of their traditional reproductive roles;
(ii) non-inclusion into the formal economic development processes;
(iii) unequal access to financial services – to facilitate them initiating profitable income generating activities;
(iv) presence of economic or business regulatory frameworks which are not gender sensitive;
(v) heavy costs of complying with formal standards; and,
(vi) the freedom to manage and use whatever they get from their exhausted efforts.

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406 LHRC (2014) Human Rights and Business Report of 2014. LHRC: Dar es Salaam. Page 140.

407 Kipobota, Clarence (2015) Challenges and Opportunities of Integrating Business' Extra-Legal Practices into Policy Framework: A Case of Women Food Vendors in Ilala Municipality, Dar es Salaam. Msc. PPA Dissertation, Ardhi University.

408 Such as: Joekes, S. (1999): 'Gender, Property Rights and Trade: Constraints to Africa Growth', In, Keneth King and Simon Mcgrath (*Eds*.) Enterprise in Africa – Between Poverty and Growth. IT Publications: London. Page 51; Chijoriga, M., & Cassimon, D. (1999): Micro Enterprises Financing: Is there a Best Model?, in Rutashobya L. K and Olomi, D. R (*eds*), African Entrepreneurship and Small Business Development, Dar es Salaam, DUP (1996) Ltd. Page 2; and, various national policies including the National Trade Policy of 2013 (Para 4.4.2); the National Microfinance Policy of 2000 (Para 3.2.5); the National Strategy for Gender Development, 2005 (Para 1.4 and 2.1.6).

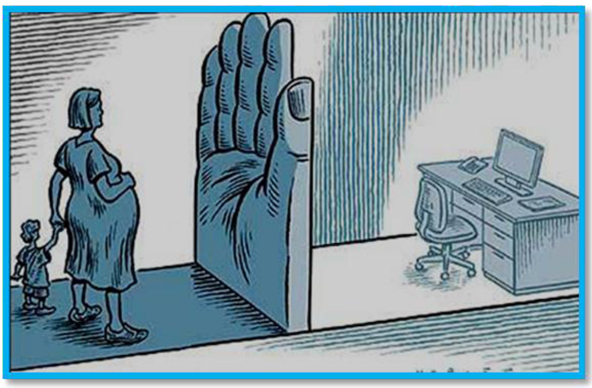
Due to these and other reasons including income poverty, women and other vulnerable groups are made victims of the poor working conditions including sexual harassment, low pay, and other challenges in work places. Moreover, it is an income poverty which is associated with prevalence of practices of harmful child labor.

As it is the case for other human rights aspects, the gender issues in business sector, particularly at workplaces are provided for in a number of international human rights instruments including, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), 1979; the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the UN Convention on the Rights of Persons with Disability (UNCRPWD), 2006; the SADC Protocol on Gender and Development of 2008; and, the Protocol of African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), 2003.

The international instruments generally call for equal and friendly working environments and entitlements for all gender groups. Other conventions on the rights of the child mentioned in previous chapters of this report, call for actions against harmful child labour.

The ILO Convention No. 111 of 1958 defines 'discrimination at workplace' under its Article 1 to include any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The CEDAW's definition on 'discrimination' bears same elements. On the other hand, Article 2 of UNCRPWD, 2006 defines discrimination on the basis of disability to mean a distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others.

Both Section 11(1) of CEDAW, 1979 and Section 27 of UNCRPWD, 2006 call for the right to the opportunity to gain a living by work freely chosen by these respective gender groups. Some of the discriminatory incidents prohibited by the international instruments include dismissal of an employed woman or PWD on the basis of his or her gender status. The instruments go further to urge the employers to ensure that, such gender groups' employment status are secured and that, they are facilitated to perform their work in any possible conducive manner.



Picture 7.1: Symbol of discrimination against pregnant women from secuaring job positions.

Such requirements are further echoed by the recently endorsed UN Strategic Development Goals of 2015-2030 (SDG, 2030). Goal 5 of SDGs, 2030 calls for an achievement of gender equality and empowerment of all women and girls. It also calls for actions to end discriminations against women (and other gender groups). The targets of goal 5 are to:-

(i) end all forms of discrimination and violence against women (VAW) and girls (VAG);
(ii) eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation (FGM);
(iii) recognize and value unpaid care and domestic work through social protection policies;
(iv) ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life;
(v) ensure universal access to sexual and reproductive health and reproductive rights;
(vi) undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.

The stated international obligations on gender and employment opportunities have been well reflected into the national legal frameworks through ratifications and domestication of national laws to enforce the standards. Such laws include, the Constitution of the United Republic of Tanzania of 1977; ELRA, 2004; the HIV and AIDS (Prevention and Control) Act, 2008;[409] the Law of the Child Act, 2009; the Persons with Disabilities Act, 2010;[410] and sectoral policies mentioned earlier on in this chapter. As stated in chapter two of this report, Article 13 of the 1977 Constitution; and, Section 7 of ELRA, 2004 prohibits discrimination of all forms including on basis of sex and disabilities.

This chapter presents the findings of some of the practical concerns on how the gender related rights were considered, promoted, protected and enforced at some of the selected workplaces in 2015. A number of incidents are cited as illustrations to aid the assessment of the subject matters and visualization of the bigger picture of how gender issues are treated in the corporate sector in Tanzania.

7.2 SITUATION OF WOMEN ENGAGEMENT IN CORPORATE BUSINESS SECTOR

7.2.1 Industrial Roles Determined by Sex: Positive and Negative Implications

As it is stated under paragraph 3.24 of the National Employment Policy of 2008, despite the positive actions that have so far been taken by the government and other stakeholders towards addressing existing gender inequalities and disparities, these problems still present a serious challenge which prevents the society from realizing its full potential in all aspects of social, economic and political development. The studies cited above highlight some of the attributing factors to this situation.

The field data for this study and empirical findings of other studies show that, a number of women in the corporate sector in Tanzania is relatively low; and, it is a case for both managerial

[409] Act No. 28 of 2008.
[410] Act No. 2 of 2010.

and junior positions. Out of more than 150 business companies sampled for this study, only 7 (being 4.7%) had female workers who were either 50% or slight above that percentage. Therefore, 97% of the companies sampled had less than 50% female workers. One of such companies with higher number of women workers was the Alkovintages Company, Dodoma region, whereby, out of 15 workers, 10 (being 66.7%) were female workers. The NMB Bank, Kongwa branch, Dodoma region is also one of such few companies. The bank had a total of 11 workers out of whom 6 (being 54.5%) were female workers, and the remaining 5 (being 45.5%) were male workers. However, status of number of workers by sex in other sampled Dodoma based corporate companies was as low as below one third in number as Table 7.1 below shows:-

Table 7.1: Ratio between Men and Women in Some Companies in Dodoma Region

Name of the Company	Men		Women	
	Number	Percentage	Number	Percentage
Tanzania Meat Company	84	73.7%	30	26.3%
Agro Processing Africa Limited (ETG)	52	86.7%	8	13.3
NARCO Company	115	95.3%	5	4.2%
Kibaigwa Flour Suppliers Company	5	71.4%	2	28.6%
Total (basing on sampled companies):	256	85.0%	45	15.0%

Source: LHRC Human Rights and Business Field Data, 2015.

The human resource managers of such companies said that, they had employed a fewer female workers than male workers in their respective companies because, (i) male seemed to be more 'able' and 'stronger' than women; (ii) the nature of work was unfriendly to women; and, (iii) women do demand more leaves then men, a situation which slows down production activities and therefore, profitability of the company.[411]

Elsewhere across the country, the same situation and the reasons given for preferring more male workers in corporate sector employment were heard. Some of other companies which had less than 50% of female workers were as summarizedin Table 7.2 below:

Table 7.2: Ratio between Men and Women in other Randomly Sampled Companies in Tanzania

Name of the Company	Region(s)	Males		Women	
		Number	Percentage	Number	Percentage
Acqual Cool Water	Dar es Salaam	40 (approximation)	69.0%	18	31.0%
Epsom Company Limited	Geita	57	93.0%	4	7.0%
Mara Milk Company Limited	Mara	13 (permanent)	81.2%	3 (permanent)	18.8%
Mara Coffee Company Limited	Mara	10 (permanent)	91.0%	1 (permanent)	9.0%
Dangote Factory Limited	Mtwara	350	57.1%	150	42.9%

[411] Corporate Human Rights Compliance Assessment, Dodoma Field Report of 2015 (LHRC's Report II). Page 42.

SIDO	Ruvuma	6	70.0%	3	30.0%
Dae Company	Ruvuma	69	76.7%	21	23.3%

Source: LHRC Human Rights and Business Field Data, 2015.

According to a lady, who is the former worker of NGOMAT company, Ruvuma Region, same factors which discriminated against women from certain positions in 1980s were the same used today 2015. According to the old lady, it is the traditional perceptions on gender roles which influenced recruitment and deployment of workers on basis of sex. Her observation is proved today by considering the situation of so many corporate companies samples, in which certain kinds of works or production section are regarded as unfit for women as the Dodoma and Mara human resource officers of some of the companies told the team.

The Jiemel Industries Limited and Quaim Steel Industries Limited both of Dar es Salaam did not have any female worker (0%) at the time of this study because the nature of their works cannot be performed by female staff, implying that, such work (production of steels) needs more muscles application, which females could not offer.

It was noticed further that, female workers outnumbered male workers in some companies due to the same reasons – nature of production or business required them more than males. For instance, the Micronix Limited, Mtwara region had more female workers than men. The company had a total of 466 workers of whom 450 (being 96.6%) were female workers and the remaining 16 (being 3.4%) were male workers. The K.M Hotel, Geita region, had 12 workers out of whom 10 (being 83.3%) were females. The reason for this situation stated was that, females are more 'attractive' to customers than males – and that, most of the hotel customers are usually men.

The lasted study by the National Bureau of Statistics (NBS) found that (see Table 7.3 below) an overall national picture of the employment ratio between males and females was almost balanced as out of the 20,030,139 workers of various industries, women were 9,886,739 (being 49.4%).

Table 7.3: Employed Population Aged 15 Years and Above by Industry and Sex, 2014

Industry	Male	Female	Total
Agriculture, forestry and fishing	6,485,796	6,913,207	13,399,003
Mining and quarrying	173,926	44,098	218,024
Manufacturing	366,287	252,554	618,841
Electricity, gas, steam and air conditioning supply	18,473	1,125	19,598
Water supply; waste management and remediation activity	8,660	4,725	13,385
Construction	408,697	13,698	422,395
Wholesale and retail trade; and repair of motor vehicles	1,263,035	1,271,099	2,534,134
Transportation and storage	504,073	17,625	521,698
Accommodation and food service activities	143,681	645,748	789,430
Information and communication	22,341	8,393	30,734

Financial and insurance activities	27,363	33,245	60,607
Real estate activities	4,244	1,772	6,016
Professional, scientific and technical activities	25,186	8,588	33,774
Administrative and support service activities	105,085	24,717	129,802
Public administration and defence; compulsory social security	153,342	38,629	191,971
Education	209,332	204,378	413,710
Human Health and social work activities	71,839	95,403	167,242
Arts, entertainment and recreation	12,606	8,298	20,904
Other service activities	105,077	103,294	208,371
Activities of households as employers; undifferentiated good	32,618	196,142	228,760
Activities of extraterritorial organizations and bodies	1,740	0	1,740
Total	**10,143,400**	**9,886,739**	**20,030,139**

Source: NBS, Integrated Labour Survey of 2014 (Table 5.3).

However, basing on the same Table 7.3 above, most of the economic subsectors which boosted the percentage of women in the corporate sector were the ones associated with leisure, health, accommodation and food services, which are notorious for paying salaries below the minimum wage order. Most paying or profitable investment activities such as manufacturing, ICT, mining, real estates and transport are predominantly occupied by males.

Within production sections too, such segregation basing on sex continues whereby, women are placed in inferior working sections. The gender roles practiced at home are replicated at workplaces as the combined Picture 7.2 below shows:

Picture 7.2: Female workers in lower production sections of the industries of the Dar es Salaam and Ruvuma based companies visited in December 2015.

LHRC believes that, women have the same capacity as men. It is important to have certain work done by men alone basing on the biological differences between men and women as well as health status of women due to, for instance, pregnancy. For instance, a single roller of chemical lime at the Neelkanth Lime (Chemical) Company, Tanga region, is served by 4 men or 16 women because it is heavy – and men are more muscular than women. However, such excuses should not be generalized to deny female workers of the opportunities to work on the sections which they could earn more money in the same manner as male workers. Moreover, it is important that women themselves are given the 'rights of refusal' to chose whether or not certain work is within their individual abilities rather than just generalizing the situation.

7.2.2 Positive Discrimination or Actions: Mixed Perceptions by Employers

The positive discrimination against women at work place is a complicated reality across the country as this study has established. As noted above, some of the employers use it as justification to exclude women or PWDs from certain positions at workplaces on the ground that they are incapable of sustaining the complexity of a particular work section. While this appears to be true and justifiable, however,it cannot be generalized. There are other hidden reasons behind the reality of positive discrimination. For instance, as it is explained above, some of the employers (such as China Paper Company, Moshi, Kilimanjaro region) avoid employing female or PWDs workers just because they consider these gender groups as ‘expensive’ and ‘unreliable’ workers. The female workers will need, apart from other leaves, the maternity leave; while the PWDs will need friendly facilities and enabling tools for them to work perfectly.

On the other hand, some literature[412] advice that, the employers must not adopt policies or practices designed to routinely favour candidates with a certain protected characteristic, even where there is evidence of under-representation or disadvantage. Therefore, all suitably qualified candidates must be considered on their individual merits for the post in question. Same source argues further that, where one candidate is clearly superior or better qualified for the job than the others, then an employer should offer the position to that candidate. However, this does not prevent an employer having a routine policy of being prepared to use positive action where it is appropriate for it to do so.

The most common economic sector for applying the positive discrimination as a strategy to reduce a number of female workers in their workplaces were found to be mining, steel industries, and transport sectors. An anonymous ex-officer of the Acacia NMGM said that, the reality remains to be that, mining activities, which sometimes involve manual drilling machines, could not in any way be performed by female workers. When he was asked whether women can be part of the machine’ operators who hardly uses physical muscles to operate the machines, he said that, it was still dangerous for women because sometimes they are ‘moody’ due to menstrual cycle or pregnancy. *‘Therefore, if you real want to engage into this (mining business) you will have to stop jokes – of using female workers. The nature of this work needs muscles and serenity of mind, things women do not have ...’*, said the ex-worker in Musoma urban, when he met with the senior researcher in December 2016.

On the other hand, the leisure economic sectors such as hotels and bar were pre-occupied by women not because they were more ‘qualified’ than men; rather, it is because female workers were regarded as points of attractions.

7.2.3 Sextortion: Monetary and Sexual Corruption

The ‘sextortion’, which for the purposes of this report refers to the situation whereby an employer (or a person acting on behalf of theemployer) sexually exploit a worker through his or her influence as the boss of the worker.[413] The international legal instruments are generally quiet

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[412] Example: Government Equalities Office, Equality Act 2010: What Do I Need to Know? A Quick Start Guide to Using Positive Action in Recruitment and Promotion. Accessed it on 13th March, 2016 from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85014/positive-action-recruitment.pdf

[413] This is LHRC’s own definition which is deduced or contextualized from scholarly materials on the internet.

about this matter. The only attempt to address it can be seen by reading Article 3 of the ILO Convention No. 182 concerning the prohibition of worst forms of child labour. Such provision provides for sexual exploitation of children which includes offering a child for prostitution or for production of pornography. The CEDAW, 1979 generally prohibits discrimination and exploitation of women, the terms which could be widely interpreted to include prohibition of sextortion as well.

At the national level, incidents of sextortation in any form are regarded as criminal offences under provisions of the Penal Code, Cap. 16; and, the Prevention and Control of Corruption (PCCB) Act, 2007. Section 138B of the Penal Code, Cap. 16 prohibits sexual exploitation of children. Section 138D of this law prohibits acts of sexual harassments. Section 130(3) of the Penal Code extends 'rape' to be part of sexual offences to include use of undue influence in order to procure sex. Paragraph (a) of the said subsection states that, *'whoever being a person in a position of authority, takes advantage of his official position, and commits rape on a girl or a woman in his official relationship or wrongfully restrains and commits rape on the girl or woman.'* Section 25 of the PCCB Act, 2007 is more explicit on sextortion as an offence. The said provision states that:

> [A]ny person being in a position of power or authority, who in the exercise of his authority, demands or imposes sexual favours or any other favour on any person as a condition for giving employment, a promotion, a right, a privilege or any preferential treatment, commits an offence and shall be liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years or to both.

Despite the fact that sextortion at workplaces or elsewhere is criminalized as an offence, it was still widely practiced but in a secretive way as this study gathered from the group discussions with some of the workers. Moreover, the victims of such incidents were 'not ready' to expose their unscrupulous bosses for two obvious reasons, namely; (i) fear of losing their hard-to-obtain jobs; (ii) fear of hit-backs from the bosses who normally have strong financial muscles to manipulate the witnesses or judicial system; (iii) fear of being regarded as immoral women by their workmates or community members; and, (iv) an inducement from the bosses to be favoured further should they shut their mouths.

(i) A Female Worker: *'We are tired of being Sexual Entertainers of the Bosses'*

Some of the Dar es Salaam based Chemi and Cotex Company's workers alleged that, incidents of sextortion prevailed in their workplace. They asserted that, some of the female workers were asked for sexby some of the bosses in order to secure certain position or retain their jobs once they breach internal company's rules and regulations.[414]

Same allegations were heard in Mwanza region, which implicated Vicfish Company and TFP workers. One of the workers of these two companies 'lamented' to the study team that, '*tumechoka na rushwa ya ngono ...hawa mabosi wanatugeuza sisi mitaji yao ya kujiridhisha kisa kazi! Tumechoka, tusaidieni, tutakufa!' ('we are tired of sexual corruption ... these bosses*

[414] Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report I). Page 10.

consider us as their sexual entertainers just because of work! We are tired, help us, we are dying!').[415]

(ii) When Sexual Intercourse becomes a 'Qualification' for Job Promotion in Kilimanjaro Region

At Moshi Lather Industry, Kilimanjaro region, the study came across a lady middleaged.She alleged that, she has been working with this company for quite sometime. According to her,one of the officers has been on her back all the time demanding sexual favours as a reward for her to be promoted to a permanent employment opportunity. It seemed that, the company's management was ready to promote her to that position, but the in charge officer responsible for working that out wanted that to happen with a 'reward' (sextortion).[416]

Probably, as long as this targeted female worker, (i) continue keeping this matter as a personal issues for herself and the crooked officer; and, (ii) the officer remains in office without being disciplined, this and other victims of the circumstances will continue to toil as low paid and unsecured workers of the company. However, any decision against the officer's motives could be detrimental to this female worker. This is due to the fact that, (i) he is at the best position to refute the claims and probably expel the female worker before she advance her claims to the higher authority; and, (ii) proving such allegations needs extra legal skills, which she does not have

(iii) Female Workers as 'Entertainment Tools' to Maintain Clientele Base

There is yet another form of sextortion which is not directly done by the bosses of the workplaces; but, with the clients whom the bosses wish to maintain for the prosperity of the company's business. Such tendencies are quite rampant in leisure economic subsector such as in hotels and bars. As briefly explained above, female workers are engaged as points of attractions for the male customers. A lady at one of the hotels in Dodoma told the study that, the manager of the hotel requires them to wear short skirts with large parts of their body exposed. Similar incidents were reported in the 2014 report of this nature regarding one of the hotels in Arusha urban (along Arusha – Moshi highway).

A lady workerin a hotel at, Mbeya region, shared same observation in December 2015 that, *'we are regarded as tool of pleasure, whereby, many customers demand to sleep with us even here at workplace ...and, the manager seems to entertain or encourage this tendence.'* According to the lady, who is less than 25 years of age, the purpose of such tendencies is to 'maintain the clientele relationship' – to decoy a customer preferring this hotel for instance when he visits in Mbeya again.[417] It is not certain how this immoral business strategy works out especially when most of the hotels were alleged to have same tricks for same purposes.

[415] Corporate Human Rights Compliance Assessment, Mwanza Field Report of 2015 (LHRC's Report II). Page 28.
[416] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report II). Page 28.
[417] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Pages 10 and 33.

(iv) Bullying and Verbal Sexual Harassments, More Painful!

Some of the female workers interviewed on 24th December, 2015 at aCompanyin Mara region, were of the view that, the bullying and insults by their Indian bosses were more painful than anything bad they have experienced at their workplaces. One of the lady respondents remarked that, *'these Indians (the bosses) insult us a lot, with quite irritating words. For instance, they tell us that, we only think of going to the toilet and we are stupid.'*[418]

Allegations of sexual abuses were also heard from workers in several other companies in Mara region. Some workers alleged that, one would face maltreatment if she refuses to adhere to boss' sexual manifestations.

The TUICO's general secretary of Mara region told the team that, such incidents were reported to her office. She cited a case of one worker who complained about her bosses. When the trade union tried to intervene, the lady worker decided to drop her case against the boss on the ground that, TUICO's intervention would cost her job.[419]

7.2.4 Gender Insensitive Working Environment in Corporate Sector

The gender insensitive working environments can be attributed to a number of factors some being, (i) presence of abusive or other forms of sexual harassment; (ii) discrimination against women (and other gender groups); as well as (iii) the infrastructural setup of the workplaces.

Only 47.3% of the corporate companies interviewed said that, they had some of the gender-related rights incorporated in their policies or practices such as to ensure there were equal employment opportunities for all gender groups; separate washrooms for the female and male workers; and continuous tenure for pregnant women upon delivery. Table 7.4 below provides more details:

Table 7.4: Presence of Workplace Guidelines or Policies which addresses Gender-Rights Issues

Responses [N=55]	Frequency	Percent
Yes	26	47.3
No	23	41.8
Not Sure	6	10.9
Total	55	100.0

Source: LHRC, Human Rights and Business Study (Field Data), 2015.

Probably, it would have been a work of the district or municipal councils' community development departments of the places where the investment projects are taking to pursue the companies within their jurisdictions to formulate workplace gender policies for their companies.

418 Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 14.
419 Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 42.

Absence ofsuch kinds of policies has so many adverse effects to some workers. For instance, the China Paper Company, Kilimanjaro region, was said to have only one toilet at workplace, which is shared by both male and female workers; and that, the toilet is very dirty. The Occupational Health and Safety (OHS) Act, 2003[420] provides for, among other things, directives on occupational hygiene – illness or adverse health effects to workers. Section 51(1) of OHS Act, 2003 calls for sufficient and suitable sanitary conveniences for persons employed in a workplace. Sub-section 2 of Section 51 of OHS Act, 2003 responds well to the issues which the China Paper and other companies across the country are experiencing about the hygienic working conditions. The said sub-section directs that, *'where persons of both sex are or are intended to be employed, the sanitary conveniences shall afford **separate accommodation for persons of each sex**'* (emphasis added). Sub-section 3 clarifies this further that, there should be one toilet for every 25 workers. It is also required that, sanitary conveniences should be made separately for workers who are PWDs.

Chapter seven of this report highlighted some capacity weaknesses on part of OSHA and other regulatory authorities which monitor safety issues at workplace. Such weaknesses are left persisting to the detriment of the health of workers and in a more adversely way against female workers. The health care experts have highlighted a dozen of health hazards as a result of poor and insensitive working environment. Such hazards include a possibility of contacting bacteria and viruses that can be found in the toilet seats example the streptococcus, hepatitis A virus, staphylococcus, shigella bacteria and sexually transmitted organisms, which are known to cause problems like gonorrhoea or chlamydia.[421] Moreover, if bins for sanitary product disposal are not being provided, many women are unable to use alternative sanitary methods for cultural or medical reasons; and therefore, can face the risk of developing urinary or digestive problems[422] as the other study cited above stated.

Most of the women try to endure the working environments despite of being unfriendly. However, the study was told that, some of the workplace environments were allegedly worst for anyone to endure despite a dire need for money. One of the leaders of TUICO's branch at Shah Company, Kilimanjaro region said that, 10 female workers quitted job from this company between January and December 2015 allegedly due to gender insensitive working environments, all of them as mentioned above.

The incidents of sexual assaults, bulling and abusive languages have been illustrated above and elsewhere in this report. Those all contribute to the creation of a working environment which women find unfriendly for them.

7.2.5 Sexual Assaults and Other Forms of Gender-Based Violence

Sexual assaults and all other forms of gender based violence (GBV) or VAW or VAG happening outside the workplaces are criminal offences under the Penal Code, Cap. 16 and other laws of

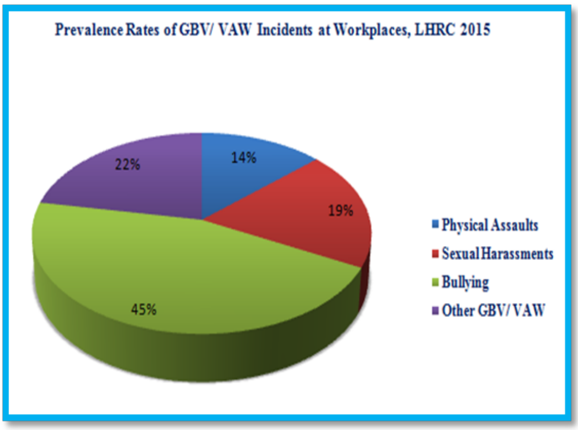
[420] Act No. 5 of 2003.
[421] Gallo Institute of Health and Nutrition, 'Health Hazards of Using Public Toilets.' Accessed on 3rd March, 2016 from: http://www.galloinstitute.org/health-hazards-of-using-public-toilets/
[422] Unite the Union, 'Dignity, Respect, Equity and Welfare at Work.' Accessed it on 3rd March, 2016 from: http://www.unitetheunion.org/uploaded/documents/%28JN7023%29%20A4%20Time%20For%20a%20Loo%20Break%20Unite%20guidance11-23699.pdf

Tanzania. The study noticed that, some of the companies have also incorporated such offences as part of the disciplinary offences in their operational manuals.

The field data show that, sexual and other forms of GBV and VAW at workplaces have remained persistent in almost the same trend over years. Most common form of GBV and VAW was bullying such as use of abusive language; insults; scorning; and evening pushing or pulling of some workers. Illustrations of some of these and other incidents are explained elsewhere in this chapter.

A response to the study question on types and nature of GBV and VAW incidents, which were common in various workplaces visited showed that, bullying was the most prevalent one of which, 309 out of 682 respondent workers (being 45.3%) mentioned it. The 'bullying' was followed by sexual harassments (such as rape, sextortion, etc) which scored 131 (being 19.2%); and physical harassments such as touching of women's bodies without their consent (91 responses, being 13.3%). Figure 7.1 below presents a visual outlook of such responses for easier analysis of the situation.

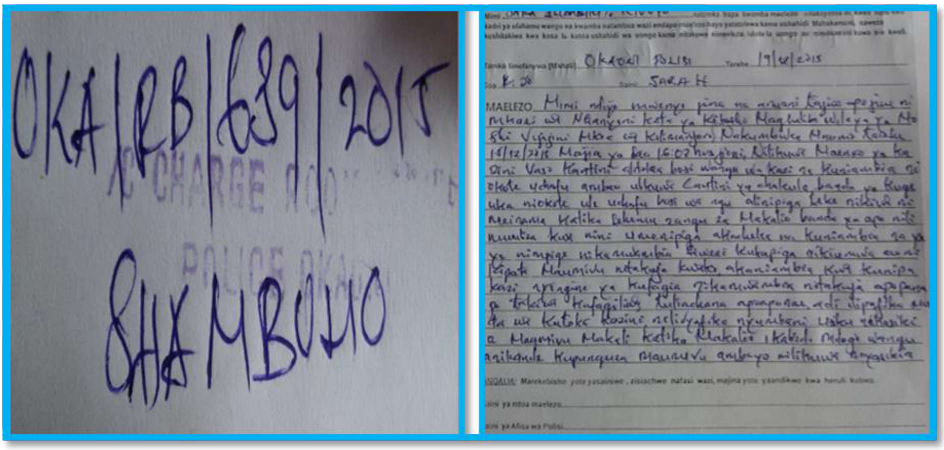
Figure 7.1: Workers Responses on the Presence of GBV/VAW at Workplaces



Source: LHRC, Human Rights and Business Study (Field Data), 2015.

The 'others GBV/ VAW' incidents mentioned by workers in an open-ended question were denial of maternity leaves (formed almost 85% of such responses); discrimination against women; absence of gender-sensitive working environments such as sharing of washrooms. A female worker of one of the companies in Mtwara told the study team that, some of the boys tend to 'steal a look' when women are taking shower in an uncovered bathroom. *'This behaviour would cause some rape cases one day ...'* complained the lady.

Some of the GBV incidents include the discrimination against women; and sextortion as discussed earlier on; but also, physical and verbal assaults. A boss at Vasso Estate, Kilimanjaro region, was alleged to have assaulted a female worker and caused on her grievous bodily harm. The victim was unable to walk for three days. It was claimed that, the boss assaulted this worker because she did not respond (hear) when she was called. As Picture 8.2 below shows, this matter was reported to the police station and remained pending at the time of this study in December 2015.[423]



Picture 7.3: A number of Police Register Book (RB) of the case against the Vasso Estate's boss.

Such incidents, as stated above, happen in many workplaces but, impunity, fear, lack of awareness and confidence, poverty and so many other factors hinder women from accessing justice once their workplace gender related rights are infringed or denied.

7.2.6 Equal Workload but Unequal Pay

ILO's Convection Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951 (No.100); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Constitution of the United Republic of Tanzania of 1977; ELRA, 2004 and so many other legal instruments referred to under chapter two of this report call for equality between men and women in employment. Article 23 of the Constitution and Section 27 of ELRA, 2004 provide that every person (regardless of his sex or gender status) is entitled to just and fair remuneration, which commensurate with his or her work (which a worker is entitled).

The difference in salary scale for equal work done by the people of the same experience and level of education was observed during the study. Mywange[424] argues that, the wage scale gap on basis of sex or gender between males and female workers ranges between 17 and 22% to mean that, female workers are low paid compared with men by that percentage (or even more). The same source cited above mentioned an influence of cultural norms as one of the attributing factors to this situation. Other studies cited earlier in this chapter also mentioned the same.

This study has established that, women with the same experience and job descriptions are lowly paid because they were assigned to handle inferior positions, which automatically attract low wage. For instance, out of 5 companies visited in Ruvuma region, only one (Dae Company) had1

423 Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report II). Page 31.

424 Mywage, 'Tofauti ya Kipato Kijinsia.' Accessed it on 3rd March, 2016 from: http://www.mywage.org/tanzania-sw/nyumbani/mishahara/tafauti-ya-kipato-kijinsia

female at managerial position (HRO).[425] At MCCCo Company, Mbinga district, Ruvuma region, female and male workers were found to have been doing same kind of work (carrying cargoes and filling in some coffee into the bags).

Picture 7.4: A Female worker at MCCCo Company, Mbinga, Ruvuma region, ferrying some bags of coffee, same way and size as male workers.

It was alleged that, the male workers were paid Tshs 90 per one bag carried while women earned only Tshs 70 per the same size of coffee bag carried. The payment difference between male and female workers in 22.2%, a reality which proves Mywange's finding as indicated above. Further group discussions with the workers of this (MCCCo) and other companies about this matter (of salary difference) revealed that, women were 'contented' with this situation as it was 'normal' for men to receive more than women and that has been a case for several years. One of the workers of the defunct Ngoni Matengo Cooperative Union (NGOMATI) of Ruvuma region, which used to be a tobacco processing factory as well, told the team that, during the 1980s when this factory was functional, workers were paid Tshs 43 and Tshs 40 for males and women respectively for the same work load at it was generally seen 'normal.'

Similar observation on indifferent salary scales between men and women were heard from other regions to connote a growing concern, which need an immediate attention.

7.3 PERSONS WITH DISABILITY IN CORPORATE SECTOR

There are between 785 and 975 million PWDs of working age (15 years or older), according to the World Report on Disability published by the World Health Organization (WHO) and the World Bank (WB) in 2011. The number of PWDs could be more than that in 2015 due to increased risks which contribute to disabilities such as hazardous working environments and road accidents. The said report found that, developing countries, Tanzania inclusive, had higher disability prevalence rates than developed countries. However, factors behind that reality were not stated in the report.

[425] Corporate Human Rights Compliance Assessment, Ruvuma Field Report of 2015 (LHRC's Report I). Page 52.

As for employment status for PWDs, the ILO 2013's report estimated that, 87% of PWDs who work (global level) were in the informal sector.[426] The 2014 similar study to this one at hand found that, at the national context (Tanzania), the employment rate of PWDs had remained below 2% at both national and individual companies' levels. It should be noted that, Tanzania is estimated to have between 2.4 million and 4.5 million PWDs.[427] Therefore, 2% out of the total population of 2.4 million PWDs really implies there is a long way or a difficult journey to have equal working environment for all gender groups.

Picture 7.5: How PWDs face Discriminations in Employment Sector
(Source: CCBRT (Undated)).[428]

Sections 7 and 31 of ELRA, 20014 prohibit discriminations against all forms. Subsection 4(l) of Section 7 specifically prohibits discrimination at workplace on basis of 'disability.' The term 'disability' is defined under Section 3 of the Persons with Disabilities Act, 2010[429] (PWDs Act, 2010) to mean *'loss or limitation of the opportunities to take part in the normal life of the community on any equal level with others due to physical, mental and social factors.'* Section 31(1) of PWDs Act, 2010 directs that every employer, public or private employ PWDs who meet the minimum qualification for such an employment – where there is a vacant post fit for a PWD.

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[426] ILO (2013) Study on Work and Employment of Persons with Disabilities. Human Rights Council, Geneva, March 2013.

[427] The NBS (2009) Tanzania Disability Survey Key Results and Last Year GBS Results Review of 2008. NBS: Dar es Salaam, estimates PWDs to be 4.5 million, which the CCBRT Information 'Why Disability' accessed on 28th February 2015 from: http://www.ccbrt.or.tz/disability/ showed 3.5 million of Tanzanians were estimated to be PWDs. The uncertainty of actual number of PWDs is an issue of concern not only in identifying the real needs of these gender group, but also proportional supply of the needed services including supportive equipments and medications. This is why LHRC has always been urging the government and other stakeholders to devise a better way in which all PWDs will be identifies, trace and monitored with follow-up services especially due to the fact that, some of the families do hide them.

[428] CCBRT, 'Handbook on Employment Rights and Entitlements of Persons with Disabilities.' Accessed on 7th March 2016 from: http://www.ccbrt.or.tz/fileadmin/downloads/02_reports_publications/CCBRT_Handbook_on_Employment_Rights_and_Entitlements_of_Persons_With_Disabilities-_English.pdf

[429] Act No. 2 of 2010.

As for friendly working environment, Section 43 of the same law requires employers to set a working environment which prevents disability to occur, and universally and friendly accessible for PWDs. One of the study's questionswas on whether the randomly selected workplaces in the sampled regions attracted different sentiments from workers who were PDWs and others who were not PWDs. All of them were allowed to share their thoughts on the same question.

The rating were 0 to 25% being worst working conditions (clarified to them to mean completely absence of universal accessibility structures such as ramps; absence of wheel chairs; etc); 26 to 50% being fair good; 51 to 75% being average or 'just normal' and the remaining range to 100% being 'very good.' Moreover, the 'not sure' component was included just in case the concept 'sensitive working conditions for PWDs' was unclear to some workers due to different reasons such as social orientation on disability rights.

The scores basing on the 722 sampled workers in 14 regions were as indicated in Table 7.5 below; that, 31.3% of the workers interviewed were not sure if the working environments they were accommodated in were friendly for PWDs. This wasthe case due to the fact that, most of the corporate companies had never employed a worker who was PWD. Therefore, it was not easy for the current workers to give an answer basing on a real practice. Only 12.5% of the respondents said that, the environment was very good. A quick manual sorting out of where such responses came from had shown M/s Mbeya Cement, Mbeya region; and, M/s Bonite Bottlers, Kilimanjaro region were among a few companies with workers feelling that the working environments were friendly even for PWDs.

Table 7.5: Availability of Friendly Working Environments for PWDs in Corporate Companies

Responses [N=722]	Frequency	Percent
Worse (0-25%)	234	32.4
Fairly Good (26-50%)	62	8.6
Good/ Average (51-75%)	110	15.2
Very Good (76-100%)	90	12.5
Not Sure	226	31.3
Total	722	100.0

Source: LHRC, Human Rights and Business Study (Field Data), 2015.

Basing on the field data presented in Table 7.5 above, less than 30% of the workers interviewed felt that the working environments were either good or very good to imply the fact that, about 70% of the working environments need to be rectified. There was no single case heard from the study whereby PWDs quitted job because of unfriendly environment. But, a number of cases were heard from both workers and employers arguing that the 'nature' of the companies' work was unfriendly for PWDs. This illusion is contrary to the requirement of the cited laws above which urge all employers to facilitate the accommodation of PWDs in their workplaces. This is due to the fact that, disability is not inability.

The enforcement of the law on disability is an issue of concern. For instance, Section 31(4) of PWDs Act, 2010 directs all employers to submit an annual report to the Commissioner for Social

Welfare of the employment status of PWDs employed in his or her workplace. All companies (100%) interrogated about this requirement said that they were not aware of this requirement let alone an obligation to have at least one-third of PWDs workers for every 20 workers. This is an issue of concern especially when considering the fact that, it was exact 5 years since the PWDs law came into being.

The illusion about ability of PWDs to perform is rampant. This is notwithstanding the fact that considerable number of disability cases originate from the workplaces. The study was informed that the NM Industries based in Dar es Salaam did not allow its driver to resume work after he sustained an accident in which one of his hands was chopped off. It was alleged further that, instead, the management of the company was paying this worker his monthly salary. Probably, this will go on tillthe end of his contract and then, the relationship between the two (an injured worker and the company) will 'automatically' come to an end.

Several companies were alleged to have such kinds of practices of discriminating PWDs. More than 50% of the sampled workplaces for this study had no even one worker with disability. For instance, the Serengeti Breweries, Moshi, Kilimanjaro region, had more than 110 workers, but none (0%) of them were PWDs. The Moshi Leather Company, Kilimanjaro region, had more than 150 workers, but none (0%) of them were PWDs. The Vasso Estate was said to have around 200 workers, but one 1 (0.5%) was a worker with disability.[430] In Mbeya region, apart from M/s. Mbeya Cement Company, Songwe, which had 1 worker with minor disability, the rest of the companies visited (about 10 of them) did not have a single PWDs employed as the worker.[431]

Picture 7.6: A Worker with Disability at the Mbeya Cement's Workplace, Songwe, Mbeya Region.

As for Ruvuma region, out of 5 companies which were sampled for this study, only one (MCCCo) had 1 worker with disability out of 20 permanent employees and about 50 casual labourer. The production manager of one of the 5 companies said that, nature of investments in

[430] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report II). Page 31.

[431] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 35.

this region automatically excludes PWDs.[432] However, this seemed to be the samemyth discussed above that, PWDs 'cannot' perform or manage.

Same situation as observed in Morogoro region, whereby out of 6 sampled regions, only 1 (namely the 21st Century Textile Limited) had (unknown) number of workers with disabilities.[433] The management of the company was not around to confirm the actual number of the workers with disabilities.

There were a few companies which could be cited as best employers as far as disability rights are concerned. Such companies include; (i) the Precision Air Plc Company, Dar es Salaam, which had at least two workers with disability who were treated quite well according to the nature of their disabilities;[434] Shah Industry, Kilimanjaro region, which had 30 workers out of whom 9 (being 30%) were persons with disability. Same company (Shah) had, in the past (1980s) a total of 300 workers, out of whom 51 (being 17%) were workers with disabilities.[435] This company, Shah, is cited as the most disability sensitive employer so far – basing on the finding of this study that, it has increased the ratio of workers with disability by 13% in 2015 while other companies, as said earlier on, did not have even one PWDs employed by them.

LHRC is of the view that, companies which are gender sensitive like Shah Industry should always be recognized by the responsible authorities and federation of pro-disability organizations (SHIVYAWATA) so that other companies too could scale up their gender policies to widen the size of women and PWDs' positions into the corporate sector. Secondly, LHRC advises the government and other stakeholders to launch a national-wide awareness campaign on this matter (inclusive working environments for PWDs) as well as effective implementation and monitoring of the disability laws. Thirdly, there is a need for the NBS and other stakeholders to come out with clear and actual statistics of PWDs, which are segregated basing on sex, types of disabilities, geographical locations, age, etc so that, both private and public employers can have a sense of the real needs of PWDs' employment.

7.4 CHILD LABOUR IN CORPORATE BUSINESS SECTOR

The international legal framework on the rights of the child is comprised of so many conventions, protocols, declarations and other forms of commitments probably more than any other gender groups in the world. The strong protection of a child welfare, which the international community tries to put in place, is justifiable; and that is, a child needs exceptional protection due to his or her tender age (maturity) and even morphological structure and the necessities for his or her upbringing.

The UN Convention on the Rights of the Child, 1989 (CRC, 1989); and, the African Charter on the Rights and Welfare of the Child, 1999 (ACRWC, 1999) are the mother laws at the UN and AU levels. The two laws generally require protection of the child from an economic exploitation

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432 Corporate Human Rights Compliance Assessment, Ruvuma Field Report of 2015 (LHRC's Report I). Page 58.

433 Corporate Human Rights Compliance Assessment, Morogoro Field Report of 2015 (LHRC's Report II). Page 30.

434 Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report II). Page 26.

435 Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC's Report I). Page 13. Interviewed M. Paul S. Ndehaki, General secretary of the SHIVYAWATA, Kilimanjaro Region, Chairman TUICO branch at Shah industries and an employee at Shah Industries for 35 years.

and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral or social developments.[436]

The generalized prohibition of 'child labour' by these two laws has been qualified by specific conventions of the same subject matter. Such conventions include, the ILO Minimum Age Convention, 1973 (No. 138); and the Worst Form of Child Labour Convention, 1999 (No. 182). Note that, there have been a number of ILO conventions against child labour since 1919 which put minimum age for the various economic sub-sectors such as industry (1919 and 1937 conventions); sea (1920 and 1936 conventions); (1921 convention); trimmer and stokers (1921 convention); non-industrial employment (1932 and 1937 conventions); fishery (1959 convention); and underground work (1965 convention). Therefore, the protection of the child against harmful labour has been evolved over a period of time – with slow notable impacts on part of Tanzania as it is discussed further below.

In response to the international obligations on the rights of the child, for instance, Article 1 of the Minimum Age Convention, 1973 (No. 138), which requires states to design and implement national policies to ensure effective abolition of all forms of child labour and set minimum age for employment, Tanzania has enacted a number of pro-child rights laws. The laws which are more relevant to the matter under this discussion here are the Law of the Child Act, 2009; and the ELRA, 2004.

The child labour and exploitative labour are prohibited under Sections 78 and 79 of the Law of the Child Act, 2009; and Section 5 of ELRA, 2004. According to Section 78(3), exploitative labour means or includes work which deprives the child (that is, a person under 18 years of age) of his or her health or development; exceeds 6 hours a day; it is inappropriate to his age; or, a child receives inadequate remuneration.

The recently release findings of the NBS' integrated labour survey 2014, which is fully cited in chapter one of this report showed that, there were at least 5 million under 18 years children who were 'employed.' The report did not clarify what was the 'employment' which the survey investigated on. However, the age of the children 'employed' was referred to be 5 to 17 years. As per Table 7.6 below, most (84%) of such 5-17 years employed children were in rural settings. This (NBS') finding supports an observation of this (LHRC's) report that, child labour was still practiced mostly in plantations and mining sites, majority of them being in rural settings.

Table 7.6: Distribution of Employed Children (5-17 Years) by Area, Sex and Level of Education 2014

		Never attended	Primary	Secondary	Total
Dar es Salaam	Male	1,254	9,702	1,727	12,684
	Female	3,425	26,980	2,519	32,925
	Total	**4,679**	**36,683**	**4,247**	**45,609**
Other Urban	Male	28,364	295,274	65,349	388,987
	Female	29,505	301,752	62,986	394,243
	Total	**57,869**	**597,026**	**128,335**	**783,230**

436 Articles 32(1) and 15(1) of CRC, 1989 and ACRWC, 1999 respectively.

Rural	Male	417,770	1,676,845	165,812	2,260,427
	Female	347,614	1,447,066	182,944	1,977,624
	Total	**765,383**	**3,123,911**	**348,757**	**4,238,051**
Total	**Male**	**447,388**	**1,981,821**	**232,889**	**2,662,098**
	Female	**380,544**	**1,775,798**	**248,450**	**2,404,792**
	Total	**827,932**	**3,757,620**	**481,338**	**5,066,889**

Source: NBS, Integrated Labour Survey of 2014 (Table 12.3 of this Reference).

Table 7.6 above suggests further that, most of the victims of child labour were children below primary school level of education; and those who did not attend school at all. It can also be a reality that, being in child labour was an attributing factor for their failure to attend schools. Such trend could also be influenced by the sample size of each age group or education level of the child who NBS managed to spot in their survey.

As for the 'notorious' sectors in child labour, agriculture (plus forest and fishing) is number one with 92% quotient of children employed into it. It is followed by trade (3.1%) and domestic working (2.6%). Table 7.8 below from the same source explains more:

Table 7.7: Working Children Aged 5-17 Years by Industry, Age Group and Sex, 2014

Industry	**15 - 17**		
	Male	**Female**	**Total**
Agriculture, forestry and fishing	2,509,864	2,154,337	4,664,201
Mining and quarrying	13,493	17,334	30,827
Manufacturing	4,090	10,669	14,759
Construction	5,706	162	5,868
Wholesale and retail trade; repair of motor vehicles and motorcycle	84,672	70,325	154,996
Transportation and storage	7,243	0	7,243
Accommodation and food service activities	12,393	34,161	46,553
Administrative and support service activities	1,742	258	2,000
Human Health and social work activities	0	2,300	2,300
Arts, entertainment and recreation	170	0	170
Other service activities	1,895	4,335	6,231
Activities of households as employers; undifferentiated good	20,830	110,911	131,741
Total	**2,662,098**	**2,404,792**	**5,066,889**

Source: NBS, Integrated Labour Survey of 2014 (Extract last three Rows from Table 12.5).

As it was observed in the 2014 edition of this report, despite comprehensive legal and policy frameworks both at the international and national levels, harmful and exploitative child labour is still an issue of concern in many parts of the country. Such tendencies are attributed to a number of 'pushing' and 'pulling' factors, including family attitudes, which, as this study established, seems to be the main driving force behind child labour. This is due to the fact that, most of the corporate companies, including the previously finger-pointed ones such as plantations and mining companies were steadily distancing themselves from utilizing children on their productions. As Table 7.9 below shows, slightly above 50% of the companies interviewed claimed to have a specific or clear policy or manual or regulations regarding minimum age for employment. The rest (about one-third) did not have any such internal regulations.

Table 7.8: Corporate Companies with Policy or Manual or Regulations Regarding the Minimum Age for Employment

Responses [N=55]	Frequency	Percent
Yes	31	56.4
No	16	29.1
Not Sure	1	1.8
Total	55	100.0

Source: LHRC, Human Rights and Business Study (Field Data), 2015.
[Note: a few responses were invalid or missing system].

Such responses could suggest that, some of the companies were haphazardly recruiting workers without being assured of their age. Some of those who said that they had some regulations were asking the candidates for works advertised to avail academic credentials as well as birth certificates. The field data based on an interview of 722 workers interviewed in the sampled regions shows that, 1.9% of the interviewed workers said that they started to work for gain from the age below 10 years while, 2.8% said that, they started to work from age of 10 years; and, 5% were already employed between the age of 15 and 17 years. That could mean about 10% of the current workers, who were interviewed, started to work from the age below 10 years.

Some of the companies had their regulations on child labour published on boards inside and outside the workplaces. The DAE Limited of Mbinga, Ruvuma Tanzania; and, the Kibaigwa International Cereal Market, Kongwa, Dodoma region are some of those few companies as the combined Picture 7.7 below shows:

Picture 7.7: The DAE Limited's and Kibaigwa Market's notices or 'warnings' on prohibition of child labour

A few incidents which the study managed to collect from the field included the existence of '*nyoka'* (small laborers – children) in Mererani, Manyara region which were mostly engaged by the artisanal miners and not big companies. Out of 10 interviewees in Merelani Tanzanite mine, 2 (20%) were children below 18 years.[437] The small mining companies prefer using the '*nyoka'* because they do not have proper mining machineries which could drill through underground. Therefore, the '*nyoka'* being persons with small morphological structures, could 'easily' penetrate through the underneath routes in search of the gemstones. Moreover, the '*nyoka'* are cheap laborers.

In Ruvuma region, as it is the case for Tabora, Tanga, Mbeya and Kilimanjaro regions, there are so many plantations which normally engage casual laborers. The chairperson of Liganga village, Lipokela ward, Songea district, Ruvuma region told the study team on 22nd December 2015 that, he was aware that child labor is prohibited by 'certain laws.' The village leader said that, an investor in this village, M/s. Aviv Plantation, which grows coffee, strictly prohibits use of children in his farm and always demand an endorsement letter from the village leadership to confirm that, a worker he wishes to engage in an employment is actually a person of the age of majority. However, according to the chairperson *'it is tempting to resist a parent who wants his or her under age child to work in the plantation especially when such a child is just staying idle at home after failing in his or her standard seven examination. I therefore, sometimes, do forge the age of the child so that the investor could accept him or her as a worker in his plantation'*, said the senior leader of the village government.[438]

> The decision by the said village leader to forge age of a child so that he or she can work for the family raises several issues which all together need a legal or policy or institutional attention. The first issue here is irresponsible law enforcer, or rather a public leader who condones illegality to meet the desire of another wrongdoer. This represent a typical characteristic of some law enforcers including some of the labor inspectors, who fail to enforce the law due to corruption or other challanges such as lack of institutional capacity as it is further discussed in the coming chapter of this report. The second issue here is an income household poverty which subjects parents to engage their children in such kinds of work as survival strategy. In connection to that, there is also an issue of lack of awareness of the importance of post-standard seven education, which is attributed to lack of nearby secondary schools or alternative learnng centres. Basing on these realities, LHRC advises that, any interventions on child labour by any stakeholder, should holistically consider both prevention and cntrol measures.

In Mbeya and Tabora regions, child labour was noticed tobe practiced in rural setting where the plantations were found; but also, where the law enforcement seemed to be weaker compared with the urban or peri-urban areas. As the combined Picture 7.6 below, children under 18 years were openly and commonly engaged in rice plantations (Kapunga Rice Project, Mbeya region); and, tobacco farms (individual farms, Sikonge, Tabora region).

Picture 7.8: **Children in the rice and tobacco plantations – Mbeya and Tabora respectively (a tobacco picture is a file photo from one of the respondents in Tabora region).**

The two children in a farm plantation were aged 13 and 15 years respectively. They told the study team (in an informal conversation as they were not targeted as respondents) that, they were sent by their parents to work on the farm in order to get some money for their families. The younger girl, 13 years, said that, she works there because there was 'no one' to provide for her needs.[439]

The magnitude of the child labour problem is mitigated in Tabora region due to some efforts from the government and non-governmental organizations (NGOs). The study learnt that the Winrock International organization, which partners with the Tabora Development Trust Fund (TDTF); the Tanzania Association of Women Leaders in Agriculture and the Environment (TAWLAE); as well as the Elimination of Child Labour in Tobacco Growing (ECLT) Foundation had a project of elimination of child labour. Some of the intervention strategies introduced by these NGOs to overcoe the problem of child labour in tobacco plantations were:-

(i) Offering of the conditional loan for mothers program shifts women recipients to providers.
(ii) Imparting occupational safety and health (OSH) knowledge and practices in Tobacco industry.
(iii) Building the capacity for district child labour committees.
(iv) Community awareness raising events and training address parents' role on child labour and responsible parenthood.

The NGOs said that, such interventions have resulted into the reduction of child labour practices by 75% (basing on the baseline data of the magnitude of the problem as observed before the commencement of the projects or interventions.[440] LHRC encourages similar interventions to be initiated all over the country especially in areas which are currently notorious practitioners of child labour.

In Kilimanjaro region, child labour is likely to have been totally abolished as it is not practiced at all by the corporate companies sampled for this study. However, the challenge still persists and it is sanctioned or condoned by some of the parents for commercial purposes. For instance, a 13 years old, who was a standard six pupil, was seen at Kindi area, Kibosho, Kilimanjaro mashing

[439] Corporate Human Rights Compliance Assessment, Mbeya Field Report of 2015 (LHRC's Report II). Page 34.
[440] Corporate Human Rights Compliance Assessment, Tabora Field Report of 2015 (LHRC's Report I). Page 28.

some stones into pieces (to make gravels for construction). The boy said that, such gravels he was making were sold and the money obtained was for the family. In the course of his ‘work’, sometimes he is injured and, according to him, no one helps him to fix the wounds.[441]

Picture 7.9: Children working at Kindi, Kibosho, Kilimanjaro region. He earns about Tshs 4,000 per a day.

As for Mwanza region, children were found working in the fishing processing activities which were managed by individual persons or groups. An officer at the city’s municipal council said that, there were between 30 and 40 working children at Igombe beach; and, between 25 and 30 of them at Mwaloni beach. Moreover, 10s of them were engaged in vehicle garage activities especially along Pamba road, and 20s of them in Mabatini area.[442] It was not clear from the responses of the council’s officials as to why they failed to control such a situation. The garage work for children was noticed to be common all over other urban areas in Dar es Salaam, Arusha, Morogoro, Mtwara and Ruvuma regions as the combined Picture 7.9 below shows:

Picture 7.10: Children working in a garage at one of the streetgarage in Ruvuma region.

In Tanga region, the child labour situation was found to be uncommon different from how it used to be in the past whereby, children were sent to work in sisal plantations. Most of such plantations were now defunct. However, there is a growing concern that owing to an increase of investments in otherr

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[441] Corporate Human Rights Compliance Assessment, Kilimanjaro Field Report of 2015 (LHRC’s Report II). Page 33.

[442] Corporate Human Rights Compliance Assessment, Mwanza Field Report of 2015 (LHRC’s Report I). Page 27.

economic sub-sectors, it is likely that child labour practices would come back again to its original shape. A few of incidents of child labour noticed in Tanga included the one at Kiomoni Lime Company whereby, a young boy aged 15 years was found at the working scene repairing a roller machine which is used to grind lime concretes. The young 'engineer' was paid for the work done and it seemed that, he has been engaged by the company for quite sometimes. The boy was not willing to share his thoughts on how this work was affecting his academic development or health status.

7.5 PERSONS LIVING WITH HIV/AIDS IN CORPORATE SECTOR

7.5.1 HIV and AIDS as Human Rights and Business Issues

There is a direct relationship between HIV/AIDS prevalence and the growth or decline of corporate sector in Tanzania, just as is the case in any other country especially the least developing countries. According to Dr. Forsythe,[443]there are a number of ways through which businesses would be impacted by HIV/AIDS. Such ways include:-

(i) Loss of Labor because most businesses in Tanzania, as argued in chapter two of this report, are labor–intensive. Furthermore, adults between the ages of 15 and 49 are more likely to be infected by HIV/AIDS, most businesses in Tanzania are likely to lose at least some of their labor to AIDS.

(ii) Declining productivity in case a significant number of workers become ill and their level of sick time increases. On the other hand, as family members of workers fall ill, those workers are likely to spend increasing amounts of time attending funerals and caring for loved ones at home.

(iii) Increased cost due to the fact that as some workers become unable to work and others die, recruitment and retraining becomes inevitable, creating more costs to business. Moreover, among infected workers, opportunistic infections have to be treated as a potentially significant cost.

(iv) Indirect factors, for instance, in businesses where workers are becoming ill and dying, there is likely to be a declining workers' morale.

Such factors or grounds justify a need for every workplace to formulate and effectively implement HIV/AIDS policy at workplace. Section 9 of the HIV and AIDS (Prevention and Control) Act, 2008[444] requires every employer (in consultation with the Ministry of Health to establish and coordinate a workplace programme on HIV and AIDS for employees under his or her control. The provision requires further that, such programme should include provision of gender responsive HIV and AIDS education, distribution of condoms and support to people living with HIV and AIDS (PLWHA). Section 8(3) of this law requires HIV and AIDS information (or in this respect, programme) to be designed and communicated in an appropriate format, technology and is accessible to disabled persons. The generality of the PWDs Act, 2010 puts same obligations.

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[443] Forsythe, Steven (2002) Assessment of Private Sector HIV/AIDS Policies and Activities in Tanzania. Available online as a draft paper and can be accessed through: http://www.policyproject.com/pubs/countryreports/tz_assessprivsect.pdf

[444] Act No. 28 of 2008.

Contrary to such requirements, the assortment of field data for this study implies that hardly 2% of the corporate companies sampled for this study had a workplace policy (in a form of one page statement) on gender, which did not necessarily address HIV and AIDS issue. Moreover, all (100%) companies interviewed on this subject matter said that, they did not have or know or aware of the existence of a worker living with HIV and AIDS. Such surprising response was heard even from regions like Mbeya and Dar es Salaam which have high prevalence rates (being 14% and 11% respectively[445]). This situation, again, could be attributed to (i) lack of awareness amongst the employers of the statutory requirement to have such policy or programme; or, (ii) weakness in law enforcement. The said 2008 HIV/AIDS law does not specifically mention a person who could monitor implementation of this requirement down to the grassroots level, where most of the business companies are doing their businesses. It is also a possibility that, (iii) some of the employers just neglect it. One of the wholesale traders in Mwanza told the study that, *'there are too many regulations and things to observe, which mighttake allthe time if one tries to abide with everything ...'*

The business person has a point here that, business sector in Tanzania is overregulated and it is, indeed, a heavy burden for the business person to carry on. On this, LHRC has been suggesting from time to time that, Tanzania needs to create a one stop centre (OSC) which could regulate through a single system all businesses or related business ventures instead of allowing the current situation, whereby, the regulatory authority officials knock the gates of the investors all the time in an uncoordinated manner. For instance, HIV/AIDS law enforcement could be enclosed to the package of occupational health for OSHA (discussed in chapter seven of this report) to monitor. This should be explicitly stated as part of OSHA's mandate.

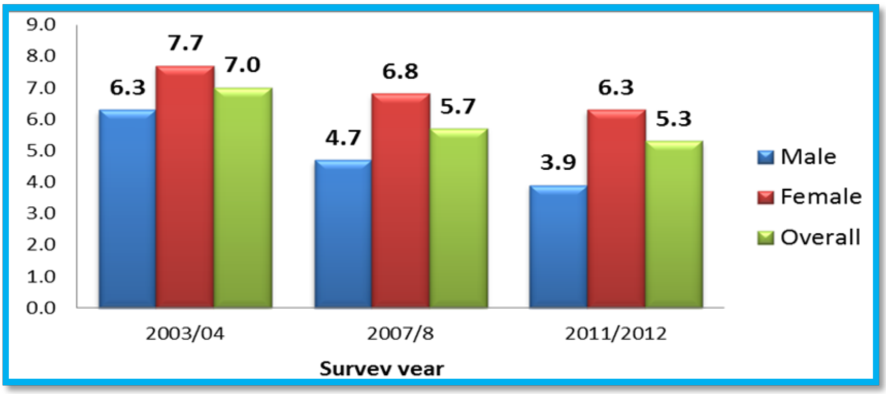
7.5.2 HIV and AIDS Prevalence Rates, Business Investments and Control Measures

Overall, 5.1% of Tanzanians age 15-49 are said to be HIV-positive.[446] According to the same source, the Tanzania AIDS Commission (TACAIDS), the HIV prevalence is higher among women (6.2%) than among men (3.8%). HIV prevalence is higher in urban areas for both women and men than in rural areas. However, as Figure 7.1 below shows, the prevalence rate has been dropping down over years:

445 URT, 'Global AIDS Response Country Progress Report.' 31st March, 2014.

446 Source: TACAIDS, 'Current Status of HIV and AIDS.' Accessed on 25th March, 2016 from: http://www.tacaids.go.tz/index.php?option=com_content&view=article&id=139:current-status-of-hiv-and-aids&catid=31&Itemid=159

Figure 7.2: Trend of National HIV/AIDS Prevalence Rates



Source: TACAIDS, 'Current Status of HIV and AIDS' (Undated).

Such decline, however, represents an overall national trend; which is critical when an assessment is made per each individual region. For instance, statistics show that, while Manyara region's HIV prevalence rate stands at 1.5%, Njombe region has 14.8%; Mbeya region 14.0%; and Dar es Salaam 11.0%.[447] The study has established from the literature that, the increase-decrease trends are influenced by a number of factors, some being, (i) level of awareness of the population of a particular area; (ii) availability of antiretroviral treatments (ART), which currently stands at 37.5% as national trend – which could vary significantly due to geographical locations and other reasons; (iii) prevalence of some cultural norms such as female genital mutilation (FGM), widow cleansing and so on; and, (iv) presence of investments which normally attract a huge interaction of people.

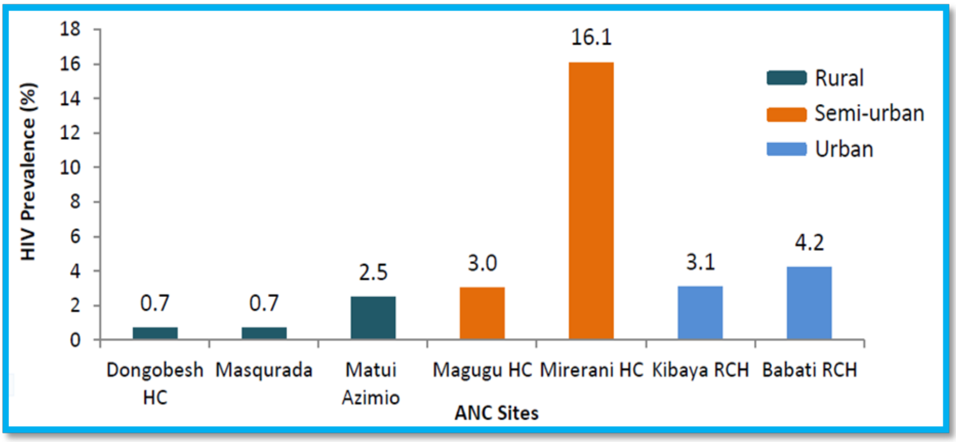
The last mentioned factor is relevant to this study. The municipal officer at Mtwara municipality told the study that, upon the discovery of natural gas in that region, there has been an influx of people going to the centre from within and outside Mtwara region. According to her, the region had only 889,100 residents in 1988; but, it was estimated to have more than 1,300,000 people in 2015 basing on the last national census of 2012, which estimated Mtwara region to have a total of 1,270,854 people. This anonymous respondent was of the view that, there is a possibility that HIV and AIDS to 'explord' due to the high influx of people. However, she did not have statistics to indicate the trend of infection over years. Same observation was made by the Songea district's Community Development Officer. She said that, there was a possibility of high infection rates especially around the coal mines.[448]

The 2014 Regional HIV/AIDS Triangulation Report of Manyara Region (published by the government of Tanzania) has revealed that, although the prevalence of HIV in Manyara region is low when compared to other regions and the nation at large (as stated above in this chapter), there are some factors which render some parts of the region to have higher HIV transmission rates than others. One of such factors mentioned by this report is the economic activities,

[447] Avert, 'HIV and AIDS in Tanzania.' Accessed on 24th March, 2016 from: http://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/tanzania PLUS other numerous sources.
[448] Corporate Human Rights Compliance Assessment, Ruvuma Field Report of 2015 (LHRC's Report I). Page 58.

especially the exploration and mining of Tanzanite and other gemstones in Mirerani, Naberera and Orkesumet townships. The HIV prevalence among pregnant women aging 15 and 49 years attending ANC in this region showed that, Mirerani township, where Tanzanite is found, had higher transmission rates (16.1%) than other none-mining townships as Figure 7.3 below shows:-

Figure 7.3: HIV Prevalence among Pregnant Women aging 15 and 49 Years – Manyara Region



Source: The 2014 Regional HIV/AIDS Triangulation Report of Manyara Region, Page 7.

Geita region too share same situation. The region is a home of so many investment companies including the GGM. Such investors are attracted to invest in the region because of its underneath huge base of gold reserve. It is stated that, the Geita gold mine contains 14.7 million ounces of proven gold reserves. It comes ahead of Bulyanhulu in Shinyanga Region with 11.2 million ounces; North Mara with 3.3 million ounces; and Buzwagi with 2.6 million ounces.[449] Such wealth, water resource and fertile lands are sufficient endowment to entice so many people in the region from within and outside the country. The NBS' records shows that, the region had only 1,337,718 persons in 2002, and ten years later, the population size went up by 13% to reach at 1,739,530 persons. Owing to the annual growth rate of this region, which is nearly 3% of some of its districts, the current (2015) population size could be around 2,000,000 persons.

The trend of HIV and AIDS prevalence over years especially from the time when extraction of gold in the region started was not obtained. However, basing on the January to November 2015 statistics on HIV status of the people tested, it seems that the infection is high and they were directly linked to the influx of investments and commercial activities in the region. For instance, as Table 7.8 below shows, the prevalence rates for the under 25 and under 50 years persons were above 13% and 79% respectively:-

[449] Gaaki Kigambo and Rosemary Mirondo, 'Gold in the Mine, Dust in the Streets: The Story of Geita.' The African, 17th March 2013. Accessed in on 4th April, 2016 through: http://www.theeastafrican.co.ke/news/Gold+in+the+mines+dust+in+the+streets+story+of+Geita+Tanzania/-/2558/1957588/-/ftlu9nz/-/index.html

Table 7.9: HIV/AIDS Prevalence Rates from one of the Geita's VTCs (January – November 2015)

HIV/AIDS (Tested people)				HIV/AIDS (Positive)		
Age	**Male**	**Female**	**Total**	**Male**	**Female**	**Percent**
15-24	410	47	457	6	0	13.95
25-49	1998	174	2172	28	6	79.06
50+	139	4	143	3	0	6.97
Total	1547	225	2772	37	6	100

Source: Extracted from Geita Town Council- Health Department/TMO, December, 2015.

The implication of such findings and arguments advanced above is that, purposive HIV and AIDS intervention strategies are highly needed not only for the workplaces, but also the whole communities especially where investment opportunities are explored and implemented. This could be a better way of preventing the anticipated new infections should the situation left unattended.

There were different sentiments of the workers about HIV and AIDS at their respective workplaces. Some workers of Vicfish and Serengeti Breweries companies, both of Mwanza region said that, no one was stigmatized or discriminated due to his or her heath status. However, their companies did not have any known HIV policy or education programme. But, the workers of the Serengeti Breweries Company on part of Dar es Salaam's (main) branch said that, the management organizes a regular HIV/AIDS tests for them.[450]

The Quaim Steel Limited, Dar es Salaam, had both employment and HIV/AIDS policies at workplace. However, none (0%) of the sampled workers for this study had any idea about such policies. The study also observed that, the policies were written in English language while majority of the workers were Swahili speakers with little or without understanding of English language.[451] In Tabora, the NBS Bus Company claimed to have periodical seminars on HIV/AIDS to its workers. On the other hand, the Halotel (newly established in Tanzania) and WETCU companies responded to the study questionnaires, without further clarifications, that they were following the laws on HIV/AIDS.[452] Probably next studies could find more about these and other companies which made same responses.

The workers of M/s. Muza Wilmer East Africa Limited, Dar es Salaam alleged that, their employer being a food processor, did not take a PLWHA as a 'preventive' measure from his products being 'infected' in the production processes.[453] However, this purely discrimination against PLWHA, which is contrary to ELRA, 2004 and HIV/AIDS Act, 2008.

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[450] Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report II). Page 26.

[451] Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report II). Page 9.

[452] Corporate Human Rights Compliance Assessment, Tabora Field Report of 2015 (LHRC's Report II). Page 32.

[453] Corporate Human Rights Compliance Assessment, Dar es Salaam Field Report of 2015 (LHRC's Report II). Page 26.

7.6 PROTECTION OF LOCAL SMALL PRODUCERS AND TRADERS

There are both positive and adverse effects of the foreign or large investments to the local economy[454] (which, in Tanzanian case, is largely dominated by SMEs as said in chapter one of this report). There is no specific legal protection of the small or local producers and traders in Tanzania. While the investors in mining and other economic sub-sectors enjoy massive tax reliefs and land banks under the laws mentioned in chapters three and four of this report, SMEs strive without such entitlements. Moreover, while large investors can easily access bank loan due to their 'reputation' and possession of valuable assets, SMEs have to use own trifling resources to run their businesses. The large investors too enjoy political prestige of brushing shoulders with the high profile leaders through their forums such as the Confederation of Tanzania Industries (CTI); and, the Tanzania Chamber of Commerce, Industry and Agriculture (TCCIA).

The globalization has left the market a competitive open space of which the strongest survive to the detriment of the small local producers and traders.[455] The only main legislation which attempt to provide some protection to 'all' traders is the Fair Competition Act, 2003.[456] It was enacted to promote and protect effective competition in trade and commerce (in the market). It also protects consumers from unfair or misleading market conducts.

The main implementer of this law is the Fair Competition Commission (FCC), which is established under Section 62 of the law. However, the law gives competitors (including SMEs as against the large investors) a wide discretionary power to decide on how they could trade. This plus some weakness of the enforcement of immigration laws, has caused an unruly influx and trading of the foreign and other companies. The presence of Asians, Congolese and others who were currently engaging in petty trade activities, which a very common Tanzanian could do can be linked with the current weakness in the legal and institutional frameworks on investment activities.

Situation on the ground shows that, the SMEs are really struggling to survive in this turbulence of wild competition in manufacturing and trade. In mining areas, there are reported cases of assaults and killings of the artisan miners on the allegations of intruding into the large companies' mining slots (sites). The LHRC's human rights reports have consistently documented such incidents which it is insignificant to reproduce them here.

During the year, the Mirerani's tanzanite artisan miners organized a demonstration to the regional commissioner to air their views against the mining company. They claimed that, there was a move to close their mining plots apparently in favour of the large investor, TanzaniteOne Company. Their claims were well documented by the media as well as Clip 7.2 below shows:

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[454] Moran, Theodere, 'How does DFI Affect Host Country Development? Using Industry Case Studies to Make Reliable Generalizations.' Accessed in on 27th March, 2016 from: https://piie.com/publications/chapters_preview/3810/11iie3810.pdf

[455] Kipobota, Clarence, 'Unmerited Economic Competitions between Local SMEs and Foreign Investors: Reflection of Legal Protections in Tanzania.' In, The Law Reformer Journal, Vol. 2, Number 1, April 2009, Pages 69-80.

[456] Act No. 8 of 2003.

Wachimbaji Tanzanite Mirerani kuandamana

Lengo ni kumfikishia RC kilio chao cha kufungiwa migodi yao 19

Joseph Lyimo, Mwanachi

Mirerani. Wachimbaji wadogo wa Tanzanite wa Mirerani wilayani Simanjiro, wameazimia kufanya maandamano ya amani kupinga kusimamishwa kufanya kazi kwenye migodi 19 inayopakana na kampuni ya TanzaniteOne.

Wachimbaji hao waliazimia kufanya maandamano hayo mwezi ujao na wanatarajia kuwa yat-

MADINI YA TANZANITE

Madini ya Tanzanite yanapatikana katika eneo la Mirerani mkoani Manyara. Kila mwaka madini hayo huingizia Tanzania Dola 20 milioni za Marekani (zaidi ya Sh bilioni 40). Duniani kote, madini hayo hayo huingiza wastani wa Dola 500 milioni (zaidi ya Sh1 trilioni).

wa wilaya (OCD) na kumtaarifu mkuu wa wilaya na mkuu wa mkoa aje hapa Mirerani kwa ajili ya kuyapokea," alisema Sumari.

Mwenyekiti wa Chama cha Ushirika cha Mirerani na Naisinyai (Minasco), Charles Mlay alisema wachimbaji wadogo wamekuwa wananyimwa haki zao bila sababu za msingi hadi kusababisha migodi kusimamishwa kimakosa, ilhali wanachimba kihalali.

"Hakuna mtu aliye juu ya sheria, kila wakati wachimbaji wadogo wananyanyasika kwa kunyimwa

Picture 7.11: Media coverage of the Mirerani's artisanal miners' grievances on the possibility of being evicted from their mining plots.

It was established in Geita that, the government initiated some incentive schemes for artisanal miners for them to acquire modern mining equipments. However, according to their Geita based office only 7 (being 70%) out of 70 applications were so far supported by the government (as of December 2015 when this study was undertaken).

Still on the same subject matter (support to artisan miners), at the national level it was noted from the Annual Review Report 2014/ 2015, which is published by the Ministry of Energy and Minerals of Tanzania[457] that, the government of Tanzania had set aside Tshs 6.2 billion for provision of small grants to develop the small scale mining sub-sector. During the period under review (2014/ 2015), a total of 750 small scale miners submitted applications for grants and the Mining Division was scrutinizing those applications and eligible small scale miners will soon receive the grants. Based on the initial evaluation of the received applications for Small Grant, 111 (being only 14.8%) it was expectedsmall scale miners to receive grants amounting to Tanzanian Shillings 7.2 billion in the fiscal year 2015/16. Again, this is still a small number basing on the fact that, there were thousands of such miners in need of support.

Such situations (cases of Mirerani, Geita and even overall national status of support to small miners) compel artisan miners to work as 'scavenger' who squall hopelessly the soil in search of the gemstones. As Picture 7.12 below shows, they desperately and quite blindly plunk the soil all over the place because they do not have survey tools to explore possible areas where they could secure gemstones.

[457] URT, Annual Review Report 2014/2015, Ministry of Energy and Minerals. Page 14.

Picture 7.12: Artisan miners in Geita, plunked the soil in the hope to get germstones, December 2015.

It is important that large mining companies collaborate with the government to support the artisan mining. This could be the best way of preventing intrution into large companies' plot by the artisanal minors as it has been alleged for a long time. LHRC is of the view that, unless such support and proportionality of incentives are shared to the small miners, conflicts in mining areas which are normally entailing gross human rights abuses, would not end soon.

As for the state of income poverty in general, the national trends or facts on how the investments have contributed into micro-economic development was not obtained during the study. This is a serious gap which NBS and other institutions can assess especially for the purpose of informing ongoing macro-economic reforms which the 5th phase governance under Dr. John Magufuli's presidency is vying for at the moment. His Excellence, Dr. Magufuli has been quoted by media 'lamenting' that, this country does not deserve to be economically poor amidst of abundance of natural resources' endowments. LHRC finds Dr. Magufuli's concern as a valid issue and therefore, suggests that, such an assessment to be conducted soon.

The absence of actual assessments on the investment benefits to micro-economic developments gave this study a leeway of observing the general trend of the social livelihoods of the commoners residing nearby or around the rich investments. One places observed was the Unga-Limited area in Arusha town.

Picture 7.13: A poor neighbourhood found around huge investment companies around, Unga-Limited area, Arusha region.

The team which met the people in this place found that, 17 (70%) out of 20 resident respondents who were randomly picked out for this subject matter (investments' benefits to the local communities' livelihoods), said that they did not benefit anything from the investors in their area. Such investors include the A to Z Textile Company. Moreover, 99% of them did not know if the investors around were duty bound (morally) to contribute into their community social developments.[458]

In Mbeya region, as it is stated in chapter three of this report, the presence of the plantation company, the Kapunga Rice Project, was still regarded by some of the local communities as a 'curse' instead of a 'blessing' to their needs. The company posses a chunk of land (more than 7,000 ha), including the 2,000 ha allegedly to be wrongly annexed to the investor's plantation. The claim about the 2,000 ha would, probably, has to wait for some years to be sorted out. It will be untilthe government reassess this land ownership and if possible, revoke 'ownership' of thepiece of land in dispute.

Such situation compels the Mbarali or Kapunga villagers to work as casual and low paid workers in their 'own' land for the benefits of the investor.[459]

Picture 7.14: A villager works in Kapunga plantation as a casual labourer, Mbeya region, December 2015.

The Nyamongo villagers, Tarime district, Mara region claimed that, following the acquisition of their lands in favour of the NMGM, they have remained with little or nothing to work on for gain. This was noticed to be a serious issue especially due to the fact that compensation and alternative settlements were allegedly not yet effected to some of the villagers. One of the villagers said that:

> [w]e do nothave a place to mine or plots to farm. We depended on the mining activities for earning a living and we have been doing so for years before the government stopped us and brought in an investor. We now depend on the leftovers of stones to try our lack if we could get something. Life goes on despite the fact that the investor prohibits us from accessing the stone he has left after filtrating gold. We do this with a lot of fear because if they catch you around, you would really be crucified![460]

The voice of the desperate villager represents a similar concern of the natives who cry for something to sustain their life through this critical juncture whereby, the investments around them and in their areas seem to be of no help to their devastating income poverty. It is also an issue of concern that, the billions of revenues collected from the investment concessions as taxes, levies, fees, loyalties or even CSR have not yet been translated from the macro to micro-benefits for the majority of local people to appreciate presence of investments.

In Mtwara region, where the 50 trillion cubic feet natural gas has been discovered and now somehow extracted, the residents see no direct benefits as yet. In 2013 they tried to resist transportation of the gas out of the region (to Dar es Salaam) on the ground that, the processing factory could be installed in Mtwara so that the youth and everyone could have a direct benefit of this natural gift to them. Their ideas were vehemently refuted, with military force. To date, the security is still somehow tight.

As a result of such situation, the study found some of the youth in Mikindani Township and other places such as Msijute and Hiyari villages sitting idle and some of them playing 'pool-table' throughout the day as Picture 7.15 below shows:

Picture 7.15: Some of the Hiyari Villagers idly playing pool around noon time on a week day.

[460] Corporate Human Rights Compliance Assessment, Mara Field Report of 2015 (LHRC's Report I). Page 44.

Probably, the government will now have to use extra police officers, vehicles and other resources to control possible crimes that would emanate from these idle boys. Possible crimes include drug trafficking, theft, robbery and even killings. Mr. Mwakajile Emmanuel, the Mtwara municipality's Acting Head of Community Development Department shared the same view, but in different perspective that, an influx of the people in the region would cause gang mobs, crimes and marital problems.[461]

On this kind of situation, the government will have to spend more money example for keeping these youth in jail if they commit such crimes; and then, little money from the investments' revenues would be channelled to development projects. LHRC is of the view that, the best way of making the investment as 'blessing' and not 'curse' to the host local communities, and probably everyone else, is by enacting the CSR law which will compel the investors to pay-back to the host communities and also, to find better ways of engaging with the communities. It is also important that government recurrent expenditures and especially unnecessary costs are streamlined in order to direct more money for the development projects. In this way, the rest of Tanzanians will also benefit, and sense the importance of investments in the country.

7.7 PERFORMANCE INDICATORS ON GENDER-RELATED RIGHTS IN CORPORATE SECTOR

The following is a summary of key findings in a form of performance indicators on the enforcement of gender-related rights in the corporate sector in Tanzania. The summary depicts a comparative picture between stated gender rights situation for the years 2013, 2014 and 2015. It should be noted that, not all 'Gender- Related Rights performance indicators' used in 2013 and 2014 were reassessed in 2015. However, at least all main indicators have been compared between the three years in order to measure the progress of implementation of gender rights as shown in the table below. It should be noted further that, some of the indicated used in this Table below, were taken directly from the LHRC's SPSS data bank without being necessarily discussed in the main text of this chapter.

[461] Corporate Human Rights Compliance Assessment, Mtwara Field Report of 2015 (LHRC's Report I). Pages 34 and 35.

Table 7.10: Comparison of Performance Indicators on Gender Rights between 2013, 2014 and 2015 Years – LHRC Studies

S/ No.	Gender Groups	[Some of the] Performance Indicators		
		2013	**2014**	**2015**
i.	**Women**	o Less than 25% of women were employed in corporate companies. o 57.2% of women in corporate companies felt existence of GBV in their workplaces compared to 42.8% of men. o Only 10.0% women workers in corporate companies are given maternity leave; and only 1.7% men are given paternity leave.	o Similar trend on number of women engaged in corporate companies. o About 50% of the companies said to have a policy on gender; but, it was not effectively implemented. o Sexual violence were named to be the most common VAW (scored 53.4%), followed by physical assaults (24.1%); and threats (22.4%). o There were numerous forms of VAW between workers themselves or workers and employers, including; physical assaults (6.8%); sexual harassment (21.7%); bullying (67.7%); and sexual assault (1.2%). o Such incidents are not reported due to a fear of losing jobs or lack of awareness of due legal process.	o Out of 55 business companies sampled for this study, only 3 (being 5.5%) had female workers who were either 50% or slight above that percentage. Therefore, 94.5% of the companies sampled had less than 50% female workers. o Women were dominantly employed (by more than 81%) in the accommodation and food service activities; by 54.9% in financial and insurance activities; by 57.0% in human health and social work activities; and, by 85.7% in household activities (NBS, 2014). o Incidents of sextortion and other forms of VAW and GBV were still prevalent. The forms of VAW included; physical assaults (2.2%); sexual harassment (7.2%); bullying (32.4%); and sexual assault (0.9%). o Also, noted that, such incidents are not reported due to a fear of losing jobs or lack of awareness of due legal process.
ii.	**Persons with Disabilities**	o Employment of PWDs in corporate sector ranges between 0.06% and not more than 1%. o Presence of some investments such as mining in Geita has fuelled violence against PWDs. E.g. killings of persons with albinism due to witchcraft beliefs.	o PWDs are mainly recruited through temporary job agencies to 'minimize risks' for employers. o At least 50% of workers (interviewed by LHRC 2014 study) were of the views that, their working environment were worse (31.9%); 27.7% (fairly good); and, 22.45 (average). o Disability law was not being effectively implemented.	o 87% of PWDs who work (global level) were in the informal sector. o Only 12.5% of the respondent workers said that, the environments were very good; while, 32.4% said the environments were worse; 8.6% (fairly good); 15.2% (average); and, those who were 'not sure' were 31.3%. o No clear indication on the effective implementation of the disability law. At least 60% of the members of management team did not even know the law.

iii.	**Children of Minimum Age**	○ 55.6% of the corporate companies claimed to have clear policies on child labour. However, there is serious misinterpretation of 'child labour' and 'light work.' ○ Mining and plantations are still notorious economic subsectors in harmful child labour.	○ 69% of the companies stated that, their human resource policies included a component on minimum age for employment (to be 18 years). ○ In sub-Saharan Africa, Tanzania inclusive, 1 among every 4 children aged 5-17 work compared to other countries like Latin America, where 1 among every 10 children are engaged with work.	○ There were at least 5 million under 18 years children who were 'employed.' ○ Most (84%) of such 5-17 years employed children were in rural settings. ○ The 'notorious' sectors in child labour, agriculture (plus forest and fishing) is number one with 92% quotient of children employed into it. It is followed by trade (3.1%) and domestic working (2.6%). ○ 56.4% of the companies interviewed claimed to have a specific or clear policy or manual or regulations regarding minimum age for employment.

Source: LHRC, Human Rights and Business Studies (Field Data), 2013, 2014 and 2015.

CHAPTER EIGHT

EFFECTIVENESS AND EFFICIENCY OF CORPORATESECTOR'S REGULATORY AUTHORITIES

8.1 REGULATION OF BUSINESS SECTOR AS PART OF HUMAN RIGHTS PROTECTION

It has been discussed in chapter one of this report that upon inception of the liberal market in 1980s and 1990s, the state exonerated itself from being active player in the manufacturing and trade (commercial activates). However, it has retained a regulatory role to ensure that, (i) business activities including manufacturing and processing are conducted in accordance with the law; and, (ii) the country (and its citizens) benefit from such activities.

The regulation of the business companies is not well articulated under the international legal framework. An American Scholar Ruggie (2007)[462] is of the view that, the international laws only impose 'indirect' responsibilities to the business companies (especially on human rights observance). At national level, basing on the Tanzanian context, the state has formed both institutional and legal frameworks to regulate business activities in Tanzania. Such frameworks are comprised of a dozen of regulatory authorities (RAs) and hundreds of laws and regulations on the same. Besides, there are investment laws which offer massive incentives for more companies to trade in the country. Such incentives seem to attract several investors every year according to the TIC's reports (indicated below); but also, according to Schutter (2012),[463] such incentives and globalization offer the (large) companies greater economic rights, access to markets and mobility, in such a way that, some of the governments have increasingly failed to find a balance between the power of business and the duty of the State to protect human rights.

> The need for protection or rather, regulation of human rights in business is a new phenomenon in Tanzania not only to the business companies, but also amongst RAs' officials as it was noted by this (2015) and previous (2014) studies on human rights and business. The notion was brought into being for the first time under the UN Guiding Principles on Business and Human Rights of 2011 (UN-GPBHR, 2011). Before that, observance of human rights in business sector was stated in a generalized form under provisions of various international legal instruments mentioned in previous chapters of this report.

The UN-GPBHR, 2011 affirms that business enterprises have a responsibility to respect human rights, and that States have a duty to ensure that they do so. Furthermore, UN-GPBHR, 2011 urges the States to take appropriate steps to prevent, investigate, punish and redress human rights abuse through effective policies, legislation, regulations and adjudication. Article 15 of UN-

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462 Ruggie, John Gerald (2007) Business and Human Rights: The Evolving International Agenda.' Corporate Social Responsibility Initiative, Working Paper No. 31, Cambridge, MA: John A. Kennedy School of Government, Harvard University.

463 Schutter, Olivier et al (2012) Human Rights Due Diligence: The Role of States. Accessed on 27th March, 2016, from: http://humanrightsinbusiness.eu/wp-content/uploads/2015/05/De-Schutter-et-al.-Human-Rights-Due-Diligence-The-Role-of-States.pdf

GPBHR, 2011 requires corporate companies to have some form of internal policies which address human rights. Other provisions of these guidelines require governments all over the world to ensure that, all human rights principles in business are mainstreamed in the policy and legal frameworks on corporate sector and investment.

8.2 TANZANIA REGULATORY FRAMEWORK ON BUSINESS

As a way of responding to the aforesaid guidelines and other international obligations which were put in place prior to 2011, the government of Tanzania initiated a series of regulatory reforms. The main reason of such regulatory reforms was to ensure maximum achievement of the objectives for pursuing market economy (and of course, not necessarily protecting human rights aspects).

As stated above, the said reforms included establishment of the institutions (RAs) and enactment of a number of business related laws at Table 8.1 below shows. The purpose of such reforms was to achieve a level playing field for investors, efficient utilization of the available resources, consumer protection from unfair and misleading market conduct, fair and competitive markets, sustainable investment in the economy and credible competition and regulatory framework.[464] The types of RAs established between 1990s and 2015, governing laws and respective specific economic (sub-) sectors are as indicated below:-

Table 8.1: Regulatory Authorities and Governing Laws for Economic Sub-sectors in Tanzania

S/ No.	Economic Sub-Sectors	Main Regulatory Authorities	Main Governing Laws
1.	Extractions of Minerals and Gas.	Tanzania Mineral Audit Agency (TMAA); Mineral Division of\and, Tanzania Petroleum Development Corporation (TPDC).	Mining Act, 2010;[465] the Petroleum (Exploration and Production) Act, 1980;[466] the Petroleum Act, 2015;[467] the Tanzania Extractive Industry (Transparency and Accountability) Act, 2015; and, the Oil and Gas Revenues Management Act, 2015.[468]
2.	Food, Drugs and Cosmetics.	Tanzania Food and Drugs Authority (TFDA).	Tanzania Food, Drugs and Cosmetics Act, 2003.[469]
3.	Agriculture.	Tanzania Dairy Board (TDB); Sugar Board of Tanzania (SBT); Tanzania Cotton Board (TCB);	Dairy Industry Act, 2004;[470] the Sugar Industry Act, 2001;[471] the Cotton Industry Act, 2001;[472] the Coffee Industry Act, 2001;[473] the Sisal

[464] The World Bank Group (2010), Better Regulation for Growth: Regulatory Capacity Review of Tanzania. Accessed on 3rd January, 2016 from: http://documents.worldbank.org/curated/en/2010/05/12536676/better-regulation-growth-governance-frameworks-tools-effective-regulatory-reform-regulatory-capacity-review-tanzania

[465] Act No. 15 of 2010.

[466] Act No. 27 of 1980.

[467] Act No. 21 of 2015.

[468] Act No. 22 of 2015.

[469] Act No. 1 of 2003.

[470] Cap. 262.

[471] Act No. 26 of 2001.

[472] Act No. 2 of 2001.

[473] Act No. 23 of 2001.

		Tanzania Coffee Board; Tanzania Sisal Board (TSB); Tea Board of Tanzania (TBT); and, Tanzania Meat Board (TMB).	Industry Act, 1997;[474] the Tea Act, 1997;[475] and, the Meat Industry Act, 2006.[476]
4.	Telecommunication.	Tanzania Communications Regulatory Authority (TCRA).	Tanzania Communications Regulatory Authority Act, 2003;[477] and, several other laws plus regulations.[478]
5.	Social Security and Insurance.	Social Security Regulatory Authority (SSA); and, Tanzania Insurance Regulatory Authority (TIRA).	Social Security Regulatory Authority, 2008;[479] Insurance Act, 2009.[480]
6.	Construction and Engineering.	Contractors Registration Board (CRB).	Contractors Registration Board Act, 1997;[481] the Architects and Quantity Surveyors Registration Act, 1997;[482] and, the Engineers Registration Act, 1997.[483]
7.	Transportation (Marine, Road, Air and Railways).	Surface and Marine Transport Regulatory Authority (SUMATRA); the Tanzania Civil Aviation Authority (TCAA); and, the Police Force of Tanzania.	Surface and Marine Transport Regulatory Authority Act, 2001; the Road Traffic Act, 1973;[484] the TAZARA Act, 1995;[485] Railways Act, 2002;[486] and, the Shipping Agency Act, 2002.[487]
8.	Finance.	Bank of Tanzania (BOT); the Tanzania Revenue Authority (TRA); and, the Public Procurement Regulatory Authority (PPRA).	Bank of Tanzania (BOT) Act, 2006;[488] the Tanzania Revenue Authority (TRA) Act, 2005; the Foreign Exchange (Bureau de Change) Act, 2006;[489] the Banking and Financial Institutions Act, 2006;[490] and Public Procurement Act, 2011.[491]
9.	Tourism.	Tanzania Tourist Board (TTB).	Tourism Act, 2008.[492]

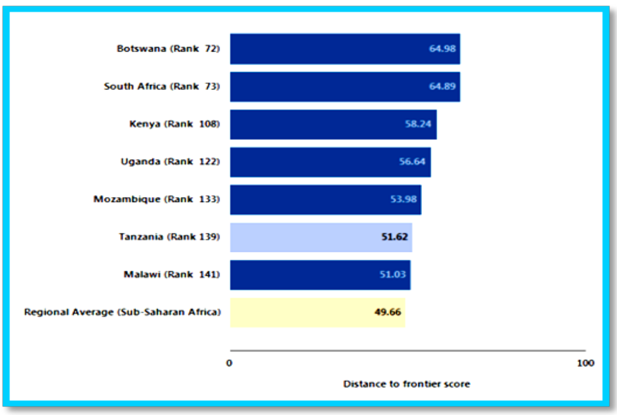
474 Act No. 2 of 1997.
475 Act No. 3 of 1997.
476 Act No. 10 of 2006.
477 Act No. 12 of 2003.
478 Other relevant laws on this sector include; the Electronic and Postal Communications Act, 2010 (Act No. 3 of 2010); Universal Communication Services Access Act, 2006 (Act No. 11 of 2006); Tanzania Communications Act, 1993 (Act No. 18 of 1993); Tanzania Broadcasting Services Act, 1993 (Act No. 6 of 1993). Their regulations include, the Electronic and Postal Communications (Consumer Protection) Regulations, 2011; the Electronic and Postal Communications (Electronic Communications Equipment Standards) Regulations, 2014; the Electronic and Postal Communications (Digital and Other Broadcasting Networks) Regulations, 2011; the Electronic and Postal Communications (Tariffs) Regulations, 2011; the Electronic and Postal Communications (Mobile Number Portability) Regulations, 2011; the Electronic and Postal Communications (Licensing) Regulations, 2011; and the Tanzania Broadcasting (Content) Regulations, 2005 (reproduced from the 2014 edition of this report).
479 Act No. 8 of 2008. Note that, this law was amended in 2010 by Social Security Laws (Amendments) Act, 2010 (Act No. 5 of 2010).
480 Act No. 10 of 2009.
481 Act No. 17 of 1997, as amended in 2008.
482 Act No. 16 of 1997.
483 Act No. 15 of 1997.
484 Act No. 30 of 1973.
485 Cap. 143.
486 Act No. 4 of 2002.
487 Act No. 11 of 2002.
488 Act No. 4 of 2006.
489 Act No. 5 of 2006.
490 Act No. 5 of 2006.
491 Act No. 7 of 2011.
492 Act No. 28 of 2008.

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.[493]
11.	Cross Cutting (General)	Business Registration and Licensing Agency (BRELA); the National Environmental Management Council (NEMC); the Occupational Health and Safety Authority (OSHA); Tanzania Bureau of Standards (TBS); the Tanzania Investment Centre (TIC); and, the Tanzania Fair Competition Commission (TFCC).	Executive Agencies Act, Cap. 245; the Occupational Health and Safety Act, 2003;[494] the National Environment Management Act, 2004;[495] the Standards Act, 2009;[496] Tanzania Investment Centre Act, 1997;[497] and, the Tanzania Fair Competition Act, 2003.[498]

Source: LHRC, Human Rights and Business Study, December 2015.

It is therefore that, some of the investments or businesses in Tanzania will have to go through long bureaucratic procedures for them to be initiated and operated in Tanzania. Moreover, some of the business activities will have to be regulated by several RAs for them to be legally operating in the country. The World Bank Group (WBG)'s 2016 Doing Business Report[499] shows that, there are still a number of issues that Tanzania needs to rectify in order to make business regulation more efficiently and friendly. Figure 8.1 below, which is adopted from page 8 of the said WBG report (which based on June 2015 benchmarks) shows that, Tanzania was trailing at 51.6% towards frontier score of easy doing business ranks.

Figure 8.1: Tanzania and Comparator Economies Rank on the Easy Doing Business, June 2015



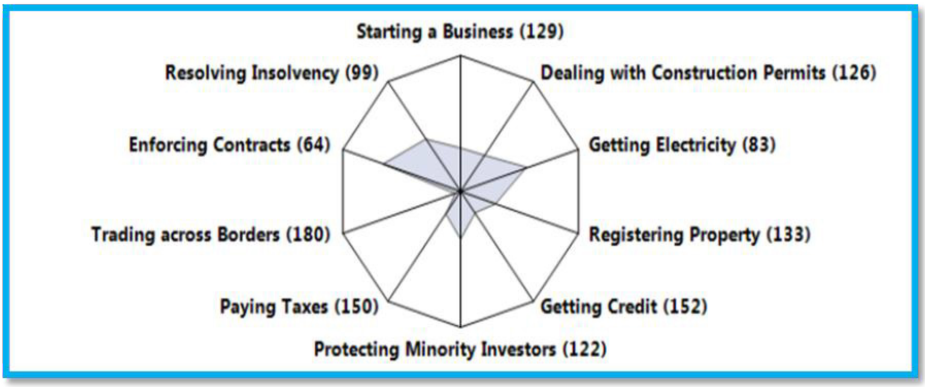
Source: WBG, Doing Business Report of 2016, Page 8.

[493] Cap. 414.
[494] Act No. 5 of 2003.
[495] Act No. 20 of 2004.
[496] Act No. 2 of 2009.
[497] Act No. 26 of 1997.
[498] Act No. 8 of 2003.
[499] This report was accessed online on 12th May, 2016 from: http://www.doingbusiness.org/reports/subnational-reports/~/media/giawb/doing%20business/documents/profiles/country/TZA.pdf

Basing on Figure 8.1 above, it is therefore that Kenya and Uganda as Tanzania's associates in East African Community (EAC) were doing better than Tanzania. Botswana and South Africa as countries with fast growing economy stand on the lead positions with their scores towards frontier mark at above 60%.

The same WBG's report has highlighted a number of attributing factors to the unsatisfactory regulatory of business performance by Tanzania. As Figure 8.2 from the same source show, such factors include prolonged business registration procedures (BRELA, TRA, local government authorities (LGAs), and other RAs).

Figure 8.2: Some Obstacles of Initiating and Running a Business in Tanzania



Source: WBG, Doing Business Report of 2016, Page 9.

As it was suggested earlier on in this chapter and previous editions of this report, Tanzania will have to establish a unified system (one stop centre) whereby, different regulatory authorities can simultaneously regulate implement their roles.

The second issue of concern about the generality of Tanzania's regulatory framework on business is that, the extent or scope of 'regulating' by RAs does not necessarily consider human rights aspects in a distinctive or clear ways. This is an issue of concern even from the inception of the investment project, whereby, NEMC does not necessarily demand a carrying out of social impact assessment (SIA) which is embodying human rights aspects as well. Apparently, this is why the human rights concerns against the investors normally burst out even before the business takes off. A reference could be made to chapters three and six of this report about compensations upon land alienations and environmental pollution during production processes.

8.3 ASSESSMENT STANDARDS OF RAS' PERFORMANCE

There are numerous institutional and operational assessment benchmarks or criteria which could be invoked here to study the status of the performance of the RAs for the year 2015 as compared to 2014. Such criteria include, (i) considering RAs' autonomous and independence of regulating economic sectors falling in their mandates;[500] (ii) transparency which is said to be a factor for establishing a stable and accessible environment that promotes competitions, trades, and investments. Moreover, it is argued that, transparency reinforces the legitimacy and fairness of regulatory processes, despite the fact that it is not easy to establish in practice;[501] and, (iii) human rights consideration as it is insisted throughout the UN-GPBHR, 2011.

LHRC adopts a sandwich approach of those and other criteria which were mentioned in its 2014 report of this nature. Such assessment criteria (performance indicators), which are also lessons for RAs to adopt in their institutional management, include:-

(i) Costs 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 - efficient of the regulation (example its net benefits).
(viii) What are the impacts of the regulation on the overall economy (such as jobs, competitiveness, innovation, economic development and of course, in this case here – human rights promotion and protection).

Such criteria have been clustered into four assessment themes, namely; (i) RAs' effectiveness of enforcing compliance standards; (ii) RAs' efficiency of the services offered; (iii) Proximity, accessibility and reliability of RAs' services; and, (iv) the outcomes, impacts and sustainability of the work of RAs.

8.3 RAs' EFFECTIVENESS OF ENFORCING COMPLIANCE STANDARDS

8.3.1 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.'[502] The assessment on effectivenessconsiders structural arrangement of the RA including accessibility throughout Tanzania; operational experiences especially incidents which improve outstanding performances;

[500] This one was well elucidated by: Meister, Andre (2010) The Role of Regulatory Agencies in Public Policy-Making Issues. George Washington University, School of Business and Public Management: Washington, DC. Page 12. Accessed on 29th March, 2016 from: http://www2.aneel.gov.br/biblioteca/trabalhos/trabalhos/artigo_andre_meister.pdf

[501] IFC, WBG and WB (2010) 'Better Regulation for Growth: Regulatory Capacity Review of Tanzania, Governance Frameworks and Tools for Effective Regulatory Reforms. Investment Climate Advisory Services of the World Bank Group. Accessed on 1st April, 2016 from: https://www.wbginvestmentclimate.org/uploads/Tanzania.pdf

[502] These definitions have been adopted, with modifications, from: Delgado, José Luis (Undated Source) Effectiveness and Efficiency of Regulatory Bodies. A Mexican Perspective. Comisión Nacional de Seguridad Nuclear y Salvaguardias. Mexico. Pages 1-4. They were used by 2014 edition of similar human rights and business report by LHRC.

outputs of the performance basing on their mandates; and ability to engage with various stakeholders including the ordinary citizens.

To discuss all these, only a few RAs have been picked as case studies on a caution that, this decision could not necessarily depict a national picture of the effectiveness of all RAs.

8.3.2 Deliverable Outputs against the Objectives of RAs: A Case of Some of Sampled Sectors

Most of the RAs were established in early 2000 as Table 8.1 above shows. It was the time when the country entered into the second phase of the economic reforms following the initial assessments done by the World Bank and other initiatives including the property and business formalization programme of Tanzania which is commonly abbreviated as MKURABITA in Swahili language. One of the implementing mechanisms of MKURABITA especially on its 'business' component is the Business Environment Strengthening Programme for Tanzania (BEST). A few economic sub-sectors are picked down here for illustration on the effectiveness of RAs' performance.

(i) Telecommunication Sector: Well Regulated by More is Desired

Around 15 years down the line, the initial results of existence of RAs are noticed. For instance, TCRA has made Tanzania to be *'one of the few African countries to liberalize and scale up the communication sector',* according to one of the TCRA officials interviewed during this study. This RA has been able to register and regulate several mobile phone operators, main ones being the Vodacom, Airtel, Tigo, Zantel and the new one, Viettel (Halotel), which started its business in 2015. The statistics show that, the number of mobile phone subscribers in Tanzania had raised by 16% in 2014 to 31.86 million subscribers, to make the communication sector as one of the fastest expanding contributors to the national economy. Moreover, according to the same source, the number of internet users rose 22% to 11.35 million last year from 2013.[503]

Despite such and other notable improvements including the control of media contents and balance reporting as TCRA did during the 2015 general elections against TBC1 (the national broadcasting corporation) and other media houses, which showed biasness in reporting election campaigns, there were issues of concern as this study gathered from the field:-

a) That, the coverage of the mobile phone networks is predominantly focusing on urban or peri-urban areas, leaving the rest of the country especially in remote areas with very low or absence of any network. The TCRA has not been able to compel or facilitate mobile phone networks to expand further to the remote areas.
b) There are allegations that some of the mobile phone networks 'steal' their clients' airtime, and also, imposing some subscription charges of their services without informed consent of the subscribers.
c) That, the mobile phone companies charge a lot of money for their services compared with other countries in Africa.[504] For instance transactions (customer tariffs) of M-PESA and TIGO-PESA (mobile phone e-money transfers) demand a lot of money as 'service

[503] Pesa-Times, 'TCRA: 32 Million People Use Mobile Phone in Tanzania.' Accessed on 9th May, 2016 from: http://pesatimes.co.tz/news/telecoms-mobiles/tcra--tcra--32-million-people-use-mobile-phones/tanzania
[504] However, this argument needs further analysis on how much do other countries charge their mobile phone users.

charges' per each transaction. A transaction of between Tshs 50,000 and Tshs 100,000 is charged a tariff of Tshs 2,000, while same transaction range could be charged less than Tshs 500 by commercial banks' ATMs.

Picture 8.1: Some of the M-Pesa; Airtel-Money; and, Tigo-Pesa Street Shops.

d) That, the Cybercrimes Act, 2015 is used to suppress freedom of expression especially for the social media community which happens to criticize the government.

e) That, TCRA has failed to control unethical internet contents or sources which are said to be main causes of the current immorality amongst the youth.

f) That, there is an influx of fake telecommunication devises in Tanzania, including illegal mobile phones smuggled from Asian and other countries.

g) That, TCRA does not have upcountry offices where people could easily access its services especially to make consultations about the services they are receiving.

(ii) Food, Drugs and Cosmetics Sectors: Still Engulfed with Counterfeit Products

The food, drugs and cosmetics, which are regulated as one package by TFDA form a sensitive part of human consumption of goods and services offered by corporate sector in Tanzania. The sub-sectors are regulated by a number of legislation and rules, the main or more specific one being the Tanzania Food, Drugs and Cosmetics Act, 2003. Section 4 of this law provides for the functions of TFDA, which include; regulating all matters relating to quality and safety of foods, drugs, herbal drugs, medical devices, poisons and cosmetics; regulating importation, manufacture, labelling, etc of the same items; monitoring clinical trials on drugs, medical devices, etc; registering related products; and, conducting inspection of products.

Various media sources showed that, TFDA did a huge work of inspecting food, drugs and cosmetics products throughout the country in 2015. For instance, in December 2015, this RA in collaboration with other law enforcers seized 1.6 tons of counterfeit food and beverages all valued at Tshs 26.2 million. Such counterfeit products were seized in Dar es Salaam following a two day 'sweep 1' operation. The products were seized from 124 business areas which TFDA, TBS, FCC and President's Office had ambushed. The seized products included counterfeit baby formula, cans of energy drinks, and bottles of juice.[505] In different occasions, TFDA and other authorities have also been seizing counterfeit medicines, to imply that Tanzanians' health is in immense risk.

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[505] Gadiosa Lamtey, 'Authorities Impound Fake Goods in 124 Areas.' The Citizen, 18th December, 2015.

Picture 8.2: Some of the Impounded Counterfeit Medicines
(Source: The Citizen (online) of 14th September, 2015).

Earlier in September 2015, TFDA had seized fake drugs and cosmetics worth Tshs 135 million following its three day operation in Mbeya, Mtwara, Mwanza, Mara, Arusha, Kilimanjaro and Dar es Salaam regions. The counterfeit products (see Picture 8.2 above) included banned and unregistered medications and cosmetics.[506]

There are at least two things of concern here. Firstly, the regulatory approach of TFDA which seems to be more on 'control' than 'prevention.' That is, it acts upon after the fake products have entered in the markets and obviously injured the health of the consumers. Secondly, the consistence and logic of the TFDA's operations. For instance, the first operation mentioned above (of December 2015) was conducted as part of the implementation of the agreements reached during a meeting hosted by the Interpol and the European police (Europol) federation, held in Praque, Czech, April 2015. The second mentioned operation of September 2015 was initiated as part of the resolution endorsed during a meeting held in Harare, Zimbabwe between 9th and 10th April, 2015 from 8 sub-Saharan African counties. This could imply that, the RA acts upon after the directive or crisis happens. LHRC once again, calls for sufficient budget allocation for TFDA and other authorities to perform well their responsibilities. It could be useful if the revenues generated by the authorities in the course of performing their duties (e.g licensing fees) are left to sustain RAs' work; or, alternatively, the government takes a small percentage (e.g 25%) and keeps the rest of the revenues for RAs' to manage themselves.

The 2015 study by Bwemelo and Mashenene on counterfeit medicine in Dar es Salaam[507] revealed that, Medicine counterfeiting is a growing problem and has been repeatedly reported to flourish and pose threats to health of consumers and pharmaceutical industry in many countries

[506] Alex Malanga, 'TFDA Seizes Shs 135 Million Fake Drugs and Cosmetics.' The Citizen, 14th September, 2015.

[507] Bwemelo, G. S, and R. S. Mashenene, 'Consumers' Response toward Counterfeit Medicines in Dar Es Salaam City, Tanzania: A Comparative Analysis.' Proceedings of the Second European Academic Research Conference on Global Business, Economics, Finance and Banking (EAR15 Swiss Conference), Zurich-Switzerland, 3-5 July, 2015 Paper ID: Z546 http://globalbizresearch.org/Swiss_Conference/pdf/Z546.pdf

across the world. The study found that 50% of substandard human medicines entering Tanzania were said to be fake. Furthermore, according to the study, presence of counterfeit medicine is well known by both RAs and the consumers (ordinary citizens). As the Table 8.2 below shows, at least 90% of the respondents of the Bwemelo and Mashenene's study said that they were aware of existence of such products in the markets.

Table 8.2: Consumer Awareness of Counterfeit Medicine Existence in Tanzania

Are you aware of the prevalence of counterfeit medicines in Tanzania?"	2008		2015	
	Frequency (n = 100)	Percent	Frequency (n = 100)	Percent
Yes	85	85.9	91	91
No	14	14.1	9	9
Total	99	100	100	100

Source: Bwemelo and Mashenene's Study, 2015.

Such findings presented in Table 8.2 above could imply that, incidents of counterfeit medicines in Tanzania are underreported and there are no adequate public warnings to protect the consumers relative to their large impact on public health. It could also be realities that, people are not willing to report to RAs for actions to be taken against the dealers of such products. Table 8.3 below adopted from the same study by Bwemelo and Mashenene (2015) proves that assumption to be a real fact; whereby, none (0%) of the respondents said that, they report counterfeit products to policy or TFDA. Instead, majority (60%) of them just threw away the fake medicine and then, takes no further actions.

Table 8.3: Consumer Reactions when Encountering Medicine

Response	2008		2015	
	Frequency (n = 57)	Percent	Frequency (n = 30)	Percent
Told the pharmacist	27	47.4	8	27
Told the doctor	7	12.3	4	13
Reported to police	2	3.5	0	0
Reported to TFDA	0	0	0	0
Threw the medicine and did nothing	21	36.8	18	60
Total	57	100	30	100

Source: Bwemelo and Mashenene's Study, 2015.

That situation (Table 8.3) suggests that, TFDA and other RA have been working in isolation with the beneficiaries of their services (the people). The LHRC 2014 study on human rights and business revealed that, at least 80% of the people were not aware of the existence of RAs and a good number of them did not understand the functions of RAs that happened to know.

This study has established that, it is not only individual persons who suffer from counterfeit products which happen to be rampant in Tanzania due to obvious weaknesses on part of RAs (law enforcers). The 'weakness' is deliberately stated here because, apart from showing that seized products are destroyed, there have been no single case reported on media about the dealers of counterfeit products.

Such weaknesses of curbing counterfeit products were found by the CTI's 2015 report[508] as causing the government to lose between Tshs 540 and 900 billion per year due to tax evasions that are related to counterfeit and substandard goods that are flooding Tanzanian markets. The CTI report found that, the illegally manufactured, fake and substandard products increased from about 35% to 40% in 2014. The government has been losing an estimated of Tshs 4 trillion since 2008 due to the prevalence of counterfeit goods in the domestic market. It is stated by CTI that, fake:-

(a) industrial equipment and raw materials generate a loss of Tshs 1,000 billion;
(b) vehicle spare parts Tshs 800 billion; agriculture inputs Tshs 600 billion;
(c) chemicals Tshs 400 billion;
(d) pharmaceuticals Tshs 400 billion;
(e) building materials Tshs 320 billion;
(f) textiles and clothes Tshs 240 billion;
(g) food and beverages Tshs 200 billion;
(h) alcohol and drinking water Tshs 200 billion.

Such losses brought the total loss to Tshs 3,160 billion almost every year; and that, this is a mere tip of the iceberg. The total amount ought to have been revenues to the government and could be more than what CTI has estimated.

Lastly the CTI report suggests that, entries through which counterfeit products are smuggled in domestic markets are known to the individual persons and even to the authorities. Such main entries ('porous borders') are mentioned by similar CTI report to include the Tanga harbour, Horohoro, Sirari, Mtukula and Tunduma borders. All these are 'porous' despite the fact that they have onsite regulatory officials. The Tanga coastal line (about 60 KMs long) has 17 landing sites that handle mostly unofficially declared small cargo. There are many other landing sites along the Indian Ocean that cater for small cargo. They include Kisiju (Coast region), Boko (Dar es Salaam) and Bagamoyo. Border posts such as Horohoro, Namanga, Holili, Tarakea, Songwe and Tunduma have law enforcement authorities, but they lack expertise for identifying counterfeits. Porous borders with Kenya, Uganda, Rwanda, Burundi, DRC, Zambia, Malawi and Mozambique are entries for smugglers of fake goods.

Some of the said boarder points normally have at least regulatory or law enforcers, namely; the revenue authority (TRA); or TMAA; or TFDA; or Police Officers; and, LGAs' leadership of the area who is in control of paramilitary groups such as *Sungusungu* and Community Polices. Besides there are other village based committees such as on forestry, wildlife, water, and so on, which can all act as watchdogs. As argued before, the fact that smuggling of fake products continues while all these government officials or institutions are watching could imply two things, one is corruption; and two, irresponsible leadership which can be directly linked to poor governance and institutional management on part of RAs. It is suggested, once again, that RAs should find ways of collaborating with grassroots governance structures if they do not have branches down to those levels. In this way, they could improve their performance with minimum costs.

[508] The summary of the CTI study was accessed by this report at hand from: Sosthenes Mwita, 'Fake Goods Cause Economic Losses.' The Daily News, 22nd October, 2015.

(iii) Social Security Schemes: Strong Strides but Low Coverage

It was gathered from this study's discussion with the head of SSRA legal affairs that, the social security in Tanzania covers a wider variety of public and private measures meant to provide benefits in the event of the individuals' earning power permanently ceasing, being interrupted, never developing, being unable to avoid poverty, or being exercised only at an acceptable social costs.

The social security schemes or services are regulated by SSA, which was established by the Social Security Regulatory Authority Act, 2008. The SSA regulates seven (7) mandatory schemes[509]and seven (7) supplementary schemes. The seventh scheme, WCF was operationalized from July 2015 as it is extensively covered in chapter two of this report. The schemes' services have, to a large extent, been harmonized since 2014.[510] The GEPF is one of the schemes which cover informal sector as well.

The major domains of social security are poverty prevention, poverty alleviation, social compensation and income distribution. This is a policy desire which has remained to be a bit theoretical due to the current structure and operation or capacity of the social security schemes. For instance:-

(a) As it is argued in chapter two of this report, there are employers who do not remit the deductions to the social security funds.
(b) There are also employers who do not register their workers for these funds. Normally what they do is to offer short term or oral contracts to make it difficult for the authorities to compel employers remitting his or her workers' contributions.
(c) The informal sector operators, who form more than 70% of the workforce as it is stated in previous chapters of this report, havenot been sensitized enough to join the schemes. As a result, only 2,142,350 workers were currently registered as social security beneficiaries. Owing to the number of workers who are estimated to be around 20 million people that could imply that less than 10% of the workers in Tanzania were enrolled into this scheme.

> LHRC is concerned that, there has been a snail pace and ineffectual efforts to ensure that more workers including the informal sectors are enrolled as beneficiaries of the scheme. According to the SSRA's legal officer, the social security laws do penalize employers who fail to remit workers contributions to the funds. This is fine. But, basing on the field experience, including this study's interviews with some of the trade unions, the SSRA or its affiliated funds have not been keen enough to trace all workplaces in order to monitor status of contributions. LHRC suggests that, SSRA and its affiliates could just link with the trade unions and employers associations as well as labour officers to monitor the compliance of this law. Linkage of efforts even for administrative measures is not prohibited under the current legal framework on social security.

[509] Namely; National Social Security Fund (NSSF); PPF Pensions Fund (PPF); Local Government Provident Fund (LAPF); Government Employees Provident Fund (GEPF); National Health Insurance Fund (NHIF); and Public Service Pension Fund (PSPF). Such funds are respectively established by the NSSF Act, 1997 (Act No. 28); PPF Act, 2001 (Act No. 25 of 2001); LAPF Act, 2006 (Act No. 9 of 2006); GEPF Retirement Benefit Fund Act, 2013; NHIF Act, 1999 (Act No. 8 of 1999); and Public Service Retirement Benefits Act, 1999 (Act No. 2 of 1999).

[510] Harmonize under the Social Security Schemes (Pension Benefit Harmonization) Rules, 2014 which are made under Sections 6, 25 and 36 of the Social Security Regulatory Authority Act, 2008.

On the other hand, SSRA and its affiliates will need to intensify their public awareness programmes. The study noted that, indeed, all these schemes including SSRA were in media including social media ‘advertising’ and not ‘informing’ or ‘sensitizing’ the public about the services they offer. Moreover, the media spots are not run consistently, strategically and holistically. For instance, most of the funds only chose a smaller group of its target such as teachers and they normally run their advisements during the time the teachers are recruited by the government. The use of mainstream media such as TV and radio seems to exclude the rural based prospective beneficiaries as they do not have access to or an interest of national based radio. Instead, the upcountry listeners of radio and TV seem to be much loyal to their community radio. But one will find all advisements are channelled to one or two radio stations, mostly famous (but urban based) youth-led radio station.

On the other hand, according to the head of legal section at SSRA, a number of complaints associated with the social security contributions have been on increase to suggest a fact that awareness on this matter is increasing as Table 8.4 below shows:-

Table 8.4: Total Complains Received by SSRA for Four Years

Period	2011/2012	2012/2013	2013/2014	2014/2015	Total
Received	97	392	171	521	
Resolved	92	383	159	490	
Walk in	47	102	224	68	
Total:	**144**	**494**	**395**	**589**	**1622**
Total Resolve	139	485	383	558	1565
Closure Rate	97%	98%	97%	95%	97%

Source: SSRA Headquarters, 2015.

The proximity of SSRA is an issue of concern. So far it has a Dar es Salaam based branch which is also the head office. Therefore, the upcountry workers who might have an issue against their employers will have either to call or send an email or board a bus and go physically, which is more expensive.

On this, LHRC suggests that, SSRA to use district or regional based labour offices as its administrative recipients of the complaints from the aggrieved workers in their areas of jurisdiction. This is due to the fact that, there are some people who will need clarifications (legal advice) before lodging their complaints – just to ensure that they are submitting genuine claims and not wasting their time for worthless demands.

Otherwise, SSRA performed well in other activities falling within its mandates including inspections of different sites (schemes). For instance, between 2014 and 2015, SSRA conducted a total of 7 onsite inspections and 24 offsite inspection to make a total of 31 inspections per year. Moreover, SSRA initiated the voluntary scheme to cover a wide range of members from both formal and informal sectors. The head of legal affairs at SSRA informed the study that, the authority also adopted a creativity and customer care in order to serve clients more effectively. As a result, about 400,000 people from private sector have been induced to join social security schemes.

The community awareness was also rolling over through various media outlets. However, as suggested above, this one still needs some rectification to make it more impactful. The last notable achievement by SSRA was the adoption and enforcement of the common or standard formular to calculate benefits for all six schemes (excluding WCF here). The next edition of this report would come out with some updates on the impacts of all these reforms. Despite such efforts, majority (78.4%) of community numbers said that, they were completely unaware of all RAs (not only SSRA). Some of them could understand that, there were TBS or SUMATRA, but they did not know the actual functions of such RAs. Only 12.4% of the community members interviewed during this study said that, they know the names and some of the function of a few RAs.

(iv) Mining Sector: Most Porous and Loser to Economy?

The extraction industry is one of the economic sectors, which is heavily regulated and protect, but yet, quite porous and notorious or victim of being a loser and less contributor to the national economy. As Table 8.1 above showed, this industry is institutionally regulated by at least three state's agents, main ones being; the Mining Division of the Ministry of Energy and Minerals, TMAA and TPDC. The extraction of oil and gas is still unpopular and may be at its infant stage – most of the companies were still in exploration processes.

As for the mining sector in particular, the chief regulators are TMAA and the Mining Division. Of course other state agencies are usually involved in monitoring of mining activities including revenues by virtue of their statutory responsibilities. The Mining Act, 2010 is the main law, which is supported by a dozen of rules and regulations including; the Mining (Mineral Rights) Regulations, 2010; the Mining (Mineral Trading) Regulations, 2010; the Mining (Mineral Beneficiation) Regulations, 2010; the Mirerani Controlled Area Regulations, 2002; the Mining (Radioactive Minerals) Regulations, 2010; the Mining (Diamond Trading) Regulations, 2003; and, the Mining (Mineral Controlled Area) Regulations, 2001.

The TMAA is a semi-autonomous institution established in November 2009 under the Executive Agencies Act, Cap. 245.[511] The aim of TMAA is to facilitate maximization of government revenue from the mining industry through effective monitoring and auditing of mining operations (including quality and quantity of minerals) and ensuring sound environmental management in the mining areas. It is this agency which also determines the revenues generated from mining activities in order to facilitate collection of payable royalty.

According to the 2014/2015 Annual Report of the Ministry of Energy and Minerals (Mining Division), the government revenues accruing from the mineral sector increased to Tshs 169.5 billion in the year 2014/15 compared to Tshs 155.65 billion realized in the year 2013/14. The difference implies an increase of the revenue collections by 8.1%. The report did not explain factors attributed tosuch an increase of revenues. However, the increase can be speculated to

[511] Through G.N No. 362 of 6thNovember, 2009.

have been caused by (i) improved performance of TMAA, the Mining Division and other RA; and, (ii) widening of the mining activities such as an increase of miners.

The TMAA and the Mining Division regulate all mine sites in Tanzania. During the year (2014/2015), the Division was said to have been able to inspect a total of 1,428 mines in the country in which 5 were large-scale mines, namely Buzwagi, Bulyanhulu, Geita, North Mara and Williamson Diamond Mine (WDL); 20 medium-scale mines; and 1,403 small-scale mines.[512] Other initiatives taken by these regulatory authorities include:-

(a) Construction of a fence around Mirerani controlled area.
(b) Introduction of Tanzanite warranty for all Tanzanite exports.
(c) Imposition of a moratorium on exports of rough tanzanite (since 2010).
(d) Initiation of support to small scale miners as discussed in chapter five of this report.
(e) Stationing mineral auditors at the major airports of Tanzania.

It appears that, as a result of such initiatives and an increase of mining activities (also improvement of other economic sectors), the real GDP increased from 6.9% in 2012/13 to 7.0 percent in 2013/14.[513] In the latter period, the GDP amounted to Tshs 20.5 trillion, with mining representing 3.3% of GDP. The total collections of USD 65.8 million and Tshs 104.9 billion were paid to the government as royalty and corporate tax respectively in 2015 (from major mining companies). Additionally, a total of Tshs 276 billion was paid as other taxes and levies during the same year.[514] Such revenues did not raise any further the ratio of mining sector's contributions to GDP.

The contribution of 3.3% to GDP by the mining sector has remained to be an issue of concern for so many years now. Previous reports of this nature by thr LHRC called for the increment of the loyalties charged from the minerals, which are relatively low as chapter four of this report indicates. None of the minerals or gems in Tanzania is charged above 5% at the moment (unless there is a recent development which this study did not come across). Diamond, uranium, copper, and even cut gemstones had their loyalties charged below 5%. This is why, despite the fact that thousands of kilograms of minerals are produced every month, the revenue from the sector has remained relatively lower that the volume of these precision stone unearthed. For instance according to page 21 of the said annual review report of 2014/2015, the Bulyanhulu Gold Mine, which started its operation in July 2001, was estimated to produce a monthly throughput of 15,100 Kg of gold. GGM was estimated to a monthly throughput of 24,000 Kg of gold; and, the Williamson Diamonds Limited a monthly throughput of 125,000 ounces.

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512 These inspections resulted into improved health and safety in the mines. Furthermore, the Division approved 25 Environmental Protection Plan. The improved health and safety in the mines has resulted into reduction of accidents (or fatality). For instance, there was only 1 accident in a large scale mines in 2014/2015 compared to 16 accidents, which caused 15 deaths in 2013/14. The medium scale mines had only 6 accidents, which caused 2 deaths in 2014/15 compared to 9 accidents, which caused two deaths in 2013/14. However, for the small scale mines situation was generally poor. Accidents recorded were on high side compared to large and medium scale mines. During this period (2014/2015), there were 22 reported accidents, which caused 45 deaths compared to 26 reported accidents, which caused 36 deaths in 2013/14 (Reference: URT, Annual Report of 2014/2015. Ministry of Energy and Minerals, Mining Division. Page 15).

513 According to the Bank of Tanzania Annual Report of 2014, the growth is attributable to good performance in communication, financial intermediation, construction, and trade and repairs activities.

514 TMAA, 'Annual Report of 2015.' Accessible at: http://www.tmaa.go.tz/uploads/TMAA_Annual_Report_2015-4.pdf

Probably, same situation would remain over the mining concession period between these companies and the government. The first major gold-mining company or project, Golden Pride Mine, which was owned by Resolute Mining was commissioned mining activities in Tanzania in 1998. It ended its operations on 12th February, 2014. It injected a capita of USD 48 million. During its 17 years of operation, the mine produced and sold 2.2 million troy ounces of gold and 207,803 troy ounces of silver, all worth USD 1.5 billion. However, throughout its life, the mine paid royalty in the amount of USD 47.3 million and other government taxes and levies amounting to Tshs 181.4 billion.[515] It is really absurd that the amount of revenue earned by the government was lower than even the capital injected by the company.

LHRC is of the view that, the stated regulatory measures would probably be meaningless if the country remains to be laxity and 'too generous' in its legal framework on revenue collections from the minerals. The tons of minerals mentioned in previous chapters of this report could be depleted with little benefits at hand. Secondly, it seems that a scaling up of regulatory approach is still needed in the mining sector so that it does not only 'controll' the smuggling and other illicit in mining trades (especially processing and exports), but also 'prevent' such incidents which still deny the country billions of revenues each year.

Some incidents which this study came across during the year can prove that, smuggling of minerals (which implies ineffectual regulation) is still a reality and a hard knob to break for good. For instance, the media reported that, an Indian national, identified as Anurag Jain, was arrested with a consignment of raw Tanzanite gemstones worth Tshs 700 million that he was in the process of smuggling to Hong Kong, China in December 2015. He was arrested while trying to board a Qatar-bound plane at the Kilimanjaro International Airport (KIA) with 2.02 Kg gemstones of the highest grades, worth USD 310,140. On interrogation, he said he had purchased the gemstones from local miners in 264 separate pieces.[516] The issue here is how such stones could be traded by individuals without the control of RAs?

Picture 8.3: Tanzanian Tanzanite, Gold and other Minerals
(Internet Picture).

[515] TMAA, 'Annual Report of 2014.' Accessible at: http://www.tmaa.go.tz/uploads/ANNUAL_REPORT_2014.pdf
[516] Pesa Times, 'Indian Arrested Smuggling Tanzanite.' 17th December, 2015. Accessed on 4th April, 2016 from: http://pesatimes.co.tz/news/general/indian-arrested-smuggling-tanzanite/tanzania

Same media source of 17th December 215 revealed that, between January and November 2015, TMAA impounded various consignments of valuable minerals worth Tshs 600 million in a total of 23 different smuggling cases across the country's ports of entries, especially airports. The TMAA's Annual Report of 2015 gives different figures. It states that the monitoring of mineral exports at the major airports enabled interception of smuggled minerals worth USD 1,512,186.61 and Tshs 34,670,794 in 25 separate incidents. Be it as it may, the message here is that, minerals worth billions of money are illegally transacted annually.

It was stated further (as reported in 2014 edition of this report), despite Tanzanite being mined only in Tanzania, quantities of the gemstones worth Tshs 635 billion have been smuggled out of the country annually through illegal channels, with most of it ending up in either Kenya or India. Kenya is said to be importing tanzanite worth USD 100 million annually; while, India documents annual imports of the blue gemstones worth USD 300 million. Such figures suggest billions of revenues are lost through smuggling every year through weak control of routes and strategies used for the smugglings.

The TEITI report of August 2015[517] indicates some challenges, which this study regards them as institutional capacity gaps to be addressed by the responsible authorities. The challenges mentioned include: -

(a) Inadequate human and financial resources to monitor and audit (medium and small-scale) mining operations with potential for generating revenues for the government.
(b) Poor record-keeping by some (medium and small-scale) mining operations which hinders audit effectiveness.
(c) Little awareness by mining operations on legal/ regulatory requirements.
(d) Delays by some government bodies in taking action(s) on audit recommendations.

According to the anonymous TMAA officer, there are also challenges of corruption incidents on part of mining, police and immigration officers; and, poor machines such as special scanners to easily detecting minerals. Moreover, according to the same officer, the government might be losing a lot of revenues due to its approach of monitoring the mining companies. In most cases, the auditing officers rely on the face of records of the papers or statistics availed by the companies instead of doing a rather thorough assessment. The officer linked this situation with lack of sufficient skills on mining operations.

(v) Transport Sector: Road Transport Sub-sector as a real 'Carnage'

The road transport sub-sector is regulated by a number of RAs main ones being SUMATRA and the police, traffic section. The two RAs are guided by a number of laws including the SUMATRA Act, 2001; the Road Traffic Act, 1973; the Motor Vehicle Driving Schools (Licensing) Act, Cap 163; the Highways Act, Cap. 167; and, the Roads Act, 2007.[518] There are also regulations made under these laws.

[517] TEITE, 'Scoping Report on the Preparation of EITI Reconciliation Reports for the years of 2012/2013 and 2013/2014 for Tanzania Extractive Industries Transparency Initiative.' Page 25. Accessed it on 2nd April, 2016 from: http://www.teiti.or.tz/wp-content/uploads/2015/08/TEITI-5th-and-6th-Final-Scoping-Report-v81.pdf

[518] Act No. 13 of 2007.

Moreover, the country formulated the National Road Safety Policy in September 2009. Besides, RAs have been adopting administrative measures to regulate the road transportation. Such measures include an introduction of speed limiters in mid 1990s; speed-schedules from one point to the other; public awareness through media and police-driver conversations; a touch to monitor speed; and inspections of the vehicles especially the passenger buses before departing as Picture 8.4 below shows:

Picture 8.4: Police officers inspect a bus before departing Ubungo Bus Terminal, Dar es Salaam.

All these measures have been adopted for two main reasons. Firstly, due to the importance of the road transport sub-sector in Tanzania, which accounts for about 70% and it is the dominant means of transport of goods and passengers.[519] Secondly, the road accident (crashes), seems to be 'a growing concern' as the National Road Safety Policy of 2009, names it. The policy states further that, road crashes are issues of concern because they result not only in loss of lives and properties of the people, but they are also causing a burden to the nation and local community. The policy says that, on part of the communities, the road crashes cause funeral costs, expenditures for medical treatment and care, and costs of repairing or replacing damaged vehicles; while on the side of the nation, the road crashes consume a significant amount of the national resources, which are estimated to cost the country at least 1% of the Gross National Product (GNP).[520]

[519] Chiduo, C. and P. Minja (2001) Road Safety in Tanzania: What are the Problems? An internet source, accessed on 5th May, 2016 from: http://ntl.bts.gov/lib/12000/12100/12140/pdf/CHIDUO_PHILEMON.PDF

[520] Paragraph 1.4 of the National Road Safety Policy of 2009. The police was published by the Ministry of Infrastructure Development, Dar es Salaam, Tanzania.

Picture 8.5: Some of the road accidents that happended in the country in 2015.

The LHRC's Tanzania Human Rights Report of 2015 states that, a number of people losing lives and those injured due to road accidents has been increasing significantly. The said report quotes the police statics which showed that, at least 512,765 accidents occurred in between 1977 and 2014. Such accidents resulted into death of 70,975 persons and 463,705 injuries. As for the year 2015 alone, there were 8,337 accidents nationwide, which resulted to 3,468 deaths and 9,383 injuries. The accidents decreased from 14,360 in 2014, which cost a total of 3,760 lives and 14,530 injuries. Therefore the decreases are by 6,023 (being 41.9%) accidents; 292 (being 7.8%); and, 5,147 (being 35.4%).[521]

The causes of the road accidents which are usually mentioned by the Tanzanian police reports are carelessness of drivers' and human error (which is sighted for causing 78% of all accidents). However, this study realized that, there are several other attributing factors to the occurrence of accidents, some of which directly relating to the institutional capacities of RAs responsible for regulating road safety. Other factors mentioned by drivers in Dar es Salaam, Tabora, Morogoro and Mwanza included:-

(a) Corruption practices by some of the traffic officers, who receive bribes and then allow defective vehicles to operate. A driver of one of the bus companies in Morogoro region told the study that, there are buses ofa Member of Parliament operating between Dar es Salaam and Morogoro regions which were 'untouchable' even if they commit traffic offences.
(b) Absence of traffic signs and road signs (markings) in some parts of the highways.
(c) Road faults (poor road) – with pit holes and ditches.
(d) Defective vehicles which operate without being maintained by proper garages. There is also an issue of the quality of vehicles certified to carry passengers. On this, the chairperson of drivers in one of the Lake Zone regions told the study that:-

> … there is something which every government official and bus owner avoid to state as the main cause of current accidents especially of the buses. You know, we now use these buses from China. I think they are not stable as compared with Scania or even Leyland or Volvo. The Chinese things are cheap and therefore not durable. I am not sure if the officers inspected the mechanical fitnesses of these kinds of buses from China before allowing them to ferry people. Just count, how many accidents involve a Scania driver against the Yutong driver? It is just

[521] Quoted with modification from: LHRC (2015) Tanzania Human Rights Report of 2015. LHRC: Dar es Salaam. Pages 27 to 29.

these people (Chinese) are sharp and they might have been able to manipulate the authorities to allow their brands in the market.

Picture 8.6: Illustration of a Yutong bus, a chinese brand of bus used in Tanzania

(e) Poor working conditions of drivers as extensively discussed in chapter two of the report. Such conditions include poor salaries; lack of formal contracts; absence of leaves; and generally insecurity of tenure.

(f) Insufficient number of SUMATRA and police officers to carry out thorough monitoring of the vehicles.

(g) Increase in number of motor vehicles and motor cycles which seems to overpower the capacity of RAs who basically use manual inspection and monitoring of vehicles and drivers. Paragraph 2.2.4 of chapter two of this report indicated the current number of vehicles and cycles. For instance, buses increased from 3,616 in 2007 to 5,585 in 2014 (being an increase of 35.3%); other passengers' cars were 34,608 in 2007 and increased to 83,764 in 2014 (being an increase of 58.7%); lorries were 20,157 in 2007 and increased to 27,413 in 2014 (being an increase of 26.5%); and, the motorcycles were only 51,471 in 2007 but, tremendously increased to 39,335,444 in 2014 (being an increase of 99.9%).

Basing on all these factors, LHRC suggests that, instead of using a generalized defense of 'human error' as being the cause of road accidents, responsible RAs should consider other factors suggested by the respondents so that, there can be road safety plan and policies which are reflecting the reality on the ground. The RAs must accept the fact that, those too could be issues of concern for them to focus on as they regulate this sector in Tanzania. The imposition of severe punishments as it happens to be a trend at the moment is a good idea; however, it is more of managing the crisis instead of preventing the same from happening.

8.4 EFFICIENCY OF SERVICES OFFERED BY RAs

The assessment of efficiencyhas simply considered performance of the regulatory functions in a timely and cost effective manner - responsibilities against regulatory laws, rules and regulations. Basing on the discussion of the selected economic sectors and sub-sectors above, which have been picked up as illustrations to generalize the situation of RAs, it can be stated that, most of RAs were experiencing weak institutional capacity to carry out their statutory mandates due to:-

(a) Budgetary deficits. That, the budget for their (RAs') operations were said to be inadequate. Therefore, some of the activities such as inspections and monitoring have been inadequately undertaken.
(b) Shortage of human resources. Though it was really difficult to secure the actual number of current staff against the real needs of the individual RAs, basing on the incidents illustrated above, it is clear that the number of workers to support the work of RAs was not adequate. The TMAA officer also mentioned a need of workers with 'specialized skills' on the matters which RAs are regulating.
(c) Shortage of facilities for performing their functions as it is discussed above.
(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.
(h) Sustainability of RAs' interventions is challenged by presence of the aforesaid factors and also, inadequate consultations with the local communities.

8.5 PERFORMANCE INDICATORS ON EFFECTIVENESS OF RAs

The following is the summary of the key findings in the form of performance indicators on the effectiveness of the Regulatory Authorities (RAs), which regulate business sector in Tanzania. The summary depicts a comparative picture between RAs' situation for the years 2014 and 2015. It should be noted that, not all 'RAs' performance indicators' used in 2014 were reassessed in 2015. However, at least all main indicators have been compared between the two years in order to measure the performance of RAs as shown in the table below. It should be noted further that, some of the indicator used in this Table below, were taken directly from the LHRC's SPSS data bank without being necessarily discussed in the main text of this chapter.

Table 8.5: Performance Indicators Regulatory Authorities – 2014 and 2015 LHRC's Studies

S/ No.	RAs' Issues	[Some of the] Performance Indicators		
		2013	**2014**	**2015**
i.	**Overall Performance (RAs' Self-Assessments)**	o N/A	o It appeared that, almost all RAs consider their performances as ranging between 40% and 50% of the expected levels. o Only 41.9% of RAs had in place specific performance assessment tools (to measure the outputs and outcomes or impacts) of their work.	o 46.4% of RAs felt that they did not have sufficient capacity to execute all mandated activities to the expected statutory standards. o 55.1% of RAs had in place specific performance assessment tools (to measure the outputs and outcomes or impacts) of their work. o Only 44.9% of RAs (workers) did not know exact number of corporate companies which were supposed to be registered or regulated by them. o Only 31.9% of RAs said that they had sufficient monitoring capacity covering all business companies across the country.
ii.	**Effectiveness and Efficiency of RAs' Performances**	o N/A	o 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. o 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.	o 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. o Around 70% of RAs had physical accessibility of their services to all regions of Mainland Tanzania.
iii.	**Awareness of RAs' Services**	o N/A	o Only 22.4% of the workers stated that, they knew some of them (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. o As for the members of public, only 19.5% of them stated that they had little knowledge of the existence of RAs. Out of those who said 'YES' to the knowledge of existence (and may be functions) of RAs, only 4.9% of the members of public claimed to have used RA's services to sort out certain challenges.	o Only 11.1% of the workers stated that, they knew some of them (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. o 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 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.

Source: LHRC, Human Rights and Business Studies (Field Data), 2014 and 2015.

CHAPTER NINE

GENERAL RECOMMENDATIONS AND CONCLUSION

This chapter adopts same recommendations by LHRC as it was in the previous reports of this nature. There are a number of recommendations which have been implemented following the previous studies. Some of the recommendations implemented by the government and other institutions or individuals were:-

(i) Reduction of tax exemptions which were massively granted to the large investors. This was recommended from 2013 and 2014, and eventually, the previous VAT law of 1997 was repealed and replaced by VAT legislation of 2014. The new law has restricted such exemptions – however the exemptions have not yet reached the 1% of GDP as LHRC and CAG suggested. More discussion on this is found in chapter four of this report.

(ii) Implementation of the Workers Compensation Act, 2008; by, among other things, the operationalization of the Workers Compensation Fund (WCF) from July 2015 as it is explained in chapter two of this report.

(iii) Enactment of the law to regulate foreign workers who wish to work in Tanzania. This was recommended in 2013 and 2014 of the previous reportsof this nature by the LHRC and eventually, that law, as discussed in chapter two of this report, beeing enacted.

(iv) Controlling of land hoarding by investors. It was recommended in 2013 and 2014 as well that, there was a need for the government to alienate unutilized land from the investors. The 2013 report revealed that, most of the investors were unable to utilize even 50% of the land granted to them while the host communities were scrambling for a few remaining. This report, in chapter three, has indicated that, the government has started to implement this recommendation, whereby, some of the dormant investors' lands have been acquired back by the government. Moreover, there is a strong statement by the current leadership on this same subject matter.

(v) As for the critical challenge of preferring 'cheap' and 'informal' labourers which was also one of the recommendations, there have been a number of government directives to the employers, requiring them to give their workers written contracts. An example of the December 2015's letter from the government to the employers is portrayed.

Below are some of the general recommendations which have not been implemented as yet, some of which are newly introduced in this 2015 report. It should be noted that specific recommendations are included in every chapter and subchapters of this report.

9.1 General Recommendations

9.1.1 Labour Rights

There is a need to:-

a) Continue strengthening law enforcement mechanism to ensure that all employers and workers adhere to the current legal standards governing employment and labour relations.
b) Effectively implement the newly enacted law which regulates employment of foreign workers in Tanzania.
c) Intensify the operationalization of WCF which came into being July 2015.
d) Civil rights groups (including trade unions and their branches) should initiate more practical ways to raise workers' awareness on employment and related laws.
e) Labour rights should be incorporated in the Proposed New Constitution.

9.1.2 Land Rights

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

9.1.3 Taxation

a) The newly enacted VAT law should be effectively implemented in such a way that, exemptions to not exceed 1% of GDP as suggested in 2013 and 2014 LHRC's reports.
b) There is a need to reconsider the institutional capacity of the Tanzania Intelligence Agency, especially in regards to control of financial and non-financial illicit, which cause loss of billions of money.

9.1.4 Corporate Accountability

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

9.1.5 Environmental Justice

a) There is a need to improve institutional capacities of all RAs for them to work more efficiently in order to, among other things, control pollutions caused by investment activities; and, effectively monitoring EIA, EA and similar standards.
b) Law enforcement needs should be improved to safeguard unlawful utilization of natural resources. Members of the public should be encouraged to take an active role towards protection of the natural resources.

9.1.6 Gender Related Rights

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

9.1.7 Regulatory Authorities (RAs)

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

9.2 Conclusion

Despite the fact that efforts were underway to improve the implementation of human rights standards in business, especially the corporate economic sector at large, more is desired than what have been achieved so far. Such efforts are hampered by a number of obstacles some being, presence of legal and institutional frameworks on business which are 'blind' of human rights standards as they are stated in the international human rights instruments. Secondly, there is a serious challenge of the enforcement of the labour laws, a situation which exposes millions of workers to engage in low-paid, unsecured and humiliating job standards. In this way, they lack several statutory entitlements and therefore, continue to be poor. It is also an issue of concern that, RAs have been institutionally weak in such a way that, they did not have sufficient resources, and branches down to the regional or district levels where most of the investment projects are taking place. Again, this institutional gap tends to give the investors a 'leeway' of doing all what they can in order to maximize profit. Such discretion is found by this and previous studies by LHRC as being detrimental to the surrounding environments; and, of course, the livelihood of the communities which host the investment projects.

It is because of those and other findings and concerns that LHRC proposes some legal reforms; and a scale-up of efforts to implement the existing law. The political will, for instance against tax evasion and financial illicit, could be part of proposed efforts. Besides, all stakeholders should take their parts to implement the issues and concerns raised in this report. It is until all these are fully done, then the workers and Tanzanians as well as the government can benefit from the investments in this country.

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