



VOICES FROM TANZANIA

# case studies on Business and Human Rights (Volume 1)

*With contributions by*



Project  
funded by the  
EUROPEAN UNION

# Editorial

## VOICES FROM TANZANIA – case studies on Business and Human Rights (Volume 1)

Antwerp/ Dar es Salaam/ Mwanza, March 2019.

The edited volume “Voices from Tanzania – case studies on Business and Human Rights (Volume 1)” is a collaboration between Tanzanian civil society organisations, the Tanzanian Commission for Human Rights and Good Governance (CHRAGG), Business and Human Rights Tanzania (BHRT) and the International Peace Information Service (IPIS).

The «Voices from Tanzania» series supports local field-based studies into business and human rights topics in Tanzania. The publications do not represent IPIS’ research or views. They are based on the surveys and analyses conducted by Tanzanian civil society organisations and solely belong to them.

### About the Contributors

**Business and Human Rights Tanzania (BHRT)** is a registered Tanzanian, non-governmental organization founded in 2016. BHRT aims to impart skills and knowledge on ‘Business and Human Rights’, in furtherance of the objectives of the UN Guiding Principles on Business and Human Rights in Tanzania and to stimulate corporate actors to adhere to human rights standards.

**The Tanzanian Commission for Human Rights and Good Governance (CHRAGG)** is Tanzania’s national human rights institution (NHRI). It is an autonomous government department with a constitutional mandate (assigned in 2000) to independently promote and protect human rights and good governance in the country.

**Governance Links Tanzania** is a Research and Policy analysis Non-Governmental Organization in Tanzania, focusing on the intersecting themes of Natural Resources, Trade and Health Governance.

**The International Peace Information Service (IPIS)** is an independent research institute providing tailored information, analysis and capacity enhancement to support those actors who want to realize a vision of durable peace, sustainable development and the fulfilment of human rights. IPIS has a geographic focus on sub-Saharan Africa and a thematic focus on natural resources, conflict motives of armed actors, business and human rights, and international arms transfers.

**Legal and Human Rights Centre (LHRC)** is an advocacy-based human rights organization that advocates for the adherence to human rights and rule of law in Tanzania. The LHRC aims to empower the public and promote, reinforce and safeguard human rights and good governance in Tanzania through legal and civic education and information; legal research and advice; monitoring and following-up on human rights violations; and advocacy for reforms of policies, laws and practices in line with international human rights standards.

**Cover photo:** The port of Dar es Salaam is an important trade hub for many businesses in Tanzania and beyond

**Layout:** Sakado

**Edited by IPIS** (Hans Merket, Mieke Thierens)

D/2019/4320/06



This publication is part of the ‘Improving monitoring, research and dialogue on Business & Human Rights in Tanzania’ project implemented by CHRAGG, BHRT and IPIS, with the financial support of the European Instrument for Democracy and Human Rights.

# Voices from Tanzania - case studies on Business and Human Rights (volume 1)

Over the past decade the role, impact and contribution of businesses regarding human rights became a topic of increased attention on the international agenda and in numerous national contexts.

Through their presence and activities, businesses can play an important role in both promoting and harming human rights,<sup>1</sup> including labour rights, the right to health, liberty, security, free speech and adequate living standards. As established in the *United Nations Guiding Principles on Business and Human Rights (UNGPs)*, corporations have a responsibility to *respect* human rights.<sup>2</sup> This means to act diligently in order to avoid infringing on human rights. The primary duty to *protect* citizens from corporate harm lays with the State. Governments can do this by enforcing effective and appropriate policies, legislation and regulations, by providing guidance and by installing effective mechanisms for redress, in case of violations. The access to remedy, through both judicial and non-judicial mechanisms, is the third essential component for safeguarding human rights, according to the UNGPs.

While momentum on business and human rights is steadily growing, limited awareness amongst the public, business actors and policy-makers, as well as a lack of effective regulations to align business practices with the UNGPs, hamper progress.

In Tanzania, the 2017 National Baseline Assessment (NBA) on business and human rights came to a similar conclusion.<sup>3</sup> It identified several gaps in addressing the corporate impact on human rights, especially when it comes to rights related to labour, land and environment. More studies and analyses on national and local dynamics are much needed to improve the understanding and feed the debate on business and human rights in Tanzania.

To support and build on the rich expertise on 'business and human rights' that is present among Tanzanian civil society and community-based organisations, the Tanzanian Commission for Human Rights and Good Governance (CHRAGG), Business and Human Rights Tanzania (BHRT) and the International Peace Information Service (IPIS) launched the publication series «**Voices from Tanzania**». Contributors to this series receive training and editorial support.

This first edited volume, "*Voices from Tanzania – case studies on Business and Human Rights (Volume 1)*", presents case studies on corporate human rights issues by Tanzania-based organisations BHRT, CHRAGG, Governance Links, Legal and Human Rights Centre and IPIS's project manager in Tanzania. Their contributions offer present-day cases from four major economic sectors in Tanzania (resource extraction, agriculture, tourism and infrastructure) and investigate a wide range of topics, from human rights issues to watch during the planned construction of the East African Crude Oil Pipeline, to labour rights issues in the fish processing and cut flower industries of Mwanza and Arusha respectively, to the tense relation between tourism investment and land rights in Sadaani National Park, and that between forest conservation and limestone mining in Kigoma Region.

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1 The universal, fundamental rights for every person around the world, as described and confirmed in the *Universal Declaration of Human Rights*, United Nations 1948. <http://www.un.org/en/universal-declaration-human-rights/>

2 Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, Office of the High Commission on Human Rights (OHCHR), 2011. [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

3 National Baseline Assessment (NBA) of current implementation of business and human rights frameworks in the United Republic of Tanzania, CHRAGG, DIHR & SOMO, November 2017. [https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/projects\\_docs/tanzania\\_bhr\\_nba\\_final\\_nov2017.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/projects_docs/tanzania_bhr_nba_final_nov2017.pdf)



Figure 1: Overview of topics covered in this “Voices from Tanzania – case studies on Business and Human Rights (Volume 1)” publication

First, *Governance Links Tanzania* takes a critical look at the **“Human rights issues to watch in the construction of the Tanzania section of East African Crude Oil Pipeline project”**. In their implementation, large infrastructure projects touch upon multiple basic human rights, including workers’ rights, property rights, the right to safe and healthy living conditions, and the right to effective remedy if rights are violated. Considering the magnitude and trajectory of the East African Crude Oil Pipeline – the 1,149 km long pipeline cuts across eight regions in northern Tanzania (see Figure 1) -, and the number of (inter-)national stakeholders involved, this project provides an interesting case to raise awareness on corporate human rights issues to consider in infrastructure projects.



Secondly, the *Tanzanian Commission for Human Rights and Good Governance (CHRAGG)* presents its findings on **“Labour rights and access to remedies by workers in fish processing industries in Mwanza city”**. Combining literature reviews with field studies conducted in three fish processing industries located in Mwanza Municipality, CHRAGG evaluates the implementation of labour rights and standards in this agricultural sector. It also investigates the extent to which workers in the fish processing industry have access to remedy through non-judicial mechanisms. As the first dedicated study on human rights in the fishing industry in Tanzania, this contribution offers crucial insights into a sector that has remained understudied so far.

The study points towards the most urgent issues to be solved and suggests steps to be taken to ensure that labour rights are promoted and protected, and access to justice is guaranteed for all.

A second study into labour rights was conducted by *Business and Human Rights Tanzania (BHRT)*. They report on **“Labour-rights compliance in the cut flower industry in Tanzania: a case study of Mount Meru flower farm (Arumeru district, Arusha region)”**. Like the fishing industry, the floriculture industry in Tanzania has often been overlooked when it comes to human rights issues, and labour rights in particular. However, as one of Tanzania’s main growing export industries, the social, environmental, health and labour rights impacts that result from producing cut flowers affect many. Field-data on labour rights compliance and general human rights awareness in Mount Meru flower farm are presented, as well as perspectives from other stakeholders (civil society, local communities and government actors) on human rights in the floriculture industry. The results from this study will help to raise awareness on existing labour laws and to strengthen access to justice for employers, employees and community members.



In the fourth contribution to this volume, the *Legal and Human Rights Centre (LHRC)* takes an in-depth look at a longstanding conflict related to tourism investment in one of Tanzania’s national parks. The study **“Tourism and land rights: case study of Uvinje sub-village and Saadani National Park”** aims to unravel the causes for the continued land dispute between Uvinje community and Saadani National Park Authorities, which has been ongoing since the 1990’s. LHRC assesses whether community land rights were safeguarded during the establishment of Saadani National Park, which human rights were violated as a result of this conflict and whether or not human rights due diligence was undertaken prior to this example of tourism investment. Suggestions are

formulated on the best way forward for this specific conflict and for human rights due diligence prior to tourism investment in general.

Finally, the project manager of the *International Peace Information Service (IPIS) in Tanzania* presents new data on **“Limestone mining and human rights issues in Kigoma Region. A case study on limestone mining communities in Makere”**. In Kigoma, mining communities rely heavily on land and resources in the Makere Forest Reserve for their livelihood. This has given rise to tensions with forest authorities, that are mandated with enforcing laws and regulations that discourage human activities in reserves. By looking into a subject and region that have been overlooked in studies on mining, human rights and conservation so far, this contribution sheds a light on human rights violations that have remained unreported and whose victims have limited access to redress and remedy.



Despite their geographical and topical diversity, one clear message emerges from all five *“Voices from Tanzania”* case studies: raising awareness on the fundamental principles of business and human rights – including how to effectively access remedy – is a crucial necessity towards the realisation of human rights for all in Tanzania. This publication aims to contribute to just that.

Karibu!



## VOICES FROM TANZANIA

### *case studies on Business and Human Rights*

*(Volume 1)*

## EXTENDED SUMMARY

“Voices from Tanzania – case studies on Business and Human Rights (Volume 1)” presents **five studies on pertinent corporate human rights issues in Tanzania** as conducted by [Business and Human Rights Tanzania \(BHRT\)](#), the [Commission for Human Rights and Good Governance \(CHRAGG\)](#), [Governance Links Tanzania](#), the [Legal and Human Rights Centre \(LHRC\)](#) and [IPIS’ project manager in Tanzania](#).

The case studies present different aspects of how business operations can impact human rights<sup>1</sup>, including labour rights, the right to health, security, free speech, property and adequate living standards. While it is the State’s duty to *protect* citizens from corporate harm, businesses have a responsibility to *respect* human rights. This means that they have to act diligently in order to avoid infringing on human rights. When human rights violations do occur, they are also required to address these violations through effective mediation and redress.

The **roles and responsibilities of governments and businesses** with regard to preventing and addressing corporate human rights harm are described in a UN global framework, *the UN Guiding Principles on Business and Human Rights (UNGPs)*<sup>2</sup>. Governments play a major role in implementing this framework locally, by enforcing appropriate policies, legislation and regulations, by providing guidance and by installing effective mechanisms for redress, in case of violations. However, ineffective regulations and monitoring, combined with limited awareness amongst the public, business actors and policy-makers, slow down progress on tackling corporate human rights harm.

**In Tanzania**<sup>3</sup>, a whole suit of laws and regulations are in place to protect citizens’ basic rights, address workers’ welfare and preserve the environment in the course of business and investment activities. Workers’ welfare, for instance, is regulated by labour regulations such as the “Employment and Labour Relations Act 2004”, the “Workers Compensation Act 2008”, the “Labour Institution Act 2004”, the “Occupational Health and Safety Act 2003” and the “Trade Union Act 1998”. Environmental protection is intended by, amongst others, the “Environmental Management Act 2004”, the “Forest Act 2002” and the “Wildlife Conservation Act 2013”. The latter two, for instance, restrict human activity such as mining,

1 The universal, fundamental rights for every person around the world, as described and confirmed in the *Universal Declaration of Human Rights*, United Nations, 1948. <http://www.un.org/en/universal-declaration-human-rights/>

2 *Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework*, Office of the High Commission on Human Rights (OHCHR), 2011. [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

3 All legislative examples relate to Tanzania mainland. Zanzibar legislation is not mentioned here, as all case studies are located on the mainland of the United Republic of Tanzania.

settlement, farming and livestock keeping in areas of conservation. Land rights, on the other hand, are mainly governed by the “Land Act, No. 4 of 1999”, the “Village Land Act, No. 5 of 1999” and the “Land Acquisition Act (Cap 118, 2002)”. Amongst other things, the “Land Acquisition Act” specifies the framework for the compulsory acquisition of land for public purposes such as infrastructure development or natural resource exploration.

In addition to legislation, several monitoring agencies are in place, such as the Occupational Safety and Health Administration (OSHA). Importantly, Tanzania has a **National Human Rights Institute** (the Commission for Human Rights and Good Governance (CHRAGG)) that has the constitutional mandate to independently promote and protect human rights in the country (“Commission for Human Rights and Good Governance Act, No. 7 of 2001”). CHRAGG has a role in helping the state to identify whether laws are aligned with human rights obligations, whether laws are being effectively enforced and whether guidance on human rights can be provided to corporations and other non-state actors. CHRAGG also takes up a role in providing access to effective remedy for human rights violations, including those related to business operations.

Despite these official frameworks, **significant gaps and inefficiencies remain** in the implementation of the UNGPs in Tanzania, especially when it comes to rights related to labour, land and environment. This was the conclusion of the 2017 National Baseline Assessment (NBA)<sup>4</sup> on business and human rights which assessed the situation of human rights in Tanzania’s extractive, agricultural and tourism sector. The NBA survey discovered a lack of corporate human rights due diligence and non-compliance with national and international regulations in all sectors. Other issues arise due to the complexity, inefficiency and lack of coherence of regulations, as well as the limited awareness of most stakeholders on the fundamental principles of business and human rights.

To improve the understanding of corporate human rights issues in Tanzania, increase awareness and advance the national agenda on business and human rights, more studies and analyses on national and local dynamics are much needed.

## THE CASE STUDIES

The five studies in this publication offer present-day **cases from four major economic sectors** in Tanzania: resource extraction, agriculture, tourism and infrastructure. A diverse range of human rights topics are studied, from human rights issues to watch during the planned construction of the East African Crude Oil Pipeline, to labour rights issues in the fish processing and cut flower industries of Mwanza and Arusha respectively, to the tense relation between tourism investment and land rights in Sadaani National Park, and that between forest conservation and limestone mining in Kigoma Region.

“*Voices from Tanzania*” studies are devised as small, field-based scoping studies which aim to draw attention to pertinent issues on business and human rights in Tanzania. Studies combine **new field data**, obtained through e.g. stakeholder interviews, observations or questionnaires, with secondary data sources such as (inter-)national legal frameworks, published reports or company (policy) documents. The analyses present previously undocumented information, provide new insights and allow the formulation of **clear recommendations** to the different stakeholders involved.

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4 National Baseline Assessment (NBA) of current implementation of business and human rights frameworks in the United Republic of Tanzania, CHRAGG, DIHR & SOMO, November 2017. [https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/projects\\_docs/tanzania\\_bhr\\_nba\\_final\\_nov2017.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/projects_docs/tanzania_bhr_nba_final_nov2017.pdf)



*Overview of topics covered in the “Voices from Tanzania – case studies on Business and Human Rights (Volume 1)” publication*

### STUDY 1:



### **Human Rights issues to Watch in the construction of the Tanzania section of East African Crude Oil Pipeline Project (Governance Links Tanzania)**

*In their implementation, large infrastructure projects touch upon multiple basic human rights, including workers’ rights, property rights, the right to safe and healthy living conditions, and the right to effective remedy if rights are violated. Considering the magnitude and trajectory of the East African Crude Oil Pipeline – the 1,149 km long pipeline cuts across eight regions in northern Tanzania -, and the number of (inter-) national stakeholders involved, this project provides an interesting case to raise awareness on **corporate human rights issues to consider in infrastructure projects**.*

The expanding business activities of the private sector are being accompanied by an increase of both positive and negative **impacts on society**. While multinational enterprises may contribute to economic welfare and employment - and thereby contribute to the enjoyment of human rights-, enterprises can also have a negative impact on human rights in their areas of operation. The dual impact that businesses may have on human rights, and hence, the corporate responsibility to respect human rights, is internationally acknowledged and reflected in, e.g. the United Nations Guiding Principles on Business and Human Rights (UNGPs).

While awareness on business and human rights (BHR) is growing among firms, a lack of capacity and incentives to align business practices with the UNGPs still pose significant challenges. In Tanzania, there is little awareness regarding business and human rights amongst government, business, civil society and community stakeholders. This is noted in the National Human Rights Action Plan 2013-2017. One of the business activities in Tanzania where human rights concerns have been raised is the construction of **large infrastructure projects** related to, for instance, energy. Such infrastructure projects usually involve large spatial coverage that is likely to encroach on established settlements, and are often accompanied by uneven regulations guiding the engagement between business, governance structures and communities.

Uganda and Tanzania signed an intergovernmental agreement for the construction of the **East African Crude Oil Pipeline (EACOP)** in May 2017. The 1,445 km pipeline will be the longest electrically heated pipeline in the world and will transport crude oil from Kabaale Parish in Hoima District of western Uganda to the Chogoleani peninsula near Tanga port in eastern Tanzania. The Tanzanian section of the pipeline, covering 1,149 km, will cross 8 regions and at least 25 districts in northern Tanzania. As this infrastructure project traverses diverse communities and livelihood strategies, it provides a useful candidate for raising awareness on business and human rights issues. It can contribute to broadening the scope for helping businesses to avoid infringing on the human rights of others and to promoting remediation strategies when adverse human rights impacts occur.

This case study identifies the **potentially critical human rights issues** that will require attention during the construction of the pipeline, based on findings collected from the planning process of the EACOP and interviews to capture the perspectives of stakeholders who were already consulted by the project teams. From the wide spectrum of consultations, emerging human rights issues to watch in the construction of the EACOP are: workplace dialogues, land rights, access to justice, education and access to technology, conditions of work and employment, adequate standard of living, participation, rights of indigenous groups and environmental rights.

**Recommendations from the study** include:

- Ensuring availability of **project information** on planning, assessments, risks and impacts in a timely, accessible and user-friendly manner
- Promoting **participation** of various institutions, such as government, private sector and civil society in engagement and regulation with regard to corporate respect for human rights. For the government, it is important to adopt “a joined” approach among national and local government institutions.
- Ensuring that **women, men, youth, and marginalized groups** along the pipeline route are consulted and given an opportunity to participate in decision-making at various stages.
- Promoting innovative ways of **working across formal and informal channels**, building trust across stakeholder groups including those representing marginalized groups.
- The Tanzanian Commission for Human Rights and Good Governance (**CHRAGG**) to expand its support to other governmental bodies for strengthening shared understanding of, and accountability for responsible investment.
- Governmental stakeholders to consider allowing space for **independent monitoring**, particularly with the participation of civil society.



**STUDY 2:**

### **Labour rights and access to remedies by workers in fish processing industries in Mwanza city (Commission for Human Rights and Good Governance)**

*Combining literature reviews with field studies conducted in three fish processing industries located in Mwanza Municipality, CHRAGG evaluates the **implementation of labour rights and standards in this agricultural sector**. It also investigates the extent to which workers in the fish processing industry have access to remedy through non-judicial mechanisms. As the first dedicated study on human rights in the fishing industry in Tanzania, this contribution offers crucial insights into a sector that has remained understudied so far. The study points towards the most urgent issues to be solved and suggests steps to be taken to ensure that labour rights are promoted and protected, and access to justice is guaranteed for all.*

The study on the access to remedies by workers in **fish processing industries in Mwanza City**, which was conducted from 7th to 12th October, 2018 aimed at monitoring the implementation of labour rights and standards, assessing the extent to which workers access available non-judicial grievance mechanisms, and the effectiveness of remedies granted for violation of labour rights.

The **respondents** of the study were mainly employees and management staff of three fish processing industries located in Mwanza Municipality, namely Nile Perch Fisheries Limited, Omega Fish Limited, and Tanzania Fish Processors Limited. A total of 11 employees - being four (4) women and seven (7) males - and seven (7) Management Officers - being one (1) female and six (6) males - were interviewed.

The **methodology** used to conduct this study includes literature reviews and consultative meetings with the Management staff of the companies, the Labour Officer-Incharge of Lake Zone, the Officer-Incharge of the Commission for Mediation and Conciliation- Lake Zone and the Regional Fishing Officer and Regional Administrative Officer. Interviews were also conducted using prepared questionnaires to test the knowledge of the management staff and employees on the issues of business and human rights. Lastly, the study was done through field observations of the general working conditions and working tools and of the availability of protective/assistive gear.

This study was conducted to assess that situation of human rights and business in the fishing industry, and specifically on the **compliance with labour rights and access to remedy through non-judicial mechanisms**. This was necessitated by the fact that, until now, there was no specific study done to ascertain the situation of human rights in the fishing industry in Tanzania. Studies conducted in other economic sectors in the country, such as the extractive industry, agro-business and tourism, all revealed corporate violations of human rights, especially regarding labour rights and access to justice.

The **overall situation of labour rights** in the three visited industries is good in terms of compliance to labour standards, despite some shortcomings which need to be rectified. There were neither complaints on unpaid salaries, discrimination nor forced- and/or child-labour. The working condition was good since there was a high quality of sanitation and protective gear and workers are paid overtime. Nevertheless, workers are not conversant with the formulae used to calculate overtime payments, as some of them are not supplied with copies of employment contracts and, hence, are not aware of the terms and conditions of their employment.

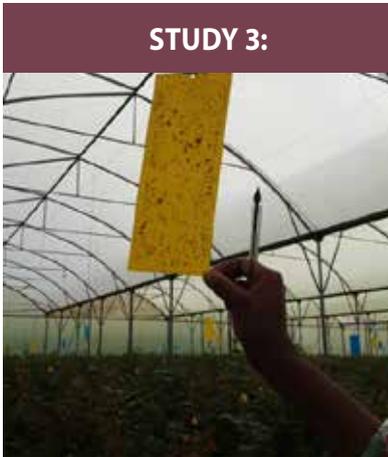
Findings of the study include the presence of **internal company mechanisms** for handling grievances that arise in the work places, including disciplinary committees. Besides those, other non-judicial mechanisms such as the Commission for Mediation and Arbitration (CMA), the Occupational Safety and Health Authority (OSHA), the Labour Office and Trade Union Committees like TUICO are used to resolve labour disputes. The study found that despite the availability of mechanisms, they are not effectively used by employees as they lack awareness and means to access them. Some of these mechanisms grant remedies which do not meet expectations of the parties involved in the labour disputes. Overall, there is a limited knowledge on labour rights and standards by both employees and employers. It was further found that the **state-based non-judicial grievance mechanisms**, i.e. the CMA and Labour Office, are not implementing their role efficiently. They are under-resourced both in terms of funds and manpower.

The study further found that most of the employees in the fish processing industry are **casual workers** with short-term, insecure employment conditions. Most casual workers have not yet been supplied with copies of their employment contract and receive wages that do not allow them to cover the basic costs of living in Tanzania.

**Key recommendations** of this study:

- It is advised to **the Prime Minister's Office - Labour, Youth, Employment and Persons with Disabilities**, to review the Labour Institution Wage Order 2013 (GN No. 196/2013) and increase the minimum wages in line with the costs of living, to allocate sufficient resources to the non-judicial mechanisms, to create awareness on business and human rights to industrial workers, management and other staff members.

- It is also recommended for **the Social Security Regulatory Authority (SSRA)** to effectively monitor contributions to the social security funds from both employees and employers.
- Lastly, **the Office of the Labour Commissioner and OSHA** are urged to ensure that labour rights and standards are adhered to in the work places.



### **Labour-rights compliance in the cut flower industry in Tanzania: a case study of Mount Meru flower farm (Arumeru district, Arusha region) (Business and Human Rights Tanzania)**

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*Like the fishing industry, the floriculture industry in Tanzania has often been overlooked when it comes to human rights issues, and labour rights in particular. However, as one of Tanzania's main growing export industries, the social, environmental, health and labour rights impacts that result from producing cut flowers affect many. Field-data on **labour rights compliance and general human rights awareness in Mount Meru flower farm** are presented, as well as perspectives from other stakeholders (civil society, local communities and government actors) on human rights in the floriculture industry. The results from this study will help to raise awareness on existing labour laws and to strengthen access to justice for employers, employees and community members.*

This report is the result of a baseline survey conducted by Business and Human Rights Tanzania (BHRT) in the **cut flower industry of Arusha Region** (Mount Meru, Arumeru district) from 11th to 20th October 2018 in partnership with the International Peace Information Service (IPIS) who funded this survey.

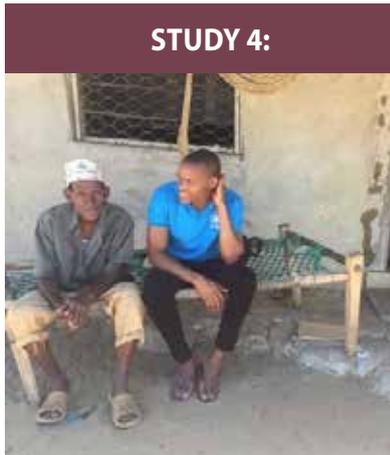
This research aimed at obtaining information on and examining the **compliance with labour rights, laws, policies and other labour regulations in the floriculture industry** in Tanzania. For years now, the floriculture industry in Tanzania has been left behind in studies investigating the implementation of labour rights in the agricultural sector. However, the floriculture industry has been associated with social, environmental, health and human rights impacts and labour issues specifically, which need to be addressed by scholars, researchers, non-governmental organisations and even the government itself. To address this knowledge gap, we examined labour rights compliance through the collection of quantitative and qualitative field-data from employers and employees of Mount Meru Flower Farm (Arusha Region, Tanzania). In addition to these results, **general human rights awareness** amongst employers and employees in the industry and perspectives from other stakeholders, such as civil society, local communities and government actors are presented here, to allow a broader view of human rights issues in the floricultural industry in Tanzania.

From our research, **we conclude** that the failure to comply with all employment standards as provided under the Tanzanian 'Employment and Labour Relation Act of 2004' exposes workers in Mount Meru Flower Farm to disadvantageous, vulnerable conditions. It was noted that several good practices exist at the flower farm, such as the existence of employment contracts written in Swahili (i.e. easy to read and understand by most employees), the presence of a trade union and general information about health and safety at the work place. On the other hand, we observed that workers are subjected to long working hours, low wages, and a lack of protection gear. Moreover, the level of awareness on existing labour laws, policies and human rights as a whole is overall low with both employers and employees.

The results from this study will help in raising **awareness** on existing labour laws and strengthening **access to justice** for employers, employees and community members. This survey is a pre-requisite for making future interventions in the sector and achieving change of behaviour by beneficiaries and community members as a whole. It will also help in advocating for policy change.

**Our main recommendations** are that:

- efforts should be made to **raise awareness** on labour rights and human rights for the workers and community members around Mount Meru cut flower farm.
- the government should make it mandatory for the cut flower industry, in accordance with the UN Guiding Principles on Business and Human Rights, to have **operational grievance mechanisms** i.e. proper corporate procedures for dispute settlement established in the flower companies.
- **NGOs** should take a lead role in awareness creation on how grievances can be lodged by workers in the event that their human rights are violated.



### **Tourism and land rights: case study of Uvinje sub-village and Saadani National Park (Legal and Human Rights Centre)**

*This study takes an in-depth look at a longstanding conflict related to tourism investment in one of Tanzania's national parks. It aims to unravel the causes for the continued land dispute between Uvinje community and Saadani National Park Authorities, which has been ongoing since the 1990's. The Legal and Human Rights Centre (LHRC) assesses whether community land rights were safeguarded during the establishment of Saadani National Park, which human rights were violated as a result of this conflict and whether or not human rights due diligence was undertaken prior to this example of tourism investment. Suggestions are formulated on the best way forward for this specific conflict and for human rights due diligence prior to tourism investment in general.*

LHRC, in collaboration with IPIS, conducted research to find out how tourism investment can impact human rights. This study focuses on the case of the Uvinje sub-village eviction that is linked to Saadani National Park (tourism) investment. With this study we aim to find out the causes for the **continued land dispute between Uvinje villagers and Saadani National Park Authorities**. This dispute has been ongoing since the 1990's when plans to upgrade the Saadani Game Reserve to a National Park revealed that Uvinje village land was considered public land by authorities, in contrast to villagers' perspectives. Despite interventions, this conflict is not yet resolved and has brought adverse impacts to the Uvinje community, not in the least the continued threat of being evicted from their ancestral land. Based on the analysis of this land dispute, we aim to suggest the best way forward for this specific conflict and for human rights due diligence prior to tourism investment in general.

**Data** was collected by using both primary and secondary sources. Methods and tools deployed were questionnaires, interviews, observations and literature review. A total of 160 respondents were reached, including community members of Uvinje sub-village, Government representatives, independent researchers and private institutions.

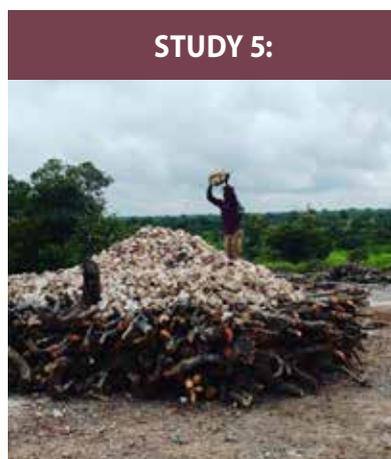
**Key findings** are: (1) that the rights of Uvinje villagers were not respected during the establishment of the Saadani National Park. Uvinje villagers are the lawful owners of their ancestral land – i.e. the land which is the subject of the dispute caused by the upgrade of the National Park - and they are entitled to the enjoyment of their property without unwarranted interferences; (2) that this case illustrates how tourism investment can negatively impact human rights when due diligence is not exercised and important components of risk assessment and mitigation, such as environmental and social impacts assessments, are neglected.

We found that the **Tanzania National Park Authority** (TANAPA) ignored the covenant with Uvinje community by making Uvinje sub-village part of the Saadani Game Reserve (SGR) when drawing the map for SGR. Subsequently, Uvinje villagers were excluded from the process of upgrading SGR to a National Park, which conflicts with Uvinje community's right to property. Moreover, we show that the

Tanzanian Commission for Human Rights and Good Governance (CHRAGG) had intervened the land dispute and drew a conclusion in favor of the Uvinje villagers. However, this advice was unheeded.

**Recommendations** are:

- SANAPA and TANAPA should **engage community members** from the start of tourism investment projects and thereby observe human rights
- SANAPA and TANAPA should honor and work on **recommendations of CHRAGG** and follow the law on acquiring land rather than exercising arbitrary eviction.
- The Ministry of Natural Resources and Tourism should collaborate with local government authorities in **monitoring Uvinje land concerns**. It should end the dispute and establish a strong regulatory and legal framework for ensuring mandatory human rights compliance in tourism investment.
- TANAPA may **work on alternatives** such as having both tourism and community members in the same land borrowing a leaf from Ngorongoro conservation area.
- CHRAGG should **follow up** on uptake of its recommendations on the dispute.
- **Community members** are encouraged to stand for their rights and ensure and consider using appropriate forums in addressing issues affecting their rights.
- Government and Civil Society Organizations should actively take part in **advocating for community rights** and the concept of free, prior and informed consent.
- Government should put in place strong regulatory and legal frameworks that ensure **mandatory human rights due diligence** in tourism investment.



### **Limestone mining and human rights issues in Kigoma Region. A case study on limestone mining communities in Makere (E. Mawala, Tanzania project manager for IPIS)**

*In Kigoma, mining communities rely heavily on land and resources in the Makere Forest Reserve for their livelihood. This has given rise to tensions with forest authorities, that are mandated with enforcing laws and regulations that discourage human activities in reserves. By looking into a subject and region that have been overlooked in studies on **mining, human rights and conservation** so far, this contribution sheds a light on human rights violations that have remained unreported and whose victims have limited access to redress and remedy.*

The purpose of this report is to highlight the main human rights challenges faced by **limestone mining communities in Kigoma** region (northwest Tanzania). These communities heavily rely on land and resources in the Makere Forest Reserve for livelihood activities such as limestone mining, farming, tree cutting, charcoal burning and livestock keeping. This puts them in conflict with the Tanzanian Forest Services (TFS) that are tasked with enforcing laws and regulations that discourage human activities in forest reserves. Kigoma region is often overlooked in studies on mining, human rights and nature conservation in Tanzania. The nature and scale of the human rights challenges in this region remain therefore largely unknown. This study aims to contribute to filling such knowledge gaps by means of a case study on limestone mining communities in Makere, Kigoma.

To give insight into these issues, **the study** combines primary and secondary data, including interviews and questionnaires with stakeholders, focus group discussions and mining site visits conducted in the area from September to November 2018. This report undertakes a scoping of the main concerns, and its

findings should not be viewed as conclusive.

The report uncovers that the **tensions between limestone mining communities in Makere and forest conservation authorities** result from ill-aligned enforcement of forest and mining legal frameworks and diffused responsibilities between mandated authorities. Another source of concern is the exploitation of refugees from the nearby Nyarugusu camp in limestone mining operations. Tensions between miners and forest authorities in Makere have escalated and cause considerable human rights challenges. This study recorded reports of excessive use of force against miners (such as beatings and torture), corruption, and the unlawful seizure, confiscation and destruction of private properties.

Most of these **violations are unreported** and the victims have limited access to redress and remedy.

**Recommendations** are:

- Relevant stakeholders should execute **capacity building** interventions that could empower limestone miners to understand the procedures to comply with when operating their mining sites that are located in forest reserves.
- Mining and forest authorities should **align the enforcement of their mandates** so that a balance is found between natural resource extraction and forest conservation. Failing to do so risks to further augment tensions between miners and forest services in Makere, as well as in other forest reserves.

## OVERALL CONCLUSIONS AND RECOMMENDATIONS

As aptly illustrated in all five case studies, regardless of the sector, business and investment activities touch upon many **basic human rights** including the right to health, personal security, social security, free speech, employment, property and adequate living standards.

Compliance with **existing regulatory frameworks** (e.g. on labour, land and environment) is an important step in promoting human rights. As the studies on labour rights in selected fish processing and cut flower farms in Mwanza City and Arusha reveal, overall compliance with labour standards minimises harmful working conditions and offers positive economic opportunities. Conversely, partial- or non-compliance can create conditions for some of the worst violations to occur. The studies on Uvinje Village/ Saadani National Park and Makere Forest bring examples of considerable human rights harm, including the destruction of private property, wrongful eviction and excessive use of force, as a result of disputed conformity to regulations on land ownership and natural resource conservation. It is therefore of the utmost importance that the most adequate legal frameworks are put in place, that they are well-aligned (i.e. do not create discordance between different authorities) and that efficient monitoring and enforcement is executed. As the cases presented in this publication show, improvements are much needed in this regard. They will advance the implementation of the State's *duty to protect* and businesses' *responsibility to respect* human rights (i.e. Pillars 1 and 2 of the UN Guiding Principles on Business and Human Rights (UNGPs)).

Another key message is how **human rights due diligence** – or the steps taken to identify, prevent, mitigate and account for adverse human rights impacts<sup>5</sup> – proves another essential prerequisite for preventing human rights harm. Adequately executing environmental and social impact assessments (ESIA), ensuring optimal participation and free, prior and informed consent (FPIC) from those that will be most affected by business or investment, and setting up effective mechanisms for redress are some of the key due diligence elements brought forward in this volume's "*Voices from Tanzania*" studies. The case of Uvinje Village in Saadani National Park demonstrates how insufficient human rights due diligence prior to tourism investment has contributed to one of the longstanding land disputes in Tanzania. The study on the potential human rights issues associated with the planned construction of the East African Crude Oil Pipeline (EACOP) also stresses the importance of due diligence processes to safeguard human rights in the course of this complex infrastructure project. Moreover, all five cases clearly evidence how

5 See for instance <https://www.business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-companies/type-of-step-taken/human-rights-due-diligence>

mechanisms of mitigation and remediation are both under-developed and under-used. **Access to remedy** (the third pillar of the UNGPs), hence, remains a challenge.

Last, but not least - and despite their geographical and topical diversity-, all five *“Voices from Tanzania”* studies reach the following overall conclusion: **raising awareness** on the fundamental principles of business and human rights – including how to effectively access remedy – is a crucial necessity towards the realisation of human rights for all in Tanzania.

**Recommendations** from this publication’s *“Voices from Tanzania”* studies include:

- To **build capacity** and **raise awareness on business and human rights** with all stakeholders in Tanzania, including employees, employers, investors, government actors, civil society members and the public at large;
- To put in place strong regulatory and legal frameworks to enforce **human rights due diligence** in all business and investment operations;
- To ensure **participation of all groups**, including women, youth, indigenous and marginalised groups in consultation and decision-making processes related to business and investment;
- To **align regulatory frameworks and mandates** of authorities to address gaps, contradictions and inefficiencies;
- To promote and support **adequate and independent monitoring** of human rights compliance;
- To provide **sufficient resources**, both in terms of funds and manpower, to government agencies mandated to monitor compliance with laws and regulations;
- To improve **access to remedy** for all, in case of human rights violations.



Project  
funded by the  
EUROPEAN UNION

*“Voices from Tanzania”* is a collaboration between Tanzanian civil society organisations, the Tanzanian Commission for Human Rights and Good Governance (CHRAGG), Business and Human Rights Tanzania (BHRT) and the International Peace Information Service (IPIS). This publication is part of the **‘Improving monitoring, research and dialogue on Business & Human Rights in Tanzania’** project implemented by CHRAGG, BHRT and IPIS, with the financial support of the European Instrument for Democracy and Human Rights.

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## VOICES FROM TANZANIA – CASE STUDIES ON BUSINESS AND HUMAN RIGHTS:

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- Study 2:** Labour rights and access to remedies by workers in fish processing industries in Mwanza city (*Commission for Human Rights and Good Governance*) ..... pg 31
- Study 3:** Labour-rights compliance in the cut flower industry in Tanzania: a case study of Mount Meru flower farm (*Arumeru district, Arusha region*) (*Business and Human Rights Tanzania*) ..... pg 49
- Study 4:** Tourism and land rights: case study of Uvinje sub-village and Saadani National Park (*Legal and Human Rights Centre*) ..... pg 67
- Study 5:** Limestone mining and human rights issues in Kigoma Region. A case study on limestone mining communities in Makere (*Elard Mawala*) ..... pg 87



# HUMAN RIGHTS ISSUES TO WATCH IN THE CONSTRUCTION OF THE TANZANIA SECTION OF EAST AFRICAN CRUDE OIL PIPELINE PROJECT



Governance Links Tanzania

October 2018

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## Acknowledgement

Governance Links Tanzania would like to thank all interviewees and respondents for their time and insights.

The authors wish to thank IPIS for the collaboration in documentation of this case study.

Governance Links Tanzania bears sole responsibility for the contents of this report.

## Acronyms and Abbreviations

<b>BHR</b>	Business and Human Rights
<b>EACOP</b>	East African Crude Oil Pipeline
<b>ESIA</b>	Environmental and Social Impact Assessment
<b>CHRAGG</b>	Commission for Human Rights and Good Governance
<b>CNOOC</b>	Chinese National Overseas Oil Corporation
<b>GP</b>	Guiding Principles
<b>IFC</b>	International Finance Corporation
<b>ILO</b>	International Labour Organisation
<b>IPIS</b>	International Peace Information Service
<b>OSHA</b>	Occupational Safety and Health Authority
<b>RPF</b>	Resettlement Policy Framework
<b>TPDC</b>	Tanzania Petroleum Development Corporation
<b>UN</b>	United Nations

## Executive Summary

The expanding business activities of the private sector are being accompanied by an increase of both positive and negative impacts on society. While multinational enterprises may contribute to economic welfare and employment - and thereby contribute to the enjoyment of human rights-, enterprises can also have a negative impact on human rights in their areas of operation. The dual impact that businesses may have on human rights, and hence, the corporate responsibility to respect human rights, is internationally acknowledged and reflected in, e.g. the United Nations Guiding Principles on Business and Human Rights (UNGPs).

While awareness on business and human rights (BHR) is growing among firms, a lack of capacity and incentives to align business practices with the UNGPs still pose significant challenges. In Tanzania, there is little awareness regarding business and human rights amongst government, business, civil society and community stakeholders. This is noted in the National Human Rights Action Plan 2013-2017. One of the business activities in Tanzania where human rights concerns have been raised is the construction of large infrastructure projects related to, for instance, energy. Such infrastructure projects usually involve large spatial coverage that is likely to encroach on established settlements, and are often accompanied by uneven regulations guiding the engagement between business, governance structures and communities.

Uganda and Tanzania signed an intergovernmental agreement for the construction of the East African Crude Oil Pipeline (EACOP) in May 2017. The 1,445 km pipeline will be the longest electrically heated pipeline in the world and will transport crude oil from Kabaale Parish in Hoima District of western Uganda to the Chogoleani peninsula near Tanga port in eastern Tanzania. The Tanzanian section of the pipeline, covering 1,149 km, will cross 8 regions and at least 25 districts in northern Tanzania. As this infrastructure project traverses diverse communities and livelihood strategies, it provides a useful candidate for raising awareness on business and human rights issues. It can contribute to broadening the scope for helping businesses to avoid infringing on the human rights of others and to promoting remediation strategies when adverse human rights impacts occur.

This case study identifies the potentially critical human rights issues that will require attention during the construction of the pipeline, based on findings collected from the planning process of the EACOP and interviews to capture the perspectives of stakeholders who were already consulted by the project teams. From the wide spectrum of consultations, emerging human rights issues to watch in the construction of the EACOP are: workplace dialogues, land rights, access to justice, education and access to technology, conditions of work and employment, adequate standard of living, participation, rights of indigenous groups and environmental rights.

*Recommendations from the study include:*

- Ensuring availability of project information on planning, assessments, risks and impacts in a timely, accessible and user-friendly manner.
- Promoting participation of various institutions, such as government, private sector and civil society in engagement and regulation with regard to corporate respect for human rights. For the government, it is important to adopt “a joined” approach among national and local government institutions.
- Ensuring that women, men, youth, and marginalized groups along the pipeline route are consulted and given an opportunity to participate in decision-making at various stages.
- Promoting innovative ways of working across formal and informal channels, building trust across stakeholder groups including those representing marginalized groups.
- The Tanzanian Commission for Human Rights and Good Governance (CHRAGG) to expand its support to other governmental bodies for strengthening shared understanding of, and accountability for responsible investment.
- Governmental stakeholders to consider allowing space for independent monitoring, particularly with the participation of civil society.

# 1. Introduction

## 1.1 Business and human rights

The expanding business activities of the private sector are being accompanied by an increase of both positive and negative impacts on society. While multinational enterprises may contribute to economic welfare and employment and thereby contribute to the enjoyment of human rights, enterprises can also have a negative impact on human rights in their areas of operation.

The United Nations acknowledges the dual impact that business enterprises may have on human rights. A mandate on the nexus between transnational corporations and other business enterprises on one hand and human rights on the other was created in 2005, and a special representative for Business and Human Rights was appointed. A 'Protect, Respect and Remedy' framework was adopted, resting on three pillars:

- The state's duty to protect its citizens against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation and adjudication.
- The corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved.
- The need for greater access by victims to effective remedy, both judicial and non-judicial.

These pillars were captured within a global standard for business and human rights, the United Nations Guiding Principles (UNGPs), which were unanimously endorsed by the Human Rights Council in 2011 (United Nations, 2011). To guide the operationalization of the second pillar - the corporate responsibility to respect human rights -, a United Nations Global Compact on Business and Human Rights was endorsed. This Global Compact lists ten principles related to the responsibilities of businesses to respect human rights (see Annex 1). Through these frameworks, the Human Rights Council calls upon UN member States to take deliberate steps to implement the UNGPs, amongst others by reviewing laws, providing guidance to companies and improving access to remedy for workers and communities that are adversely impacted by business activities.

While awareness on business and human rights (BHR) is growing among firms, a lack of capacity and incentives to align business practices with the UNGPs still pose significant challenges. As argued by the Economist Intelligence Unit of the *Economist*, "current leaders in corporate action on human rights have moved ahead by embedding respect for human rights within their organisations, but acknowledge that they still have much to learn" (The *Economist Intelligence Unit*, 2015). Comprehensive, just, effective and predictable future BHR frameworks at any level will require both public law enforcement and widespread positive business engagement. An ideal strategy cannot be limited either to top-down state 'command' regulations or to voluntary business driven initiatives alone but it will need to include both (Ford, 2015).

In Tanzania, there is little awareness regarding BHR amongst government, business, civil society and community stakeholders. This is noted in the National Human Rights Action Plan 2013-2017 as a key challenge that needs to be addressed. It has been substantiated by the findings of a baseline study on BHR, conducted by the Commission for Human Rights and Good Governance (CHRAGG). This baseline study was conducted in preparation of a National Action Plan on BHR, which still needs to be developed for Tanzania. In the absence of this overall national framework, a whole suit of national laws and regulations linked to human rights (e.g. labour, environment, health and safety) could guide corporations in their BHR due diligence processes. However, as this baseline assessment indicates, the lack of coherent policy and institutional framework to implement the UNGPs (CHRAGG, 2017) is another great challenge to successfully promote human rights in Tanzania.

## 1.2 The East African Crude Oil Pipeline (EACOP)

In May 2017, Uganda and Tanzania signed an intergovernmental agreement for the construction of the East African Crude Oil Pipeline (EACOP). The 1,445 km pipeline will be the longest electrically heated pipeline in the world and will transport crude oil from Kabaale Parish in Hoima District of Uganda to the Chogoleani peninsula near Tanga port in Tanzania (Figure 1). The Tanzania section of the pipeline, covering 1,149 km, will cross 8 regions and at least 25 districts in northern Tanzania. This includes both densely populated areas (e.g. Kagera, Geita, Shinyanga and Tanga Region) as well as regions now dedicated to cultivation and/or grazing (e.g. in Tabora, Tanga and Shinyanga Regions) (Figure 1).

Under the guidance of the Tanzania Petroleum Development Corporation (TPDC) in Tanzania, several international companies are lined up for participation in the EACOP, including Total, the UK-based Tullow Oil Plc and the Chinese National Overseas Oil Corporation (CNOOC). Local sub-contractors will be progressively engaged. Significant employment is foreseen with both international and local contractors. However, how this will translate into local employment and adherence to regulations on labour rights yet remains to be seen. The \$3.55 billion EACOP is a massive infrastructure project of great geopolitical and economic importance to both governments, extractive industry companies as well as the citizens of Tanzania and Uganda.

Large infrastructure projects related to energy or transportation are one of the business sectors in Tanzania where human rights concerns have been raised. However, only a few examples have been properly documented so far. Examples include the Mwambani harbor development (Land rights concerns in Tanzania, 2010) and the construction of a new economic zone around Kilimanjaro International Airport (KIA) (The EastAfrican, December 12, 2017). In both instances, evictions from ancestral lands without proper engagement of communities and delayed compensations for grievances caused were common. There are multiple potential human rights issues linked to infrastructure development, but those related to displacements of communities appear prevalent.

The EACOP project, which traverses diverse communities and livelihood strategies and which involves a wide range of actors with varying experience at local and international levels, risks to touch upon several human rights issues. This study aims to provide a basis for highlighting salient issues to observe by the companies in the course of the EACOP construction and to monitor by CHRAGG and civil society actors in order to ensure adherence to national and international business and human rights frameworks.

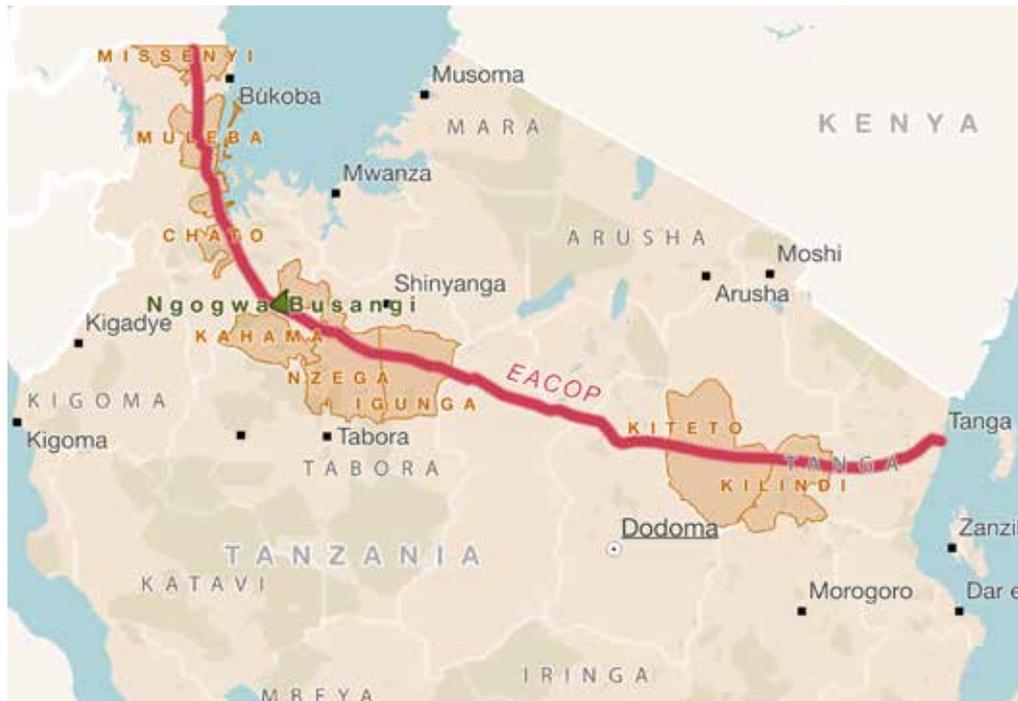


Figure 1: EACOP Pipeline Route Overview

### 1.3 Objective of this study

The overall question in this study is: "What are the critical human rights issues to watch for compliance with national and international frameworks on corporate human rights in the construction of the East African Crude Oil Pipeline?". Specifically, the study seeks to capture the perspectives of various stakeholders on critical human rights issues in the construction of the Tanzania section of the East African Crude Oil Pipeline project.

## 2. Methodology

This case study identifies the potentially critical human rights issues that will require attention during the construction of the pipeline, based on (1) findings collected from the planning process of the EACOP and (2) interviews capturing the perspectives of stakeholders who were already consulted by the EACOP project teams. The sources of information for this case study include:

- A desk review of frameworks developed by Total East Africa Midstream BV for the EACOP, particularly the Resettlement Policy Framework (RPF) and other publications available through the project information centre
- Unstructured interviews with about 80 individuals from TPDC and EACOP technical teams, local government authority leaders and community members within the route of the pipeline. Stakeholders from the following seven districts were consulted: Misisenyi and Muleba (Kagera Region), Chato (Geita Region), Kahama (Shinyanga Region), Nzege and Igunga (Tabora Region) and Kiteto in Manyara Region (Figure 1).

- In-depth interviews with ten independent experts and senior executives of Tanzanian companies lined up for sub-contracting.

It is worth noting that by the time of documenting this case study, the construction was in preliminary stages of stakeholder engagement at regional and district levels. According to the project time frame, delays were due to due diligence processes and background studies for establishment of engagement that took longer than expected. Hence, at this point in the project (i.e. prior to the launch of the construction) it is worth characterizing human rights issues that may arise during the construction of the EACOP and that will require close monitoring. Therefore, it also calls for further follow-up when the actual groundwork is on course.

### 3. Main findings

In this study, we have identified the following nine topics as main human rights issues to consider during the construction of the EACOP. The information collected from desk review and field consultations was synthesized and carefully filtered to align with the Tanzanian national legislations on business and human rights and the UN Global Compact.

#### 3.1 Workplace dialogues

The construction of the EACOP will involve a broad spectrum of international and local contractors and subcontractors, and thus multiple employers with varying experiences regarding workplace dialogues. These dialogues are important instruments to, e.g., negotiate decent working conditions, employment contracts and labour-related grievances. As such, open dialogues and collective bargaining have always been the drivers of workplace stability. Whether or not companies offer opportunities for workplace dialogue will greatly depend on the companies involved. Government can assist this process by legislating effective labour laws and regulations that include dialogue and collective bargaining (e.g. the United Republic of Tanzania Labour Institutions Act, 2004). Moreover, cooperation between government and social partners - such as workers unions and other civil society organisations - can play a driving role in creating the conditions for effective dialogue and collective bargaining. It can ensure that the appropriate framework is in place for businesses to comply with international standards, such as principle 3 of the UN Global Compact on Business and Human Rights which says that “businesses should uphold the freedom of association and the effective recognition of the rights to collective bargaining” (Annex 1: The Ten Principles of the UN Global Compact). Further, recommendations by the International Labour Organisation (ILO) on tripartite constituents emphasize full consultations and direct participation, on a basis of equality in the workplace (ILO,1976).

Some EACOP actors have demonstrated long track records of engagement and stakeholder consultation in infrastructure investments. During the study, we found that Total East Africa Midstream BV has been operating in upstream oil since 2011 with over 100,000 employees in 130 countries. They have experience in consulting workers through open dialogues that are appropriate for different stakeholder groups. Tullow PC is working on 30 projects in 22 countries and upholds high standards of engagement with employees in the workplace. TPDC, a state-owned enterprise, has been operating since 1973 and engages with various employee groups and representative bodies on workplace issues (Total East Africa Midstream BV, 2018).

### 3.2 Rights related to land

Land is the most important factor for sustainable livelihoods and poverty reduction in the route of the pipeline. It is a fundamental, place-based ecosystem service that provides space and means on which rural development depends. Due to the functional dependency between trees, water, soil, vegetation, animals and humans, land is a space for rural communities to invest and sustain their livelihoods.

The planned routing of the pipeline indicates that there will be temporary and permanent land acquisitions. According to Tanzanian law, land acquisition for investment purposes is possible, albeit strictly regulated (The Land Act No.4 and The Village Land Act No. 5 of 1999). The Resettlement Action Plan (RAP) framework indicates that precautionary measures were taken to avoid routing the pipeline through high population density areas. It also directs that a thorough Environmental and Social Impact Assessment (ESIA) should be conducted in compliance with International Finance Corporation (IFC) performance standards (Total East Africa Midstream BV, 2018). This assessment analyses the potential impact on the communities and the environment of every decision prior to and during the construction. Conducting an ESIA is also obliged under the Tanzanian law (e.g. Environmental Management Act (2004)).

High population density settlements like those with permanent crops in Kagera Region (Fig.1) need closer attention. Some household farms in Missenyi and Muleba Districts measure about 0.5 hectare for a family of 5-7.

An elderly person in Muleba asserted: *"This small piece of land I inherited from my parents is the most important asset in the family. We have been told that the pipeline will rarely pass in farms or settlements. In case it does, I would wonder what compensation will be appropriate for this asset"*

In some parts of Manyara (Kiteto) and Tanga regions (Kilindi) (Fig.1), where extensive farming and pastoralism co-exist, community members reported of speculators rushing to claim ownership of pieces of land far away from villages. Pastoralism is a livestock production system that is based on extensive land use and often some form of herd mobility, which has been practiced for centuries. Complex communal land ownership in pastoralist communities, particularly in Kiteto and Kilindi, will require special policy attention in case of land acquisitions for the EACOP, as such communities cannot easily diversify their livelihood strategies and compensation will prove challenging. Current legislation on land acquisition in Tanzania and monitoring of compliance will have to prove their adequacy in this case.



*A farm in Kagera Region*

### 3.3 Access to justice

Principles 1 and 2 of the UN Global Compact on Business and Human Rights require businesses to support and respect human rights and not to be complicit to abuses of people of various identities (Annex 1: The Ten Principles of the UN Global Compact). Moreover, access to effective remedy for those affected by business-related human rights violations, is one of core pillars of the UNGPs (United Nations, 2011).

In the context of the EACOP, this calls for attention to gender issues in compensation during resettlement,

the right to effective remedy, and the right to a fair trial before the law. It is expected that those grieved through resettlement and inadequate compensation will advance a wide range of claims. Mechanisms for both judicial and non-judicial remedies are necessary to ensure timely administration of justice. Operational grievance mechanisms set up by companies could offer non-judicial solutions, but only if they are rooted in a real commitment to a fair, transparent and independent remediation process. Existing on-site legal empowerment should be examined to ensure that it involves helping people harnessing the law to pursue what they value and to building trust with communities through existing negotiation frameworks, complaints procedures and court litigation.

### 3.4 Education and access to technology

Employment in the EACOP will attract a wide range of skills and experiences, while at the same time creating opportunities for learning at various levels. The management practices used within a business can have an impact on productivity as stipulated in UN Global Compact principles 1,6 and 9 (Annex 1: The Ten Principles of the UN Global Compact). On-going investment in training leads to higher relative productivity, especially when all, or nearly all, of the workforce receives regular training. In the field, a large number of youth with various skills strongly indicated the expectation that employment in the EACOP project will provide opportunities for up-skilling and adapting to new technologies. It will be important for the various employers to plan and implement practices that can add value to local skills and stimulate innovations. As concluded in one study *"...At the same time, local enterprises are eager to, and increasingly capable of, linking up to the foreign investors in order to expand their activities and acquire technology, skills and market access"* (DIIS Working Paper 2014:02).

### 3.5 Conditions of work and employment

Employment in the construction of the pipeline fits into Tanzania's formal labour market. Therefore, it requires adherence to national and international labour regulations, including those regulating quality of employment, decent work and the avoidance of child labour (UN Global Compact principles 4, 5 and 6; ILO Convention No. 144 of 1976; Tanzania's Employment and Labour Relations Act 2004). Recruitment of the forerunner team working on the preliminaries of the EACOP has demonstrated transparent recruitment and employment procedures that need to be sustained.

The right to health and safety at work, freedom from discrimination and right to a fair wage and equal pay, are also key principles to adhere to, as directed by the Employment and Labour Relations Act, (2004). Considering the decent working conditions generally demonstrated by Total, CNOOC, Tullow Pc and state-owned TPDC, it is expected that high levels of compliance with the national and international labour standards will be observed. In any case, compliance with official labour standards should be monitored regularly by the relevant government authorities such as the Occupational Safety and Health Authority (OSHA).

### 3.6 Adequate standard of living

As indicated in Section 3.2, displacement is one of the main anticipated effects of constructing the EACOP. Displacement and resettlement will inevitably impact the lives and livelihoods of communities, leading to a decline in social and economic resilience. It is crucial that the financial and in-kind compensation allocated to displaced groups can ensure minimal disruption of lives and livelihood systems. This reality requires strategies for compliance to UN Global Compact principles 1, 2 and 7 (Annex 1: The Ten Principles of the UN Global Compact).

Displacement of communities and removal of properties will lead to claims for compensation in cash and

in kind. National legislation guides the rates and processes for collaborative valuation by national and local government authorities. However, it might be necessary to establish an independent verification mechanism on valuation for compensation, as compensation often remains very disputed like it was observed in the cases of KIA (The East African, December 12, 2017) and Mwambani harbor (Land Rights Concerns in Tanzania, 2010).

Although the EACOP pipeline corridor is designed to avoid densely populated areas, mostly passing through rural and peri-urban areas (Fig.1), some regions will be affected more than others. Most affected structures (27%), including both residential dwellings and other non-residential structures, are in Kagera Region, while Manyara (which hosts the largest part of the pipeline route) is less affected as the pipeline passes only through low population areas in this region.

### 3.7 Participation

The impacts of development-induced displacement and resettlement can be complex, manifold and difficult to predetermine. While compensation should aim at restoration of livelihoods and living standards after resettlement, prior and informed consent should necessarily precede such arrangements. Citizens' engagement and consultation in investment projects that demand land acquisition are not only required by law (Tanzania's Land Acquisition Act 1967 (RE 2002)). It is key to ensure that resettlement is as voluntary as possible, based on freedom of expression during community engagement consultation, including all community groups and particularly those who face specific barriers like women, youth, the elderly and people with disability. From interviews with communities in Kiteto (Manyara region), it is clear that there is anxiety about how ownership of property by marginalized groups, such as land, will be protected or claimed.

Besides participation in compensation/remediation processes, participation can also be stimulated through employment. The prioritization of "local content"<sup>1</sup> strategies through the use of local service providers in local procurements, strengthens the participation of individuals and enterprises. In this way, the construction of the EACOP could positively affect local livelihoods and economic participation.

### 3.8 Spiritual and cultural life of indigenous communities

Another internationally recognised human rights standard that is very relevant for assessing the corporate responsibility to respect human rights, is the UN Declaration on the Rights of Indigenous Peoples (*Marriette et al, 2012*). This declaration is broadly in line with UN global Compact Principles 1 and 2 (Annex 1: The Ten Principles of the UN Global Compact). The existence of indigenous communities in central Tanzania is significant. Consultations with vulnerable groups documented particularly the presence of the Ndorobo and Akei in the districts of Kilindi, Kiteto, Igunga and Simanjiro. During the EACOP engagement processes it is crucial to understand the indigenous way of life and rights to customarily owned lands, forests, and other natural resources. Improved technologies for mapping and land demarcation, and consultations and engagement with indigenous representatives, should allow that the land and resources managed by indigenous peoples are negotiated without tensions.



*A household in Igunga District*

1 Local content is a development strategy aimed at increasing the benefits from the extractive sector and translating them to other sectors of the economy.

### 3.9 Rights related to the environment

UN Global Compact Principles 7, 8 and 9 (Annex 1: The Ten Principles of the UN Global Compact) require institutions to promote greater environmental responsibility, support a precautionary approach to environmental challenges and encourage environmentally friendly technologies. One way to ensure this during infrastructure investments, is by conducting proper ESIA studies (see also Section 3.2).

The EACOP pipeline will traverse various categories of reserved land, including forests, game reserves like Biharamulo Forest and Game Reserve (Kagera Region) and Ngongwa Busangi Forest Reserve (Geita Region). Meanwhile, ecologically sensitive areas like water catchments (including traditional springs) may not be formally registered for protection, but they are critical for livelihoods of local communities. There is a commitment to avoid water catchments and wetlands in the planning of the pipeline route as elaborated in the Resettlement Policy Framework. However, guaranteeing the right to clean water, sanitation, and environmental health may not be easy. Plans for the protection of both surface and ground water should be defined clearly by results of ESIA. Mitigation plans should be established well ahead of construction.



*The Baobab tree, an important home for some indigenous communities*

## 4. Conclusion

It is an established fact that there are clear economic and social benefits associated with the construction of the EACOP pipeline. From the wide spectrum of consultations held, we conclude that potential human rights issues to watch in the construction of the EACOP are those related to workplace dialogues, land rights, access to justice, education and access to technology, conditions of work and employment, adequate standard of living, participation, rights of indigenous groups and environmental rights.

The most contentious issues to observe are those related to land rights. Not only can EACOP land acquisitions negatively impact local communities through loss of land, particularly when there is no compliance with prior and informed consent, fair and timely compensation, access to effective remedy and community participation in all stages. Loss of land can also endanger other human rights, such as the right to an adequate standard of living, the right to a clean and healthy environment and indigenous rights. Hence, foreseeable risks and negative impacts to human rights need to be identified and plans for mitigation need to be developed and adapted throughout the construction process.

## 5. Recommendations

1. In order to protect the rights of communities and workers, project information on planning, assessments, risks and impacts needs to be available in a timely, accessible and user-friendly manner. Sharing this information as such will be crucial to ensure that the EACOP infrastructure project will be in line with key BHR principles.
2. Addressing the various human rights issues in the project will require the participation of various institutions, governmental, private sector and civil society in engagement and regulation with regards to business respect for human rights. For the government, it is important to adopt “a joined” approach among national and local government institutions. Further, space for multi-stakeholder dialogues and partnerships between government, companies, and civil society organizations should be considered early in the consultations.
3. Further, there should be deliberate efforts to ensure that women, men, youth, and marginalized groups along the pipeline route are consulted and given an opportunity to contribute to decision-making at various stages, including the Environmental and Social Impact Assessments and Resettlement Action Plans.
4. Taking into account the stakeholder consultations in the context of Tanzania, it will be useful for the project entities to promote innovative ways of working across formal and informal channels, building trust across stakeholder groups including those representing marginalized groups.
5. With the overarching mandate to monitor the implementation of UN Global Compact Principles for Business and Human Rights, CHRAGG should expand its support to other governmental bodies for strengthening shared understanding of, and accountability for responsible investment.
6. In order to sustain compliance to the UN Guiding Principles on Business and Human Rights, governmental stakeholders should consider allowing space for independent monitoring, particularly with the participation of civil society.

# Annex 1: The Ten Principles of the UN Global Compact on Business and Human Rights

## Human Rights

[Principle 1](#): Businesses should support and respect the protection of internationally proclaimed human rights; and

[Principle 2](#): make sure that they are not complicit in human rights abuses.

## Labour

[Principle 3](#): Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

[Principle 4](#): the elimination of all forms of forced and compulsory labour;

[Principle 5](#): the effective abolition of child labour; and

[Principle 6](#): the elimination of discrimination in respect of employment and occupation.

## Environment

[Principle 7](#): Businesses should support a precautionary approach to environmental challenges;

[Principle 8](#): undertake initiatives to promote greater environmental responsibility; and

[Principle 9](#): encourage the development and diffusion of environmentally friendly technologies.

## Anti-Corruption

[Principle 10](#): Businesses should work against corruption in all its forms, including extortion and bribery.

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## LABOUR RIGHTS AND ACCESS TO REMEDIES BY WORKERS IN FISH PROCCESING INDUSTRIES IN MWANZA CITY

Commission For  
Human Rights And Good  
Governance

October 2018



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### MANDATE TO CONDUCT RESEARCH AND PREPARE REPORTS

This study has been done in accordance with Article of 130 (1)(c), (d), (f), and (g) of the Constitution of the United Republic of Tanzania (1977) and Section 6(1) (d),(f), (g) and (j), of the Commission for Human Rights and Good Governance Act, No. 7 of 2001 which gives mandate to the Commission for Human Rights and Good Governance (CHRAGG) to promote, protect and preserve human rights and principles of good governance in the country through investigation and research.

The Commission for Human Rights and Good Governance has prepared this report in accordance with Section 35(a) of the Act No 7 of 2001 which empowers CHRAGG to prepare and submit reports relating to the exercise of its functions.

.....  
**Francis K. Nzuki**

Director of Human Rights

Commission for Human Rights and Good Governance

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## Abbreviations

<b>AIDS</b>	Acquired Immune Deficiency Syndrome
<b>BHRT</b>	Business and Human Rights Tanzania
<b>HRAGG</b>	Commission for Human Rights and Good Governance.
<b>CMA</b>	Commission for Mediation and Arbitration
<b>EU</b>	European Union
<b>GN</b>	Government Notice
<b>HIV</b>	Human Immunodeficiency Virus
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ILO</b>	International Labour Organization
<b>IPIS</b>	International Peace Information Service
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>LAPF</b>	Local Government Authority Provident Funds
<b>NBA</b>	National Baseline Assessment
<b>NSSF</b>	National Social Security Funds
<b>OSHA</b>	Occupational Safety and Health Authority
<b>PSPF</b>	Parastatal Sector Pension Funds
<b>TUICO</b>	Tanzania Union for Industries and Commercial Organizations
<b>UNGPs</b>	United Nations Guiding Principles on Business and Human Rights
<b>WCF</b>	Workers Compensation Fund

## 1. Executive summary

- 1.1 The study on the access to remedies by workers in fish processing industries in Mwanza City, which was conducted from 7<sup>th</sup> to 12<sup>th</sup> October, 2018 aimed at monitoring the implementation of labour rights and standards, assessing the extent to which workers access available non-judicial grievance mechanisms, and the effectiveness of remedies granted for violation of labour rights.
- 1.2 The respondents of the study were mainly employees and management staff of three fish processing industries located in Mwanza Municipality, namely Nile Perch Fisheries Limited, Omega Fish Limited, and Tanzania Fish Processors Limited. A total of 11 employees - being four (4) women and seven (7) males - and seven (7) Management Officers - being one (1) female and six (6) males - were interviewed.
- 1.3 The methodology used to conduct this study includes literature reviews and consultative meetings with the Management staff of the companies, the Labour Officer-Incharge of Lake Zone, the Officer-Incharge of the Commission for Mediation and Conciliation- Lake Zone and the Regional Fishing Officer and Regional Administrative Officer. Interviews were also conducted using prepared questionnaires to test the knowledge of the management staff and employees on the issues of business and human rights. Lastly, the study was done through field observations of the general working conditions and working tools and of the availability of protective/assistive gear.
- 1.4 This study was conducted to assess that situation of human rights and business in the fishing industry, and specifically on the compliance with labour rights and access to remedy through non-judicial mechanisms. This was necessitated by the fact that, until now, there was no specific study done to ascertain the situation of human rights in the fishing industry in Tanzania. Studies conducted in other economic sectors in the country, such as the extractive industry, agro-business and tourism, all revealed corporate violations of human rights, especially regarding labour rights and access to justice.
- 1.5 The overall situation of labour rights in the three visited industries is good in terms of compliance to labour standards, despite some shortcomings which need to be rectified. There were neither complaints on unpaid salaries, discrimination nor forced- and/or child-labour. The working condition was good since there was a high quality of sanitation and protective gear and workers are paid overtime. Nevertheless, workers are not conversant with the formulae used to calculate overtime payments, as some of them are not supplied with copies of employment contracts and, hence, are not aware of the terms and conditions of their employment.
- 1.6 Findings of the study include the presence of internal company mechanisms for handling grievances that arise in the work places, including disciplinary committees. Besides those, other non-judicial mechanisms such as the Commission for Mediation and Arbitration (CMA), the Occupational Safety and Health Authority (OSHA), the Labour Office and Trade Union Committees like TUICO are used to resolve labour disputes.
- 1.7 The study found that despite the availability of mechanisms, they are not effectively used by employees as they lack awareness and means to access them. Some of these mechanisms grant remedies which do not meet expectations of the parties involved in the labour disputes. Overall, there is a limited knowledge on labour rights and standards by both employees and employers.
- 1.8 It was further found that the state-based non-judicial grievance mechanisms, i.e. the CMA and Labour Office, are not implementing their role efficiently. They are under-resourced both in terms of funds and manpower.
- 1.9 The study further found that most of the employees in the fish processing industry are casual workers with short-term, insecure employment conditions. Most casual workers have not yet been

supplied with copies of their employment contract and receive wages that do not allow them to cover the basic costs of living in Tanzania.

- 1.10 The study suggests some steps to be taken in order to ensure that labour rights and standards are promoted and protected and access to justice is guaranteed by employees through efficient and effective non-judicial grievance mechanisms.
- 1.11 Key recommendations of this study include: advise to the Prime Minister's Office - Labour, Youth, Employment and Persons with Disabilities, to review the Labour Institution Wage Order 2013 (GN No. 196/2013) and increase the minimum wages in line with the costs of living, to allocate sufficient resources to the non-judicial mechanisms, to create awareness on business and human rights to industrial workers, management and other staff members.
- 1.12 It is also recommended for the Social Security Regulatory Authority (SSRA) to effectively monitor contributions to the social security funds from both employees and employers.
- 1.13 Lastly, the Office of the Labour Commissioner and OSHA are urged to ensure that labour rights and standards are adhered to in the work places.

## 2. Scope of the study

- 2.1 The Commission for Human Rights and Good Governance conducted a study on labour rights and access to remedies by workers in fish processing industries in Mwanza City from 7<sup>th</sup> to 12<sup>th</sup> October, 2018. The study was done in three industries namely Nile Perch Fisheries Limited, Omega Fish Limited, and Tanzania Fish Processors Limited. The CHRAGG's working team composed of the Director of the Human Rights Department, two Principal Investigation Officers and a Senior Investigation Officer.
- 2.2 The study aimed at ascertaining the extent to which workers in the fishing industries have access to available non-judicial grievance mechanisms. It also wanted to oversee compliance to labour standards, establish the knowledge gap of employers and employees regarding labour rights and advise on remedial actions.
- 2.3 This study was conducted as part of the activities in the implementation of the EU-funded project on "Improving Monitoring, Research and Dialogue on Business and Human Rights in Tanzania" that aims at building local and national capacities for improved reporting, fact finding, monitoring and follow-up of corporate human rights harms in Tanzania.

## 3. Rationale of the study

### 3.1. Decent work and labour rights

- 3.1.1 The working life is integral to both human and socioeconomic development. The quality of working life is defined both by the opportunities of the labour market and the welfare of workers. Governments across Africa have called for action to ensure a decent working life which takes into consideration the respect, protection and promotion of labour rights and standards. The African Union Extraordinary Summit on Employment and Poverty Alleviation in Africa (Ouagadougou, September 2004) overwhelmingly endorsed the International Labour Organisation (ILO)'s Decent Work Agenda, which emphasizes the creation of quality jobs<sup>1</sup>. On a global level, the United Nations (UN) Sustainable Development Goals (SDGs), call for all nations to promote sustained, inclusive and sustainable economic growth, with full and productive employment and decent work for all.
- 3.1.2 In order to ensure decent work and the protection of labour rights in Tanzania, the Government has enacted several laws and policies and implements various programmes. Both Constitutions of the Republic of Tanzania, 1977 and of the Revolutionary Government of Zanzibar, 1984 guarantee the right to work and fair remuneration. Labour rights are governed primarily by the Employment and Labour Relations Act (2004), the Labour Institutions Act (2004), and the Workers Compensation Act (2009) for Tanzania Mainland. The Workers Compensation Act (2008) established the Workers' Compensation Fund (WCF), which is now fully operational, but still does not have sub-offices or staff throughout the country. In Tanzania Mainland, health and safety in the workplace is regulated by the Occupational Health and Safety Act (2003). In Zanzibar, labour rights are governed by the Employment Act (2005), Labour Relations Act (2005), Workers Compensation Act (2005), and the Occupational Safety and Health Act (2005).
- 3.1.3 The United Republic of Tanzania and Zanzibar Constitutions and the relevant labour laws generally outlaw discrimination at work places. The People with Disability Acts in both Tanzania Mainland and Zanzibar protect the rights of people with disability. Child labour is prohibited under the Employment and Labour Relations Acts, 2004 and the Child Acts (No. 21 of 2009 and Zanzibar Children Act, No.6 of 2011). Trade unions in Tanzania Mainland are regulated under the Labour Institutions Act (2004) and in Zanzibar by the Labour Relations Act (2005) pursuant to which employees have discretion to join a trade union of their choice. The Labour Institution Act (2004) mandates the Minister responsible for labour and forms the Sectoral Wage Board that recommends the minimum wage for employees in the informal sector.

### 3.2. Business and human rights in Tanzania

- 3.2.1 'Business and human rights' entails the promotion and protection of human rights in corporate activities. It encompasses three basic pillars as defined by the United Nations Guiding Principles on Business and Human Rights (UNGPs). The first pillar requires the State to ensure that human rights are protected, the second pillar urges corporations to respect human rights and the last pillar ensures that the victims of human rights harms can access remedies for human rights violations through available mechanisms, either judicial or non-judicial.
- 3.2.2 In 2017, CHRAGG conducted the National Baseline Assessment (NBA) on Business and Human Rights in Tanzania's extractive industry (Shanta Mining-Dodoma and Singida regions), agro-business (Kapunga Farms- Mbeya Regions) and tourism sector (Zanzibar). The NBA survey aimed to assess the situation of human rights in different business sectors.

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1 National profile of working conditions in the United Republic of Tanzania (ILO, 2009).

- 3.2.3 The NBA survey revealed that businesses/companies failed to exercise human rights due diligence by not complying with national and international standards, specifically on labour issues, environmental management and land management and acquisition.
- 3.2.4 NBA results also indicate the existence of discrimination, poor working conditions, long working hours beyond those permitted by law, non-payment of extra working hours, unfair remuneration, unfair termination, non-existence of trade unions, high exposure to physical risks at work places and the absence of internal complaints handling mechanisms<sup>2</sup>. One of the main reasons for these violations seems to be the limited knowledge of labour rights and standards amongst different stakeholders.
- 3.2.5 Further, the assessment found that there was insufficient awareness of available grievances mechanisms and especially of non-judicial ones. This is due to ineffective awareness campaigns and unpublicized information on how to seek remedy through non-judicial mechanisms. A grievance mechanism entails a formal complaint handling process that can either be judicial or non-judicial and that is used by individuals, workers, communities and/or civil society organizations that are negatively affected by certain business activities and operations. Grievance mechanisms are sometimes also called 'complaints', 'redress', or 'accountability' mechanisms.
- 3.2.6 Work from other human rights stakeholders on the situation of business and human rights in Tanzania, such as the Legal and Human Rights Centre<sup>3</sup>'s 2016 study, also found labour rights violations to persist in several business sectors. Among the noted violations are included: poor working conditions, non-observance of working hours, no overtime payment, discrimination in work places, unfair remuneration, non-existence of trade unions, and high exposure to physical risks at work places, absence of internal complaints handling mechanisms and inadequate awareness of labour rights of both employers and employees<sup>4</sup>.

### 3.3. Labour rights in Tanzania's fish processing industries

- 3.3.1 The fishing industry is an important economic sector in Tanzania. The Ministry of Livestock and Fisheries reported in 2017 that the fishing sector contributed 2.2% of the National Income (GDP). A total of 230, 977 people have been involved in fishing activities whereas more than 4 million people depend on the supply chain of the fishing sector<sup>5</sup>.
- 3.3.2 The scope of the NBA was limited to case studies in the extractive, tourism and agro-business in Zanzibar, Mbeya, Singida and Dodoma. The fishing industry was not part of this assessment and also other studies have not looked into workers' rights in this industry, but rather focused on economic and environmental studies<sup>6</sup>. Therefore, a lack of knowledge remains on the implementation of human rights in the fishing industry, on the compliance with labour rights in the sector and the access to grievance mechanisms for its workers.
- 3.3.3 CHRAGG like any other National Human Rights Institution (NHRI) has a role in helping the state to identify whether laws are aligned with their human rights obligations, whether laws are being effectively enforced and whether guidance on human rights can be provided to corporations and other non-state actors. Specifically, CHRAGG contributes directly to the implementation of the third pillar of the UNGPs, namely access to an effective remedy for human rights violations.

2 CHRAGG (2017), National Baseline Assessment (NBA), November 2017

3 A human rights Non-Government Organization (NGO) that strives to empower the public and promote, reinforce and safeguard human rights and good governance in Tanzania

4 Legal and Human Rights Center: Report of the Human Rights and Business, 2016.

5 Speech of the Ministry of Livestock and Fisheries during the Parliament Budget Session 2017/18 at page 82.

6 URT (2016). The Tanzania Fisheries Sector: Challenges and Opportunities, the Ministry of Agriculture, Livestock and Fisheries.

3.3.4 CHRAGG has therefore conducted this study on access to remedy for labour-related violations of human rights in three large-scale fish processing industries in Mwanza Region. The findings of this report will be used to advocate for the implementation of the third pillar of the UNGPs (access to an effective remedy for human rights violations) as well as being the entry point towards further investigations of the violations of the labour rights issues identified in this study. Importantly, it offers a platform to create awareness of labour rights and standards.



*The CHRAGG Team in safety attire and gear as they set to inspect the Nile Perch Industry Ltd.*

## 4. Methodologies and data collection methods.

The study applied qualitative and quantitative approaches. Descriptive data was obtained through interviews, observations and discussions, while data from questionnaires was quantified in percentages, ratios, and numbers. The data collection focused on the extent to which workers and employees comply with national, regional and international labour standards. Emphasize was put on obtaining a practical understanding of human rights issues in the fishing industry and specifically, the access to remedies through non-judicial grievance mechanisms.

### 4.1. Literature review

- 4.1.1 Prior to and after the study, the team reviewed national, regional and international labour legal frameworks, reports, and other literature related to business and human rights, and especially to the right to access non-judicial labour grievance mechanisms.
- 4.1.2 The documents reviewed were the International Labour Organisation (ILO) Conventions (Convention 29, Convention 87, Convention 98, Convention 100, Convention 105, Convention 111, Convention 138 and Convention 182), the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the International Covenants on Social, Economic and Cultural Rights (ICESCR), 1966, the International Covenant on Civil and Political Rights (ICCPR), the United Nations Global Compact on Business and Human Rights, the Tanzanian Employment and Labour Relations Act (Act No 6 of 2004) and the Labour Institution Act ( No 7 of 2004).
- 4.1.3 Other sources include the companies' internal policy guidelines and reports, such as labour anti-corruption policies, various official reports on fishing industry in Tanzania and the budget speech of the Minister of Agriculture, Livestock and Fisheries of 2017.

### 4.2. Consultative meetings

- 4.2.1 A total of six consultative meetings were conducted with the Management of the three visited industries, the Labour Officer in charge of Mwanza City, the Officer in-charge of Labour Inspection

and Training, the Officer in-charge of the Commission for Mediation and Arbitration (CMA) in the Lake Zone, the Regional Fishing Officer from the Office of the Regional Commissioner and the Regional Administrative Secretary of Mwanza City.

- 4.2.2 Consultative meetings aimed at introducing the purposes and objectives of the study, planning for logistics and programming of the study, collecting data about the situation of human rights in the fishing industry in Mwanza City and the access to remedies specifically, and creating awareness on labour rights and the means to claim for remedies in case of harm through non-judicial grievance mechanisms.

### 4.3. Interviews

- 4.3.1 Interviews were conducted by using prepared questionnaires. The respondents were the Management Staff and randomly-selected workers who represented each section in the industry, i.e. the production department, security, transport and workshop. Casual and professional workers were also interviewed. The questionnaires focused predominantly on testing the elementary knowledge on labour rights in the supply chain, covering issues of recruitment process, contract, working hours and overtime, maternity leave, remuneration including wages, issues of social security, and rights to privacy, discrimination, child labour, workers' representations to trade unions, the use of grievance mechanisms and access to remedy. Questions were asked on the working environment as well, including questions related to occupational health and safety.
- 4.3.2 The interviews were also used as the forum for creating awareness on how employees and employers can access remedies through non-judicial grievance mechanisms.

### 4.4. Observations in the field

Additional data were collected through observation. Observation was done through inspections of the working places of Nile Perch Fisheries Limited, Omega Fish Limited, and Tanzania Fish Processors Limited and their fish processing section (production department), specifically. In this way, the CHRAGG Team was able to see and observe the working conditions (including the use of work gear), the safety of the workers, hygiene and the division of labour amongst the workers.



*Production Manager of Tanzania Fish Processor Ltd (facing the camera) briefing the CHRAGG Team on the fish processing processes.*

## 5. Presentation of data and analysis

A total of 11 employees (4 females and 7 males) and 7 Management Officers (1 female and 6 males) were interviewed from the three investigated industries in Mwanza City (Nile Perch Fisheries Limited, Omega Fish Limited, and Tanzania Fish Processors Limited).

Data was collected on access to remedy and labour rights in accordance with the key thematic areas identified on the questionnaires, as hereunder elaborated.

### 5.1. Access to remedy through non-judicial grievance mechanisms

The Labour Institutions Act (No 7 of 2004) provides for the state-based non-judicial body, the Commission for Mediation and Arbitration (CMA) as established under Section 12, to mediate and arbitrate labour disputes. Section 43 of the Labour Institutions Act establishes the Office of the Commissioner of Labour, who is responsible for the administration of labour laws and for overseeing labour standards.

Besides, the Occupational Safety and Health Authority (OSHA), established under Section 4 of the Occupational Health and Safety Act 2003 is mandated with the inspection of workplaces in order to monitor health and safety and settle disputes that arise.

CHRAGG is also one of the state's non-judicial bodies mandated to oversee human rights and administrative standards through mediation, conciliation or negotiation as per procedures provided in Rule 14(1) of the Complaints Procedures Regulation (GN No 144 of 2003).

The study looked at the available functions of the access to remedy, including the complaints handling function, dispute resolution function, related functions such as preventative work with businesses, supervisory functions and regulatory analysis, functions with respect to the promotion of social dialogue, and advice to the government.

The study also looked at types of the available remedies granted to the victims of corporate harm, and to workers specifically, and it assessed the effectiveness of these remedies.

#### 5.1.1. Available functions of access to remedies.

- 5.1.1.1 Data were gathered from both employers and employees. In all of the three visited industries, both state-based and company-based grievance mechanisms were used. The companies have established internal arrangements for filing complaints by workers, using standard forms prepared by the companies. There are different arrangements for dealing with disciplinary and labour rights complaints.
- 5.1.1.2 Disciplinary complaints are dealt with through a disciplinary committee whose members are selected among the staff.
- 5.1.1.3 The labour rights complaints are handled by the Committee of the Trade Union at the work place, which constitutes of staff members and the representative of the Trade Union from the Regional Office. In all the three industries, there is a branch of the Trade Union TUICO (Tanzania Union of Industries and Commerce Workers) present.
- 5.1.1.4 Also available are the mechanisms used for dispute resolution owned by the state through, for instance, the Labour Office, the Commission for Mediation and Arbitration (CMA) and the Occupational Safety and Health Authority (OSHA). The Labour Office and OSHA are normally paying visits to the industries on a monthly basis to inspect the working conditions, to receive complaints and to conduct training on labour standards. Complaints which cannot be resolved

on the spot during these inspection visits will be referred for further hearing. In this way, the Labour Office and OSHA basically function as mediators and arbitrators.

- 5.1.1.5 All the respondents that were interviewed have little knowledge of the functions of CMA and CHRAGG as elements of the state-based non-judicial grievance mechanisms available to them. The interview with the Zonal Office in charge of CMA revealed that there are only 6 complaints from fishing industries filed between January 2018 and September 2018.
- 5.1.1.6 The last available function we investigated was the preventive and supervisory means to access remedies. The team learnt that the management of all the visited industries conducts on-job orientation training whereby labour rights and standards are taught. The Labour office and OSHA frequently inspect industries and remind employers and employees on conforming to laws of the country. In Nile Perch Industry, the team was shown the special room used for various trainings to employees.

### 5.1.2. Effectiveness of Available Remedies

- 5.1.2.1 It was found that remedies provided by company-based mechanisms differed from those provided through the state mechanisms. While the company-based mechanisms aim at harmonizing working relationship among employees and between the employees and employers, the state mechanisms - though mediatory - are punitive and aim to protect workers against corporate human rights harm. The trade union branches (TUICO) at the working places were empowered to perform collective bargaining roles for employees in cases of disputes. They especially take up this role in negotiating for reinstatement, restoration and compensation.
- 5.1.2.2 Sixty per cent of the employees who were interviewed showed dissatisfaction with the remedies granted, especially in cases of injuries. It was found that employers provided first aid services only. Serious injury cases were referred to referral hospitals and health centers on the expenses of employees or their own health insurance cards. It was found that, while the visited industries had registered with the Workers Compensation Fund (WCF), no employee was reported to be compensated by the fund. This is caused mainly by inadequate knowledge on the procedures to access the fund.
- 5.1.2.3 The study found that 80% of the interviewed employees had insufficient knowledge on accessing non-judicial grievance mechanisms. It was also found that the employees encountered difficulties to enforce remedies due to limited knowledge on the procedures.
- 5.1.2.4 It was also found that CMA had a one year back log of cases due to under-staffing. In the Lake Zone, for example, there is only one staff member at the CMA, who is stationed in Mwanza.

## **5.2. Labour Rights**

Secondly, this study assessed the labour conditions in the three fish processing industries through on-site observations and responses from management and workers to predetermined questions. The objectives were to establish the level of business respect for human rights, the workers' complaints related to breaches of labour rights/labour rights standards and the level of workers' knowledge on access to state-based non-judicial mechanisms.

The team analysed recruitment processes and contracts, working hours, overtime, rest periods and breaks, wages and salaries, social security, rights to privacy and non-discrimination, working environment and occupational health and safety as well as other labour standards such as children's rights.

### 5.2.1. Recruitment Process and Employment Agreement

- 5.2.1.1 Section 14 and 15 of the Employment and Labour Relations Act (2004) provide for three types of employment contracts, namely (1) a contract for an unspecified period of time, (2) a contract for a specified period of time for professionals and managerial cadre and (3) a contract for a specific task. The law requires that the detailed particulars of the employment have to appear on the employee's contract, including terms and conditions of the employment, the entitlements and benefits associated with the employment and the details of the tasks and duties to execute during the employment. Such a contract must be supplied to the employee.
- 5.2.1.2 The study identified three types of workers in the three fish processing companies: workers with a contract for an unspecified period of time, employees with a contract for a specified period of time (casual labour) and outsourced workers from the security companies.
- 5.2.1.3 Technical staff typically had specified long-term employment contracts for periods of six months and more. Workers with contracts for an unspecified period of time and special task workers were paid on a daily basis and their contracts expired every 24 hours. They constitute the majority of workers in the fish processing industry.
- 5.2.1.4 Information concerning signed employment contracts varied from one employee to another and from one company to the other. For instance, all technical staff interviewed had copies of their contracts, while other employees were not supplied with their copies of contracts.
- 5.2.1.5 Further, all three companies provided employment contracts that clearly specify the terms and conditions of employment such as working hours, wages/salaries and overtime remuneration. However, information on the length of employment, other benefits and leave payments differed from one company to another. In essence, employment contracts were conform the laws in terms of terms and conditions provided, though some employees were denied copies of their contracts. Further, the majority of them were casual workers (known as vibarua in Kiswahili) who were employed on hourly terms.
- 5.2.1.6 To conclude, the labour market in the fish processing industries is filled with temporary employees. They make up a large part of the employees in the sector compared to those with more long-term contracts. These temporary employees have no job security as they often lack contracts and are employed for shorter periods of time, in many instances less than 6 months. Since the Employment and Labour Relations Act (2004) does not provide obligations regarding benefits for an employment of less than 6 months, short-term labourers are thus likely to lose any benefits that they may be entitled to in longer-term contracts.

### 5.2.2. Working Hours, Overtime, Rest periods and Breaks,

- 5.2.2.1 Article 7 (d) of the ICESCR (1966) recognises the rights of workers to rest, leisure, reasonable limitation of working hours, periodic holidays with pay and remuneration for public holidays.
- 5.2.2.2 In Tanzania, working hours are limited to nine hours a day, as provided for by Section 19(1) (c) of the Employment and Labour Relation Act (2004). Section 19 (3)(b) precludes an employee to work more than 50 hours overtime in any four-week cycle, whereas Section 19 (5) provides that an employer shall pay an employee not less than one- and one-half times the employee's basic wage for any overtime worked.
- 5.2.2.3 The study revealed that in all three companies, employees worked eight to nine hours a day. Employees are granted breakfast and lunch breaks, except for workers working in the production department at the Tanzania Fish Processors Ltd who report on duty at 13hrs (after lunch). This is in line with Section 23(1) of the Employment and Labour Relation Act (2004) which provides for a break of 60 minutes for employees who work five hours continuously. At Omega Fish Ltd, management said that they provide free lunch for all employees.

- 5.2.2.4 In all the studied companies, employees who worked in the production departments had one hour of work for cleanliness before they signed off duty.
- 5.2.2.5 Nine out of eleven interviewed employees confirmed that their company controlled excessive working hours by keeping attendance registers and offered interval breaks in production sections, a free hour for lunch, and one free day a week.
- 5.2.2.6 The study team noted the presence of employees working in cold rooms at temperatures of -18 centigrade, used for storing frozen fish, in all three industries. These employees get out of the cold rooms after every three to five minutes.
- 5.2.2.7 In general, testimonies from both the management and employees highlight the existence of different formulae for calculating overtime allowances. For instance, at the Tanzania Fish Processors Ltd, the management reported to have a standard working policy which specifies the calculation and mode of payment of overtime.
- 5.2.2.8 The overtime of permanent employees is paid at the end of the month, while for employees with contracts for a specified period of time and hours, overtime was paid on a daily basis. It was found that at the three industries, employees and especially the professionals, were granted with an annual leave package as provided by Sections 29 and 30 of the Employment and Labour Relation Act (2004). They were also paid for any public holiday that may fall within the period of that leave.
- 5.2.2.9 Tanzania Fish Processing Ltd and Omega Fish Ltd have special leave packages based on the number of worked days in that specific year, place of domicile of the employee and his/her number of dependants.
- 5.2.2.10 The study revealed that although employees were paid overtime, annual leave and public holidays, these payments were regarded as a privilege rather than a right.
- 5.2.2.11 In all three companies, it was noted that there is a difference between professionals and non-professional employees in the provision of some of the basic entitlements like leave, overtime and holidays. The former are overall more privileged than the latter.

### 5.2.3. Remuneration, Salary and Wages

- 5.2.3.1 Fair and equal payment for work is a right of all Tanzanians. In 1951, the ILO passed Convention 100 on Equal Remuneration. Remuneration is thereby defined as “the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment”. Equal remuneration for men and women is explained as “the rates of remuneration established without discrimination based on sex”.
- 5.2.3.2 In the three fish processing companies that we studied, wage calculations and transparency on equal pay for workers were addressed differently for employees and for members of the company management. At the managerial and professional positions, wages are negotiable through collective bargaining in the presence of the management and representatives of trade union TUICO. For the other employees, wages are determined by considering minimum wages as provided for by the law. Interviewed employees complained about insufficient minimum wages that did not allow them to meet their basic needs considering the cost of living in Tanzania.
- 5.2.3.3 None of the respondents reported delays of payments. The team noted the existence of bonus payments to the employees, which are provided at the discretion of the employer.
- 5.2.3.4 It was also noted that men and women are treated equally in terms of wage payment, without discrimination. Wage payments are made based on the work done by the employees as agreed in the contract. All the industries visited promote gender equality in terms of employment opportunities and benefits. For instance, the companies employ 40% women and 60% men.

In terms of payment disputes, wage deductions and salary scales, the CMA officer advised to review official salary standards and minimum wages in particular. These have not been reviewed since 2013 and are no longer conform the current costs of living in the country. At the Nile Perch Fisheries Ltd, one employee who had worked for more than 25 years at the company was still being paid a minimum wage.

- 5.2.3.5 Overall, it was found that wages and other remunerations were paid in accordance with the laws and that no wage deductions are made contrary to the laws. It was also found that the wages paid to temporary employees did not consider the current cost of living.

#### 5.2.4. Social Security/ Health Care,

- 5.2.4.1 Article 9 of ICESCR indicates provisions for social security, including social insurance.
- 5.2.4.2 In Tanzania, social and health security is regulated by major government schemes: Public and Parastatal Service Pension Fund (PSPF), National Social Security Fund (NSSF), Workers Compensation Fund (WCF) and National Health Insurance Fund (NHIF). Other minor social schemes are operated by the private sector.
- 5.2.4.3 The study revealed that most of the employees were members of social security schemes, save for a few.
- 5.2.4.4 It was also found that, apart from the government social security schemes, the companies had no internal, company-owned social security arrangements. Instead, employees whose contracts expired were paid end-of-contract gratuity.
- 5.2.4.5 In terms of health insurance, some employees were members of the NHIF and NSSF health insurance, while others were not members of any of these schemes.
- 5.2.4.6 For injuries sustained in the course of employment, all companies were members of the WCF, which is the special government fund established for compensating employees who are injured. However, as mentioned earlier, no injured employee from the visited industries has obtained compensation from the WCF.
- 5.2.4.7 A total of seven out of 11 employees interviewed reported that companies had special kits for on-site first aid services. In case of grievous harms, the injured employee was referred to hospital by the employer. However, there were no arrangements for the supply of free nutritious support to HIV victims as required by the National Policy on the Prevention and Control of AIDS, 2001.

#### 5.2.5. Rights to privacy and non-discrimination,

- 5.2.5.1 Article 13(5) and 16 of the Constitution of the United Republic of Tanzania (1977) guarantee the rights to privacy and non-discrimination of all citizen regardless of their colour, sex, religion, tribal or political affiliation etc. Also section 7(1) of the Employment and Labour Relation Act (2004) requires every employer to promote equal opportunities in employment and to strive to eliminate discrimination in any employment policy or practice.
- 5.2.5.2 All the respondents in the three companies reported to have not experienced discrimination at the work place. Some companies have an anti-discrimination policy, like the Tanzania Fish Processors Ltd. In essence, all three companies have a human rights policy which guides the companies to respect human rights during its operation. The policy requires the companies in establishing internal mechanisms to deal with the resolution of labour disputes, the availability of safety gear, a clean and healthy working environment and the capacity building of their employees on human rights issues.

- 5.2.5.3 In terms of the protection of employees' privacy, all companies comply with the relevant regulations. All companies keep records of every employee in a separate file. These records are kept at the registry and can only be accessed by Human Resources Officers. There were no complaints on the interference of the company with employees' private lives nor of sharing employees' private information with other people without consent of the employees.
- 5.2.5.4 Each company also has a health unit, responsible for keeping information about medical examinations. In all three companies, there are Women Committees responsible for the promotion and protection of women's rights at the work place.

### 5.2.6. Working environment and occupational health and safety.

- 5.2.6.1 The team inspected working premises in the three studied industries. The working environment is generally good. Employees in the production department are provided with protective equipment like gloves, caps, shoes, masks and special clothes for cold working conditions. The management provides induction training to every new employee about the health and safety regulations in the company.
- 5.2.6.2 Health and safety standards in the production and workshop departments adhere to EU export standards in order to maintain their permit to export fish to EU countries.

### 5.2.7. Child labour

5.2.7.1 Article 1 of ILO's Convention 138 on Minimum Age (1973) requires Member States to have a national policy which abolishes child labour and to progressively raise the minimum age for legal employment or work to a level consistent with the fullest physical and mental development of young persons.

5.2.7.2 In Tanzania, Section 5(1) of the Employment and Labour Relation Act (2004) prohibits the employment of the child.

5.2.7.3 This study revealed that in all three industries no child is employed. All companies have anti-child labour policies. Based on the information obtained from individual employment records, the majority of workers are employed from the age of 23 years old and older.

5.2.7.4 Managements request birth certificates, voters' identification cards and certifications from local leaders as prerequisite documents for age verification.



*CHRAGG Team discussing some findings with the Production Manager at the Nile Perch Industry Ltd*

## 6. Conclusions: Key findings

Based on the analysis of gathered data as described above, this study concludes that the concept of “Business and Human Rights” is still a new phenomenon to the majority of Tanzanians, even to workers and their management.

While the main priority for businesses is to do profitable business, the welfare of their workers is not yet a business strategy let alone priority - for most. However, the situation appears more positive in the visited fish processing industries, where workers’ welfare seems overall well-protected, though not always to the standards required by the law.

Labour disputes in the visited industries are limited and mostly concern insufficient (minimal) wages, the absence of employment contracts and inadequate health insurance for injuries sustained during the course of employment. In case of disputes, the company’s grievance mechanisms are used rather than state-based remediation mechanisms. Workers have shown a strong trust in the company’s mechanisms and consider them as effective, cost- and time- efficient. The state-based non-judicial mechanisms are used by only a few employees and especially when an employee is summarily dismissed. Some of the remedies granted by both the company and state-based mechanisms are not effective. For instance, there is no increase of wages despite several attempts by employees to claim for the increment.

### 6.1. Key Findings

- 6.1.1 The state-based non-judicial grievance mechanisms and especially the Commission for Mediation and Arbitration (CMA) and the Labour Office, who play an essential role in monitoring the implementation of labour rights and standards, are under-resourced.
- 6.1.2 There is little awareness on available state-based non-judicial grievance mechanisms by both employees and employers. This includes a lack of knowledge on how to access these mechanisms and on procedures for executing orders made by them.
- 6.1.3 There is limited knowledge on labour rights and labour rights standards by both employees and employers.
- 6.1.4 Some of the employees are not aware of the terms and conditions of their employment, as they are not supplied with copies of their employment contract and others have no written contract of employment at all.
- 6.1.5 Many workers in the fish processing industries are casual workers. The nature of their short-term employment leaves them with more insecurity and less rights than people in longer-term employment.
- 6.1.6 Minimum wages paid to employees are not sufficient to account for the current cost of living and the standards of life in Tanzania.
- 6.1.7 Remedies for payment of insufficient wages, absence of employment of contracts and inadequate health insurance are not sufficient and do not meet the expectations of the victims.
- 6.1.8 Companies have no internal arrangement for social security of their employees apart from the national social security schemes.

### 6.2. Good practices from the fish processing industries:

- 6.2.1 There are efficient company-based complaints handling mechanisms which are composed of both employees and representatives from the management and the industry’s trade union.

- 6.2.2 Industrial operations promote gender equality and almost an equal employment of men and women in the companies. The division of labour among them considers the special needs of women.
- 6.2.3 Industries have internal policies for promotion and protection of human rights, for example Tanzania Fish Processors Ltd have more than 12 policies including a human rights policy.
- 6.2.4 Industries comply with the laws and regulations on working hours, overtime, child labour and occupational health and safety. All industries adhere to the EU standards on export, which among other things emphasizes a safe and clean, hygienic working environment.

## 7. Recommendations

Based on our findings on the fish processing industries in Mwanza, we urge the following actions in order to ensure that human rights are promoted, protected and preserved in the operations of industries in the country:

- 7.1 The Government through the Prime Minister's Office - Labour, Youth, Employment and Persons with Disabilities, to collaborate with CHRAGG and other human rights stakeholders to create awareness on business and human rights to industrial workers, management staff and staff of available non-judicial mechanisms. Awareness programmes should also focus on labour rights, labour rights standards and access to remedy.
- 7.2 The Government through the Prime Minister's Office - Labour, Youth, Employment and Persons with Disabilities, to strengthen the capacity of non-judicial grievance mechanisms like CMA, by deploying adequate numbers of staff, opening labour district offices and allocate sufficient budget.
- 7.3 The Social Security Regulatory Authority (SSRA) should take effective measures to monitor contributions to the social security funds and collections from both employees and employers.
- 7.4 The Prime Minister's Office - Labour, Youth, Employment and Persons with Disabilities, should review the Labour Institution Wage Order 2013 (GN No. 196/2013), which sets the minimum wages, and raise minimum wages conform to the current costs of living in Tanzania.
- 7.5 Employers should raise salaries and other remunerations for employees conform to the costs of living and minimum standards of life.
- 7.6 The Office of the Labour Commissioner and OSHA should effectively use their mandates to ensure adherence to labour rights and standards by both employees and employers and take stern measures when breaches occur.



*A Team member (left) with the Human Resources Officer of Omega Fish Ltd (right)*

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## LABOUR-RIGHTS COMPLIANCE IN THE CUT FLOWER INDUSTRY IN TANZANIA: A CASE STUDY OF MOUNT MERU FLOWER FARM (ARUMERU DISTRICT, ARUSHA REGION)

Business and Human  
Rights Tanzania

October 2018



**Study executed by** Rose Ugulumu (lead), Emmanuel Mongella, John Kaaya (Assistants)

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## Acknowledgement

Many people have contributed directly or indirectly to the accomplishment of this survey. The team therefore behold to all of them for their precious and useful inputs and comments on the issues of labour rights in flower farming which was undertaken in Arusha region, Arumeru district.

Special thanks goes to IPIS for funding this study. Our gratitude goes further to all respondents, particularly Employees from Mount Meru Flower farm, Employer: Mount Meru Flower actors, Community members around Mount Meru Flower farm, the Civil Society: CBOs members, Government authorities within Mount Meru Flower farm location.

## List of abbreviations

<b>BHRT</b>	Business and Human Rights Tanzania
<b>CBOs</b>	Community-based Organizations
<b>CMA</b>	Commission for Mediation and Arbitration
<b>CSOs</b>	Civil Society Organizations
<b>ELRA</b>	Employment and Labour Relations Act (2004)
<b>IPIS</b>	International Peace Information Service
<b>LHRC</b>	Legal and Human Rights Centre
<b>NGOs</b>	Non-governmental Organisations
<b>OSHA</b>	Occupational Safety and Health Authority
<b>TAHA</b>	Tanzania Horticultural Association
<b>TAWLA</b>	Tanzania Womens Lawyers Association
<b>TPAWU</b>	Tanzania Plantation and Agricultural Workers Union
<b>Tsh</b>	Tanzanian Shilling
<b>TU</b>	Trade union
<b>UNGP</b>	United Nation Guiding Principles on Business and Human Rights

## Executive summary

This report is the result of a baseline survey conducted by Business and Human Rights Tanzania (BHRT) in the cut flower industry of Arusha Region (Mount Meru, Arumeru district) from 11<sup>th</sup> to 20<sup>th</sup> October 2018 in partnership with the International Peace Information Service (IPIS) who funded this survey.

This study aimed at obtaining information on and examining the compliance with labour rights, laws, policies and other labour regulations in the floriculture industry in Tanzania. For years now, the floriculture industry in Tanzania has been left behind in studies investigating the implementation of labour rights in the agricultural sector. However, the floriculture industry has been associated with social, environmental, health and human rights impacts and labour issues specifically, which need to be addressed by scholars, researchers, non-governmental organisations and even the government itself.

To address this knowledge gap, we examined labour rights compliance through the collection of quantitative and qualitative field-data from employers and employees of Mount Meru Flower Farm (Arusha Region, Tanzania). In addition to these results, general human rights awareness amongst employers and employees in the industry and perspectives from other stakeholders, such as civil society, local communities and government actors are presented here, to allow a broader view of human rights issues in the floricultural industry in Tanzania.

From our study, we conclude that the failure to comply with all employment standards as provided under the Tanzanian 'Employment and Labour Relation Act of 2004' exposes workers in Mount Meru Flower Farm to disadvantageous, vulnerable conditions. It was noted that several good practices exist at the flower farm, such as the existence of employment contracts written in Swahili (i.e. easy to read and understand by most employees), the presence of a trade union and general information about health and safety at the work place. On the other hand, we observed that workers are subjected to long working hours, low wages, and a lack of protection gear. Moreover, the level of awareness on existing labour laws, policies and human rights as a whole is overall low with both employers and employees.

The results from this study will help in rising awareness on existing labour laws and strengthening access to justice for employers, employees and community members. This survey is a pre-requisite for making future interventions in the sector and achieving change of behavior by beneficiaries and community members as a whole. It will also help in advocating for policy change.

Our main recommendations are that efforts should be made to raise awareness on labour rights and human rights for the workers and community members around Mount Meru cut flower farm. Also, the government should make it mandatory for the cut flower industry, in accordance with the UN Guiding Principles on Business and Human Rights, to have operational grievance mechanisms i.e. proper corporate procedures for dispute settlement established in the flower companies. NGOs should take a lead role in awareness creation on how grievances can be lodged by workers in the event that their human rights are violated.

# 1. Introduction and background information

## 1.1. About Business and Human Rights Tanzania (BHRT)

Business and Human Rights Tanzania (BHRT) is a Tanzanian, non-governmental organization that is a private, non-partisan and not-for-profit organization. It is registered under the *NGO Act, 2002*. BHRT aims at imparting skills and knowledge on Business and Human Rights in furtherance of the objectives of the UN Guiding Principles on Business and Human Rights to the government of United Republic of Tanzania, judicial officers, the parliament, business persons/companies, local communities, professionals and people in informal sectors in order to influence investment – and particularly Foreign Direct Investment in natural resources including minerals, oil, gas, wildlife – and stimulate corporate actors to adhere to human rights standards.

## 1.2. About the Funder; International Peace Information Service - (IPIS)

IPIS is an independent research institute providing tailored information, analysis and capacity enhancement to support those actors who want to realize a vision of durable peace, sustainable development and the fulfillment of human rights.

Throughout the years, IPIS has developed a geographic focus on sub-Saharan Africa and a thematic focus on natural resources, conflict motives of armed actors, business and human rights, and international arms transfers. Within this scope, IPIS strives to be a center of excellence on field-based research.

## 1.3. Problem statement

### 1.3.1. The cut flower industry in Tanzania

Cut flower production constitutes a major ornamental crop business in the world with most marketed cut flowers being rose, carnation, tulip and chrysanthemum.<sup>1</sup> Before 1990, the USA and European countries such as the Netherlands, France and Germany were traditionally the principal producers of cut flowers in the world. Increasing production costs led to the transfer of flower investments to developing countries where labour is cheap and the climate is favorable throughout the year. By 1990, South America (Colombia, Ecuador, Brazil) and Africa (South Africa, Kenya, Zimbabwe, Tanzania and Uganda) by-passed then developed countries in cut flower production capacity.<sup>2</sup>

In Tanzania, the cut flower industry started in 1986 by Tanzania Flowers Ltd. with the production of carnation, euphorbia and bishop's weed. It was followed by production of cut flowers rose and chrysanthemum in 1992 and 1997.<sup>3</sup> The number of companies producing rose cut flowers and chrysanthemum shoot cuttings in the country increased to 13 in 2003. Foreign and local investors owned eight and five enterprises, respectively. Since then, more investors have shown interest to invest in the flower business in the country.

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While floriculture is a new and growing business in Tanzania, it is the 107<sup>th</sup> largest export economy in the world and the 107<sup>th</sup> most complex economy according to the Economic Complexity Index (ECI)<sup>4</sup>. Data on compliance with labour rights or the enforcement of labour laws and policies are limited. With limited research available, overall information is limited on the challenges faced by the local communities and workers due to social, environmental, health, labour and human rights impacts of such a big and new industry in the country.<sup>5</sup> Lack of knowledge on these issues is most problematic for the industry's employees. When employees lack awareness, they are more vulnerable to violations of their rights. It also makes it difficult for workers and community members to have a clear platform of raising their concerns/complaints. This survey was therefore undertaken to provide information that could guide and lead to more interventions on the protection of workers' rights in the future.

### 1.3.2. Labour rights and regulations

The state plays a great role in the protection of workers and their welfare. The state's duty to protect the human rights of its citizens, by legislating and ultimately enforcing appropriate laws and regulations, is one of the main pillars of the UN Guiding Principles on Business and Human Rights<sup>6</sup>, which is the international framework on corporate human rights.

One of the state agencies involved in addressing workers' welfare in Tanzania is the Ministry of Labour, Employment and Youth development. The main aim of the ministry is to create an enabling environment for better implementation of labour standards, for the creation of equitable and decent employment opportunities and for youth empowerment through provision, enforcement and monitoring of policies, legislations, guidelines and regulations. In Tanzania, labour regulations include "The Employment and Labour Relations Act 2004", "The Employment and Labour Relations (Code of good conduct) Regulations 2007", "The Employment Act 2004", "The Workers Compensation Act 2008", "Labour Institution Act 2004" and "The Trade Union Act 1998".

In general, investors, employees and community members in Tanzania have a limited knowledge on existing (inter-)national principles on business and human rights, especially related to issues of labour, land and environment<sup>7</sup>. Lack of official surveys on business and human rights in agribusiness and especially in the cut flower industry calls for more investigation and interventions in the sector. It is from this observation that BHRT, in collaboration with IPIS, pushed to undertake the current study to document the existing situation of labour rights compliance in the cut flower industry in one particular area of Tanzania, as a baseline for future interventions.

## 1.4. Objective of the study

This study aims to obtain information on the current status of labour rights compliance in the cut flower industry in Tanzania, by assessing the (1) awareness of labour laws, policies and rights by employers and employees, (2) compliance with the standard of employment by employers and companies, and (3) freedom of representation and association through trade unions, in the case of the Mount Meru flower farm in Arusha region, north-east Tanzania. In addition, general human rights awareness amongst employers and employees in the industry is evaluated and perspectives from other stakeholders, such as civil society, local communities and government actors are presented.

4 OEC Tanzania (TZA)- <https://atlas.media.mit.edu/en/profile/country/tza>

5 Mutabuzi, S.K. (1999), Cut Flower Industry in Tanzania.

6 Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework. Office of the High Commission on Human Rights (OHCHR), 2011. [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

7 National Baseline Assessment (NBA) of current implementation of business and human rights frameworks in the United Republic of Tanzania | CHRAGG, DIHR & SOMO | November 2017. [https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/projects\\_docs/tanzania\\_bhr\\_nba\\_final\\_nov2017.pdf](https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/projects_docs/tanzania_bhr_nba_final_nov2017.pdf)

With this information we then aim to:

1. Enable capacity building among employers, employees and community members to use business and human rights principles to claim and enforce their rights.
2. Monitor, promote and protect human rights standards in Tanzania's agribusiness sector
3. Help the community members to hold duty bearers accountable in relation to abuses linked to the agribusiness sector.
4. Influence policy makers and law makers at the district-, regional- and country- level to include principles of business and human rights in their decision-making process in regard to monitoring labour rights standards.

## 1.5. Methodology

This survey adopted a combination of qualitative and quantitative approaches. The quantitative (primary) data were obtained between 11-20 October 2018 from various sources and a total of 54 respondents.

Respondents of this study were selected based on purposive or deliberate sampling which involves the deliberate selection of a particular unit. For the purpose of this study the following categories of respondents were selected: (1) employees from the farm; (2) the employer, i.e., Mount Meru Flower actors; (3) community members, i.e., people living around the farm area; (4) the civil society, i.e., community-based organizations (CBOs) members around the same area of study; and (5) government authorities in the location. Their turn-up is shown in Table 1.1.

*Table 1.1: Actual and expected number of respondents for the study*

S/No.	Category of respondent	Expected No.	Actual No.	%
1	Employees from Mount Meru Flower farm	30	32	107%
2	Employer: Mount Meru Flower actors	5	5	100%
3	Community members around Mount Meru Flower farm	5	7	140%
4	The Community- based organisations: CBOs members	5	4	80%
5	Government authorities within Mount Meru Flower farm location	5	6	120%
<b>Total</b>		<b>50</b>	<b>54</b>	<b>109.4%</b>

Source: BHRT (primary data) October 2018

Specific questionnaires were administered to community members, civil society organizations and leaders around Mount Meru flower farms, respectively. Focus group discussion was used as supplementary tool to the questionnaires for the purpose of getting more information from those who had no chance to fill the questionnaires or wanted to give more information.

These quantitative methods were complemented with qualitative information cited in documents such as government reports, company rules and regulations and other published reports. The adoption of a combined approach intended to increase the reliability of data.

## 1.6. Description of the study area

The baseline study was conducted in Arusha region which is located in the north-eastern corner of Tanzania. It lies below the equator between latitudes 2°S and 6°S and longitudes 35°E and 38°E. The region has a common border with Kenya in the north, which makes flower export easier and cheaper. All cut flower enterprises are found in the highland areas above 1000m above sea level around the Meru, Hanang and Oldeani mountains in Arumeru district. These areas are characterised by fertile grey soils originated from recent volcanic ash, a fairly reliable average annual rainfall of 1000-1200 mm, temperatures of 17-30°C and a relative humidity of 50-70%. This study was conducted in one specific company referred to as Mount Meru Flowers Ltd farm, situated next to Mount Meru in Arumeru district, Arusha region (Figure 1).



Figure 1.1: Localisation of Mount Meru Flower farm, Arumeru District, Arusha Region

## 1.7. Sustainability

This report will be used as advocacy strategy and tool for policy change and awareness creation. Upon the change of policy, the community mindset/attitudes will also be changed and a culture of respect to business and human rights built.

## 2. Findings and data analysis

### 2.1. Introduction

The workers' welfare in the cut flower industry is determined by several factors. One of them is labour rights compliance, which we will assess by addressing three factors: (1) awareness of labour laws, policies and rights by employers and employees, (2) compliance with the standard of employment by employers and companies, and (3) freedom of representation and association through trade unions.

This chapter therefore, ventures to analyse data and the findings of the survey in relation to the factors listed above. In addition, general human rights awareness amongst employers and employees in the industry and perspectives from other stakeholders, such as civil society, local communities and government actors are presented, to allow a broader view of human rights issues in the floricultural industry in Tanzania.

### 2.2. General findings

#### 2.2.1. General Characterization of Respondents

Among the fifty-four (54) respondents who were reached and interviewed, eighteen (18) were males and thirty-six (36) females (Figure 2.1). The majority of them were categorized under the age group of 35 years and above. With regard to their level of education most of them were holders of primary education certificates, few with ordinary and advance level certificates. Only one respondent had a bachelor degree. The majority of the respondents were employees of the Mount Meru Flower farm (59%) such as cleaning staff, field staff, administration staff and security guards. Others were either flower farm employers or community members, CBO members or government authorities in the area of the flower farm (see Table 1.1).

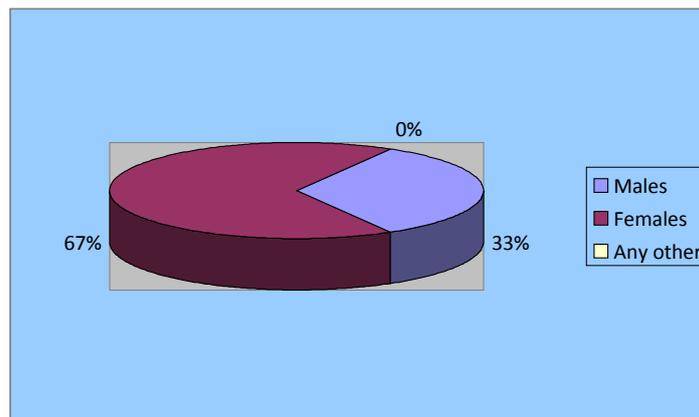


Figure 2.1: Distribution of respondents according to sex

#### 2.2.2. Economic Activities

The Arumeru economy is almost entirely agricultural, consisting mostly of subsistence farming and livestock raising. Exports from the few large-scale commercial horticultural farms bring in most of the

money in the district<sup>8</sup>. Hence, many community members in this district are involved in the floriculture industry. This being the case, the majority of the respondents mentioned the floriculture industry as the major means of their living. Most of them are either owners of a flower farm or employees in the flower farm industry. Few respondents involve themselves in crop farming, livestock keeping or business as per figure 2.2 below.

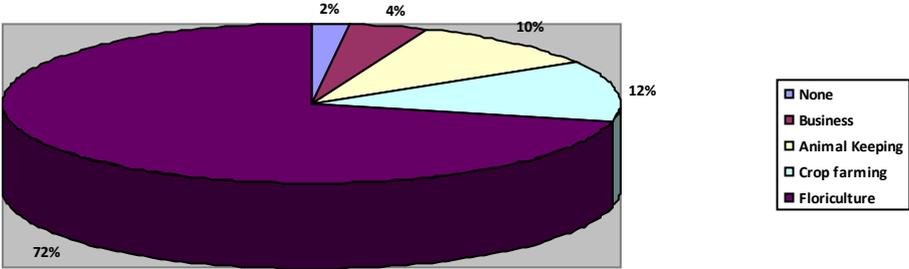


Figure 2.2: Distribution of respondents (workers) according to their main economic activity.

The majority of the workers in this industry (85%) responded that they had a special training on floriculture, especially in cut flower activities. The remaining 15% said that they were trained by their friends and relatives in the field or through own experience. This implies that employment in the cut flower industry calls for some form of special training.

Limited employment opportunities in other sectors was ranked high as one of the driving factors behind one joining the cut flower industry as an employee. 59.4% of the respondents (employees) said that they joined the industry because there is a lack of other employment opportunities, the remaining 40.6% of employee respondents mentioned other drivers such as motivation by friends and relatives, securing capital for other business activities and the zeal to get experience in this new industry.

In this survey, we observed that the cut flower industry in Mount Meru is a major employer for women and youth<sup>9</sup>. The majority of the respondents found in the field were women and youth. Both are engaged in flower production, though more women are engaged in the grading and packaging of flowers. This is due to biological reasons – women have soft hands which are friendly to the activities -, due to traditional believes that certain work/ assignments are for women versus men and the perception that women cannot participate in certain tasks/assignments. The presence of women and



Women and youth in cut flower industry

8 Arumeru District Council Report of October 2016  
 9 'Youth' are people between 15 and 35 years old (Tanzania National Youth Policy 2007)

youth in the industry is important as both are often categorized as “marginalized groups”, i.e. they are often excluded by either themselves or by the society from work/assignments and often lack access to decent employment. Employment in the cut flower industry could, hence, provide an opportunity for empowerment of these groups.

## 2.3. Labour rights in relation to cut flower industry in Tanzania

### 2.3.1. Awareness of Labour laws and Policies

The state has a role to ensure that labour laws and policies are sensitized to employers and employees. Scholars have recommended that workers be sensitized on labour laws and policies which govern the conditions of provision of labour.<sup>10</sup> Sensitizing workers on labour laws and policies empowers them, as they will be able to know what is expected of them in terms of labour activities and what should be their reciprocal benefits from these labour activities.

In general, workers in the cut flower industry at Mount Meru are not aware of labour laws and policies. A large majority of the respondents (81% of interviewed employees) said that they are aware of the existence of labour laws and policies, while 19% indicate that they are not aware of labour laws. However, when asked to mention a known labour law, only 13% from those who said to be aware were able to mention a law, while 87% failed to mention even a single law or policy or part of it. Those who could name an existing labour law, mentioned the 2004 Employment and Labour Relations Act (ELRA).

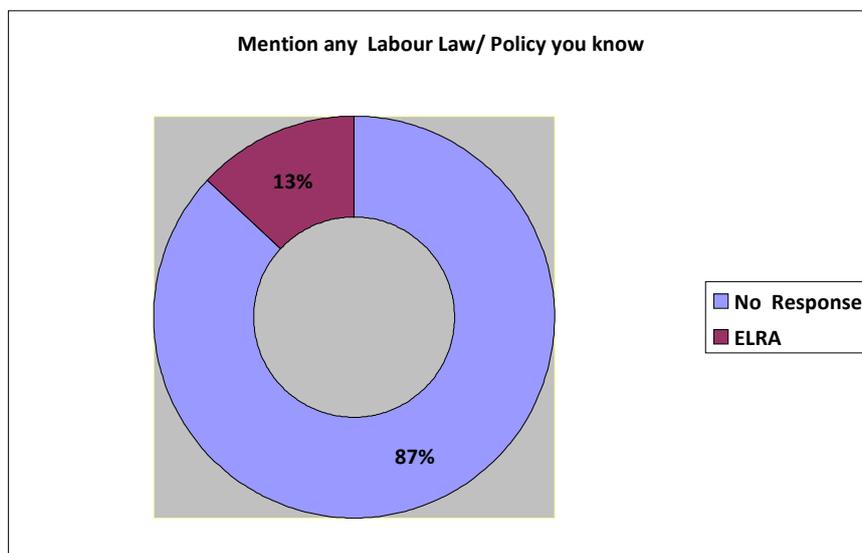


Figure 2.3: knowledge of existing labour laws and policies of employees who indicated to be aware of any laws.

10 Dolan, C. (2005) “Fields of Obligation: Rooting ethical sourcing in Kenyan horticulture” *Journal of Consumer Culture* Vol. 5(3) 5.

### 2.3.2. Compliance with employment standards

Standards of employment indicate the minimum statutory terms and conditions below which an employer can not employ. Employment standards establish a non-exploitative, favourable working environment and are meant to protect the rights of both employers and employees, on one side, and those of owners of capital on the other side. The basic labour standards, as officially incorporated in the “Employment and Labour Relations Act 2004”, “the Employment Act 2004”, “Labour Institutions Act 2004” and the “Trade Unions Act 1998” include: the right to remuneration, hours of work, occupational health and safety, abolition of child labour, forced labour, the elimination of discrimination, fair termination etc. In order to investigate the compliance of the cut flower industry with these standards, we focussed on three basic elements: (1) whether or not employment contracts exist, (2) whether or not people receive a fair wage for fair working hours, and (3) what the overall status of the working conditions in the Mount Meru Flower farm is.

#### 2.3.2.1. Existence of Contract of Employment

Through this survey it was observed that the majority of workers (78%) in the cut flower industry in Mount Meru have employment contracts for work on a temporary or permanent basis. Most of the contracts are drawn up in Swahili. Considering the average level of education of the workers (see Section 2.2.1), this implies that most workers are in a position to understand their contracts. Respondents with a contract were also of the opinion that they were given room by the employers to discuss the terms of the contract before signing it. Only 22% of the respondents were working without a contract of employment.



Picture: Workers in cut flower farm

#### 2.3.2.2. Remuneration

Section 27 of the “Employment and Labour Relations Act 2004”<sup>11</sup> requires the employer to pay wages to an employee - in the amount to which the employee is entitled - during working hours at the place of work, on the agreed pay day. This study establishes that, despite having employment contracts, the majority of workers in this industry are subjected to low wages. The average salary mentioned by fieldworkers was Tsh 100,000 (ca. 38 euro) per month. The minimum salary for the agriculture sector in Tanzania is Tsh 100,000, which is low compared to other sectors. For instance, the minimum salary for Trade, Industry and commercial services is Tsh 150,000, for the Fishing and Marine sector it is Tsh 200,000 and for communication services it is Tsh 150,000 per month<sup>12</sup>. 82% of the respondents said that they are paid low salaries compared to the work that they are doing. In their opinion, their salaries do not meet their basic needs. They also claimed that they are subjected to long working hours with low pay, as overtime wages are the same as their normal (minimum) wages.

#### 2.3.2.3. Working Conditions

In this study, 58% of the respondents reported that the working conditions in the cut flower industry

11 United Republic of Tanzania. Employment and Labour Relations Act, 2004. Available at <https://www.ilo.org/dyn/natlex/docs/SERIAL/68319/66452/>

12 <http://www.mywage.org/tanzania> and <https://wageindicator.org>

is at least better when compared to other farms/ agricultural industries. Working conditions are good because most of the employees are provided with employment contracts in Swahili (see Section 2.3.2.1) and because some rules and regulations are displayed in the work place's notice board, such as rules on pesticides and the sexual harassment policy.

However, workers indicate that they still face some challenges. There is a lack of protection gear to wear during work, such as gloves, overalls, gumboots and masks for field work staff.

Also problematic are the effects of the sprays which are used to spray pesticides on flowers. Sometimes employees fail to follow the correct procedures for using these sprays. Spraying without wearing a protective mask, for instance, exposes workers to the toxins used in the sprays. 42% of worker respondents reported that they face poor working conditions caused by a lack of work gear, a lack of knowledge on health hazards, a low wage and long working hours. Working hours are typically to nine (9) hours or more for field workers.

Overall, the working conditions of employees in the Mount Meru cut flower industry can be challenging. Conditions can be improved further by frequent trainings on health and safety practices and monitoring of the effectiveness of health and safety trainings and practices. This should reduce the risk of health hazards and work accidents at the farm, which occur mainly while spraying pesticides and handling flowers with thorns without protective gear.

### 2.3.3. Freedom of Association through trade Unions

Freedom of association is a fundamental right which has been granted by the Constitution of the United Republic of Tanzania. This right also has been provided for by labour laws<sup>13</sup>, which indicate that workers have a right to form and join trade unions. The trade unions play the role of political voice for workers on labour-related issues. In the cut flower industry we investigated, almost half of the workers are members of the Tanzania Plantation and Agricultural Workers Union (TPAWU). 52% of the Mount Meru Flower farm worker respondents reported that they are members of a trade union, while 48% have not yet joined trade unions. All disputes that arise at the flower farm are resolved internally by the company's set procedures.

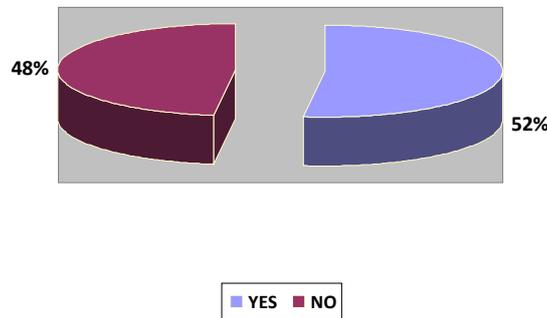
The aggrieved party may report to his/her trade union for further steps in solving the issues, which has been a great help for workers in defending their rights. Those workers who are trade union members reported that the trade union represents their labour issues well and were important in safeguarding good working conditions

It is remarkable that a significant number of employees (43%) said that they did not know what to do when faced with a challenge at work. 27% said that they use the management of the company to solve issues, while 30% said that they involve their trade unions.

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13 Such as Article 20 of the Constitution of the United Republic of Tanzania (1977) and S.9, 45-50 and 61 of the Employment and Labour Relations Act (2004)

**Are you a member of a Trade Union?**



*Figure 2.4: Percentage of Mount Meru Flower farm employees interviewed that are members of a trade union*

Respondents were also asked whether they know of other places or organisations to report their grievances, besides trade unions and company management. 38% of the respondents were able to mention a few non-governmental organisations like Legal and Human Rights Centre (LHRC) and Tanzania Horticultural Association (TAHA). LHRC strives to empower the public and promote, reinforce and safeguard human rights and good governance in Tanzania. TAHA is responsible for empowering small-holders to invest in commercial farming and in horticultural crops specifically. One respondent mentioned the Commission for Mediation and Arbitration (CMA), which is responsible for mediating any dispute referred to it in terms of any labour law, for determining any dispute referred to it by arbitration and for facilitating the establishment of a forum for workers participation, if requested to do so according to section 72 of the Employment and Labour Relations Act<sup>14</sup>.

**2.3.4. Human rights awareness among employees**

According to the survey data, as presented in Table 2.1, awareness of human rights issues amongst workers in Mount Meru Flower farm appears high, with 71.9% of workers indicating they have any knowledge on the matter. However, during open-ended interviews the need to create more awareness on human rights was clearly revealed. Although most workers responded to have any knowledge, in fact their awareness remains limited to concepts such as the bill of rights as it has been enshrined in the Constitution of United Republic of Tanzania 1977, and the rights of special groups such as women, children, people with disabilities etc.

It can be concluded that there still is a significant need to increase awareness on human rights amongst employees in the cut flower industry.

14 Labour Institutions Act No.14 of 2004

Table 2.1 RESPONDENTS' KNOWLEDGE ON HUMAN RIGHTS

Probe item	Response	No of respondents	%
<b>Whether respondents have any knowledge of human rights</b>	Yes	23	71.9
	No	6	18.7
	I don't know	0	0.0
	No response	3	9.4
	<b>Total</b>	<b>32</b>	<b>100</b>

### 2.3.5. Human rights awareness among employers

In this study, we interviewed five people who are employers in the Mount Meru Flower farm (Table 1.1). A set of ten (10) open-ended questions were put to them, which focused on issues such as human rights programmes at the flower farm. Overall, employers' awareness on human rights and human rights principles was limited. Although one respondent stated outright that there was no human rights programme of any kind in the company, all others indicated there was something in that direction, only that it was not clearly spelt out as 'human rights'. For instance, several respondents mentioned workers' rights, but saw this as something separate from human rights: "No. We only have programmes for workers' rights, which are given out every three month period."

Only one respondent, a human resource person, explained there were human rights programmes in place, including trainings on sexual harassment and other basic rights such as the right to be heard and the right to work. According to her, the rights are posted on the notice board for all workers to see. Only posting this information on notice board does not seem sufficient. There is clearly still a need of conducting classes and sharing publications and discussions to raise human rights awareness in the flower industry and the society at large.

## 2.4. Other stakeholder perspectives on the cut flower industry in Tanzania

### 2.4.1. Civil Society Organization perceptions

Four people were interviewed in this category: two respondents working for the Legal and Human Rights Centre (LHRC) and two working for the Tanzania Women Lawyers Association (TAWLA), who advocate for and provide legal aid services to vulnerable women and promote land rights for women.

In their opinion, many flower companies still fail to comply with the existing labour laws. Many workers do not have recognized legal agreements, earn low wages that cannot meet their basic needs, and have long working hours. Moreover, many employees do not know their rights. On the other hand, they acknowledge that the presence of commercial flower farming in their area provided viable employment and livelihood opportunities to people. They conclude that, as the agribusiness sector in Tanzania is rapidly expanding, a special set of rules specific for the industry would be recommendable.

### 2.4.2. Community Perceptions

Seven people from communities surrounding the Mount Meru Flower farm were interviewed. They

gave both positive and negative insights about the company.

On the one hand, Mount Meru Flower has helped local people to secure employment, has supplied local communities with flowers for occasions such as weddings and funerals and has executed community-based support programmes such as providing water services and renovations of local hospitals and schools. On the other hand, respondents mentioned that Mount Meru flower farm activities have led to environmental pollution during the rainy season. When it rains the dams of basins that store chemical waste products from pesticides have broken.

The community insisted that, if all shortcomings are dealt with, Mount Meru Flower farm will be of benefit not only to the surrounding communities but also to the nation as a whole.

### 2.4.3. Local Government Perspectives

The last category of respondents we questioned in this study were local government leaders. Local governments see the commercial flower farming business in their area as a good opportunity for their people. Besides providing employment to local people, the flower farms provide the government with revenue and social services like maintained roads, a health centre and a market for locally produced food items. Three local leaders (60%) claimed that Mount Meru Flower farms had been observing workers' rights, while two others (40%) disagreed. They said that they had been hearing complaints about long working hours, the lack of protective working gear, low salary and people being fired without sufficient reason.

## 3. Conclusion and recommendations

### 3.1. Conclusions

In this study, we assessed several aspects of labour rights compliance in the cut flower industry in Tanzania, and Mount Meru Flower farm (Arusha Region) in particular. Firstly, from this study, it is evident that there is a great need to raise awareness to the communities around cut flower industries, the workers and employers in the industry and other interested stakeholders. Awareness on basic concepts of human rights, labour rights and labour laws are the key entry points to intervene. Secondly, in order to improve the standard of employment, Mount Meru Flower farm should address issues of low wages, long working hours, challenging work conditions and especially health and safety practices. The company does provide most of its employees with employment contracts, allows the presence of trade unions and tries to resolve most labour disputes through internal procedures.

Overall, labour rights compliance in the cut flower industry at Mount Meru is considered positive, although significant challenges remain and improved awareness on human rights of both employees and employers is a must.

### 3.2. Recommendations

1. Awareness should be created on labour rights and human rights for the workers and community members around Mount Meru cut flower farm.
2. The government and NGOs should work together to create awareness in the communities and the cut flower companies/ industries on the UN Guiding Principles on Business and Human Rights (UNGPs).
3. The government should make it mandatory for cut flower industry, in accordance with the UNGPs, to have grievance mechanisms i.e. proper corporate procedures of dispute settlement established in their companies.
4. NGOs should take a lead role in awareness creation on how grievances can be lodged by workers in the event that their human rights are violated.
5. Women, youth and people with disabilities should be trained so that they can benefit from the floricultural sector.
6. There should be channel for reporting gender-based violence incidents happening within the industry.

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## TOURISM AND LAND RIGHTS: CASE STUDY OF UVINJE SUB-VILLAGE AND SAADANI NATIONAL PARK

Legal and Human Rights Centre

October 2018



**Study executed and written by** Tito Magoti, Alphonce Lusako

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## Acknowledgment

LHRC appreciates the cooperation received from the Commission for Human Rights and Good Governance, Bagamoyo District Council, Uvinje sub-village community in the due course of looking for information for this study.

LHRC would like to express special thanks to Mr. Tito Magoti, Mr. Alphonse Lusako and Ms. Joyce Komanya for their commitment to coordinate the study and write the report. Further thanks to International Peace Information Service (IPIS) for their very initial idea of making LHRC a contributor to the first **Voices From Tanzania** publication and for their support in preparing this report.

## Abbreviations

<b>SANAPA</b>	Saadani National Park (Authority)
<b>NGOs</b>	Non-Government Organizations
<b>TANAPA</b>	Tanzania National Parks Authority
<b>LHRC</b>	Legal and Human Rights Center
<b>CHRAGG</b>	Commission for Human Rights and Good Governance
<b>RC</b>	Regional Commissioner
<b>DC</b>	District Commissioner
<b>TLS</b>	Tanganyika Lawyers Society
<b>CEDAW</b>	Committee on the Elimination of Discrimination Against Women
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>UDHR</b>	Universal Declaration of Human Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>LGA</b>	Local Government Authority
<b>UN</b>	United Nations
<b>FAO</b>	Food Association Organization
<b>TIC</b>	Tanzania Investment Center
<b>C.U.R.T</b>	Constitution of United Republic of Tanzania, 1977
<b>SGR</b>	Saadani Game Reserve
<b>FPIC</b>	Free, Prior and Informed Consent
<b>ESIA</b>	Environment and Social Impact Assessment
<b>GN</b>	Government Notice
<b>CSO</b>	Civil Society Organisation

## About LHRC

Legal and Human Rights Centre (LHRC) is an advocacy-based human rights organization that advocates for adherence to human rights and rule of law in Tanzania. LHRC was established in 1995. It operates in Tanzania Mainland, with specific interventions in Zanzibar.

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

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

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

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

## Executive Summary

LHRC, in collaboration with IPIS, conducted this study to find out how tourism investment can impact human rights. This study focuses on the case of the Uvinje sub-village eviction that is linked to Saadani National Park (tourism) investment. With this study we aim to find out the causes for the continued land dispute between Uvinje villagers and Saadani National Park Authorities. This dispute has been ongoing since the 1990's when plans to upgrade the Saadani Game Reserve to a National Park revealed that Uvinje village land was considered public land by authorities, in contrast to villagers' perspectives. Despite interventions, this conflict is not yet resolved and has brought adverse impacts to the Uvinje community, not in the least the continued threat of being evicted from their ancestral land. Based on the analysis of this land dispute, we aim to suggest the best way forward for this specific conflict and for human rights due diligence prior to tourism investment in general.

This report has four chapters, whereby: *Chapter one* is the general introduction with reflections on background information and narration of the problem; *Chapter two* analyzes the legal framework on land ownership acquisition for investment. It focuses on key international, regional and local instruments/standards for land ownership, disposition of land rights and compulsory land acquisition for investment purposes – including tourism investment; *Chapter three* is dictated to findings of the study, informed by three questions: (1) *Were community land rights safeguarded during the establishment of the Saadani National Park?*; (2) *What are the human rights violations resulting from this land dispute?*; (3) *Was human rights due diligence undertaken prior to tourism investment?* Finally, *Chapter four* carries conclusions and recommendations.

Data was collected by using both primary and secondary sources. Methods and tools deployed were questionnaires, interviews, observations and literature review. A total of 160 respondents were reached, including community members of Uvinje sub-village, Government representatives, independent researchers and private institutions.

Key findings are: (1) that the rights of Uvinje villagers were not respected during the establishment of the Saadani National Park. Uvinje villagers are the lawful owners of their ancestral land – i.e. the land which

is the subject of the dispute caused by the upgrade of the National Park - and they are entitled to the enjoyment of their property without unwarranted interferences; (2) that this case illustrates how tourism investment can negatively impact human rights when due diligence is not exercised and important components of risk assessment and mitigation, such as environmental and social impacts assessments, are neglected.

We found that the Tanzania National Park Authority (TANAPA) ignored the covenant with Uvinje community by making Uvinje sub-village part of the Saadani Game Reserve (SGR) when drawing the map for SGR. Subsequently, Uvinje villagers were excluded from the process of upgrading SGR to a National Park, which conflicts with Uvinje community's right to property. Moreover, we show that the Tanzanian Commission for Human Rights and Good Governance (CHRAGG) had intervened the land dispute and drew a conclusion in favor of the Uvinje villagers. However, this advice was unheeded.

**Recommendations are:**

- SANAPA and TANAPA should engage community members from the start of tourism investment projects and thereby observe human rights
- SANAPA and TANAPA should honor and work on recommendations of CHRAGG and follow the law on acquiring land rather than exercising arbitrary eviction.
- The Ministry of Natural Resources and Tourism should collaborate with local government authorities in monitoring Uvinje land concerns. It should end the dispute and establish a strong regulatory and legal framework for ensuring mandatory human rights compliance in tourism investment.
- TANAPA may work on alternatives such as having both tourism and community members in the same land borrowing a leaf from Ngorongoro conservation area.
- CHRAGG should follow up on uptake of its recommendations on the dispute.
- Community members are encouraged to stand for their rights and ensure and consider using appropriate forums in addressing issues affecting their rights.
- Government and Civil Society Organizations should actively take part in advocating for community rights and the concept of free, prior and informed consent.
- Government should put in place strong regulatory and legal frameworks that ensure mandatory human rights due diligence in tourism investment.

# 1. Introduction

## 1.1. About Uvinje sub-village and Saadani National Park: Establishment, Geographical Location and Population

Uvinje is a sub-village (cell) adjacent to Saadani National Park, approximately 8 km from Saadani village, in the Saadani Village, Bagamoyo, Pwani (Coastal) Region. It was officially gazetted in 2005.<sup>1</sup> Its land stretches over 3000 acres and inhabits a population of more than 200 people. The main economic activities are fishing, farming and livestock keeping. A part of the village land is leased by a private investor who pays annual property taxes to the government of ca. Tsh. 15,600,000. Since 1974, it is said to be included in the Saadani Game Reserve –now a National Park.



*Map of Uvinje village and Saadani National Park*

Saadani National Park (SANAPA), established in 2005, is situated between Dar es Salaam (200 km) and Tanga (75 km) at the eastern boarder of the Tanzania mainland.<sup>2</sup> It includes areas of Pangani, Handeni and Bagamoyo Districts. It is home to a mix of both marine and mainland flora and fauna. Vegetation in the park is unique and includes mangrove forests around the winding Wami River and ocean clumps of palm trees, coral reefs in the Indian Ocean, short and tall-grass savannah and the harsh black cotton plains.<sup>3</sup>

## 1.2. Background information and statement of problem

The land dispute between the Uvinje villagers and the Tanzania National Parks Authority (TANAPA) stretches back to the 1990s when TANAPA sought to upgrade Saadani Game Reserve (SGR) to become a National Park.<sup>4</sup> TANAPA redrew the boundaries of the Reserve, supposedly for promotion of tourism

1 Case Study Report: Uvinje Village & Saadani National Park Tanzania; by Alejandra Orozco Quintero.

2 [https://www.google.com/search?q=Map+of+Saadani+National+Park&rlz=1C1CHBF\\_enTZ769TZ769&tbm=isch&source=iu&ictx=1&fir=D9nmYAFrrY1EXM%253A%252Cr\\_olq5UYZmJ4KM%252C\\_&usg=AI4\\_kTmiiHDJov8c3UYPHEAdo5TalV3Ew&sa=X&ved=2ahUKEwid\\_JTq\\_jdAhXQmlsKHU\\_sD\\_YQ9QEwBHoECAUQBA#imgrc=D9nmYAFrrY1EXM](https://www.google.com/search?q=Map+of+Saadani+National+Park&rlz=1C1CHBF_enTZ769TZ769&tbm=isch&source=iu&ictx=1&fir=D9nmYAFrrY1EXM%253A%252Cr_olq5UYZmJ4KM%252C_&usg=AI4_kTmiiHDJov8c3UYPHEAdo5TalV3Ew&sa=X&ved=2ahUKEwid_JTq_jdAhXQmlsKHU_sD_YQ9QEwBHoECAUQBA#imgrc=D9nmYAFrrY1EXM) accessed on 8/10/2018

3 <https://www.tanzania-experience.com/destinations/saadani-national-park/> accessed on 8/10/2018

4 *Background information* was retrieved from the following 2 sources: The Uvinje Project by PROTAMOS INVESTING IN JUSTICE.2014, Uvinje Village & Saadani National Park, Tanzania, by Alejandra Orozco and 04 October 2017 LHRC Fact finding Mission Report on Uvinje Eviction Saga.

following a growing herd of animals in the SGR. In redrawing the boundaries of the SGR, TANAPA did not consider the status of Uvinje sub-village and the village was made part of the Reserve, although it had been long established as ancestral lands of the Uvinje community outside the SGR.

During the upgrade from Game Reserve to National Park, the redrawn boundaries of SGR were maintained and used by the Government to justify evictions of the Uvinje villagers from the Reserve/ National Park. These evictions are deemed necessary in order to comply with the *laws and regulations for conservation areas*<sup>5</sup>. The process, however, brought out cries for community rights over the land, the need for consultations with right holders and adherence to laws on compulsory acquisition of land. A protracted land dispute between right holders (community members) and duty bearers (SANAPA, TANAPA and regional and local government authorities) started. This dispute is centered around the opposing views of villagers that purport to have been living on their land prior to the establishment of SGR, while TANAPA says that Uvinje sub-village is part of SANAPA.

The Uvinje community was not fully engaged nor consulted in the decision to upgrade the SGR to a National Park and initial conclusions that Uvinje sub-village should not form part of the SGR in the first place were disregarded. Villagers felt aggrieved after this process, contending that it was non-participatory, arbitrary and contrary to laws on acquisition of land (explained in Chapter 2 of this paper). Attempts to evict villagers have been made by TANAPA in collaboration with local government authorities from time to time. These activities endanger community land rights and villagers' safety due to unwarranted interferences by armed policemen and game wardens who threaten villagers with forceful eviction.

Over the course of the conflict, there have been several interventions by the government authorities on the matter, but the land dispute and associated human rights violations are still ongoing.



*Uvinje villagers in arguments with TANAPA officials on attempts to evict them*

## 1.3. Objectives and Methodologies

### 1.3.1. Objective(s) of the study

The main objective of this study was to evaluate how tourism investment can impact human rights, by exploring a case study of land dispute between Uvinje community (a sub-village within Saadani Village)

<sup>5</sup> See Restrictions of human activities in Conservation areas under Section 26, 31 and 42 of Wildlife Conservation Act, 2013

and the Tanzania National Parks Authority (TANAPA). Despite previous investigations into this case<sup>6</sup>, many questions remain unanswered, leading to the following objectives:

1. To assess and find out the root causes of the land dispute
2. To determine the legal status of land acquisition and ownership by Uvinje community
3. To assess interventions made to end the dispute
4. To give recommendations for ending the dispute
5. To provide appropriate and relevant recommendations in order to promote responsible behavior in tourism investment

In this way, we aim to answer these three key questions:

1. Were community land rights safeguarded during the establishment of the Saadani National Park?



*The LHRC team interviewing Uvinje sub-village Chairperson on 16th September 2018*

*Uvinje cell leaders and researchers viewing Uvinje area and its associated features*

6 See e.g. *The Uvinje Project* by PROTAMOS INVESTING IN JUSTICE.2014, *Uvinje Village & Saadani National Park, Tanzania*, by Alejandra Orozco and 04 October 2017 LHRC Fact finding Mission Report on Uvinje Eviction Saga.

## 2. Legal framework on land acquisition and ownership

There are standards at all levels, i.e. local (domestic) and international, which provide the legal framework for land acquisition and ownership in Tanzania. This chapter focuses on these legal instruments in order to clarify the fundamental principles of land ownership, disposition of land rights and compulsory land acquisition for public purposes such as tourism investment. This framework will, hence, allow us to investigate the issue of land ownership of Uvinje sub-village in the next Chapter.

### 2.1. International Standards on land ownership and acquisition for investment

Access to land is an essential element for the realization of human rights and as such it is considered in several international principles and interpretive documents<sup>7</sup>, including:

#### 2.1.1. Universal Declaration of Human Rights (UDHR), 1948;

provides that everyone has the right to own property alone as well as in association with others and that no one shall be arbitrarily deprived of his property.<sup>8</sup> UDHR encompasses a number of rights which are connected to or depending on access to land such as: the rights to housing, food, health, and work.<sup>9</sup>

#### 2.1.2. International Covenant on Civil and Political Rights;

prohibits arbitrary or unlawful interference with one's enjoyment of space and property.<sup>10</sup> State parties are required to provide an effective remedy for persons, whose rights have been violated, including adequate compensation for any property.<sup>11</sup>

#### 2.1.3. International Covenant on Economic, Social and Cultural Rights (ICESCR);

prohibits forced evictions by placing obligations among member States to use all appropriate means to realize the right to housing. This includes refraining from forced evictions and ensuring that the law is enforced against its agents or third parties who carry out forced evictions.<sup>12</sup> Forced evictions are prima facie incompatible with the requirements of the ICESCR.<sup>13</sup>

7 The Vancouver Declaration on Human Settlements, UN Conference on Human Settlements, Adopted June 11, 1976, General Principles: Land; Voluntary Guidelines of the Food and Agriculture Organization of the United Nations (FAO), adopted 127th Session of the FOA Council, November 2004,

8 United Nations, Universal Declaration of Human Rights (UDHR), Art. 17, Dec. 10, 1948, available at <http://www.un.org/Overview/rights.html#a25>

9 Ibid. Art. 23, 25, Dec. 10, 1948,

10 United Nations, International Covenant on Civil and Political Rights (ICCPR), Art. 17 open for signature Dec. 16, 1966, available at [http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm).

11 Article 2(3) of the ICCPR, ibid

12 Article 2(1) of the ICESCR

13 Committee on Economic Social and Cultural Rights (CESCR), General Comment 7, The right to adequate housing (Art. 11(1)): forced evictions, 1 (May 20, 1997)

#### 2.1.4. Declaration on the Rights of Indigenous Peoples,<sup>14</sup>

avers that indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.<sup>15</sup> It emphasizes protection of rights and redress.

#### 2.1.5. Committee on the Elimination of Discrimination Against Women (CEDAW);

calls States to create mechanisms for inclusive ownership of properties including land. It focuses on enjoyment of right to property.<sup>16</sup>

#### 2.1.6. United Nations Guiding Principles on Business and Human Rights, 2011;

provides a framework that indicates the roles and responsibilities of governments and businesses with regard to preventing and addressing corporate human rights harms. The guiding principles – though not binding - include three pillars: the duty to protect, the responsibility to respect and the access to remedy.<sup>17</sup>

## **2.2. National Laws and Policies on land ownership and acquisition for investment**

#### 2.2.1. Constitution of the United Republic of Tanzania (C.U.R.T.), 1977;

provides for right to own property including land.<sup>18</sup> Every person is entitled to own property, and has a right to the protection of his property held in accordance with the law and it prohibits deprivation of ones property without adhering to other enabling laws.

#### 2.2.2. National Land Policy of 1995;

was adopted to formulate and implement a coherent and comprehensive land policy for proper management and allocation of land. The policy made the President of the United Republic of Tanzania a land trustee on behalf of all Tanzanians.<sup>19</sup>

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14 Adopted by the United Nations General Assembly in 2007

15 United Nations, Declaration on the Rights of Indigenous Peoples, art. 26(1), Sept. 13, 2007.

16 See Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), Art. 16(h).

17 Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework. [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

18 Article 24 of the Constitution of the United Republic of Tanzania, 1977

19 This is in consonance with Section 3 and 4(1) of Land Act 1999 Cap 113.

### 2.2.3. Land Act, No. 4 of 1999;

establishes four categories of land: general land, village land, reserve land and urban land.<sup>20</sup> Land is owned by the state and vested to the President of the United Republic of Tanzania as Trustee of the Land for Tanzanians.<sup>21</sup> Citizens of the United Republic of Tanzania are allowed to own land by means of occupation,<sup>22</sup> while non-citizens can occupy land for investment purposes as prescribed in the investment laws of the country.<sup>23</sup>

### 2.2.4. Village Land Act, No.5 of 1999;

provides for registration of village land at the village level. It decentralizes powers to the local level while enhancing accessibility and protection of land owned by villagers.<sup>24</sup>

### 2.2.5. Land Acquisition Act, CAP 118 [RE 2002];

governs acquisition of land for all purposes. It provides the framework for compulsory acquisition of land for public purposes in connection with housing schemes.<sup>25</sup> Compulsory land acquisition, which is the subject of this paper, is legally synchronized under this law whereby once the President realizes that any land is required for “public purpose”, the Minister shall furnish a notice of an intent to acquire that land to the persons interested or claiming to be interested in this land, or to the persons entitled to sell or convey the same, or to such of them as shall, after reasonable inquiry, be known to him.<sup>26</sup> The aspect of citizen’s engagement and consultation to the fullest possible level – which is the essence of the concept of “free, prior and informed consent” –, is thereby of the utmost importance.

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20 Section 4 (4) of the Land Act of 1999

21 Read more at: <https://www.tanzaniainvest.com/economy/tanzania-investment-legal-framework> and follow us on [www.twitter.com/tanzaniainvest](https://www.twitter.com/tanzaniainvest) accessed on 9/9/2018

22 Section 19 (1) of the *Land Act* of 1999

23 Tanzania Investment Act of 1997 and Sections 19 (2) and 20 of the *Land Act* of 1999.

24 <http://tanzanialaw.blogspot.com/2011/08/tanzanian-land-acts-1999.html> accessed on 10/10/2018

25 Land Acquisition Act of 1967 CAP 118[RE 2002]

26 Ibid Sections 6, 7 & 8

## 3. Findings

This study looks at how tourism investment can impact human rights – with a case study of the land conflict between Tanzania National Parks Authority (TANAPA) and Saadani National Park Authority on one hand and Uvinje community on the other hand.

Our findings present the views of both parties involved in the dispute, as well as those of other neutral and/or interested parties such as professionals (advocates and researchers), ombudsman and advisory bodies. By discussing these different views, we aim to answer the following questions:

1. Were community land rights safeguarded during the establishment of the Saadani National Park?
2. What are the human rights violations resulting from this land dispute?
3. Was human rights due diligence undertaken prior to tourism investment?

### 3.1. Were community land rights safeguarded during the establishment of the Saadani National Park?

Tourism investment necessitates acquisition of land by the government, through its agencies such as the Tanzania National Parks Authority, by private corporations or by individuals. As detailed in Chapter 2, the government is empowered by law to acquire land for public interest - such as tourism investment - but with the obligation of providing land owners appropriate redress.<sup>27</sup> It is believed that the entire exercise of land acquisition for investment purpose, if rightly done, will promote sustainable development and investment while maintaining community rights including land rights.<sup>28</sup> Governments and investors are required to strike a balance between the public need for land on one hand and the provision of land tenure security and the protection of private property rights on the other hand.

If the process of compulsory land acquisition was done correctly in the case of Uvinje village, land rights would have been respected and free, prior and informed consent (FPIC) would have been applied.

#### 3.1.1. Status of land ownership by Uvinje villagers

Uvinje sub-village is legally recognized in Tanzania with a defined administrative structure and territories. Villagers acquired land customarily and they are enjoying their stay by customary (deemed) rights of occupancy. Ca. 95% of the respondents in the village confirmed that they have deemed rights of occupancy (*legal rights*)<sup>29</sup> of staying on the land while 5% could not tell due to loss of memory (old age). Old men in the village were not able to tell the accurate age of the village, but through their stories they indicated that Uvinje sub-village was established more than 100-year ago, even before the establishment of the SGR.

*“Everyone has their home, and here is our home ... we were born here ... there is an old-man who has 114-year, he always tells us he was born here and found elders and old men living here in times ... I with my elderly was also born here and found old-man already in this land ... we are here even before the Game Reserve, we are here legally”* said one old man, pictured below (I).

27 Sections 3, 4, 5, 6, 7 and 8 of the Land Acquisition Act of 1967 CAP 118[RE 2002]

28 Legal and Human Rights Centre (2017); Human Rights and Business Report, page 77.

29 Accruing from the Village Land Act, No.5 of 1999; also see Tanzania Land Policy Action Node: Policies that work 4 lands; Policy Brief No.4, England, 2014. Available at <https://agriknowledge.org/downloads/4t64gn20s>.

### 3.1.2. Government's stance on the dispute

As mentioned in the preceding paragraph, the Government legally recognizes Uvinje sub-village. However, there are contradictory positions given at different times by government authorities (i.e. the Regional and District Council and TANAPA) on the status of Uvinje sub-village. The first position held by TANAPA and the District and Regional Authority is that Uvinje sub-village is within Saadani Game Reserve [now Saadani National Park] based on the Government Notice (GN) 275 of 1974 which establishes the SGR and its boundaries. Because of this, Uvinje village should be evicted in order to comply with regulations for conservation areas. However, when we fact-check this position by verifying GN.275 of 1974, Uvinje sub-village is outside the SGR. The second position held<sup>30</sup> is that TANAPA wants to expand the boundaries of Saadani National Park and this very exercise will affect Uvinje sub-village in its entirety.



Moreover, as we learned from interviews with Uvinje community leaders led by Mr. Hussein Saleh Akida, on November 28, 2006, the Regional Government for Pwani led by Dr. Christine Ishengoma (Regional Commissioner for Pwani) paid a visit to Uvinje sub-village in order to resolve the dispute. The Regional Commissioner (RC), after hearing both parties, ruled in favor of Uvinje community members and ordered the cessation of eviction plans. This was properly communicated to SANAPA authority by the District Commissioner for Bagamoyo on December 01, 2006 (see Annex 01).

In the same line of authority, sub-village Council for Uvinje has always stood with community members.<sup>31</sup> They hold the opinion that Uvinje sub-village was established prior to the establishment of Saadani Game Reserve (SGR). They acknowledge to have witnessed the establishment of the SGR and some even became employees of the SGR.

*"We witnessed the establishment of Saadani Game Reserve, some of us worked here and we were transferred when it was upgraded to a National Park... even our grandfathers were here; their graves are here."* said one Oldman who is a senior villager in Uvinje.

### 3.1.3. Commission for Human Rights and Good Governance's interventions

The Commission for Human Rights and Good Governance (CHRAGG), which is the National Human Rights Institute of Tanzania, works to strengthen adherence to good governance and observation of human rights in Tanzania – serving the dual role of a human rights commission and an ombudsman.<sup>32</sup> As we discovered during our study, CHRAGG received a complaint from the villagers about what they termed 'arbitrarily and forceful eviction orders'. In response to this complaint, CHRAGG made inquiries and investigations from March 05, 2015 onwards. CHRAGG issued the verdict in favor of community members and gave directives to TANAPA and the Ministry for Natural Resources and Tourism on May 11, 2017. The arguments presented by CHRAGG are:

1. TANAPA disregarded the agreement between them and the community of Uvinje on setting demarcations of the SRG. TANAPA drew a map which shows Uvinje sub-village as found within the SGR, contrary to the Government Notice (GN) number 275 of 1974, which establishes the SGR and its boundaries and whereby Uvinje sub-village is situated outside the SGR.

30 Testimonies from Uvinje sub-village Chairman, Mr. Hussein Saleh Akida

31 This was delivered by Uvinje Chairman, Mr. Hussein Saleh Akida

32 Article 129 and 130 of the Constitution of the United Republic of Tanzania, 1977

2. The establishment of SGR did not follow the due process. Contrary to Section 4 of the Village Land Act<sup>33</sup>, which mandates citizen's participation in land acquisition, the community members were not engaged in extending and upgrading the SGR.

CHRAGG issued directives to TANAPA and the Ministry for Natural Resources and Tourism saying that if they wish to expand SAPANA, they should follow the procedures set forth under the Land Acquisition Act, Act No. 5 of 1999 and other laws (see *Annex 02*).

### 3.1.4. Overall analysis of the TANAPA versus Uvinje Community land dispute

Combining all the information collected during this study's field work and analysis, it seems that there was no legal basis for the eviction order for Uvinje sub-village. Both the Regional and District Authorities for Pwani and Bagamoyo and CHRAGG concluded that SANAPA and TANAPA erred in their moves to evict civilians without considering community rights and free and prior informed consent (FPIC).

It is observed that the due process was not followed but also, that major mistakes were made by TANAPA from the very beginning of designing the map for SGR contrary to the covenant with Uvinje villagers. For that reason, it can be concluded that Uvinje community members are entitled to enjoy the right to own land in the area of Uvinje sub-village and that TANAPA is supposed to follow and honor the procedures as set forth under the laws on acquisition of land as discussed in Chapter 2 of this paper.

Overall, this case illustrates how the entire concept of securing community private property rights in the course of tourism investment comes to a challenge when the due processes (as per the laws) are not followed.

## 3.2. What are the human rights violations resulting from this land dispute?

Without access to land, the enjoyment and realization of other fundamental human rights is also affected. The availability of and access to land is of vital importance for furtherance of development and reducing poverty.<sup>34</sup> It also is a pillar for the enjoyment of social and cultural rights.

Through our field study, we aimed to unfold the truths on this matter. It was noted that the enjoyment of human rights by Uvinje community is limited because of the protracted land conflict with TANAPA. One of the abused rights is 'the right to own property', due to the threat of forceful eviction. Community members established that eviction orders diminish their liberty to exercise control over their land. In addition, 'the right to a clean, healthy and safe environment', 'the right to health', 'the right to an adequate standard of living', 'the right to work', 'the right to benefit from natural resources' and 'the right to development', among others, are in danger due to the Government's decision not to allocate social services in the area as a result of the land dispute.

*"Uvinje would have developed more compared to how it is now ... we had long-term plans of building schools and health centers through our own efforts ... this dispute has minimized all of our efforts since TANAPA and government officials are barring us to develop this place contending it is theirs ..."* said the Chairman for Uvinje sub-village.

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33 Act No. 5 of 1999 [Cap. 114, RE. 2001]

34 See e.g. Why Strengthening Land Rights strengthens Development, the Namibian, 24/08/2018. <https://www.namibian.com.na/70746/read/Why-Strengthening-Land-Rights-Strengthens-Development>

Last but not least, failure of the government authorities to honor the judgment and directives of CHRAGG on ending the land dispute is a threat to the rule of law and principles of good governance. CHRAGG issued their judgment demanding cessation of the eviction exercise in May 2017 but as of yet (December 2018), eviction processes are still ongoing.

### 3.3. Was human rights due diligence undertaken prior to tourism investment?

One of the approaches that could assist in handling human rights violations as documented in this study - and that could even potentially curtail them - is “human rights due diligence”.

“Human rights due diligence” is an ongoing risk management process that any reasonable and prudent company needs to follow in order to identify, prevent, mitigate and account for how it addresses its adverse human rights impacts. It includes four key steps: (1) assessing actual and potential human rights impacts; (2) integrating and acting on the findings; (3) tracking responses and (4) communicating about how impacts are addressed.<sup>35</sup> Due diligence is a crucial component of how businesses can take up their responsibility to respect human rights, as described in the international framework on corporate human rights, the United Nations Guiding Principles on Business and Human Rights<sup>36</sup>. The two other pillars of this framework are the government’s duty to protect the human rights of its citizens and the access to remedy.

For tourism investment, human rights due diligence implies considering the potential human rights effects of every decision prior to and during the investment. In Tanzania, it includes conducting an environmental (and social) impact assessment (ESIA), which is a legal requirement under the Environmental Management Act<sup>37</sup>. All investors, whether they are private companies or government entities, are obliged to comply with this requirement. ESIA is vital for protecting the environment and the fundamental right to a clean, safe and healthy environment. It also assists in addressing adverse impacts of investment by redressing the (potential) victims.

ESIA obligations in this case study would construe an initial step in considering community private land rights, since tourism investment needs a vast area of land. It would also consider all other potential human rights violations, examples of which can be found in the Section 3.2 of this paper. Further, the due diligence process would imply that the Uvinje community formed part of the process, that they were aware of the potential impacts of expanding Saadani National Park (including how any future relation with TANAPA which would affect their private land rights) and that they were informed of mechanisms for redress.

It was noted from our field study that Uvinje community members are not aware as to whether an ESIA process was undertaken. In fact, no ESIA study was performed in this case. Community members have limited awareness about the authorities (i.e. the institutions, their roles and functionality) placed to do this. They claim to have never been engaged in any initiatives of expanding Saadani National Park and were not aware this expansion would make the village part of the Park. This is corroborated by CHRAGG, whose investigations - among other things - noted that the community was disengaged in this specific investment process while it adversely affected their land rights and, as our investigation shows, their human rights in general.

35 Available at <https://www.ungpreporting.org/glossary/human-rights-due-diligence/> accessed on 04/12/2018 at 04:50

36 Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework. Office of the High Commission on Human Rights (OHCHR), 2011. [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

37 B. T. Baya & Menan H. Jangu PhD “ENVIRONMENTAL CONSIDERATION FOR SUSTAINABLE INDUSTRIALIZATION IN TANZANIA” The National Environment Management Council, March, 2017, at <http://www.nemc.or.tz/uploads/publications/en1508331411-Environmental%20Consideration%20for%20Industrialization%20in%20Tanzania.pdf>, accessed 10/10/2018

As learned from the interviews with community leaders, TANAPA did raise the issue of compensation as a means of remedy should the community accept relocation – as they did with other villages near Saadani National Park.<sup>38</sup> However, this option did not gain community members’ endorsement since it was perceived as a means of seducing them to surrender their land.

Taken all these aspects in consideration, it is debatable whether this specific tourism investment would still have been considered viable after exercising human rights due diligence and ESIA studies.

Overall, this case study illustrates that although tourism investment can have positive effects on a country and local communities, when it tempers with community (land) rights without proper human rights due diligence, it can quickly become a threat to human rights.



*Uvinje sub-village Chairman (r) showcasing village boundaries*

38 Said Uvinje Cell leader, Mr. Hussein Saleh Akida.

## 4. Conclusion and recommendations

### 4.1. Conclusion

From the foregoing, it can be concluded that tourism investment impacts human rights in many ways. In the case of Uvinje village, it is observed that the government and its agency dealing with tourism (i.e. TANAPA) did not consider community land rights during two crucial events: 1) when establishing Saadani Game Reserve (SGR) and 2) when upgrading SGR to Saadani National Park. Communities were adversely impacted by the decisions and approaches used during these investment processes. As such, the Uvinje case illustrates how (land) rights are endangered when the proper means of acquiring land and general human rights due diligence processes are not put in place. Moreover, there is still a danger of community rights getting lost as the land conflict continues.

It is important for all investors, including both the government and private investors, to understand the general concept of ownership of property and to respect the procedures and regulations for investment on another's land. When imposing laws and policies which are likely to affect land rights, it is important to bear in mind that land is a cross-cutting issue which affects the enjoyment of many other fundamental rights such as right to development and many other socio-economic rights.

Lastly, this study also indicates the importance of investors to undertake and/or improve human rights due diligence in all new and ongoing investments in a bid to ensure responsible behavior and compliance with existing human rights obligations.

### 4.2. Recommendations

#### **General recommendations are:**

- SANAPA and TANAPA should engage the community members before the start of tourism investment and while observing human rights
- SANAPA and TANAPA should honor and work on recommendations of CHRAGG; following the law on acquiring land rather than exercising arbitrary eviction.
- Ministry of Natural Resources and Tourism should better collaborate with local government authorities in monitoring Uvinje land concerns and ending the dispute.
- TANAPA may work on alternatives such as human-wildlife interaction, borrowing a leaf from Ngorongoro conservation area. This was also suggested by Uvinje villagers and it is our humblest opinion that it may work since the Uvinje community has been living on that premise since the establishment of the SGR and they have a healthy relationship with the wildlife in the conservation area.
- CHRAGG should follow up on its recommendations on the dispute.
- Community members are encouraged to stand up for their rights, using appropriate forums such as Ward and District Land Tribunals and Courts of Laws in addressing issues affecting their rights. This minimizes dictation of decisions by those in power especially when they form part of a dispute.
- Government and civil society organizations (CSOs) should actively take part in advocating for community rights and the concept of free, prior and informed consent
- Government (Executive arms) and the Legislature should put in place strong regulatory and legal frameworks that ensure mandatory human rights due diligence in tourism investment.

## 5. Annexes

### Annex 1: Pwani RC's statement on cessation of eviction

Jamhuri ya Muungano wa Tanzania  
OFISI YA WAZIRI MKUU  
TAWALA ZA MKOJA NA SERIKALI ZA MITAA

Anwani ya Simu:  
"Admin" BAGAMOYO  
Simu ya Mdomo: 023-2910003  
Unapojibu tafadhali taja:

OFISI YA MKUU WA WILAYA,  
S.L.P. 94,  
BAGAMOYO.

Kumb. Na. BG/G.10/Z/II/33

1 Desemba, 2006

Mkuu wa Hifadhi,  
Saadani National Park (SANAPA),  
s.l.p. 133,  
PANGANI – TANGA.

**YAH. UTEKELEZAJI WA MAAGIZO YA MKUU WA MKOJA WAKATI WA  
ZIARA YA KUTEMBELEA VIJJI VINAVYOPAKANA NA  
HIFADHI YA SANAPA**

Kichwa cha habari hapo juu chahusika.

Mkuu wa Mkoa wa Pwani Mhe. Dkt Christine Ishengoma alitembelea maeneo ya vijiji vinavyopakana na eneo la Hifadhi ya SANAPA tarehe 28/11/2006. Katika ziara hiyo aliongea na wananchi kwenye mikutano ya hadhara ambapo aliagiza kuwa wananchi wanabishi katika kitongoji cha Uvinje wasihamishwe badala yake mipaka yao ya asili ihesimike kwa kuwashirikisha wananchi wanaofahamu mipaka hiyo. Aidha Wataalam watafika katika maeneo hayo shirikiana nao katika kutambua mipaka na kuipima. Mihutasari iwasilishwe kwa hatua.

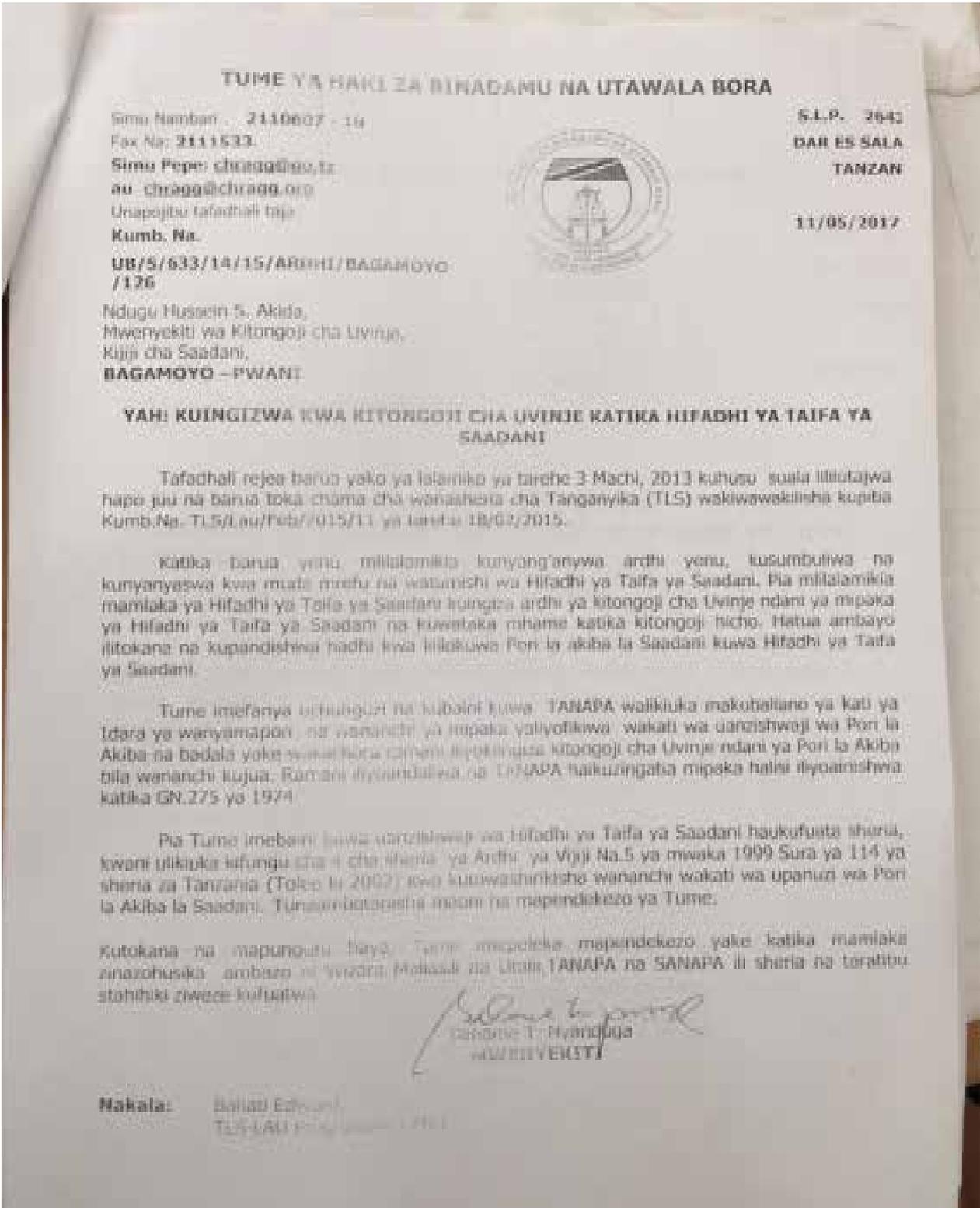
Maagizo haya ya Mkuu wa Mkoa yamefuta makubaliano ya Kikao cha Wadau kilichofanyika tarehe 09/11/2006 ambapo ilikubalika wananchi wa Uvinje wathaminiwe mali zao na kuhamishwa kwenye eneo lao Kijiji cha Saadani waongozewe eneo lao ambalo walibadilishana na hifadhi Km 1½ inabaki kama makubaliano kwa kijiji cha Saadani.

Kwa barua hii unatakiwa kuchukua hatua mara baada ya kukamilika kwa mikutano ya wananchi wa maeneo husika.

Nakutakia urekelezaji mwema.

  
Lt Col (Mst.) S. M. Mrengo  
MKU WA WILAYA  
BAGAMOYO.

Annex 02: CHRAGG position on the dispute



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# LIMESTONE MINING AND HUMAN RIGHTS ISSUES IN KIGOMA REGION. A CASE STUDY ON LIMESTONE MINING COMMUNITIES IN MAKERE.



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November 2018

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## List of Acronyms and Abbreviations

<b>CBO</b>	Community Based organization
<b>CSO</b>	Civil Society Organization
<b>KIGOREMA</b>	Kigoma Regional Miners Association
<b>KIWACHOMA</b>	Kikundi cha wachimba chokaa Makere (Makere Limestone Miners Group).
<b>MM</b>	Ministry of Minerals
<b>PM</b>	Primary Mining License
<b>TFS</b>	Tanzania Forest Service
<b>TZS</b>	Tanzanian Shilling
<b>UNHCR</b>	United Nations High Commission for Refugees
<b>USD</b>	US Dollar

## Executive Summary

The purpose of this report is to highlight the main human rights challenges faced by limestone mining communities in Kigoma region (northwest Tanzania). These communities heavily rely on land and resources in the Makere Forest Reserve for livelihood activities such as limestone mining, farming, tree cutting, charcoal burning and livestock keeping. This puts them in conflict with the Tanzanian Forest Services (TFS) that are tasked with enforcing laws and regulations that discourage human activities in forest reserves.

Kigoma region is often overlooked in studies on mining, human rights and nature conservation in Tanzania. The nature and scale of the human rights challenges in this region remain therefore largely unknown. This study aims to contribute to filling such knowledge gaps by means of a case study on limestone mining communities in Makere, Kigoma.

To give insight into these issues, the study combines primary and secondary data, including interviews and questionnaires with stakeholders, focus group discussions and mining site visits conducted in the area from September to November 2018. This report undertakes a scoping of the main concerns, and its findings should not be viewed as conclusive.

The report uncovers that the tensions between limestone mining communities in Makere and forest conservation authorities result from ill-aligned enforcement of forest and mining legal frameworks and diffused responsibilities between mandated authorities. Another source of concern is the exploitation of refugees from the nearby Nyarugusu camp in limestone mining operations.

Tensions between miners and forest authorities in Makere have escalated and cause considerable human rights challenges. This study recorded reports of excessive use of force against miners (such as beatings and torture), corruption, and the unlawful seizure, confiscation and destruction of private properties. Most of these violations are unreported and the victims have limited access to redress and remedy.

# 1. Introduction

## 1.1. Limestone mining in Kigoma region

Kigoma region, in north-western Tanzania, is an area rich in salt, copper, various types of gemstones and limestone deposits. These minerals are mainly extracted by artisanal and small-scale miners. Salt is the only mineral which is mined by a medium-scale mine – Nyanza Mines Ltd.

Most small-scale miners in Kigoma work on limestone. This is concentrated around Makere, Nyamilwa and Ilagala in Uvinza and Kasulu districts. It provides an important livelihood and source of employment for adjacent communities of Makere, Nyamidaho, Mvugwe, Kitakata, Kagerankanda, Mvinza and Katoto village.

Limestone mining in Kigoma mainly takes place in forest-rich areas and reserves. Miners carve the limestone out of rocks and process it into lime through burning. This is mostly done in rudimentary ways that consume large amounts of fuel wood and thus cause significant deforestation. Forest reserves are overseen by the Tanzania Forest Services (TFS) and governed by the 2002 Forest Act. Article 26 of this Act prohibits human activities such as mining, settlements, farming and livestock keeping in forest reserves, unless someone is granted a permit or license in accordance with the Forest Act.

This study focusses on small-scale limestone mining communities in and around the North and South Makere Forest Reserve (hereafter: Makere Forest Reserve). Miners reported to have been active in this area since 1978 and many sites have obtained a mining license<sup>1</sup>. Additional permits and compensation charges for undertaking such activities in forest reserves are however much less complied with. This study unravels how the poor compliance with these forest regulations have elevated tensions between miners and the Tanzanian forest authorities. This is resulting in a violent repression of miners from the forest reserve, posing severe human rights concerns.

Following this introductory chapter, chapters two to four respectively focus on the field of tension between limestone mining and forest conservation, the repression experienced by limestone miners in Makere forest reserve, and the exploitation of refugees. A fifth and final chapter summarises the main findings.

## 1.2. Scope of this study

This study assesses the scale and scope of human rights impacts associated with limestone mining operations in Kigoma region. It is envisioned that the findings of this study will fill existing knowledge gaps on a region and sector that is often overlooked. This report will also give recommendations to address the human rights issues that have been identified.

## 1.3. Methodology

This study relies on questionnaires, field observations, focus group discussions as well as primary and secondary data analysis. Open-ended questionnaires and semi-structured interviews were obtained from limestone miners, mining communities, the limestone mining group in Makere, refugees involved in mining, civil society organizations and Kigoma's regional miners' association between September and November 2018. The limestone mining sites visited are located in Ilagala, Nyamilwa and Makere. References are also made to various communications and official correspondences between state actors and limestone miners. Besides these official correspondences, other sources were limestone miners' records and documents, and legal texts such as the forest and mining legislation.

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1 November 2017, KIWACHOMA letter to Kasulu District Commissioner, Kumb. Na CBO/250/15/17

## 2. Mining and forest conservation

Makere Forest Reserve is one of 448 declared National Forest Reserves in Tanzania. A recent survey undertaken by the International Peace Information Service (IPIS) identified 64 limestone mining and processing sites in and around the reserve (Figure 1).<sup>2</sup> IPIS estimates that limestone mining in Makere directly employs over 600 workers in times of good production. Many others find indirect employment in the sector, such as limestone traders, lime kiln builders, transporters, brick makers and food providers.



Figure 1 Mining sites with and without primary mining licenses (PML) in Makere Forest Reserve

### 2.1. Deforestation

The biggest impact of limestone mining in Makere Forest Reserve is deforestation. There has been little innovation in limestone mining and processing in Kigoma. Limited skills and low access to financing imply that the bulk of miners use rudimentary techniques that consume large amounts of firewood. This is a primary concern for forest authorities. The most wood-consuming technique is the burning of limestone on huge woodpiles that fail to capture much of the heat. Others have built kilns (i.e. brick heat chambers) that are considerably more efficient, but still require considerable firewood. Limestone miners account that, even in kilns, about 50 cubic meters of fuel wood is needed to process 50 tons of limestone.

The Tanzania Forest Service (TFS) is mandated by the Forest Act to oversee the management and conservation of forests in Tanzania. This responsibility includes mapping and demarcating forest reserves and enhancing the capacity of local forest managers.

According to TFS official communication<sup>3</sup> with the Makere Limestone Miners Group (KIWACHOMA), the 42 limestone kilns in Makere Forest Reserve are estimated to harvest 8,400 cubic meters of fuel wood per year. Each kiln, hence, consumes about 200 cubic meters annually, thus producing 200 tons of limestone per year (in line with the above estimate of about 50 cubic meters of fuel wood needed to produce 50 tons of limestone). TFS calculated that this corresponds to an annual loss of 78 hectares of the Makere Forest, which has a total size of 99,682 hectares of land. For these reasons, in the aforementioned

<sup>2</sup> H. Merket, *Mapping artisanal and small-scale mining in northwest Tanzania: a survey on its nature, scope and impact* (IPIS, Antwerp, 2019).

<sup>3</sup> March, 2013, TFS letter kumb. Na.TFSC 166/286/01,

communication TFS officials advised Makere miners to register as consumers of Makere forest products, thus paying TFS for the amount of firewood used in the processing of limestone.



Figure 2: Limestone kiln (above - left). Fuelwood cut ready for burning limestone (above - right).

## 2.2. Ill-aligned enforcement of forest and mining frameworks

There exists thus a field of tension between mining, as an important livelihood for Makere communities, and forest conservation. Such tensions can be addressed through adequate regulation and oversight. Yet, this is precisely where the main stumbling blocks lay.

In line with the 2002 Forest Act, which aims to restrict human activity in forest reserves, Article 95(1c) of the 2010 Mining Act prohibits holders of mineral rights to mine in forest reserves without “the written consent of the authority having control over the forest reserve”.<sup>4</sup> When issuing mining licenses, the Ministry for Minerals does not verify such consent, and leaves it to the license holder to obtain the surface rights prior to the commencement of mining operations. This responsibility is not closely monitored in practice, and compliance of miners with the Forest Act is therefore low.

According to data published by IPIS in January 2018, 21 of the 46 limestone mining and processing sites in Makere have no Primary Mining License (PML, i.e. the dedicated license for small-scale mining operations in Tanzania). Yet, even sites with a PML can thus only undertake mining activities in the forest reserve with explicit permission from TFS. Getting such permits is complex, as it requires an Environmental Protection Plan, and is costly. The Forest Act imposes a mining fee of ca. USD 650 (TZS 1,505,000) per hectare per year, and an establishment fee of a mineral extraction plant of ca. USD 5,130 (TZS 11,800,000) per hectare per year. To put this into perspective, a primary mining license (PML) issued by the Ministry for Minerals costs annual rent (fees) of USD 36 (TZS 80,000) per hectare.<sup>5</sup>

Inadequate skills, limited access to finance and poor awareness on these complex legal frameworks, means that many miners fail to follow these proper procedures. This puts them in conflict with TFS officers who tend to focus on sanctioning rather than assistance and awareness-raising.

4 Similarly, Section 96 of the 2010 Mining Act requires mineral rights to be “exercised reasonably and ... not be exercised so as to affect injuriously the interest of any owner or occupier of the land over which those rights extend”.

5 Other PML-related costs are an application fee of TZS 50,000 (USD 22), a processing fee of TZS 50,000 and a renewal fee of TZS 100,000 (USD 43) after 7 years.

### 3. Expulsion of miners from Makere Forest Reserve

Irrespective of the complexity of compliance, mining communities operating in and around Makere Forest Reserve are met with repression, rather than encouragement and support on how to operate within the Forest and Mining legal frameworks. Miners and community members interviewed during the field study frequently complained about two types of violations by forest authorities: excessive use of force and corruption.

Miners reported that the risks and damages of this repression, as well as the strict enforcement of forest regulations by TFS, are causing a reduction in the number of active PML-licensed mining sites from 35 in 2006 to only 16 in September 2018. Some of these miners have moved to the area around Nyamilwa in nearby Uvinza district to continue limestone extraction and processing. They moreover indicate that the repression decreases their ability to attract capital because investors are not willing to support an instable sector, where investments constantly run the risk of being confiscated by forest authorities (see below). In this way, mining communities are being forced out of Makere Forest Reserve

#### 3.1. Reports of excessive use of force: violence, torture, destruction

The expulsion of miners from the forest reserve does not appear to occur in accordance with the applicable judicial procedures. Various limestone miners reported extrajudicial abuses by elements of the forest authorities. This includes destruction of properties and equipment, torture and excessive violence.

TFS patrols are alleged to regularly destruct properties and equipment of limestone mining communities, such as huts, shade units, water containers, stores and limestone kilns. Each kiln is worth on average 5 million TZS (ca. 2200 USD) and takes about a month of hard work to construct.

Another recurring allegation is that forest authorities who catch miners operating illegally in the forest reserve force them to eat limestone powder. Various miners were allegedly taken to the hospital due to these malpractices and some even died. In one incident in 2003, four persons were beaten and forced to eat lime. This caused the death of one man identified as Mr. Peter Luyumbu who was 54 years old. The man was a local builder of limestone kilns in Makere. His family was immensely affected as he performed as committed head of family for years. Another example involves Mr. Jackson Michael Magombe, a.k.a. Kulana, who was allegedly intimidated by forest patrols to either eat lime or be killed on the spot. He chose the former and was subsequently left behind in the forest. In efforts to rescue his life, Mr. Jackson spent more than 150,000 TZS (ca. 70 USD) in different hospitals; luckily, he survived.

In a reported case of excessive use of force, a refugee from the Democratic Republic of Congo (DRC), living in the nearby Nyarugusu camp and working on a limestone mine in Makere Forest Reserve, was shot in the leg and subsequently taken to Kasulu district headquarters by TFS officers. His injuries caused lasting harms that are gravely affecting the miner and his family, as he is no longer able to work and earn as much as before the incident.

These disproportioned actions by forest patrols are creating an atmosphere of stress, intimidation and mistrust.

#### 3.2. Reports of corruption: confiscation, seizures, illegal taxation

Besides the violence, limestone miners make account of corrupt practices by Makere forest officials, such as the illegal confiscation of goods and unlawful taxation. Forest officials are reported to confiscate lime and sell it to traders for their own account, without following proper procedures or obtaining the necessary courts orders. In other cases, forest officers demand high monetary fines that appear to have no basis in law.

According to miners it has become the norm that any limestone miner caught in Makere Forest Reserve is charged by forest officers with a fine of 2 million TZS (ca. 900 USD). Official receipts are reportedly never issued. In September 2018, for example, eight cars loaded with limestone were stopped by forest officers in the Makere reserve. The drivers had to pay 2 million TZS per truck, or have their vehicle confiscated. In addition, their load - the result of two months of hard work, worth millions of shillings – was confiscated.

Section 84(5) of the 2002 Forest Act specifies that offences and penalties for operating without a permit in forest reserves shall “upon conviction be liable to a fine of not less than thirty thousand shillings and not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both such fine”. Limestone miners indicate to often pay bribes because they are more affordable than these inflated fines imposed by undisciplined officers.

Given that official receipts are not often issued, limestone miners indicated that some forest officers might under-declare fines collected from miners to TFS headquarters. In this manner some TFS officers allegedly acquired millions of TZS as private income from fraudulent fines collected through intimidation, use of force and severe beatings of miners.

According to miners such incidents of violence and corruption occur on a monthly basis. In general, these cases are not reported to the police, mining or senior forest authorities, because of a lack of awareness among miners of their rights, of the applicable rules and of the appropriate channels for lodging such grievances. Moreover, many of them lack courage to go to court for fear of retribution.

Besides questioning their integrity, many limestone miners lament the fixation of forest authorities on limestone mining, whilst being much laxer regarding farming and livestock keeping in the reserve. It is worth noting that farming and livestock keeping are two activities that are in fact strictly prohibited in Makere Forest Reserve, without legal exceptions.

### 3.3. Miners engagement and responses by authorities

To address the above challenges, the Makere Limestone Miners Group (KIWACHOMA) has been actively engaging different state actors for assistance and support. For instance, in November 3<sup>rd</sup>, 2008 KIWACHOMA wrote a letter to the Prime Minister’s Office requesting support to continue carrying out mining operations in Makere Forest. The Prime Minister’s office referred the letter to the relevant authorities to attend to the problem<sup>6</sup>. In November 2017, KIWACHOMA requested the Kasulu District Commissioner<sup>7</sup> to allow them to carry out the limestone mining operations in Makere Forest given that they possess active mining licenses, and pay taxes and royalties that contribute to the government’s industrialization drive. To date, this communication with authorities did not impact the forest officers’ approach towards expelling mining activities from the forest. Finally, in February 2018, the Kasulu district authorities communicated<sup>8</sup> to TFS that the Resident Mining Office in Kigoma advised that licenced miners should be able to carry out mining operations in the forest with concert from the forest authorities.

## 4. Limestone mining and involvement of refugees

### 4.1. Refugees as a source of labour in a struggling sector

This study brought to light that many Burundian and DRC refugees, from the nearby Nyarugusu camp,

6 A letter from Prime Ministers’ office to KIWACHOMA: Kumb. Na,PM/P/1/569/14

7 A letter from KIWACHOMA to Kasulu District Commissioner, Kumb. Na. CBO/250/17/15

8 Letter from District Commissioner’s office to TFS Kasulu, kumb. Na.AB185/217/01/38

are involved in limestone mining in Makere. They constitute even the large majority of workers. Our assessments suggest that each limestone mining site on average consists of 12 miners, out of which 10 are refugees. Limestone mining constitutes an alternative source of income for refugees, who often have a hard time making ends meet.

Many limestone operations are struggling to be profitable, and therefore seek to engage cheap labour. As refugees have limited to no prospects of other employment opportunities, they are more easily manipulated to work in poor conditions. As competition is high, many of them are hardworking and do not object to hard working conditions or terms of payment. Some site managers reportedly withhold payments regularly. In the light of the illegality of their work, refugees have no basis to report such malpractices to the authorities.

In the light of these challenges, the Makere Limestone Miners Group (KIWACHOMA) – which is registered as a community-based organization (registration no. 00250) – established a committee where refugees can express grievances related specifically to unpaid wages. The committee provides guidance and mediation to find amicable solutions. KIWACHOMA asserts that this platform is applauded by refugees and other workers for reducing outstanding wage claims.

## 4.2. Violence and harassment

Refugees are an easy victim of violence and harassment as they work without proper permits and have no representation in local politics and village management structures. Several refugees complained about mistreatment by forest authorities. For example, in September 2018, four refugees were arrested and beaten by the forest authorities because of their engagement in illegal limestone mining operations in the forest reserve.

Given that refugees constitute the bulk of the workforce and often have to execute the illegal and risky tasks, such as collecting firewood, they bear the brunt of repulsion by authorities. The Primary Mining License holders or site managers themselves are often not present for the operations and, hence, escape repression. As refugees have no access to justice, excessive use of force against them often remains unreported.

## 5. Conclusion

There exists a field of tension between limestone mining as an important livelihood of Makere communities, and the conservation of the Makere Forest Reserve. Adequate oversight and regulation could help to strike a balance between these conflicting objectives. However, at present, the implementation of mining and forest regulations are ill-aligned. Those who receive a primary mining license to operate within the forest reserve are not encouraged nor guided in obtaining the proper permits from the forest services. Rather, the latter opt to focus on expelling miners from the reserve.

Miners report a disproportioned repression by forest services through excessive use of force, property destruction and corruption. The lack of proper law enforcement in Makere Forest Reserve leaves also room for the exploitation of refugees as a cheap source of labor in limestone operations. Most of these violations are unreported and the victims have limited access to redress and remedy. If the current trend continues, there is a risk of inflicting further human rights abuses. It moreover risks to jeopardize both the development of an already struggling limestone mining sector in Kigoma as well as the conservation of Makere Forest Reserve.

## 6. Recommendations

Relevant stakeholders should execute capacity building interventions that could empower limestone miners to understand the procedures to comply with when operating their PML-sites that are located in forest reserves. Miners need to be conversant with all required procedural complexities, legal procedures and cost barriers before attempting to apply for PML in forest reserves.

Mining and forest authorities should align the enforcement of their mandates so that a balance is found between natural resource extraction and forest conservation. Failing to do so risks to further augment tensions between miners and forest services in Makere, as well as in other forest reserves.

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***“Voices from Tanzania – case studies on Business and Human Rights (Volume 1)”  
is a collaboration between Tanzanian civil society organisations,  
the Tanzanian Commission for Human Rights and Good Governance (CHRAGG),  
Business and Human Rights Tanzania (BHRT) and  
the International Peace Information Service (IPIS).  
The «Voices from Tanzania» series supports local field-based studies  
into business and human rights topics in Tanzania.***



Project  
funded by the  
**EUROPEAN UNION**