



# NATIONAL BASELINE ASSESSMENT (NBA)

OF CURRENT IMPLEMENTATION OF BUSINESS  
AND HUMAN RIGHTS FRAMEWORKS IN  
THE UNITED REPUBLIC OF TANZANIA

NOVEMBER 2017





The Commission for Human Rights and Good Governance (CHRAGG) is an independent government institution established under Article 129 of the Constitution of the United Republic of Tanzania (1977), with the mandates to promote, protect and preserve human rights in Tanzania. CHRAGG is partnering with the Netherlands-based Centre for Research on Multinational Corporations (SOMO), the Danish Institute for Human Rights (DIHR) and the Tanzanian civil society organisation Business and Human Rights Tanzania (BHRT) to implement the project: “Implementing the United Nations Guiding Principles on Business and Human Rights in sub-Saharan Africa”. One of the objectives of the project is to develop a National Baseline Assessment on Business and Human Rights, being the pre-requisite to the development of a National Action Plan on Business and Human Rights.



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# 1 INTRODUCTION

The Human Rights Action Plan (2013-2017) of the Tanzanian Government tasked the Commission for Human Rights and Good Governance (CHRAGG) with developing a National Baseline Study on Business and Human Rights (NBA) and to support the development of a National Action Plan (NAP) on Business and Human Rights.

This NBA is the response to this request, providing a comprehensive account of the status of protection of human rights with regard to business activities in Tanzania. The Baseline examines the steps that the Government has taken to implement the United Nations Guiding Principles on Business and Human Rights (UNGPs or Guiding Principles) – in particular Pillar I: the State duty to protect, and Pillar III: access to remedy. The Baseline outlines the strengths and weaknesses in the Government's approach to business and human rights and makes recommendations to address any gaps identified.

The Baseline was developed by CHRAGG, with technical support from the Danish Institute for Human Rights (DIHR). Both organisations are A-status National Human Rights Institutions (NHRIs) with the mandate to protect and promote human rights. The framework of the Baseline is based on the National Action Plans Toolkit, which was jointly developed by DIHR and the International Corporate Accountability Roundtable (ICAR). The research conducted for the Baseline included extensive desktop research, including drawing on draft materials from the Tanzanian Legal and Human Rights Centre (LHRC), engagement and consultation with government, business and civil society stakeholders, as well as three field missions to gather case study experiences in the agricultural, mining and tourism sectors in Tanzania Mainland and Zanzibar.

The Baseline includes the following sections:

1. Introduction – including an overview of the role of NBAs, NAPs and the methodology applied to develop this Baseline;
2. Business and human rights context in Tanzania;
3. Key findings and recommendations; and
4. Field mission case studies.

The full details of the NBA research can be found in the NBA Template Matrix in Annex I. An overview of the stakeholder engagement and consultation undertaken as part of developing the Baseline is provided in Annex II.

## 1.1 NATIONAL ACTION PLANS AND THE NATIONAL BASELINE ASSESSMENT

In 2011, the United Nations Human Rights Council unanimously endorsed the Guiding Principles, a framework that articulates the roles and responsibilities of governments and businesses with regard to preventing and addressing business-related human rights harms. The framework consists of three complementary and interrelated pillars:<sup>1</sup>

1. The State has the duty to protect against human rights abuses by third parties, including business enterprises;
2. Business enterprises have the responsibility to respect human rights, i.e. “do no harm”, regardless of whether the State takes up its own duties; and

3. Victims of business-related human rights harms must be provided with access to effective remedy, both judicial and non-judicial.

Subsequently, the Human Rights Council called on all member States to develop NAPs to implement the Guiding Principles at the national level.<sup>2</sup> NAPs are a well-established tool for governments to coordinate action and make concrete commitments to address a particular theme. NAPs on climate change, gender empowerment and poverty reduction have been undertaken by dozens of States. NAPs on business and human rights aim to achieve the same internal collaboration and external target-setting. To date, business and human rights NAPs have been published by the United Kingdom, the Netherlands, Denmark, Niger, Mozambique and a number of other States.<sup>3</sup>

An important first step in developing a NAP is a baseline assessment that enables government and other stakeholders to know the extent to which current law, policy and other measures give effect to the State's duty to protect human rights under international human rights law, the Guiding Principles and other key business and human rights standards. An NBA identifies initiatives already in place to address human rights impacts of business as well as considering the state of play of business and human rights in practice to draw out key issues in the legal, regulatory and policy framework. NBAs should be carried out by neutral third parties and developed through consultation with civil society, business and government actors. As such, NHRIs are perfectly placed to take up this role, and a number of NBAs globally are being carried out by NHRIs or involve strong NHRI participation. In Africa, for example, NBA processes in Zambia, Tanzania, South Africa and Kenya are/have been led by, or involve the participation of, NHRIs.

## **1.2 METHODOLOGY**

The framework for this NBA is based on the DIHR-ICAR National Action Plans Toolkit.<sup>4</sup> The Toolkit elaborates Pillar I and Pillar III of the Guiding Principles (Pillar II relates to company practice, so it is not included<sup>5</sup>) through a comprehensive overview of government protection of the human rights of workers and communities from business-related harms.

The Toolkit NBA template was modified for this assessment. Guiding Principles 2 and 7, for example, which relate to the conduct of businesses abroad and in conflict zones, were omitted, as few Tanzanian companies operate in other jurisdictions and Tanzania is not an area of armed conflict. As can be seen in the NBA Template Matrix (Annex I), other indicators were grouped or kept separated according to their relevance to the local context.

The core NBA Team consisted of six personnel from CHRAGG, with technical support from one DIHR staff member. The civil society organisation Business and Human Rights Tanzania (BHRT) also provided valuable input to the NBA draft and contributed to planning and hosting the consultation meetings held in August 2017 in Tanzania Mainland and Zanzibar.

The development of the NBA was supported as part of the US Department of State, Department of Democracy, Human Rights and Labour (DRL) funded project "Implementing the United Nations Guiding Principles on Business and Human Rights in sub-Saharan Africa", led by the Centre for Research on Multinational Corporations (SOMO).

The NBA was conducted between January and October 2017 and involved the following steps:

The Baseline includes the following sections:

1. Desktop research, including legal and policy analysis but also considering business and human rights in practice to try to ascertain key issues relevant in Tanzania;
2. Bilateral engagement, including consultations with government, business and civil society stakeholders in Tanzania Mainland and Zanzibar to verify the accuracy of desktop research and fill in missing information;
3. Three field missions – two in Tanzania Mainland and one in Zanzibar – to acquire on-the-ground knowledge and awareness of key business and human rights issues in the agricultural, mining and tourism sectors;
4. Consultation on the draft NBA with government, business and civil society stakeholders at three consultation meetings held in Dar es Salaam (Tanzania Mainland) and Zanzibar in August 2017 to verify the key findings of the draft NBA and make any necessary adjustments and follow-up; and
5. Finalisation and publication of the NBA.

## **2 BUSINESS AND HUMAN RIGHTS CONTEXT**

Agriculture has long dominated Tanzania's economy, but with burgeoning extractives and tourism sectors, the country's economic landscape is changing fast and legislation is struggling to keep pace. In July 2015, the Government enacted three legislative acts to consolidate existing legislation on the booming oil and gas industry.<sup>6</sup> A USD8 billion dollar natural gas discovery in the Ruvu Basin Coast Region<sup>7</sup> added to Tanzania's impressive portfolio of gold, diamond and copper deposits. The financial services, communication and construction sectors are also expanding, helping to maintain the last decade's steady 7% GDP growth.<sup>8</sup>

Despite the exponential pace of economic development, with Tanzania expected to become one of the fastest growing economies in the world, poverty remains problematic.<sup>9</sup> Although the poverty rate has fallen, increased population growth has kept the absolute number of poor static, with an estimated 12 million Tanzanians continuing to live in extreme poverty.<sup>10</sup> To address this problem, the National Strategy for Growth and Poverty Reduction emphasises the importance of the private sector in leading inclusive and sustainable growth.

### **2.1 AGRICULTURE**

Agriculture remains critical, providing 80% of employment and 30% of GDP. With its lush tropical belt and cooler Central Plateau, Tanzania's fertile land produces cassava and sorghum for domestic consumption, while tobacco, coffee and cashews are exported abroad.<sup>11</sup> Crop production is soaring and rose by 44% between 2008 and 2013; the value of tobacco exports alone almost doubled from 2010-2015, with cashew nut revenue increasing four fold.<sup>12</sup>

Yet 40% of farmers live below the national poverty line.<sup>13</sup> The majority are smallholders, farming little more than two hectares and only a small fraction use animal traction for ploughing.<sup>14</sup> Subsistence farming supported by the sale of surplus crops is a precarious enterprise, vulnerable to droughts and temperature spikes.<sup>15</sup> To stabilise these livelihoods the Government has committed to increasing the agriculture value-added net output, developed the Southern Agricultural Growth Corridor of Tanzania (SAGCOT) to improve food security, and established the Tanzania Agriculture Development Bank (TADB).<sup>16</sup>

## **2.2 MINING AND OIL & GAS**

Tanzania is a veritable treasure trove of natural resources, with extractive sector revenues exceeding USD754 million in 2014 and contributing 5% to GDP.<sup>17</sup> The country's southern regions boast rich iron, uranium and coal deposits in addition to gold and diamond mines.<sup>18</sup> Gold exports from the country's seven mines totalled USD1.3 billion in 2015.<sup>19</sup> Following the recent discovery of numerous graphite fields, Tanzania is soon to become one of the world's largest graphite producers.

Rich mineral wealth has drawn foreign investment from around the globe with Canada's Barrick Gold and South African Anglo Gold Ashanti investing billions in the country's gold mines.<sup>20</sup> Similarly, Australian miner Mantra is developing a uranium mine in the Mkuju River region while China's Sichuan Hongda Co. Ltd. signed a contract to establish a USD3 billion joint venture to develop coal and iron mining in the south of the country.<sup>21</sup>

Although these high profile multinationals dominate the industry, the artisanal mining of coloured gemstones and diamonds provides many jobs. While these small scale miners have traditionally been marginalised by the Government due to the sector's low tax revenues, their rights have been strengthened by the Mining Act (2010).<sup>22</sup>

Alongside gems and precious metals, Tanzania is endowed with generous natural gas reserves potentially capable of generating government revenue of USD1.4 billion during the first decade of gas production.<sup>23</sup> Financed by a loan from the Export-Import Bank of China, a 542km long gas pipeline stretching from the Mtwara oil fields to Dar es Salaam was completed in 2016 to produce condensed natural gas for use in power generation, industrial applications and cooking.<sup>24</sup> In 2013, half of the country's electricity generation came from natural gas, 30% from hydroelectric sources and the remainder from thermal energy.

Currently, only 20% of the population has access to electricity, with frequent power cuts hampering economic growth, but the Government has committed to change this. Already, Tanzania is considering constructing a USD200 million "mega plant" to transport gas to households and industry<sup>25</sup> alongside a new pipeline exporting gas to Uganda.<sup>26</sup> Determined to ensure revenue from these vast gas fields is prudently spent, the Natural Gas Policy (2013) demands the establishment of a Sovereign Wealth Fund in the form of the "Natural Gas Revenue Fund".<sup>27</sup>

## **2.3 TOURISM**

With a quarter of its land dedicated to wildlife reserves, Zanzibar's white sandy beaches and the famed Serengeti Plains, tourists are flocking to Tanzania from across Africa and Europe. International tourist arrivals rose by 90% from 2006-2014, with Mount Kilimanjaro considered Africa's top tourist attraction in 2016 and the country voted best safari destination in 2013.<sup>28</sup> This booming tourism sector comprised 14% of the country's GDP in 2014 and is projected to rise by over 6% annually over the next decade. International investors play a critical role in this sector too, in 2016, for example, Tanzania signed an agreement with the United Arab Emirates to cooperate in tourism development.<sup>29</sup> Continued political stability and improving infrastructure is boosting tourism further,<sup>30</sup> with the Government hoping that the increased tourism budget will attract three million visitors by 2018.

## **2.4 INFRASTRUCTURE AND GOODS**

In 2013, just over 20% of Tanzania's 87,600kms of public roads were paved,<sup>31</sup> but Tanzania's Development Vision 2025 promises that infrastructure investments, especially in the road network, are a top priority.<sup>32</sup> Currently, the transport sector is valued at USD2.1 billion,<sup>33</sup> but with infrastructure projects worth USD1.9 billion already planned, its value is projected to soar.<sup>34</sup>

Although a dramatic increase in manufactured goods and crop exports has boosted the Tanzanian economy,<sup>35</sup> the existing infrastructure is struggling to deal with the sheer volume of trade.<sup>36</sup> Dar es Salaam's port handles over ten million tonnes of cargo annually, with its trade volume starting to rival that of Mombasa, the regional leader.<sup>37</sup> In accordance with the Government's Development Vision 2025, the port's capacity is to be increased to 28 million tonnes by 2020,<sup>38</sup> with USD1.5 billion required over the next five years to upgrade existing facilities and construct new ones.<sup>39</sup> Air transport is also evolving fast, with 3.5 million passengers and over 25,000 tonnes of cargo travelling through the country's 58 airports in 2015.<sup>40</sup>

# **3 KEY FINDINGS AND RECOMMENDATIONS**

## **PILLAR I: STATE DUTY TO PROTECT**

### **GUIDING PRINCIPLE 1: EFFECTIVE POLICIES, LEGISLATION, REGULATIONS AND ADJUDICATION**

#### **Government commitment to the Guiding Principles**

The Guiding Principles were unanimously endorsed by the Human Rights Council in 2011. The Guiding Principles state that: (i) governments have a duty to protect against human rights abuses by businesses; (ii) businesses have a responsibility to respect human rights; and (iii) victims of business-related human rights abuses must be provided with access to effective judicial and non-judicial remedy.



The Human Rights Council called upon UN member States to take deliberate steps to implement the Guiding Principles, including by reviewing laws, providing guidance to companies and improving access to remedy for workers and communities that are adversely impacted by business activities.

### **Gaps in implementation**

- This Baseline is a first step towards a NAP, however, there is not yet a NAP on business and human rights, despite the commitment made under Tanzania's National Human Rights Action Plan (2013-2017).
- 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 as a key challenge that needs to be addressed and has been substantiated by the findings of this Baseline.
- There is no coherent policy and institutional framework in place to implement the Guiding Principles.

### **Recommendations to the Government**

- Informed by this Baseline, prepare to take prompt measures, including assigning adequate budget, to develop and implement a NAP on business and human rights, including the rights of children and other vulnerable groups. Responsibility for this must rest with the Government, i.e. the Office of the Attorney General Chambers, as outlined in the National Human Rights Action Plan.
- In collaboration with relevant stakeholders, undertake a public awareness and education campaign on business and human rights, including preparing easily accessible materials to introduce business and human rights to the general population, including children and other vulnerable groups.
- The Ministry responsible for Constitutional and Legal Affairs, through the Attorney General's Chambers and CHRAGG, should identify and undertake a review of laws and policies relevant to business and human rights – e.g. institutional frameworks on labour, land and environment – and make any necessary adjustments to bring these into line with the requirements outlined in the Guiding Principles.
- The NAP should address the rights of children and other vulnerable groups, and define activities to be implemented to safeguard their rights in the context of business activities, including by involving children and child rights stakeholders.

### **Participation in international initiatives and standards**

Tanzania has signed a number of soft law instruments relevant to business and human rights, including the Abuja Declaration, the Beijing Platform for Action and the Africa Mining Vision. Tanzania is also a voluntary member of the Extractive Industries Transparency Initiative (EITI), entailing that companies and the Government publicly report their payments and revenues, respectively.

## **Gaps in implementation**

- Insufficient information is available to the general public on the implementation status of the EITI and its implementing act, the Accountability and Transparency Act (2015).
- Despite there being complaints on excessive use of force by public and private security forces stationed to protect company assets, the Government has not signed up to the Voluntary Principles on Security and Human Rights (VPSHR)<sup>41</sup> and has not made any commitments to the International Code of Conduct for Private Security Providers (ICoC), highly relevant initiatives given the predominance of the extractive industries in the country.
- Furthermore, the Government has not taken steps to implement the Food and Agriculture Organisation of the United Nations (FAO) Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security<sup>42</sup> and the African Union (AU) Guidelines on Large Scale Land Acquisition, despite these being highly relevant in Tanzania given the predominance of the agricultural sector and subsistence lifestyles in some areas of the country.
- Whilst the Ministry of Minerals has taken some steps towards the implementation of the Africa Mining Vision, e.g. capacity building, the Vision has not been fully domesticated in the form of a Country Mining Vision.
- No active steps have been taken by the Government to encourage investors to comply with international good practice standards, e.g. standards by the International Council on Mining and Metals or the International Finance Corporation Performance Standards.

## **Recommendations to the Government**

- Publish periodic EITI reports in accordance with the EITI standard, as well as publishing some more general information about the EITI and the Transparency and Accountability Act (2015) to raise the awareness of the general public of these standards and commitments.
- Make a formal commitment to the Voluntary Principles on Security and Human Rights, the International Code of Conduct for Private Security Providers, the FAO Guidelines on Land Tenure, and the AU Guiding Principles on Large Scale Land Based Investment in Africa, and take active steps towards their implementation, including by issuing guidance to companies and other relevant stakeholders on their implementation.
- In collaboration with the Tanzania Investment Centre (TIC) and Zanzibar Investment Promotion Authority (ZIPA), make both national and foreign investment compliance with international and national standards a requirement for investment, i.e. through the application process, contractual provisions and monitoring.

## **GUIDING PRINCIPLES 1 & 3: LAWS, POLICIES, REGULATIONS & THEIR ENFORCEMENT**

### **Economic, social and cultural rights under the Constitutions**

The Constitution of the United Republic of Tanzania (1977) and the Constitution of Zanzibar (1984) contain provisions that safeguard human rights. Rights under these Constitutions are enforceable – in Tanzania pursuant to the enactment of the Basic Rights and Duties

Enforcement Act (1984) and in Zanzibar pursuant to the Constitution of Zanzibar (1984) and relevant laws.

### **Gaps in implementation**

- Economic, social and cultural rights are not explicitly included in the Constitutions and are therefore not justiciable under the Constitutions. They are justiciable only under other laws that specifically address these topics. It is possible to make claims against business actors via other avenues, such as civil or criminal laws, but not via the Constitutions.

### **Recommendation to the Government**

- Make economic, social and cultural rights enforceable under the Constitutions.

### **Labour law**

The two Constitutions guarantee the right to work and fair remuneration.<sup>43</sup> In Tanzania Mainland, labour rights are governed primarily by the Employment and Labour Relations Act (2004),<sup>44</sup> the Labour Institutions Act (2004)<sup>45</sup> and the Workers Compensation Act (2008). In Zanzibar, labour rights are governed by the Employment Act (2005), Labour Relations Act (2005) and the Workers Compensation Act (2005). Social security schemes are regulated by the Social Security Regulatory Authority (SSRA) created by the Social Security Regulatory Act (2015) in Tanzania Mainland and the Zanzibar Social Security Act (2005) in Zanzibar. In Tanzania Mainland, health and safety in the workplace is regulated by the Occupational Health and Safety Act (2003).<sup>46</sup> In Tanzania Mainland, the Workers Compensation Act (2008)<sup>47</sup> established the Workers Compensation Fund (WCF). Though fully operational, it still does not have sub-offices or staff throughout the country.<sup>48</sup> The Workers Compensation Act makes it mandatory for employers to subscribe and submit a prescribed amount to the WCF. In Zanzibar there is no established workers compensation fund, employers still pay compensation directly to the injured.

The Constitutions and the relevant labour laws generally outlaw discrimination at work places. The rights of vulnerable groups, like maidservants and barmaids, are protected by the same laws. 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 2005 respectively) and the Child Acts (2009 and 2011 respectively). Trade unions in Tanzania Mainland, which civil society stakeholders consulted perceived as very weak, 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 to form a wage board in respect of a sector, that investigates remuneration and conditions of employment and recommends the minimum wage. The minimum wage order is thereafter gazetted by the responsible minister.

### **Gaps in implementation**

- The ministries responsible for inspecting workplaces and monitoring labour rights, including health and safety, are insufficiently resourced to perform their mandate, including both funding and human resources.
- Labour laws are not well known by employers and employees/workers.
- Failure of employers to register with the Occupational Safety Committee as members, which is required by law.
- The workers compensation legislation in Zanzibar does not provide for the establishment of a workers compensation fund, such as in Tanzania Mainland.

### **Recommendations to the Government**

- Allocate increased resources to the ministries responsible for carrying out inspections of workplaces and other labour rights enforcement activities, to enable them to fully discharge their mandates.
- Labour inspection officers should be placed/located in every district to ensure sufficient outreach to local areas.
- Allocate increased resources to the Occupational Safety and Health Authority (OSHA), responsible for carrying out health and safety inspections of workplaces, to enable the authority to fully discharge its mandate.
- The ministries responsible for labour in Tanzania Mainland and Zanzibar, in collaboration with other relevant stakeholders, should undertake a public education and awareness campaign to promote labour rights knowledge amongst employers and citizens.
- Amend the Workers Compensation Act (2005) in Zanzibar to provide for the establishment of a workers compensation fund.

### **Environmental law**

The Environmental Management Act (2004) (EMA) in Tanzania Mainland and the Zanzibar Environmental Management Act (2015) (ZEMA), which repeal the Environmental Management for Sustainable Development Act (1992), provide legal and institutional framework provisions to ensure sustainable management of the environment. The EMA and ZEMA also emphasise that everyone living in Tanzania has the “right to a safe, clean and healthy environment.”<sup>49</sup> Should this right be threatened, every person is entitled to take action against the polluter.<sup>50</sup>

There have been reported incidents of environmental pollution by the business sector; for example, the accusation that the North Mara Gold Mine, operating in Tarime District, emptied poisonous chemicals in Tigite River. There are also allegations of dust pollution around quarrying, extractive and cement industries, and water pollution around textile industries. In the case of Zanzibar, there are reported incidents of land degradation due to sand extraction and dynamite fishing that destroys fish breeding areas like coral reefs, and oil spills that pollute the ocean.

The EMA and ZEMA demand that developers of major projects provide an Environmental Impact Assessment (EIA) prior to commencing operations.<sup>51</sup> During the preparation of an impact assessment, developers together with the National Environment Management Council (NEMC) are expected to “seek the view of any person who is likely to be affected by the project.” EIAs should not only identify environmental concerns but also “social, cultural, economic and legal considerations” and propose mitigation measures.<sup>52</sup> Compliance is assessed by NEMC,<sup>53</sup> which is responsible for the reviewing EIAs and monitoring the implementation and effectiveness of environmental impact management plans.

Although businesses and government authorities state that communities are consulted in the process of conducting EIAs, through village assemblies and public meetings, communities consulted during the field missions undertaken as part of the NBA dispute this claim.

### **Gaps in implementation**

- Despite the fact that both the EMA and ZEMA include numerous environmental protections, these provisions are not effectively enforced in practice.
- The EMA and ZEMA provide for consultation of affected persons, which is elaborated in the accompanying regulations. However, the acts and regulations do not provide specific provisions for engaging with children and other vulnerable groups, and in practice consultation is often inadequate.
- The process of community consultation during EIA preparation is not promoted through public awareness. Communities need to be involved in the whole EIA process.
- Although the EMA and ZEMA refer to some social, cultural, and environmental impacts within the definition of “environmental”, the laws do not clearly set conditions for the systematic and comprehensive inclusion of human rights issues in the EIA process and associated impact management plans and processes.
- Rule 39(1) of the EIA and Audit Regulations stipulates that all documents submitted to NEMC in the preparation of EIAs are “public documents” open for public inspection; however, there is no mention of the procedure to be followed by stakeholders for accessing this information and the conditions according to which NEMC will grant or refuse access are not clear.

### **Recommendations to the Government**

- Assign additional resources to NEMC and the Zanzibar Environmental Management Authority (ZanzibarEMA), including financial and human resources, to effectively monitor business compliance and exercise their mandates as provided under the EMA and ZEMA.
- The consultation provisions in the environmental regulations should be elaborated to include clear guidance to businesses and other stakeholders on the level and type of community engagement that is expected in order to meet compliance with the regulations – this should include explicit provisions regarding the inclusion of vulnerable individuals and groups in EIA consultation.
- NEMC and businesses should conduct public awareness on the legal obligation for community involvement during EIA preparation.
- The definition of environmental impact under the EMA, ZEMA and implementing regulations should be revised to more explicitly include social and human rights issues.

- Review the regulations to give stronger right to access to information for EIA documents.

### **Land ownership, acquisition, lease & use**

Land is considered property in Tanzania, with its ownership and use governed by multiple pieces of legislation and underpinned by the Constitutions.<sup>54</sup> Consolidating numerous administrative directives, the Land Act (1999) was enacted to govern land ownership and adjudicate land disputes in accordance with the National Land Policy in Tanzania Mainland. It also provides the legal framework for administering “general” and “reserved” land,<sup>55</sup> while the Village Land Act (1999)<sup>56</sup> governs land tenure in villages. The term “reserved land” applies to areas designated for national parks, forest reserves, public utilities or areas deemed “hazardous”. “General land” is defined as all public land that is neither village nor reserved land and includes “unoccupied or unused village land”.<sup>57</sup>

The Land Act (1999) guarantees women the same land rights as men,<sup>58</sup> while the Village Land Act (1999) renders any customary practices discriminating against women, children or persons with disabilities “void and inoperative”.<sup>59</sup> In addition, the Village Land Act (1999) emphasises that “customary right of occupancy is in every respect of equal status and effect to a granted right of occupancy.”<sup>60</sup>

The Village Council is empowered to issue Certificates of Customary Rights of Occupancy (CCROs) to formalise village/customary land rights.<sup>61</sup>

The National Land Policy states that “full fair and prompt compensation” should be paid to those whose use of land has been “revoked” or “otherwise interfered with”<sup>62</sup> by the State. Resettlement is addressed in the Land Act (1999), Village Land Act (1999), Land Acquisition Act (1967), and the Resettlement Policy Framework (2014) which addresses losses of land, houses, businesses, economic immovable assets and community assets like water.

In Zanzibar, land issues are governed by the Land Tenure Act (1992) and Land Transfer Act (1994) which, respectively, provide for the mode of acquiring right of occupancy and conditions for the land transfer. Land transfer and acquisition starts from members of Shehia, who submit their recommendations to district commissioners for assessment and reference to the land tribunal. All public lands are owned by the Government. Only Zanzibaris are entitled the right of occupancy but non-Zanzibaris can acquire leases for up to 99 years. There are designated free economic zones for investors, which are governed under the custodianship of the Zanzibar Investment Authority (ZIPA). The acquisition of land outside of free economic zones is governed by the Commission for Land. ZIPA must approve land acquisitions for investment projects. In practice, however, many tenants have no titles or certificates demonstrating their land ownership and may be inadequately compensated when their land is purchased by investors. Due to a lack of coordination, investors may simply purchase land directly from the Government without consulting local communities.

## **Gaps in implementation**

- The prescribed legal procedure for acquiring land for investment that requires land to be compensated before it is acquired is often disregarded in practice and the procedure is silent on resettlement.
- Communities are insufficiently consulted during the land valuation process, despite this being provided for in the law.
- Despite legal protections in the law, in practice landowners are not adequately compensated.
- Land use management and planning is not currently done well and causes a large number of conflicts between communities and investors, e.g. open community land is assigned to investors without prior community agreement.
- In practice, conflicts between the application of land laws and other laws – e.g. natural resource extraction, water, agriculture, infrastructure – sometimes arise because land use decisions made under one law are not cross-checked with allocations made according to other laws.
- District land and housing tribunals have not been established in every district, limiting people's access to land justice. Furthermore, these tribunals, as well as some other land dispute mechanisms (e.g. village council, ward tribunals), lack capacity.
- Citizens have limited knowledge of their land rights.
- The procedures for the acquisition of land, receipt of a certificate of title, and change of land use – under the Land Act (1999), Village Land Act (1999) and Land Acquisition Act (1967) – take too long, i.e. to receive proof of title.

## **Recommendations to the Government**

- The Government should step up efforts to monitor compliance of companies with the laws on land acquisition, and review land laws and other relevant laws to include stronger rights-holder safeguards in the context of any resettlement.
- The ministries of land and relevant local authorities should better monitor land valuation processes associated with investments and report publicly on any discrepancies identified.
- The ministries of land and relevant local authorities should better monitor compensation processes associated with investments.
- Ensure that village/shehia land use management committees (which under the law are established to manage village land) are established in every village.
- Mandate that village/shehia land committees within village/shehia councils are supported in land negotiations with investors through legal and technical expertise from the relevant local authority and the Office of the Attorney General's Chamber.
- Mandate sector-relevant ministries with the role of exercising due diligence over community-investor land transactions with ensuring that independent expertise was provided and due consultation took place.
- Mandate that where there is a change in land use delegation (e.g. from game reserve to national park, or village land/general land to national park or reserved land) that due process must be demonstrated by the ministries responsible for land, relevant sectoral ministry(ies) and local government administration in the resettlement, compensation and tenure/usage rights of villages affected.

- Include a requirement to also consult relevant sector ministries (e.g. mining, agriculture, infrastructure) in the consultation and validation process that the ministries of land and relevant local authorities are required to undertake prior to any land allocation, to avoid any discrepancies in land allocation.
- Ensure the prompt establishment and adequate resourcing of district land and housing tribunals; strengthen resourcing for village council and ward tribunals to deal with land related matters.
- Engage and resource relevant third parties (e.g. CHRAGG and civil society organisations working on land) to implement land rights awareness campaigns.
- Mandate the ministries of land and the ministries of local government to dedicate additional resources to fast track issuing of land title certificates.

### **Corporate law and tax law, including revenue collection**

Corporate entities are governed in Tanzania Mainland by the Companies Act (2002), and the Company Act (2013) for Zanzibar. These acts apply to both foreign and local companies. Foreign companies investing in Tanzania follow different procedures to their local counterparts and are required to register with the Tanzania Investment Centre (TIC) or Zanzibar Investment Promotion Authority (ZIPA) before commencing operations.<sup>63</sup>

The Dar es Salaam Stock Exchange (DSE) was established by the Capital Markets and Security Authority (CMSA) under the Capital Market Securities Act (1994) and was incorporated in 1996 to safeguard securities investors in Tanzania. The CMSA regulates the conduct of corporate entities listed on the DSE, which currently has 26 listed companies.<sup>64</sup>

Tanzania has enacted numerous laws refining its two taxation regimes over the last decade and offers a wide range of tax incentives to attract investment in accordance with the Tanzania Investment Act (1997) in the Mainland and Zanzibar Investment and Protection Act (2004) in Zanzibar. The Export Processing Zone Act (2006) and Special Economic Zones Act (2006) govern the generous tax incentives offered in these zones. Provided companies export at least 80% of their goods and exceed a minimum annual turnover threshold, they may operate in the export processing zones. Companies within these zones enjoy a ten-year exemption from corporate income tax, import duty exemptions on raw materials, exemption from local government authority taxes and unlimited repatriation of profits.<sup>65</sup>

Foreign companies investing more than USD300,000 (USD100,000 for local companies) can apply to the Tanzania Investment Centre for certificates of incentives entitling them to additional tax breaks. “Strategic investors” – defined as companies investing more than USD20 million and offering “specific/great impact to the society or economy” – can negotiate bespoke fiscal agreements with the Government.<sup>66</sup>

Despite concerns from the African Development Bank and the International Monetary Fund regarding Tanzania’s overuse of tax incentives, they continue to be commonly used and are estimated to have totalled over TShs.1 trillion in 2011.<sup>67</sup>



## **Gaps in implementation**

- Increased tax evasion and avoidance due to the loopholes in the tax legislation.
- Lack of monitoring mechanisms on the effectiveness of tax incentives in attracting investors. According to a 2006 International Monetary Fund report focusing on East Africa, “investment incentives – particularly tax incentives – are not an important factor in attracting foreign investment.”<sup>68</sup> Instead, political stability, good quality infrastructure and predictable macroeconomic policy were identified as critical. However, some government and business stakeholders engaged had the view that besides political stability, good quality infrastructure and predictable macroeconomic policy, investment incentives are relevant elements in attracting investors.
- Lack of coordination between tax policies administered by the Tanzania Revenue Authority (TRA) and other government agencies.

## **Recommendations to the Government**

- Mandate that the Tanzania Revenue Authority, the Tanzania Investment Centre, the Zanzibar Investment and Promotion Authority (ZIPA), the Business Registration and Licensing Authority (BRELA) in the Mainland, and the Business and Property Registration Agency (BPRA) in Zanzibar, dedicate additional efforts to monitoring compliance of investors with company and tax laws as well as compliance with human rights standards by setting up pre-conditions.
- Task the Tanzania Revenue Authority with undertaking a review of all existing tax incentives to establish their relevance in terms of attracting investment whilst ensuring human rights are protected – any tax incentives found not to be effective and/or potentially detrimental to human rights protection should be removed accordingly.
- Increase coordination between all government agencies and bodies responsible for tax administration – i.e. local government authorities, Tanzania Revenue Authority.
- Establish a one-stop-shop (centre) for all tax issues to promote the effective collection and administration of taxes. The tax information generated by different institutions must be digitalised through an automated data system.

## **Access to information & corporate reporting**

Accessing corporate information in Tanzania is challenging. For instance, key information on the extractive industries is only available with Ministry approval. According to the Petroleum Act (2015), the Petroleum Upstream Regulatory Authority (PURA) can make information on details of agreements, licenses, permits, approved development plans etc. available to the public following the written approval of the Minister.<sup>69</sup> However, data submitted under the Act is ordinarily considered confidential<sup>70</sup> and some information is only to be disclosed in certain specified circumstances.<sup>71</sup> The inability to readily access information has proven problematic for local leaders, who are not fully informed about the activities of major companies operating in their districts as only the central Government can demand disclosure and reports.

To promote transparency in the extractive industries and implementation of the EITI, Tanzania enacted the Transparency and Accountability Act (2015). According to this Act, companies are required to submit all tax disclosures,<sup>72</sup> annual reports containing corporate social responsibility information<sup>73</sup> and capital expenditures to the Tanzania Extractives Industry Committee.<sup>74</sup> The Act requires the Committee to demand that all extractive industries concessions, licenses and contracts are published online or disseminated through a similar widely circulated medium. Names of individual shareholders (beneficial ownership information) and implementation of environmental management plans should also be released.<sup>75</sup>

Corporate financial reporting in Tanzania is governed and regulated by the National Board of Accountants and Auditors (NBAA).<sup>76</sup> The NBAA describes the mandatory requirements that corporate entities must provide within their financial reports as written by their corporate directors.

The Access to Information Act (2016)<sup>77</sup> in Tanzanian Mainland, which is still not operational, provides general access to information, defines the scope of information which the public has the right to access, and promotes transparency and accountability of information holders. However, there are several other pieces of individual legislation that govern access to specific information.

### **Gaps in implementation**

- The Minister for Legal Affairs has not gazetted the operation of the Access to Information Act (2016). The Act restricts access to exempt information, which means certain key pieces of information relevant to business and human rights are restricted.
- The Government does not currently require any non-financial reporting by companies.
- Lack of political will to effectively implement the EITI, e.g. despite the Transparency and Accountability Act's safeguards many contracts awarded by the Government to multinational companies remain confidential and are rarely subject to public scrutiny.
- Companies listed on the stock exchange are required to meet a number of criteria, however, human rights issues are not observed in these criteria. Furthermore, only 26 companies are listed.
- Human rights impacts are not considered "material" to the economic performance of the reporting company according to the NBAA.<sup>78</sup>

### **Recommendations to the Government**

- Promptly gazette the operation of the Access to Information Act (2016) and amend the same to remove "restrictive clauses" of "access to information".
- All legislation related to corporate reporting (e.g. Companies Act) should be amended to include requirements for non-financial reporting, clearly including information addressing labour, environment, social and human rights issues.
- Issue guidance to businesses about what type of information to include in non-financial reporting – clearly defining labour, environment, social and human rights issues and targets.
- Include a requirement in the stock exchange listing rules for companies to adhere to relevant labour, environment, social and human rights standards.

## **Enforcement capacity**

Enforcement is governed by a range of relevant ministries and agencies in Tanzania Mainland and Zanzibar, for example: NEMC; OSHA; the Tanzania Mineral Audit Authority (TMAA); and the Energy and Water Utilities Regulatory Authorities (EWURA).

## **Gaps in implementation**

- The research carried out for this Baseline found that most government agencies were under-resourced to implement their mandates to prevent and address business-related human rights abuses. This includes inspection agencies, licensing bodies and remedy mechanisms. In many areas the law complies with international standards but weak enforcement means that human rights abuses by companies are not investigated, addressed and remediated.
- There is lack of coordination within the Government on business and human rights related topics, which further hinders enforcement.
- The capacity of OSHA in terms of funds and human resources is quite low.
- There is limited interaction between the Environment Section and other relevant government agencies and bodies, i.e. there is a insufficient coordination within the Government on addressing environmental matters in a holistic manner.
- Police and other law enforcement officers are not sufficiently trained on human rights, especially as they relate to business activities.

## **Recommendations to the Government**

- Establish a coordinating body – such as a National Coordinating Committee on Business and Human Rights comprising an advisory section of diverse stakeholder groups – to work on implementing coordination mechanisms between different government ministries and bodies that are relevant to the topic of business and human rights.
- Increase resources to institutions such as NEMC, ZanzibarEMA, OSHA, TMAA and EWURA to ensure that these agencies can discharge their mandates effectively.
- Increase training on human rights for relevant government departments, local authorities and agencies to ensure that they are sensitised to the human rights responsibilities of businesses, common forms of human rights abuses and their remedy.

## **GUIDING PRINCIPLE 4: BUSINESSES OWNED OR CONTROLLED BY THE STATE**

The Guiding Principles state that “where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State’s own international law obligations.” This means that the State has an enhanced and particular obligation to ensure that any businesses that it owns or controls (such as State-owned enterprises or financial institutions that receive substantial State support) exercise respect for human rights.

Through the Treasury Registrar, Tanzania's Government owns interests and shares in 214 public parastatals, companies and statutory corporations, including the National Housing Corporation (NHC) and the Tanzania Petroleum Development Corporation.<sup>79</sup>

State-owned enterprises may be established by the President under section four of the Public Corporations Act,<sup>80</sup> incorporated under the Companies Act,<sup>81</sup> or created by an act of Parliament. State-owned enterprises are required to report finances to the central bank and make payments through a centralised system. The Public Audit Act (2008) establishes a Controller and Auditor General, responsible for auditing reports on the accounting of all public authorities and other bodies.<sup>82</sup>

Current governance policies have been criticised by the Controller and Auditor General of Public Authorities due to the lack of clarity regarding boards of directors' responsibilities and blurred separation of powers between the Government, National Assembly and boards of directors.<sup>83</sup> In addition, internal audit departments are weak and there is no composite law outlining corporate governance principles.<sup>84</sup>

The Government also has substantial interests in several banks, e.g. the Government has a 40% share in the National Bank of Commerce (NBC), a 100% share in the Tanzanian Women Bank, and the Tanzania Postal Bank is a government institution. As such, increasing the human rights requirements of such institutions would be relevant.

### **Gaps in implementation**

- There is no legal framework that obliges State-owned business enterprises to conduct human rights due diligence, hence they are governed in the same way as regular private enterprises and are required to adhere to national laws and treaties ratified by the country.
- There is no evidence in law or policy that the State requires State-owned or controlled businesses to undertake supply chain management to ensure respect for human rights.
- There is no evidence in law or policy that businesses receiving substantial support and services from State agencies are required to take into account human rights considerations.

### **Recommendations to the Government**

- Develop and implement a policy directed specifically at State-owned and controlled enterprises requiring such enterprises to respect human rights and exercise human rights due diligence, including in supply chain management.

## **GUIDING PRINCIPLE 5: PUBLIC SERVICE DELIVERY**

The Guiding Principles note that States retain their duties under international human rights law to provide equitable public services regardless of whether those services are privatised. In Tanzania, there are both public and private essential services provided. Essential services provided by the Government are not contracted out. Some private essential service providers receive government subsidies, e.g. in the area of health. Water and electricity, and road infrastructure, is provided by the Government.

In terms of businesses and essential services, some corporations have ensured that the neighbouring villages close to their operations have access to health, education, and water services, and in some areas they have offered electricity.<sup>85</sup> Essential services are frequently provided as part of corporate charity initiatives. It is sometimes argued that corporate offers for essential services are used as advertisements for, or promotions of, the corporations.<sup>86</sup> There are examples of companies building buildings as part of contracts with the Government or corporate social responsibility (CSR) programmes, however, then staff or further resources necessary to make these services operational are not provided. The EITI reported that mining companies paid almost USD15,5 million in corporate social responsibility payments in 2014, which was about 2% of total government revenue from the extractives sector.<sup>87</sup>

### **Gaps in implementation**

- Misunderstandings by stakeholders regarding the respective duties and responsibilities of the State and companies with regard to providing essential services.
- In areas where companies are providing some essential services the Government has been less active to provide these services and/or ensure that sufficient public services of good quality are provided.
- Limited to no Government and/or other third party oversight of social services provided by companies to ensure that these meet the most urgent essential services needs and uphold the relevant national and international standards.
- There is no evidence that the Government has undertaken an analysis of the human rights impacts of private companies providing essential services where this is not part of their core business, e.g. private mining companies providing health care facilities to workers and local communities.

### **Recommendations to the Government**

- The general standards set for investment by the Tanzania Investment Centre and ZIPA should include consideration of the respective roles and responsibilities of the State and companies with regard to essential service provision, and include consideration of a community development agreement as a condition of investment where relevant.
- As part of investment decision-making, the local government should be required to provide information to communities regarding community development agreements, including through dissemination processes that include not only village leaders but extend to the general community.
- Environmental and social management plans should require the Government to raise community awareness regarding the respective duties and responsibilities of the State and companies with regard to providing essential services.
- Any essential services provided by companies should be subject to government oversight by the relevant ministry or authority (e.g. health, education).

## **GUIDING PRINCIPLE 6: PUBLIC PROCUREMENT**

Tanzania's Public Procurement Act (2011) and the Zanzibar Procurement and Public Assets Act (2017) were enacted to overhaul the country's fragmented and largely unenforced public procurement regulations and is considered to be a critical means for ensuring good financial management. The Act states that the Public Procurement Policy Division (PPPD), established under the Ministry of Finance and Economic Affairs is responsible for reviewing procurement policies, regulations and other similar directives.

The Public Procurement Regulatory Authority (PPRA) regulates public procurement and ensures the application of fair, competitive, transparent and non-discriminatory standards.<sup>88</sup> Although tenderers of any nationality may generally participate in procurement proceedings, Tanzanian contractors and consultants will be granted a margin of preference provided they meet the criteria specified by the Act.<sup>89</sup>

Although the Act makes no reference to environmental or social concerns, the first draft of Tanzania's National Public Procurement Policy (2012) recognises the importance of these issues.<sup>90</sup>

### **Gaps in implementation**

- Ensuring compliance with public procurement policies has proven to be problematic, with almost all PPRA annual reports detailing incidents of procurement entities failing to comply with existing regulations. Although the compliance rate increased by 30% between 2007 and 2011, the average level of compliance in 2011 according to PPRA audit reports was 68%,<sup>91</sup> indicating a problematic level of non-compliance.
- The Act does not stipulate any human rights considerations on part of the contractors (bidders) in the procurement process. Bidding companies are monitored for financial criteria but not on environmental, social or human rights performance.
- Environmental, social and human rights considerations are not actively considered in screening and selection of service providers or the monitoring of subsequent compliance.
- Reliability and integrity of procurement officers and suppliers can be problematic.

### **Recommendations to the Government**

- Task the PPRA to take additional measures to ensure that public entities comply with public procurement rules.
- Integrate human rights criteria throughout the public procurement system, including pre-qualification, award criteria, tender evaluation, monitoring and termination.
- Bar companies found to violate human rights or environmental standards from participating in further bids.
- Ensure proper screening of the procurement officers by the employers.

## **GUIDING PRINCIPLE 8: POLICY COHERENCE**

The Guiding Principles state that government duties under human rights law should be consistently implemented across departments and between the local and national level. This means that governments are obligated to assess the policies and practices of all agencies to ensure that the State duty to protect against business-related human rights abuses and the responsibility to respect human rights are effectively implemented across government agencies and activities.

### **Gaps in Implementation**

- The interaction between government bodies charged with regulating the practices of business activities is unclear. Land acquisition and lease by companies, for example, fall under the remit of the Ministry of Lands, the Ministry of Regional Administration and Local Government, and the Tanzania Investment Centre – these three parties do not always coordinate, resulting in multiple certificates being issued for the same parcel of land.
- As noted previously, the interaction between ministries when assessing investors is not coordinated. Monitoring the environmental, social and human rights impacts of businesses is spread across the Government without clear lines of reporting, coordination or collaboration.
- There is no close monitoring regarding company adherence to human rights in investment agreements.

### **Recommendations to the Government**

- Identify and review key regulatory activities related to business human rights impacts (e.g. land acquisition, lease or use; investment contracts; taxation and revenue management; labour conditions; environmental impacts) to clarify the responsibilities of relevant ministries.
- Establish a framework to coordinate the monitoring of business activities between all agencies that conduct site visits.

## **GUIDING PRINCIPLE 9: INVESTMENT NEGOTIATIONS AND AGREEMENTS**

The Guiding Principles state that trade and investment arrangements (State-investor contracts, bilateral investment treaties, free trade agreements etc.) should not prevent States from exercising their human rights duties, and should be formulated and implemented in a manner that is consistent with business respect for human rights.

There is little evidence regarding the State's support for human rights-based provisions in investment agreements because these agreements predominantly remain confidential. However, recently the Parliament passed the Natural Wealth and Resources Contracts (Review and Renegotiation of Unconscionable Terms) Act (2017) mandating the Parliament to review natural resource contracts and agreements made by the Government. The enactment of the Act will likely change the earlier common practice of maintaining the

confidentiality of these agreements preventing third parties, including human rights actors, from being involved in promoting human rights in these agreements.

Stabilisation clauses, included in many foreign investment contracts, can play a role in limiting a government's ability to meet its human rights obligations.<sup>92</sup> This is evidenced in Tanzania particularly by the inability of the Government to alter any provisions of said contracts for the betterment of its people.<sup>93</sup> While Tanzania is endowed with a significant amount of natural resources,<sup>94</sup> making it ripe for foreign investment, poverty encourages stabilisation clauses, which in turn prevents the Government from requesting more money to aid in development.

### **Gaps in implementation**

- The vast majority of investment agreements and State-investor contracts are confidential; despite members of parliament, civil society organisations, community members and academics on several occasions lobbying to ensure that they are made transparent. Despite the newly enacted Transparency and Accountability Act (2015) which implements the EITI, most investment contracts remain confidential.
- There is no systematic inclusion of environmental, social and other human rights issues in bilateral and multilateral investment agreements.
- There is no policy on the avoidance of stabilisation clauses in State-investor contracts, and if they are to be used to favour economic equilibrium over full freezing clauses.

### **Recommendations to the Government**

- Include human rights criteria in investment agreements and contracts with foreign investors in accordance with the UN Principles for Responsible Contracts, i.e. consider human rights from the outset. Ensure that relevant agencies monitor foreign investment projects for compliance with these principles and that information on the human rights obligations of companies operating in Tanzania is available to the public.
- Include non-financial criteria, particularly regarding environmental and human rights performance, in risk screening and due diligence assessments of foreign investors. Clarify that the Ministry of Industry, Trade and Investment has the ultimate duty to carry out and act on the findings of such risk screening.

## **PILLAR 3: ACCESS TO REMEDY**

### **GUIDING PRINCIPLES 25 & 26: JUDICIAL GRIEVANCE MECHANISMS**

States have the obligation to provide effective judicial remedies to victims of business-related human rights abuses. This means not only establishing courts and other bodies to investigate and adjudicate business-related complaints, but also ensuring that the justice they deliver is timely, consistent, equitable and available to all without discrimination.

The United Republic of Tanzania has a number of judicial remedy mechanisms relevant for addressing business-related human rights harms. The High Court Commercial Division and



the Industrial Court in Zanzibar deal with business-related matters. The Tax Revenue Appeal Tribunal adjudicate tax cases. Complaints of labour exploitation, including failing to pay wages and forcing employees to work, can be lodged with local labour officers, who will arrange for corrective action to be taken. Complaints can also be lodged directly with the Commission for Mediation and Arbitration (CMA) and at the Labour Commission in Zanzibar, which are mandated to deal with labour-related disputes. Land Tribunals – which are supposed to be established in every district – are mandated to deal with land-related disputes in the first instance, with appeal to the High Court. The Fair Competition Commission deals with consumer-related complaints, working in collaboration with the sector-relevant authority.

### **Gaps in implementation**

- While most Tanzanian institutions providing judicial remedies are adequately mandated, there are numerous practical barriers for citizens to gain access to justice, including:
  - Cases are slow to process and can be expensive;
  - In cases of human rights abuses by businesses, most citizens do not know where to file a claim. In disputes over land for example, Land Tribunals and formal courts have jurisdiction; and
  - Where judgments have been made in favour of victims of human rights abuses, especially against the Government, compensation has been delayed or not paid at all.
- Such practical barriers add up to the fact that very few successful judicial cases against companies have been carried out. In the few cases where a judgment against a company has been ordered, payment amounts have been small and the process of accessing justice has taken years.

### **Recommendations to the Government**

- Address critical issues regarding access to justice, including barriers to access to judicial remedies and prompt enforcement of judgments. This includes: ensuring speedy hearing of cases; providing more resources to honour court judgements; and decentralising the Land Tribunals to all districts.
- The Ministry of Constitutional and Legal Affairs and judicial institutions should disseminate easy-to-understand information that clarifies judicial remedy mechanisms responsible for business-related human rights abuses. This information should be localised to the district level and presented in a form that is readily understandable to citizens.
- Agencies that deal with investigations of individual complaints (e.g. NEMC, ZanzibarEMA, CMA, and the Labour Commission in Zanzibar) should prepare and disseminate simplified materials explaining their mandate.

### **GUIDING PRINCIPLES 25, 27, 28 & 31: NON-JUDICIAL GRIEVANCE MECHANISMS**

The Guiding Principles recommend that, in addition to judicial mechanisms, States should establish alternative bodies where victims of business-related human rights abuses can seek redress. For these bodies to be considered effective, the Guiding Principles state that they must be legitimate, accessible, predictable, equitable, transparent, rights-compatible and

provide a source of continuous learning (operational-level mechanisms should, in addition, be based on engagement and dialogue).

Tanzania has a number of non-judicial remedy mechanisms available to victims of business-related human rights abuses. For example, CHRAGG monitors human rights conditions across the country. It has the power to investigate complaints and to make recommendations for compensation or other actions to remedy human rights abuses. The Prevention and Combating Corruption Bureau (PCCB) can receive complaints regarding allegations of bribery and corruption, as well as undertaking investigations on their initiative.

### **Gaps in implementation**

- The Government has not provided guidance to companies regarding operational-level grievance mechanisms.
- The State does not collect or publish information about available non-judicial grievance mechanisms, such as the International Finance Corporation's Compliance Advisor Ombudsman or operational-level complaint mechanisms.
- CHRAGG, which is mandated to hear human rights-related complaints, is under-resourced.

### **Recommendations to the Government**

- The Ministry of Constitutional and Legal Affairs, and other relevant ministries, should disseminate easy-to-understand information that clarifies non-judicial grievance mechanisms for business-related human rights abuses (e.g. the International Finance Corporation's Compliance Advisor Ombudsman or the OECD's National Contact Points).
- CHRAGG's complaints function should be expanded to make recommendations binding. The Commission's funding should be increased to enable it to fully and effectively implement its mandate to promote and protect human rights.
- The Ministry of Industry, Trade and Investment, the Ministry of Constitutional and Legal Affairs, Tanzania Investment Centre, Zanzibar Investment Promotion Authority, Zanzibar Commercial Tribunal, Chamber of Commerce Zanzibar, Chamber of Mines in the Mainland, labour tribunals and dispute handling units, in collaboration with community representatives, should provide guidance to businesses on human rights due diligence, including a component on operational-level grievance mechanisms that meet the effectiveness criteria outlined in Guiding Principle 31.
- Increase funding and improve the operation of the Land Tribunals.

## **4 BUSINESS AND HUMAN RIGHTS CASE STUDIES**

### **4.1 SHANTA MINING**

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**Name:** Shanta Mining Company Limited – Singida Project

**Location:** Ikungi District

**Industry:** Mining

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**Number and types of stakeholders consulted:**

Seven community representatives from each of the three villages of Mulumbi, Mang'onyi and Sambaru; three chairpersons as community leaders of the three villages; executive officers of the three villages; one executive ward officer; one professional from Mlumbi village; one district executive director; representatives from the environment and land departments of the Ikungi District Council; representatives from the District Commissioner; three management representatives from Shanta Mining; and company workers.

**Duration:** 8 days

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## **1. Introduction to the fieldwork site**

CHRAGG conducted an eight-day field mission in Ikungi District, Singida Region, as a part of information collection for the Baseline. The main focus of the field mission was to solicit inputs from different stakeholders and to verify some of the preliminary Baseline findings obtained from the literature review and initial bilateral engagement. The intention was also to provide some focused information on one of Tanzania's key industry sectors: mining.

The field mission at Ikungi District involved collecting key business and human rights information about one extractive industries company owned by the Shanta Mining Company. The company has, from 2004-2011, been granted three prospecting licenses. Despite being given these three licenses – ML 455/2012, ML 456/2012 and ML 457/2012, at Mang'onyi, Mlumbi and Sambaru Village respectively – the Shanta Mining Company has not started exploration and mining activities due to its failure to compensate the communities for land use and access during prospecting activities, which would be a prerequisite for exploration and development licenses.

The CHRAGG team consulted key government and company representatives. The team also engaged communities in the three villages of Mang'onyi, Mlumbi and Sambaru through community leaders, representatives of the community selected with consideration of gender/sex, village executive officers, ward executive officers and educational professionals. Through the detailed guiding questions used in the interviews regarding the company, the affected communities and experience of the operations in Ikungi District, the CHRAGG team was able to collect important data. Alongside with the questionnaires, the team had opportunities to discuss the company's impacts with community members who have in a unique way managed to explore in detail their experiences of the company's activities, including any complaints against Shanta Mining.

## **2. Key human rights findings**

### **Environment**

The Environmental and Social Impact Assessment (ESIA) certificate issued in 2013 had expired – according to the law the assessment has to be renewed every three years. The company is in the process of renewing the ESIA. In the process of conducting an updated ESIA, the company and district authority stated that the community was consulted through

village assemblies and public meetings. However, representatives of the community dispute having been consulted.

The Local Government Authority monitors the implementation of social and environmental impact management of the company's operations through local district council level environmental management committees, which monitor environmental and social impacts on a regular basis and issue inspection reports. However, no company level Environmental and Social Impact Management Plan was identified.

Stakeholders mentioned a number of environmental concerns related to the company's activities, including: soil erosion, affecting people's housing; and soil quality making land less arable.

### **Human resources and labour rights**

The company employs technical staff, security guards and casual labour. Professional/technical staff/employees have specified employment contracts that range from two months to one year duration. The recruitment of technical staff is done through open advertisement. Local community members raised the concern that technical staff are employed on a tribal and nepotism basis, rather than on a skills basis. There are few technical staff, hence there are no trade unions. Technical staff and their dependants enjoy both health insurance, like AAR, and Social Security schemes like National Social Security Fund (NSSF), Government Employees Pension Fund, PPF etc.

Non-technical staff are engaged as casual labourers and their employment contracts expire after every 24 hours. Casual employees are recruited from local communities through the recommendation by village executive officers and ward executive officers, who undertake a vetting process to determine suitable candidates.

The company has a Health and Safety Policy which is implemented through the company dress code (including personal protective equipment such as helmets, gumboots, leather boots etc.) and strict rules regarding reporting safety incidents and accidents. In the case of technical staff, according to company stakeholders, if an accident occurs the company compensates any injury and incapacitation; however, this does not apply to casual workers. The Shanta Mining Company is not registered by OSHA, as is required by the Occupational Health and Safety Act (2003).

The company has a grievance officer, an internal grievance handling mechanism for employees, and the company Disciplinary Policy and Procedure. Some cases of disputes between employees and the company are referred to the Commission for Mediation and Arbitration (CMA).

Technical staff and security personnel live free of charge in a well-maintained tented camp, while casual employees return back home after working hours.

## **Security**

The three licensed areas are guarded/secured by the armed State police force, which works on shift to protect the licensed areas. The company has, through its social responsibility policy, built a police station at Mang'onyi Ward, which is closer to the licensed area than the other public police stations. There is a memorandum of understanding between the company and the Inspector General of the Police to restore peace, which was signed following the 2012 incident (see below).

In addition to the police stationed at the licensed areas, the company has engaged its own private security guards. These workers are engaged on an individual basis as employees of the company rather than through a private security company. They are managed by the company's security department.

There was no evidence of armed groups/gangs.

In response to community members trespassing onto the licensed areas, the company and police reportedly responded with use of excessive force, including tear gas. The community also complained of the State police trespassing onto their land. Community members reported that there were frequent incidents of use of force against them to prevent community members from entering the licensed areas.

In 2012, when the company officially obtained the licenses to the area, the community invaded the Shanta Mine – due to dissatisfaction with compensation arrangements and because the licenses prevented community members from continuing alluvial gold mining. In the incident, community members came onto the licensed areas and burned down structures. Several were arrested by the police but not arraigned before the court.

## **Land and resettlement**

A total of 83 people out of 132 who were affected by the mineral prospecting process were not compensated. During the prospecting the company drilled water trenches, water boreholes, and created access roads to the prospecting license sites on the community land/farms.

The community alleged that the prospecting process made their land barren, vibrations affected their houses and there were alleged reported miscarriages and increase of matrimonial disputes. These allegations were not investigated or addressed by the company.

Besides not being compensated, the community have been stopped from using their land for farming, cattle rearing, bee keeping, house construction and cultural rites.

Community members expressed dissatisfaction and concern regarding compensation and resettlement due to undervaluing their property and land and that the valuation process was not transparent and participatory. An independent valuer undertook the valuation, which needs to be approved by the Chief Government Valuer. However, according to

community stakeholders some of their assets were undervalued in this process; furthermore, community stakeholders reported that they were not adequately consulted in the process. Land value in the area has increased significantly as a result of company presence.

### **Engagement and consultation**

While the Company said that it regularly consults the community – through village government, members of parliament and NGOs, especially Haki Madini – some community and government representatives said that the community was not fully consulted. Lack of engagement and consultation was reported both for the impact assessment process as well as for more general day-to-day engagement.

### **Access to remedy**

The company does not have a project-level community grievance mechanism in place.

There was a resettlement plan for some families and 49 people have been compensated. However, the majority of community members in Mlumbi and Sambara Villages have not been compensated. They lodged their complaints with the District Commissioner whose special Committee came up with several recommendations – to fulfil the compensation requirements, to ensure regular engagement and participation, and more. The District Commission and the company are in regular dialogue in order to achieve implementation of the recommendation measures but it is a slow process.

The community has a knowledge gap regarding how to seek remedies through adjudication, arbitration (law tribunals) and/or through non-judicial grievance mechanisms.

## **3. Implications for the Baseline**

Concluding observations on the State duty to protect, corporate responsibility to respect and access to remedy pillars – based on the fieldwork findings – include the following:

- The team observed that human rights impacts caused by Shanta Mining activities gave rise to causes of action in the communities of the three villages, yet their claims often failed to proceed and where remedies were obtained these did not meet community expectations compared to the harm suffered.
- Besides judicial mechanisms being in place as a means of achieving accountability and access to remedy in cases of business-related human rights abuses, communities lack knowledge and information about non-judicial mechanisms and non-State grievance mechanisms at the operational and community level.
- The State has failed to ensure that the company complies with the provision of the Environmental Management Act (2004) on land rehabilitation and remediating adverse effects, the Village Land Act (1999) on land compensation, and the Mining Act (2010) on requirements regarding prospecting activities.

- The company management has failed to exercise its due diligence by not complying with national and international standards on investment, corporate social responsibility, environmental management and labour standards.

#### **4. Recommendations**

- The Government should ensure that remedies for human rights abuses, including compensation, to the three village communities (Mulumbi, Mang'onyi and Sambaru) is paid promptly and fairly.
- The Government, in collaboration with CHRAGG and CSOs, should raise awareness of the communities on both judicial and non-judicial grievance mechanisms.
- The Government should ensure that Shanta Mining Company complies with national, regional and international standards on labour, security, investment, environmental management and corporate social responsibility.
- Shanta Mining Company should promptly put in place a project-level grievance mechanism to handle communities' complaints arising from the mining activities.

#### **4.2 KAPUNGA RICE PROJECT**

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**Name: Kapunga Rice Project Limited**

**Location: Mbarali District-Mbeya Region**

**Industry: Agri-Business**

**Number and types of stakeholders consulted:**

Fourteen stakeholders were consulted, including: Mbarali District Administration representatives; CSO representatives (SKMAVM, USANGONET and RIEFP); community members; village executive officers and ward executive officers; and company workers.

**Duration: 8 Days**

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##### **1. Introduction to the fieldwork site**

Kapunga Rice Estates is a rice farming company which owns large rice farms. The farms comprise of 5,500 hectares of land. The land is owned by the company but the company sub-leases some parts that it does not use for its own activities to local villagers. The Estate is located in Mbarali District, more than 100 kilometres from district headquarters (Rujewa Town). These rice farms were previously owned by NAFCO (National Food and Agricultural Corporation, a government-owned company). The company was privatised in 2006, in accordance with the government privatisation policy in place at the time.

CHRAGG conducted the field mission in Mbarali District, Mbeya Region, as a part of information collection for the Baseline. The main focus of the field mission was to solicit inputs from different stakeholders and to verify some of the initial findings obtained from the literature review and early bilateral consultations. Stakeholder engagement during the field mission took place mainly in the form of interviews and discussions with individuals in Rujewa Town, at Kapunga Village, and Kapunga Rice Company, representatives from Mbarali

District and Kapunga Village Administration, CSO's, community members and employees' representatives.

## **2. Key human rights findings**

### **Environment**

According to some stakeholders interviewed the company undertook an initial EIA. However, whilst this assessment has been made available to the local administration it has not been made available to the public. No environmental impact management plan could be identified. There are significant water shortages in the area and the same water infrastructure is used by the company and the villages. Following some instances where the company blocked villagers' access to the water source, NEMC ordered the company to allow villagers to access the water source. NEMC became aware of this issue following villagers' complaints; NEMC does not engage in regular periodic monitoring but only monitors when a complaint has been raised. However, in 2016 the Estate was penalised (in the form of monetary fines) by NEMC for denying Kapunga villagers water for irrigation. Kapunga village farmers depend solely on water for irrigation from Kapunga Estate's irrigation infrastructure. No other major environmental impacts – e.g. pollution – were identified, impacts on water was the main issue. The Village Council has a series of committees, including one on environment which addresses environmental concerns within the village. However, this does not connect with the environmental management of the company.

### **Casual labour and child labour**

In most cases the company's agricultural activities are mechanised. However, during planting season a good number of labourers are hired, mostly from Kapunga village, other neighbouring villages, and other neighbouring districts. A concern was raised by several community members, workers and civil society representatives interviewed, that school aged children are also seen working in the rice farms during the planting season, interfering with their schooling.

Most of the local people hired are casual labourers employed on daily basis, particularly during planting season – this work was reportedly adequately remunerated. Technical people are hired on a contractual basis, normally renewable after one year of service.

Concerns were raised by workers that their area of expertise is not always taken into consideration, i.e. that worker skills do not necessarily match their job assignments.

### **Workers' representation**

It was reported by workers and other stakeholders interviewed that employees have no formal mechanism to represent them. No trade union is allowed to be established. Previously, some employee representatives attempted to advocate for trade unionism but were ultimately fired. Since then, no trade union has been allowed to operate on the company's premises.



## **Workers' grievance mechanism**

Employees have concerns regarding working conditions but have no forum to air or discuss them. The only available opportunity is to see the human resources officer of the company, who has no authority to make decisions. Decisions on key labour related issues are made by the company management team based in Dar es Salaam.

## **Occupational health and safety**

Working conditions were reported to be uncondusive in general, particularly for workers in the fumigation unit. Masks given to them were reported to be sub-standard. This may cause health problems as a result of using fumigation chemicals without adequate personal protective equipment.

Accidents have been witnessed at the company by workers. Examples of accidents and injuries reported included chemical burns and loss of body parts due to machinery accidents. In all these cases, it was reported that the company did not give the victims fair and adequate medical attention.

## **Wages**

Wages were generally reported by workers to be low and employees do not know how their salaries are determined. Every employee negotiates individually with the employer. In some cases, employees with the same qualifications and experience are paid different salaries.

## **Social security/healthcare**

The company pays social security benefits through the NSSF for employees hired on a contractual basis. Healthcare, unemployment and retirement benefits are not paid. There are no other additional social security benefits paid.

## **Security**

Security guards are present at the company. These are neither public security guards nor guards employed through a private security firm, they are individual security guards hired by the company. The guards are unarmed and not formally trained. Security guards are mainly the Maasai, not from other ethnic groups. The security guards were reported to not be on good terms with community members surrounding the rice farms because of their regular harassment of local community members. There are reported incidents of the security guards beating villagers. This was reportedly primarily for two reasons: (i) villagers that trespassed onto company land to fish in a river that is on the estate land – this is the only river in Kapunga; and (ii) there are some roads that are passing through the Estate to the other end of the village – these roads are under the maintenance of public authorities but villagers' access to them is nevertheless restricted by the company. One incident of beating was reported to the Village Council, which summoned the guards who had perpetrated the beating; however, the guards did not appear so the Village Council referred the matter to the police.

## **Land and resettlement**

Land ownership and use was identified as a key issue. Regarding land ownership, Kapunga villagers were mostly affected by privatisation of the Estate. Previously, NAFCO officials (i.e. the government-owned company) tolerated people living illegally on the Estate. However, upon privatisation, the private investor taking over the Estate forcefully evicted some villagers and no more settlements on the land falling under the rice project were allowed. However, more recently, the Government has revoked ownership of 1870 hectares formerly owned by Kapunga Rice Project Company, to enable some villagers to remain living on this land. This piece of land is currently owned by Kapunga Village. There are also still 13 families living within the Estate on areas of land that are formally owned by the company. These families have been allocated land in Kapunga Village (i.e. where they would have formal tenure rights) and are expected to be relocated in October 2017 by the Village Council.

Kapunga Village Administration also reported denials of passage through the company farms to other villages and to villagers' farms. However, this problem was resolved by the Village Council through negotiation with the company.

## **Social services**

Some issues regarding the provision of social services were identified. When the rice farming project was owned by NAFCO, villagers had access to some social services which were serving NAFCO employees, e.g. there was a school building which was NAFCO-sponsored but serviced by the Government as a regular public school, which was accessible to NAFCO employees as well as local villagers. With the current owner of the project, community representatives reported to have no access to such services, i.e. the school that was within the Estate and previously operated by the Government was closed. After the closing of the NAFCO-sponsored school, Kapunga sponsored a new school building, however, this was not accepted by the villagers due to a lack of consultation between Kapunga and the villagers in the process, who then built their own school. Both of these schools are now under the management of the Government.

## **Corporate social responsibility**

The company has built one primary school (Kapunga B Primary School) and installed waterpumping machines at the villages' wells but the capacity of the installed machines is low and cannot pump water to the village. No other social services are provided by the company. As explained above, it was noted that the school was not accepted by the villagers, who ended up building their own school. Some stakeholders pointed out that the company made a promise to build a healthcare centre, which was not fulfilled.

## **Engagement and consultation, including grievance resolution**

The village authority was neither consulted nor engaged during the privatisation of the NAFCO farms to Kapunga Company. It was reported that since the farms were privatised, the arrangement for occupation and use of land between the village and the company was

not ascertained by all parties. Village leaders were also not aware of any consultation undertaken during the EIA. There is no regular company-community engagement and the company does not have an operational-level grievance mechanism in place that community members can access if they have concerns regarding the company's activities. Stakeholders reported that the Village Council is the most common forum for raising concerns and complaints.

### **3. Implications for the Baseline**

Concluding observations on the State duty to protect, corporate responsibility to respect and access to remedy pillars – based on the fieldwork findings:

- Kapunga Rice Company Ltd has attempted to undertake an EIA and implemented some community development projects. However, it was noted that the EIA report has not been shared with the public and no environmental management plan and systematic environmental impact monitoring by NEMC could be identified.
- Some CSR projects were implemented without consulting community members. This might be one of the reasons why Kapunga villagers did not accept the primary school built by Kapunga Company.
- With regard to labour related issues, a number of concerns were noted including: hiring children, some of whom were reported to be seen working during school hours; lack of workers' representation; and lack of a common formula for determining employees' salaries/wages, contrary to the labour standards.
- On the issue of healthcare and occupational health and safety, it was noted that there is neither a health insurance scheme for employees in place, nor regular monitoring by responsible government authorities. The company is required to comply with occupational health and safety standards as provided by the law.

### **4. Recommendations**

- The company should avoid hiring children.
- Formal and regular consultations between Kapunga Rice Company and local communities should be established.
- Kapunga Rice Company should establish a company-level grievance mechanism that community members can access if they have concerns regarding company activities.
- Human rights stakeholders should work with Kapunga Company management on establishing a formal mechanism for workers' representation.
- Relevant government authorities (i.e. NEMC, OSHA etc.) should regularly inspect, e.g. labour and environment, to ensure that the company is not having adverse impacts on people's human rights and has the appropriate management measures in place.
- A Water Committee comprising of members from the Village Council and from the Estate should be established. This committee could be responsible for day-to-day management of water for irrigation to ensure that this does not adversely affect people's access to water for personal use.
- Kapunga Rice Company should have uniformity in determining wages in accordance with qualification and experience.
- Kapunga Rice Company should establish a healthcare benefits scheme for its employees.

## 4.3 TOURISM IN ZANZIBAR

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**Name:** Selected Tourism Industry Operators

**Location:** Zanzibar

**Industry:** Tourism

**Number and types of stakeholders consulted:**

A representative from the President's Office, Constitutional Affairs, Public Service and Good Governance; a representative from the Ministry of Information, Tourism, Culture and Sports; a representative from the Labour Ministry; a representative from the Zanzibar Tourism Commission (ZTC) and the Zanzibar Investment Promotion Agency (ZIPA); representatives from the Fisherman Tours and Travel Ltd, the Ocean View Hotel, the Serena Hotel, the Zanzibar Ocean View Resort Hotel, Zan Tour, and the MIGAO Tourism Company; a representative from the Zanzibar Association of Tourism Investors (ZATI); one employee representative at Gallery Tours; six workers with the Zanzibar Trade Union Congress; community representatives around tourist hotels and several Shehas as community leaders from local authorities in Zanzibar.

**Duration:** 8 days

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### 1. Introduction to the fieldwork site

CHRAGG conducted a field mission in some of the Zanzibar regions, except in Pemba, as a part of information collection for the Baseline. The main focus of the field mission was to solicit inputs from different stakeholders and verify some of the initial findings obtained from literature review and early bilateral engagement.

The field mission in parts of Zanzibar involved collecting key business and human rights information about the tourism industry. The CHRAGG team consulted: ministries; government departments; government agencies; government authorities; business companies operating in tourist hotels, galleries and tour guide; trade unions; civil society organisations; and communities around tourist hotels and settings.

### 2. Key human rights findings

#### Environment

The Zanzibar Government has enacted laws and regulations that govern environmental management. Hotel establishments have to qualify for environmental requirement conditions before being licensed to operate in Zanzibar. The conditions include having an EIA certificate and environmental management plans. The inadequate infrastructure for the operation and management of the tourism industry in Zanzibar renders difficulties in managing the environment and relations with surrounding communities. The hotel buildings, which were formerly occupied by very few families, are now crowded by tourists and workers – which can lead to the failure in solid and liquid waste management. The sewage systems have not changed to respond to increased activities. There has been

widespread waste throughout the neighbourhoods, which endangers the health of surrounding communities. There has been poor management by relevant businesses to respond to environmental degradation associated with the industry. The Government has been silent in terms of monitoring and addressing such adverse environmental impacts.

## **Security**

Hotels hire private security companies to protect hotels' assets. There has been concern from the community over hotels' capacity to control the conduct of private security officers. For example, CHRAGG has received complaints from community members regarding the conduct of some security officers, who happen to be a nuisance to the people and are accused of sexual harassment of women. Private security companies, due to poor structural infrastructure, tend to station their guards along public pavements and in close proximity of people's residences/homes. The closeness of hotels and private residences may likely cartel the community around tourist hotels to enjoy some of their rights like right to privacy and personal integrity. Private security companies should therefore take measures to ensure that guards have good conduct.

## **Labour issues**

In Zanzibar, the tourism industry has attracted over 60% of investment projects. While the majority of the skilled and semi-skilled are Zanzibaris, the Zanzibar Promotion and Protection Act (2004), provides an opportunity for approved projects to employ expatriates in key positions that are determined by ZIPA. The residence permits are governed by the Employment Act (2005) that generally regulates labour standards, and the Immigration Act (1995).

During the engagement process carried out during the field mission – including group discussion and physical observation – it was reported by various stakeholders that: there was no uniform standard of setting the minimum wage; most of the workers at most of the tourist hotels and tour guides are not unionised; few have knowledge on labour dispute handling mechanisms; and few receive benefits from social security and health insurances. Whilst major hotels take measures to avoid employing children, children may nevertheless be engaged in the tourism industry in the supply chain, like fishing and other commodities hawking.

## **Community impacts**

The communities around hotels are impacted by environmental degradation, noise pollution from the machines installed by hotels like air conditioners, generators and heavy trucks which supply water to the hotels. Hotels have also been encroaching on open spaces that are for public domain usage for several reasons, including cultural protocols.

While there was no direct evidence of child employment at hotels, instances of more grievous forms of child labour were reported in the tourism industry supply chain like petty business hawking that impair the rights of children to attend school and are similarly subjected to hazardous working environments in the sea and road sides.

While the tourism industry creates a significant amount of direct and indirect employment, this does not always translate into employment and livelihood for communities. Despite employment and other benefits, local communities, which are predominantly Islamic, are against the trade and consumption of alcohol in the tourism industry.

### **Engagement and consultation**

The community engagement and consultation processes during the establishment of hotels are controversial. The community representatives consulted said there was no clear mechanism which effectively responds to communities' grievances. However, the communities have been submitting their complaints to the appropriate authorities like Sheha (Representative of the Central Government), Municipal Council and police, but no action has been taken to rectify the situation. Communities are also not regularly consulted during urban planning, e.g. during planning for hotel construction.

### **Access to remedy**

Evidence pertaining to access to remedy after loss of land for tourist investments was not provided. But the communities seem to be dissatisfied with the existing mechanisms of access to remedy. Some members of the community are complaining of the failures of the Government to protect their rights violated by investors.

## **3. Implications for the Baseline**

Concluding observations on the State duty to protect, corporate responsibility to respect and access to remedy pillars – based on the fieldwork findings:

- Tourism is currently the main sector contributing immensely to the economic development of Zanzibar. According to the Zanzibar Commission for Tourism, tourism contributes 80% of foreign exchange gain. It has created about 22,000 direct employments and about 50,000 indirect employment. There are presently around 400 hotels in different parts of Zanzibar.
- During this fieldwork, it was found that public and private institutions as well as the community lack knowledge of the Guiding Principles. Such lack of knowledge has resulted in the State being unaware of its duty to protect human rights with regard to business activities, and private institutions (investments) fail to know their responsibility to respect human rights in their business undertakings. Some public institutions, such as ZIPA and the Commission for Tourism, comply with the World Trade Organisation's principles, which govern the establishment and operation of investments.
- The field mission further found that there is little consideration of labour related rights by employers. Employees are normally given part time contracts which are contrary to the Employment Act (2005). While the Act requires that a contract be of one year duration at minimum, employees have been given contracts less than one year in duration. The law requires these contracts to be approved by labour officers. However, labour officers have been approving these contracts in spite of the fact that they are contrary to the law.
- The Labour Commission, the Dispute Handling Unit and the Industrial Court are empowered to handle labour related disputes. However, despite the presence of these state agencies

and despite the fact that labour laws guarantee the right to free access to justice, there are some obstacles which hinder access to these labour dispute tribunals. The Dispute Handling Unit, being a quasi-judicial entity, currently faces the challenge of having an inadequate number of competent officers conversant with labour-related laws and procedures to handle labour disputes. It was found that the industrial court is presided by a judge of the High Court who, besides his role in the industrial court, is also assigned other non-labour related cases. In that case, the determination of labour cases takes very long. It was also found that trade unions, which should represent employees, are said to be incapable of it.

- Domestic labour laws are not in compliance with the international labour standards, there are some contradictions in the domestic laws.
- It was also found that there is no public policy, law or guidelines governing corporate social responsibilities. Though companies have been doing some social activities like building schools, wells etc., there is no guideline governing such investments to ensure that they are human rights compliant. This vacuum has resulted in communities asking companies to informally contribute to some social activities.

#### **4. Recommendations**

- The Government, in collaboration with CHRAGG and CSOs, should promote the Guiding Principles among businesses and communities involved in and impacted by the tourism industry.
- The Labour Commissioner in Zanzibar should ensure companies in the tourism industry comply with national and International Labour Organisation standards.
- The Government should ensure that the labour disputes unit has adequate competent staff to handle labour complaints.
- The Government should review its registration on labour matters to comply with international labour standards.
- There should be public policy that guides corporate social responsibilities.

## ANNEX I: NBA TEMPLATE MATRIX

### PILLAR I: STATE DUTY TO PROTECT

GUIDING PRINCIPLE 1		
States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.		
1.1. International and Regional legal instruments		
Has the government signed and ratified relevant international legal instruments?		
Indicators & Scoping Questions	Implementation Status	Gaps
<b>International Human Rights Legal Instrument</b>  Has the government signed and ratified relevant international human rights legal instruments, such as ICERD, ICCPR, ICESCR, CEDAW, CAT, CRC, ICMW, CPED, CRPD, the core ILO conventions, and any corresponding protocols?	<p>The United Republic of Tanzania is a dualist state so its international legal obligations are governed by Article 63 of the Constitution of the United Republic of Tanzania (1977).</p> <p>Tanzania has ratified a number of core international human rights instruments that promote and protect human rights, including the following:<sup>95</sup></p> <ul style="list-style-type: none"> <li>• Convention on the Elimination of all Forms of Discrimination Against Women (1979)</li> <li>• Convention on the Elimination of All Forms of Racial Discrimination (1965)</li> <li>• Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)</li> <li>• Convention on the Rights of the Child (1989)</li> <li>• Covenant on Civil and Political Rights (1966)</li> <li>• International Covenant on Economic, Social and Cultural Rights (1966)</li> </ul>	<p>The country has not ratified the following key international human rights-relevant instruments:<sup>97</sup></p> <ul style="list-style-type: none"> <li>• Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)</li> <li>• Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)</li> <li>• Convention on Biological Diversity (1992)</li> <li>• Convention Concerning the Protection of the World Cultural and Natural Heritage (1972)</li> <li>• Convention for the Safeguarding of the Intangible Cultural Heritage (2003)</li> <li>• ILO Convention No. 169 on Indigenous and Tribal Peoples (1989)<sup>98</sup></li> <li>• The Optional Protocol to the International Covenant on Civil and Political Rights, 1966 which allows individuals to submit complaints directly to the UN</li> </ul>



	<ul style="list-style-type: none"> <li>• ILO Core Labour Conventions</li> <li>• A number of additional ILO Labour Conventions.<sup>96</sup></li> </ul>	<p>Human Rights Committee</p> <ul style="list-style-type: none"> <li>• The Second Optional Protocol to the International Covenant on Civil and Political Rights (1989), which calls for the abolition of the death penalty</li> </ul> <p>Furthermore, there are some notable gaps in the implementation of the international human rights instruments that have been ratified – in particular with regard to economic, social and cultural rights. For example, although the right to education is provided for under Article 11 of the Constitution (1977), it is not enforceable in practice.</p> <p>Enforcing provisions to prevent child labour have also proved problematic: children are exploited by engaging in child labour in the mining, agriculture, and fishing sectors, especially in rural areas.<sup>99</sup></p>
<p><b>Regional and Sub-Regional Human Rights Legal Instruments</b></p> <p>Has the government signed and ratified relevant regional human rights legal instruments, such as the African (Banjul) Charter on Human and Peoples' Rights; the American Convention on Human Rights; the European Convention for the Protection of Human Rights and Fundamental Freedoms; and any corresponding protocols?</p>	<p>Tanzania is a party to and has ratified a number of regional and sub-regional legal instruments, including:<sup>100</sup></p> <ul style="list-style-type: none"> <li>• African Charter on Human and Peoples Rights (1981) (Banjul Charter)</li> <li>• African Charter on the Rights and Welfare of the Child of (1990)</li> <li>• Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) (Maputo Protocol).</li> </ul> <p>Tanzania has domesticated the African Charter on the Rights and Welfare of the Child (1990) by enacting the Law of the Child Act (2009) that prohibits all forms of forced child labour.</p> <p>The Maputo Protocol requires States parties to ensure there is an equal representation of women in all decision-making bodies.<sup>101</sup> The government has endeavoured to increase representation of women</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• Limited community education is available to ensure that citizens are aware of their rights under the African Charter on Human and Peoples Rights and the African Charter on the Rights and Welfare of the Child.</li> <li>• Those in charge of implementing these charters need to be better resourced in terms of human and financial resources.</li> <li>• The implementation of these charters cuts across several ministries and needs to be better coordinated within the government.</li> </ul>

	<p>and the current Cabinet has 34% female representation.<sup>102</sup></p> <p>The African Court on Human and Peoples Rights is based in Arusha city, Tanzania.<sup>103</sup></p> <p>Tanzania is a member-state to two major sub-regional economic blocks: The East Africa Community<sup>104</sup> and the Southern African Development Community (SADC).<sup>105</sup> These economic blocks have legal instruments that enhance the protection of human rights by member states, like the Treaty Charter for the Establishment of the East Africa of 1999<sup>106</sup> and the SADC protocol on Gender and Development.<sup>107</sup></p>	
<b>1.2. International and Regional Soft Law Instruments</b> Has the government signed relevant international and regional soft law instruments?		
<b>Indicators &amp; Scoping Questions</b>	<b>Implementation Status</b>	<b>Gaps</b>
<b>International Human Rights Soft Law Instruments</b>  Has the government signed relevant international human rights soft law instruments?	<p>Tanzania has signed the Universal Declaration of Human Rights (1948), the UN Charter and is a member of the UN.<sup>108</sup></p> <p>Tanzania has also signed the Beijing Declaration and Platform for Action (1995), and is establishing action plans for the implementation of the commitments under the Declaration.</p> <p>The government has also signed the United Nations Declaration on the Rights of Indigenous Peoples (2007), but is yet to take firm steps towards implementing it.</p> <p>The government has committed to the Rio Declaration on Environment and Development (1992).</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>Limited government action to take steps to mainstream gender considerations into government policies and practice.</li> <li>Most citizens have limited knowledge of gender equality and affirmative action commitments, principles and practice.</li> <li>Key human rights-relevant declarations have not been signed, for example: The United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities (1993) and the Universal Declaration on Cultural Diversity (2001).</li> </ul>
<b>Regional Human Rights Soft Law Instruments</b>  Has the government signed relevant regional human rights	<p>Tanzania has ratified various regional human rights instruments. These include the African Charter on Human and Peoples Rights (1981), African Charter on the Rights and Welfare of the Child (1990), Protocol to the African Charter on Human and Peoples' Rights on the</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>Insufficient public awareness of the regional instruments.</li> </ul>

soft law instruments?	Rights of Women in Africa (Maputo Protocol) and the Abuja Declaration (2001). <sup>109</sup> Tanzania has also ratified the Treaty for the Establishment of EAC (2000), which among other things establishes the East African Court of Justice. The Convention Governing Specific Aspects of Refugee Problems in Africa and the Protocol on the Establishment of an African Court on Human and Peoples' Rights have been ratified too.	
<b>1.3. UN Guiding Principles on Business and Human Rights</b>		
Is the State actively implementing the Guiding Principles?		
<b>Indicators &amp; Scoping Questions</b>	<b>Implementation Status</b>	<b>Gaps</b>
<b>Formal Statement of Support</b>  Has the State given a formal statement of support for the Guiding Principles?	Including business and human rights in the National Action Plan on Human Rights (2013-2017) is one initiative the government has taken to promote business and human rights. <sup>110</sup>  Business and human rights has been included in Tanzania's National Human Rights Action Plan since December 2016 under the United Nations Development Assistance Plan – UNDAF 2. This is administered by the Ministry of Constitutional and Legal Affairs. The Commission for Human Rights and Good Governance and the Office of the Attorney General Chambers are responsible for preparing the National Baseline Assessment and National Action Plan on Business and Human Rights from the beginning to its implementation. The National Action Plan on Human Rights specifically mentions implementing human rights into business practices.	Gaps include: <ul style="list-style-type: none"> <li>There is not yet a National Action Plan on Business and Human Rights, nor have firm steps been taken towards developing one, despite the commitment to do so under the government's National Action Plan on Human Rights.</li> <li>Although the Commission for Human Rights and Good Governance is well placed to undertake a national baseline assessment, responsibility for developing and implementing a National Action Plan rests with the government. The office of the Attorney General Chambers needs to take charge on this, as outlined in the Human Rights Action Plan.</li> </ul>
<b>Implementation Structures</b>  Has the State put in place relevant structures to ensure implementation of	<i>None found.</i>	Gaps include: <ul style="list-style-type: none"> <li>There is little awareness of business and human rights amongst government, business and civil society stakeholders – this is noted in the National Human</li> </ul>

the UNGPs, for example, through the establishment or designation of a body tasked with implementation measures or through the allocation of internal resources?		<p>Rights Action Plan (2013-2017) as a key challenge that needs to be addressed.<sup>111</sup></p> <ul style="list-style-type: none"> <li>• Lack of legal, policy and institutional frameworks to oversee the implementation of the UN Guiding Principles on Business and Human Rights – again, this is noted as a key challenge in the Human Rights Action Plan.<sup>112</sup></li> <li>• Lack of coordination within the government on business and human rights related topics – this is particularly relevant to those institutions that deal with business-related topics.</li> <li>• Budget constraints in the development of the National Action Plans on Business and Human Rights.</li> </ul>
<p><b>Capacity-Building</b></p> <p>Has the State put in place measures to capacitate government actors and local citizens with knowledge and information on the UNGPs, for example, through workshops, conferences, or other events?</p>	<p><i>No state initiatives found.</i></p> <p>The area of business and human rights in Tanzania is still very new. As a general observation, none of the institutions mentioned have expertise on business and human rights. No educational institution in Tanzania offers a business and human rights course at any level. Only a few civil society organisations focus on this topic and are working to build capacity.</p> <p>The International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights (DIHR) facilitated a business and human rights capacity building session for members of CHRAGG and civil society organisations in July 2015.<sup>113</sup> However, no similar initiatives for government stakeholders were identified.</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• Government stakeholders have insufficient knowledge on identifying, documenting and addressing business and human rights issues.</li> <li>• Due to a lack of easily accessible materials on business and human rights and the UN Guiding Principles on Business and Human Rights, it is difficult to build the capacity of stakeholders to understand this topic.</li> </ul>
<p><b>Information</b></p> <p>Has the State disseminated information</p>	<p><i>No state initiatives found.</i></p> <p>The Legal and Human Rights Centre (LHRC) translated the</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• Apart from the reference to business and human</li> </ul>

about the UNGPs through public media sources, internal guidance documents, or other materials?	UNGPs into Swahili and disseminated this translation to relevant stakeholders. <sup>114</sup>	<p>rights in the National Human Rights Action Plan (2013-2017), no other government efforts to disseminate information on the UN Guiding Principles were identified.</p> <ul style="list-style-type: none"> <li>The Government has not followed up to ensure that the information in the National Human Rights Action Plan was fully understood and implemented by relevant stakeholders.</li> </ul>
<b>1.4. Other Relevant Standards and Initiatives</b> Is the State supporting or participating in other standards and initiatives relevant to business and human rights?		
<b>Indicators &amp; Scoping Questions</b>	<b>Implementation Status</b>	<b>Gaps</b>
<b>Standards</b> Has the government supported other standards on business and human rights, such as the IFC Performance Standards, the OECD Guidelines for Multinational Enterprises, and the UN Global Compact?	The government supports the OECD standards, especially in corruption and public procurement.	
<b>Initiatives</b> Has the government participated in initiatives, multi-stakeholder or otherwise, on business and human rights, such as the Global Network Initiative (GNI), the International Code of Conduct for Private Security Service Providers Association (ICoCA), and the Voluntary Principles on Security and Human Rights (VPs)?	<p><b>Voluntary Principles on Security and Human Rights</b></p> <p>The Voluntary Principles on Security and Human Rights (VPSHR) is a multi-stakeholder initiative addressing human rights and security in the extractive industries. By joining the initiative, governments and companies commit to implementing principles concerning risk assessment, private security provision and interaction with public security forces.</p> <p>The Tanzanian government has not signed the VPSHR. However, some companies and NGOs operating in Tanzania have joined the initiative and adhere to the principles. Signatories include: BP, Statoil, Shell, Total, Pact</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>Like many other African countries, Tanzania is desperate to attract investors and is not inclined to strictly observe these standards and initiatives.<sup>131</sup></li> <li>Lack of current information on the implementation status of the EITI.</li> <li>The Government has not signed up to the Voluntary Principles on Security and Human Rights,<sup>132</sup> although this is a highly relevant initiative given the predominance of the extractive industries in Tanzania. The Government attended the VPSHR Annual Planning Meeting in 2013. It is currently unclear whether the</li> </ul>

	<p>and Search for Common Ground.</p> <p><b>Extractive Industries Transparency Initiative</b></p> <p>Tanzania joined the Extractives Industries Transparency Initiative (EITI) in 2006 and qualified for full membership in 2012 following the submission of its first EITI report. To ensure long term implementation of this initiative irrespective of changes in government, the Tanzania Extractives Industries (Transparency and Accountability Act) was enacted in 2015.</p> <p>The Act establishes the Tanzania Extractive Industries Committee, an independent government entity responsible for promoting transparency and accountability throughout the extractives industry.<sup>115</sup> Composed of fifteen members with equal representation from civil society, government entities and extractive industries companies,<sup>116</sup> the Committee is responsible for developing a framework for promoting transparent company reporting in the extractive industries.<sup>117</sup></p> <p>In addition, the Committee requires companies to submit information; including accurate records of production costs, volumes of production, and export data.<sup>118</sup> Companies are explicitly obliged to submit annual reports containing information on local content and corporate social responsibility.<sup>119</sup></p> <p>Publicising information is also critical, with the Committee charged with ensuring the government publish all new<sup>120</sup> concessions, contracts and licenses related to the extractive industries projects online.<sup>121</sup> The names of individual shareholders and implementation reports should also be published.<sup>122</sup> Failure to provide the</p>	<p>government is considering adopting the VPSHR in the future.</p> <ul style="list-style-type: none"> <li>• The Government has not made any commitment to the International Code of Conduct for Private Security Providers (ICoC), such as by encouraging companies to become signatories to the Code. The ICoC is a set of principles for private security providers created through a multi-stakeholder initiative. The Code reinforces and articulates the obligations of private security providers, particularly with regard to international humanitarian and human rights law. It is a non-state mechanism intended to supplement state legal oversight of private security providers.<sup>133</sup></li> <li>• The Government has not taken steps to implement the FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.<sup>134</sup> These are particularly relevant in Tanzania given the predominance of the agricultural sector and subsistence lifestyles in some areas of the country.</li> <li>• The Government has not taken active steps to encourage investors to comply with international good practice standards, e.g. International Council on Mining and Metals, FAO Guidelines on Food Security or the International Finance Corporation Performance Standards.</li> <li>• Although the government is considering capacity building among artisanal miners to help them develop environmentally friendly practices, there are still conflicts between multinational investors and small scale miners in a number of locations including Geita and Handen.</li> </ul>
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	<p>necessary documentation<sup>123</sup> or giving false information are offences punishable with a fine or imprisonment.<sup>124</sup></p> <p>Tanzania has committed to establishing a central register for beneficial ownership of extractive industries companies so that law enforcement agencies will have access to the necessary information. Bilateral information sharing agreements with partner countries will be also be established.</p> <p><b>Africa Mining Vision</b></p> <p>In 2009, the African Union formally launched the Africa Mining Vision to promote the “transparent, equitable and optimal exploitation of mineral resources” to boost sustainable growth and tackle poverty.<sup>125</sup></p> <p>To implement this policy in Tanzania, the Ministry of Energy and Mining requested assistance from UNDP help develop a Country Mining Vision (CMV) in 2014.<sup>126</sup></p> <p>The CMV was subsequently launched in March 2015, whereby the government committed to: conducting a legal and policy review of existing regulatory frameworks; designing a business plan to integrate mining into national development plans; and providing technical support to stakeholders.<sup>127</sup></p> <p>To further support the objectives of the Africa Mining Vision, the government has also:<sup>128</sup></p> <ul style="list-style-type: none"> <li>• Introduced training projects to help officials negotiate favourable fiscal terms in contracts with the extractive industry and to monitor tax compliance.</li> <li>• Demanded mineral production and exports are audited by trained inspectors.</li> </ul>	<ul style="list-style-type: none"> <li>• Tanzania is a signatory to the AU Framework and Guidelines on Land Policy in Africa and the 2014 AU Guiding Principles on Large Scale Land Based Investment,</li> </ul> <p>Tanzania is reviewing the National Land Policy and this presents the opportunity to translate guidelines into policy. Subsequently, these guidelines can be converted into a set of binding provisions delineating the roles of companies, civil society and communities in the land management process.</p>
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	<ul style="list-style-type: none"> <li>Introduced a community development levy allocating a portion of mineral revenues to communities directly affected by mining activities.</li> <li>Started the process of establishing a Sovereign Wealth Fund for natural gas revenue.</li> </ul> <p>The government-led Tanzania Natural Resource Charter also aims to monitor policy developments in the extractive industries to boost the economy and human development.<sup>129</sup></p> <p>Similarly, the UNDP-backed Capacity Development in the Energy Sector and Extractive Industries (CADESE) signed in 2012 was designed to support the CMV and promote renewable energy resources.<sup>130</sup></p>	
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## 1.5. National Laws and Regulations

Does the general law of the State provide protection against business-related human rights abuses?

Indicators & Scoping Questions	Implementation Status	Gaps
<b>Constitution</b>  Does the constitution contain wording aimed at human rights protection?	<p>The Constitution (1977) contains provisions that safeguard human rights.</p> <p>Rights under the Constitution of Tanzania are enforceable, pursuant to the enactment of the Basic Rights and Duties Enforcement Act (1994).<sup>135</sup></p> <p>Several Constitutional cases concerning human rights have been filed before the courts, such as <i>Independent Candidate Rev. Christopher Mtikila versus Attorney General</i>,<sup>136</sup> and <i>LHRC and others versus Hon. Mizengo Pinda and Attorney General</i>.<sup>137</sup></p> <p>Furthermore, Article 27 confers an obligation to every citizen to safeguard the country's natural resources.<sup>138</sup> According to the Land Act and Village Land Act (1999), a citizen has the right to own land</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>Economic, social and cultural rights are only mentioned in the Constitution's preamble and are not justiciable under the Constitution but only under other laws that specifically address these topics. Some rights which are provided under the Constitution are protected under specific legislation, e.g. the Education Act, Land Act (1999).</li> <li>Presence of claw back clauses, e.g. the right to life is subject to other laws.<sup>139</sup></li> <li>No clear provision on the right to a safe, healthy and clean environment is included.</li> </ul>



	including both the substances on and under the land; with the exception of minerals. Minerals are the property of the government.	
<p><b>Labour Law</b></p> <p>Has the government put in place labour laws and regulations to ensure the protection and promotion of workers' rights?</p>	<p>Both the Constitution of the United Republic of Tanzania (1977) and the Constitution of Zanzibar (1984) guarantee the right to work and fair remuneration.<sup>140</sup> Labour rights are primarily governed by the Employment and Labour Relations Act (2004),<sup>141</sup> the Labour Institutions Act (2004),<sup>142</sup> and the Workers Compensation Act (2009). In Zanzibar, labour rights are governed by the Employment Act (2005), the Labour Relations Act (2005), the Workers Compensation Act (2005).</p> <p>Legislation also provides for social security schemes regulated by the Social Security Regulatory Authority (SSRA) or the Zanzibar Social Security Act (2005). Health and safety in the workplace is regulated by the Occupational Health and Safety Act (2003) or the Occupational Safety and Health Act (2005) (Zanzibar). On the Tanzanian Mainland, the Workers' Compensation Act (2008) established the Workers' Compensation Fund (WCF), which is now fully operational, but it still lacks sub-offices and staff in many parts of the country. This Act makes it mandatory for employers to subscribe and submit a prescribed amount to the WCF.</p> <p>Together with the relevant labour laws, the Constitutions of Tanzania and Zanzibar prohibit workplace discrimination. The rights of vulnerable groups like maidservants and barmaids are protected by the same laws. The Persons with Disabilities Acts in both the Tanzanian Mainland and Zanzibar protect the rights of persons with disabilities. Child labour is prohibited under the Employment and Labour Relations Acts (2004 and 2005 respectively), the Child Acts (No. 21 of 2009 and the Zanzibar Children Act, No.6 of 2011).</p> <p>On the Tanzanian mainland, trade unions are regulated by the</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• Labour laws are not well known by employees/workers.</li> <li>• Those implementing labour laws lack resources to reach those employees/workers who may need to access assistance from the State to have their labour rights enforced.</li> <li>• Insufficient funding and resourcing– including human resources. The Ministry of Labour lacks appropriately skilled personnel carry out workplace inspections and perform their mandate.</li> <li>• There is a particularly important challenge with mining companies in Tanzania when employees are denied their right to join and form trade unions near mining sites.<sup>144</sup> Additionally, the government closely monitors companies that have allowed workers to form trade unions.<sup>145</sup></li> <li>• The Workers compensation legislation in Zanzibar does not provide for any equivalent of the Workers Compensation Fund.</li> </ul>

	<p>Labour Institutions Act (2004); civil society stakeholders consider the legislation very weak. In Zanzibar, the Labour Relations Act (2005) governs trade unions and allow employees to join a trade union of their choice. The Labour Institution Act (2004) specifies the Minister is responsible for labour and requires the formation of a Sectoral Wage Board recommending the minimum wage for employees in the informal sector. The minimum wage order is thereafter gazetted by the responsible minister.</p> <p>Additional regulations are in place to support the enforcement of these laws, e.g. the Employment and Labour Relations (Code of Good Practice) Rules (2007).<sup>143</sup></p>	
<p><b>Environmental Law</b></p> <p>Has the government put in place environmental laws and regulations to ensure the protection and promotion of the rights of its citizens to health, a healthy environment, and livelihoods including, for example, clean water, clean air, and cultivatable land?</p>	<p>Tanzania's National Environmental Policy (1997) highlighted major problems with land degradation, deforestation and rapid population growth prompting a flurry of environmental legislation.<sup>146</sup></p> <p>The Land Act (1999) and Village Land Act (1999) were passed and quickly followed by the Forestry Act (2002), Fisheries Act (2003) and Wildlife Act (2009).</p> <p>The Environmental Management Act (2004) (EMA) in the mainland and the Zanzibar Environmental Management Act, 2015 (Act No. 3 Of 2015) were passed to provide legal and institutional frameworks to ensure sustainable management of the environment. It also emphasises that everyone living in Tanzania has the "right to a safe, clean and healthy environment."<sup>147</sup> Should this right be threatened, every person is entitled to bring an action against the polluter.<sup>148</sup> In line with the "polluter pays principle", those responsible for environmental damage should provide compensation to victims and restore degraded environments as far as practicable.<sup>149</sup></p> <p>The EMA and ZEMA demands that developers of major projects provide an Environmental Impact Assessment (EIA) prior to commencing operations.<sup>150</sup> The EIA Guidelines for the Mineral Sector</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• Although the EMA includes numerous environmental protections theoretically, its provisions are not effectively enforced in practice due to insufficient accountability measures for the officers responsible for implementing the laws.</li> <li>• Neither the law nor regulations set clear procedures for public consultations during the preparation of EIAs and include no specific provisions for engaging with vulnerable individuals or groups.</li> <li>• The qualifications required of experts and the judging criteria for meeting NEMC approval are not clearly stated and may not include competence in human rights.</li> <li>• Although the EMA refers to some social impacts within its definition of "environmental", the current law does not clearly set conditions for the systematic and comprehensive inclusion of social and human rights issues in the EIA process and associated impact</li> </ul>

	<p>(2014) provide explicit guidance for performing these assessments in the extractive industries.</p> <p>Compliance is assessed by the National Environmental Management Council (NEMC),<sup>151</sup> and the Zanzibar Environmental Management Authority (ZEMA) which are responsible for reviewing and monitoring EIAs. Completing an EIA is mandatory for the listed types of business operations, and failing to submit an EIA constitutes an offence, punishable by a fine of at least five hundred thousand shillings and/or a prison sentence of between two and seven years.<sup>152</sup></p> <p>Only environmental experts registered and certified in accordance with the Registration of Environmental Experts Regulations (2005) are authorised to conduct EIAs.<sup>153</sup> A first degree in a relevant discipline; three referees who meet NEMC’s minimum requirements and no professional or disciplinary convictions are prerequisites for gaining expert accreditation.<sup>154</sup> An up-to-date register of all experts is to be maintained, with the Registrar responsible for making a list of experts publicly available and facilitating searches of the register.<sup>155</sup></p> <p>During the preparation of an impact assessment, developers together with the NEMC are expected to “seek the view of any person who is likely to be affected by the project.”</p> <p>To publicise the project, its anticipated effects and benefits, developers are expected to: stick posters in public places; publish a notice in a national newspaper for two consecutive weeks; and make radio announcements in both English and Kiswahili.<sup>156</sup></p> <p>EIAs should not only identify environmental concerns but also “social, cultural, economic and legal considerations” and propose mitigation measures.<sup>157</sup></p> <p>As part of the EIA process, developers are expected to submit a</p>	<p>management plans and processes.</p> <ul style="list-style-type: none"> <li>• Rule 39(1) of the EIA and Audit Regulations stipulates that all documents submitted to the NEMC in the preparation of environmental impact assessments are “public documents”, however there is no mention of the procedure to be followed by stakeholders for accessing this information.</li> </ul>
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	<p>project brief including the “socio-cultural impacts on the local community” and a “plan to ensure the health and safety of workers and neighbouring communities.”<sup>158</sup></p> <p>If a proposed project is likely to have significant environmental effects on bordering regions or districts, an EIA can help to promote information exchange and consultation.<sup>159</sup></p>	
<p><b>Property and Land Management Law</b></p> <p>Has the government put in place land management laws and regulations to ensure the protection of the rights of its citizens, including the recognition of customary land rights and the incorporation of human rights considerations into environmental and social impact assessments and related licensing practices?</p>	<p>Land is considered property in Tanzania, with its ownership and use governed by multiple pieces of legislation and underpinned by the Constitution.<sup>160</sup> Although land tenure is not explicitly referred to in the Constitution, Article 24 asserts the right to own property with the courts confirming that this includes land rights.<sup>161</sup></p> <p>Consolidating numerous administrative directives, the Land Act (1999) was enacted to govern land ownership and adjudicate land disputes in accordance with the National Land Policy. It also provides legal frameworks for administering “general” and “reserved” land,<sup>162</sup> while the Village Land Act (1999)<sup>163</sup> governs land tenure in rural regions.</p> <p>The term “reserved land” applies to areas designated for national parks, forest reserves, public utilities or deemed “hazardous”.<sup>164</sup> Numerous provisions govern the use of this land, including the Forest Ordinance (Cap 389), Wildlife Conservation Act (1994) and Highway Ordinance (Cap 167).<sup>165</sup> “General land” is defined as all public land which is neither village nor reserved land and includes “unoccupied or unused village land.”</p> <p>The Land Act (1999) guarantees women the same land rights as men,<sup>166</sup> while the Village Land Act (1999) renders any customary practices discriminating against women, children or persons with disabilities “void and inoperative.”<sup>167</sup> In addition, the Village Land Act emphasises that “customary right of occupancy is in every respect of equal status and effect to a granted right of</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• The prescribed legal procedure for acquiring land is disregarded in practice.</li> <li>• Legal protections for customary land remain insufficient – in particular, there is only one certificate for a whole village, which may disadvantage women and other marginalised or vulnerable rights-holders that are excluded from the process.</li> <li>• Land valuation is not conducted by an independent third-party.</li> <li>• Existing rules are poorly enforced as they have not been developed in conjunction with participatory engagement from stakeholders.</li> <li>• Despite legal protections in principle, in practice landowners are not adequately compensated.</li> <li>• The market for land is not fully regulated and continues to operate informally.</li> <li>• New land laws are not always consistent with provisions adopted in specific sectors, e.g. natural resource extraction, water, agriculture and infrastructure.</li> <li>• Few “District Land and Housing Tribunals” have been established and other land dispute mechanisms lack</li> </ul>

	<p>occupancy.”<sup>168</sup></p> <p>The Village Council is empowered to issue Certificates of Customary Rights of Occupancy (CCROs) to formalise customary land rights and may also apply conditions for its development, yearly rent and any fees.<sup>169</sup></p> <p>The National Land Policy states that “full fair and prompt compensation” should be paid to those whose use of land has been “revoked” or “otherwise interfered with”<sup>170</sup> by the State, with resettlement addressed in the Land Act, Village Land Act, Land Acquisition Act (1967), and the Resettlement Policy Framework (2014).</p> <p>Practical guidelines on assessment and compensation are included in Regulation 3 of the Land Policy (Assessment of the Value of Land for Compensation) Regulations (2001) and Part I-III of the Village Land Regulations (2002). The Bank of Tanzania (BOT), Tanzania Social Action Funds (TASAF) and Tanzania Roads Agency (TANROAD) also offer resettlement guidelines.</p> <p>In practice however, many tenants have no titles or certificates demonstrating their land ownership and may be inadequately compensated when their land is purchased by investors. Due to a lack of coordination, investors may simply purchase land directly from the government without consulting local communities.</p> <p>Additional land-relevant legislation includes:</p> <ul style="list-style-type: none"> <li>• The Tanzania Investment Act Cap 38</li> <li>• The Environmental Management Act (2004)</li> <li>• The Forest Act (2002)</li> <li>• Wildlife Conservation Act (2009)</li> <li>• Ngorongoro Conservation Act (2002)</li> </ul>	<p>capacity.</p> <ul style="list-style-type: none"> <li>• Lack of institutional coherence in land governance – i.e. between key ministries responsible for land governance such as the Ministry of Lands and Human Settlement Development, Ministry of Energy and Minerals, local Government Authorities etc.</li> <li>• Citizens have limited access to information on land issues and their rights with regard to land.</li> <li>• The provisions under the Land Act (1999) and Village Land Act (1999) are taking a long time to implement in practice.</li> </ul>
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	<ul style="list-style-type: none"> <li>• Land Disputes Courts Act (2002)</li> <li>• Land Use Act (2007)</li> <li>• Urban Planning Act (2007)</li> <li>• Mining Act (2009)</li> </ul>	
<b>Health and Safety Law</b>  Has the government put in place health and safety laws and regulations to ensure the physical and mental health of workers and communities?	<p>In Tanzania, health and safety in the workplace is regulated by the Occupational Health and Safety Act (2003)<sup>171</sup> (OSHA) and the Law of Contract Act, Cap. 345.</p> <p>The government recently enacted the Workers' Compensation Act (2008),<sup>172</sup> which established the Workers' Compensation Fund (WCF). The WCF is now fully operational, after the appointment of the Secretary General, but it still lacks sub-offices and staff throughout the country.<sup>173</sup></p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• The OSHA applies to all workplaces, however, the relevant inspection and enforcement agencies are under resourced and have too little manpower to effectively implement their mandate throughout the country.</li> <li>• There are insufficient resources to effectively manage occupational health and safety in the workplace.</li> <li>• Poor quality business health and safety plans</li> <li>• Failure of employers to join the legally required Occupational Health and Safety Committee. Employees are reluctant to join the board because they fear being held responsible for non-compliance with OSHA.</li> </ul>
<b>Corporate and Securities Law</b>  Has the government put in place corporate and securities laws and regulations to support ethical corporate behaviour and business respect for human rights, such as through financial reporting, incorporation/registration, and stock exchange listing	<p>Corporate entities in Tanzania are governed by the Companies Act (2002) which applies to both to foreign and local companies. The Act comprehensively outlines the procedures for registering and incorporating businesses; forming subsidiaries and managing companies.<sup>174</sup> It also contains provisions regarding accounting, auditing and the winding up of companies.</p> <p>Foreign companies investing in Tanzania follow different procedures to their local counterparts and are required to register with the Tanzania Investment Centre before commencing operations.<sup>175</sup></p> <p>The Business Licensing Act (1972) – as amended by the Finance Act</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• There are no provisions in the stock exchange listing rules demanding ethical corporate behaviour or respect for human rights as a precondition for registration on the DSE.</li> <li>• The Companies Act, 2002 regulates the internal affairs of the companies without taking the interests of third parties into account.</li> <li>• The law fails to address business and human rights.</li> </ul>

requirements?	<p>(2014) Sec. II – stipulates that licences are compulsory for all business enterprises except farming, small scale trading etc.<sup>176</sup> These changes updated the payable licence fees<sup>177</sup> and introduced the requirement that companies submit a tax clearance certificate with their applications.<sup>178</sup></p> <p>The Companies Act demands that companies submit annual returns<sup>179</sup> containing audited financial statements and Directors reports.<sup>180</sup> These reports should contain a “fair review of the business and its subsidiaries” and recommended dividends, with all financial reporting requirements detailed in Chapter V.</p> <p>Annual meetings should be organised to discuss these reports,<sup>181</sup> with an extraordinary meeting called on a members’ requisition.<sup>182</sup> There is no reference to human rights or sustainability reporting in these provisions, with the Act focussing primarily on regulating companies’ internal affairs.</p> <p>Directors must act “honestly in good faith and in what the director believes to be the best interests of the company.”<sup>183</sup> Company directors must also disclose their interest in any contract to the meeting of directors.<sup>184</sup> Although the Companies Act outlines the procedure for executing contracts it is silent on their public disclosure.<sup>185</sup></p> <p>The Dar es Salaam Stock Exchange (DSE) was established by the Capital Markets and Security Authority (CMSA) under the Capital Market Securities Act (1994) and was incorporated in 1996 to safeguard securities investors in Tanzania.</p> <p>The CMSA regulates the conduct of corporate entities listed on the Dar es Salaam Stock Exchange, which currently has 25 listed companies.<sup>186</sup> To qualify for listing all companies must satisfy a number of criteria including: incorporation in Tanzania; a minimum of 1000 shareholders; and publication of annual accounts for the</p>	
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	<p>preceding three years.<sup>187</sup></p> <p>Tanzania adopted International Financing Reporting Standards (IFRS) in 2004, which are applied to both local and foreign companies trading publicly.<sup>188</sup></p>	
<p><b>Tax Law</b></p> <p>Has the government put in place tax laws and regulations to support ethical corporate behaviour?</p>	<p>Tanzania has enacted numerous laws refining its taxation regime over the last decade<sup>189</sup> and offers a wide range of tax incentives to attract investment in accordance with the Tanzania Investment Act (1997).</p> <p>There are three investment regimes in Tanzania. These regimes are administered under three different Laws, namely:</p> <ul style="list-style-type: none"> <li>• Tanzania Investment (“TI”) Act, 1997</li> <li>• Export Processing Zones (“EPZ”) Act [CAP 373 R.E. 2012].</li> <li>• Special Economic Zones (“SEZ”) Act [CAP 420 RE. 20 12].</li> </ul> <p>Generally, the TI Act provides normal tax incentives and additional tax benefits in respect of “strategic or major investments”. The approval of strategic or major investment status is subject to consultation between various government authorities and the Ministry of Finance.</p> <p>The EPZ Act envisages the establishment of export oriented manufacturing within areas designated as EPZs. The SEZ Act applies to investments related to producing goods and services for the local market.</p> <p>The SEZ and EPZ Acts identify different categories of investor which qualify for different incentives. Tax incentives available under these schemes include the following:</p> <ul style="list-style-type: none"> <li>• Tax holiday for ten years;</li> <li>• Exemption from the requirement to deduct withholding tax on interest on foreign source loans, rent etc. for a period of ten years;</li> </ul>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• Increased use of tax evasion and avoidance due to the loopholes in the tax legislation.</li> <li>• Lack of coordination between tax policies administered by the Tanzania Revenue Authority (TRA) and other government agencies.</li> <li>• Lack of monitoring mechanisms on the effectiveness of tax incentives in attracting investors. According to a 2006 IMF report focussing on East Africa, “investment incentives – particularly tax incentives – are not an important factor in attracting foreign investment.” Instead, political stability, good quality infrastructure and predictable macroeconomic policy were identified as critical.<sup>192</sup></li> <li>• There is a five-year tax holiday provided for in the law for companies. There are some examples of companies changing their name/incorporation to benefit from this tax holiday for more than five years.</li> <li>• Lack of sufficient information from tax administration agencies, which prevents the Tanzanian government from raising substantial revenue from non-tax related sources including property taxes or user fees.</li> </ul>



	<ul style="list-style-type: none"> <li>Exemption from city service levy for a period of ten years.</li> </ul> <p>Mining companies pay zero import duty on fuel, are entitled to special VAT relief and are exempt from capital gains tax.<sup>190</sup> The precise terms are specified in individual Mining Development Agreements.<sup>191</sup></p> <p>Most of the current legislation primarily uses taxation as a Government revenue collection tool, to provide funds to meet social demands. None of them include special provisions allowing the Tanzania Revenue Authority to regulate tax incentives.</p>	
<p><b>Trade Law</b></p> <p>Has the government put in place trade laws and regulations to support the protection and promotion of human rights within trade practices?</p>	<p>Tanzania has bilateral investment treaties with 20 countries whereby 11 are in force and 9 just signed. Other investment agreements with regional blocks include 8 treaties such as EU-SADC EPA (2016), EU SADC Interim Agreement (2009), EAC- US TIFA (2008), SADC Investment Protocol, Cotonou Agreement (2000), EAC Treaty (1999), SADC Treaty (1992) and EU Treaty (1991). The country is also a signatory to global investment instruments such as the International Centre for Settlement of Investment Disputes (ICSID) convention, the New York Convention, the UN Guiding Principles on Business and Human Rights, SADC Model BIT 2012, General Agreement on Trade in Services (GATS), Fifth Protocol to GATS, Fourth Protocol to GATS, Trade-related Aspects of Intellectual Property Rights, Trade-related Investment Measures (TRIMs), Multilateral Investment Guarantee Agency (MIGA) Convention, Settlement of Investment Disputes between States and Nationals of other States Convention, New York Convention, UN Code of Conduct on Transnational Corporations, ILO Tripartite Declaration on Multinational Enterprises, Doha Declaration, ILO Tripartite Declaration on Multinational Enterprises, Singapore Ministerial Declaration, World Bank Investment Guidelines, ILO Tripartite Declaration on Multinational Enterprises, New International Economic Order UN Resolution, Charter of Economic Rights and</p>	

	Duties of States, Permanent Sovereignty UN Resolution	
<p><b>Disclosure and Reporting</b></p> <p>Has the State put in place laws and regulations to support disclosure and reporting by corporations on human rights, labour rights, environmental impacts, corporate social responsibility, or other ethical issues?</p>	<p>Accessing corporate information in Tanzania is challenging, for example, key information on the extractive industries is only available with Ministry level approval.</p> <p>According to the Petroleum Act (2015) The Petroleum Upstream Regulatory Authority (PURA) can make information on details of agreements, licences, permits, approved development plans etc. available to the public following the written approval of the Minister.<sup>193</sup></p> <p>However, data submitted under the Act is ordinarily considered confidential<sup>194</sup> and some information is specified as only to be disclosed in certain specified circumstances.<sup>195</sup></p> <p>The inability to readily access information has proved problematic for local level leaders who are not fully informed about the activities of major companies operating in their districts, as only the central government can demand disclosure and reports.</p> <p>To promote transparency in the extractives industry and implementation of the Extractive Industries Transparency Initiative (EITI), Tanzania enacted the Transparency and Accountability Act (2015). According to this Act, companies are required to submit: all tax disclosures,<sup>196</sup> annual reports containing corporate social responsibility information,<sup>197</sup> and capital expenditures to the Tanzania Extractives Industry Committee.<sup>198</sup></p> <p>This Transparency and Accountability Act requires the Committee to demand that all extractive industries concessions, licences and contracts are published online or disseminated through a similar widely circulated medium. Names of individual shareholders (beneficial owner information) and implementation of Environmental Management Plans should also be released.<sup>199</sup></p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• Lack of political will to effectively implement EITI. Despite the Transparency and Accountability Act's safeguards, many contracts awarded to multinational companies by the government remain confidential and are rarely subject to public scrutiny.</li> </ul>

	To further enhance transparency and accountability, the government launched its e-Government strategy in 2013. <sup>200</sup>	
<b>Procurement Law</b>  Has the government put in place laws and regulations to support the incorporation of human rights considerations into the procurement by the State of goods and services from the private sector?	See UN Guiding Principle 6, below.	See UN Guiding Principle 6, below.
<b>Anti-Bribery and Corruption</b>  Has the government put in place laws and regulations aimed at promoting anti-bribery and combatting corruption within and across government?	In Tanzania, the Prevention and Combating of Corruption Act (2007) establishes the Prevention and Combating of Corruption Bureau (PCCB). <sup>201</sup> The primary mandate of the anti-corruption bureau is to investigate and prosecute bribery and corruption allegations in Tanzania. <sup>202</sup>	Gaps include: <ul style="list-style-type: none"> <li>• Despite the government's anti-corruption efforts, Tanzania continues to suffer from rampant corruption due to the complexity of its laws and lack of administrative capacity. The PCCB specifically lacks independence in taking corrupt officials to court. This tends to create an environment conducive to corrupt practices. The PCCB cannot take a case before a court of law without the approval of the DPP (Director of Public Prosecutions).</li> <li>• Currently, the law states that both the giver and receiver of a bribe will be liable, thereby inhibiting the ability/incentive of people to report.</li> <li>• Confidentiality of those reporting potential or actual instances of bribery and corruption is not always maintained, posing a risk for those who report instances of bribery and corruption.</li> <li>• There is often a lack of concrete evidence to bring a case of bribery and corruption before the courts.</li> </ul>

		<ul style="list-style-type: none"> <li>• There is insufficient focus on prevention.</li> </ul>
<b>Investment Law</b>	<p>The Tanzania Investment Centre (TIC) oversees all the country's investment and supports overseas investors in Tanzania. The law requires that all government agencies and bodies comply fully with the TIC and help it perform its role effectively. In addition to identifying investment opportunities and issuing permits, the Centre also handles enquiries regarding land acquisitions.</p> <p>Tanzania is an active member of the World Bank Foreign Investment Insurance Wing, Multilateral Investment Guarantee Agency (MIGA) and International Centre for Investment Settlement Disputes (ICSID). The Tanzania National Business Council (TNBC) was established in April 2001, as an independent forum for dialogue and consultation to help develop a strong, competitive economy. The government established the Zanzibar Investment Promotion Agency (ZIPA) to help foreign investors navigate local bureaucracy and implement their projects more quickly.</p> <p>Currently, there is little involvement from the private sector or other stakeholders in creating human rights compliant investment policies.</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• There is no clear evidence/information that the TIC has enforced performance standards that support the protection and promotion of human rights.</li> <li>• The TIC does not have any direct engagement with local communities to inform investment decision-making. TIC's due diligence process ensuring that accurate information is received from the relevant government ministries needs to be strengthened.</li> <li>• The absence of a properly coordinated national investment strategy has led to a lack of institutional coherence and contributed to the ineffective implementation of investment policies.</li> <li>• Data on the impact of investment projects are often inaccurate, with investors exaggerating potential job opportunities and social benefits.</li> <li>• Tanzania's legislative environment has proved challenging for investors with investment provisions spread across numerous laws including the Public Procurement Act, Tanzania Investment Act and the Mining Act (2010).</li> <li>• More confusing still, the applicable laws vary depending on the sector, the size of the investment and whether the investors are Tanzanian nationals.</li> <li>• Similarly, although the TIC Investment Guides and the TIC website summarises the main investment incentives by industry, these are not clearly laid out within a single legal document.</li> </ul>

<p><b>Human Rights Defender and/or Whistleblower Protection</b></p> <p>Has the State put in place laws and regulations aimed at supporting business respect for the rights of human rights defenders and/or whistleblowers?</p>	<p>The Whistleblowers and Witness Protection Act (2015) was passed to protect human rights defenders and whistle-blowers in general.<sup>203</sup></p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• The Act fails to adequately safeguard whistleblowers and human rights defenders in practice due to a lack of government commitment to implement the requisite protection mechanisms.</li> <li>• Law enforcement officials lack training on the requirements of the Act, including the protection of human rights defenders e.g. in exercising their right to access to information.</li> </ul>
<p><b>Consumer Law</b></p> <p>Has the State put in place consumer laws and regulations to ensure business respect for human rights and to promote consumer interest in the human rights impacts of purchased products and services?</p>	<p>Corporate entities in Tanzania are governed by the Companies Act (2002) that establishes the registration process, types of registration, mandatory requirements for foreign companies to incorporate and register in Tanzania before commencing business, as well as governing the formation of subsidiaries.<sup>204</sup></p> <p>These laws contain no reference to human rights and business.</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• Although Tanzania has a great deal of legislation and government owned Sectoral Regulatory Authorities (SRAs) to protect consumers and businesses, problems remain due to an increase in unscrupulous traders who flood the Tanzanian market with unsafe products, counterfeit goods, and unethical products, which adversely affect the lives of many innocent consumers.<sup>205</sup></li> <li>• There are enforcement gaps due to limited resources for the implementation of the protections provided for by the Act.</li> <li>• The general public lacks awareness of the protections provided for by the Act and the reporting system.</li> </ul>
<p><b>Criminal Law</b></p> <p>Has the State put in place criminal laws and regulations to ensure that corporate crimes that are related to human rights are investigated, prosecuted, and</p>	<p>Company directors and staff can be held liable under criminal law. In Tanzania, the police force have the power to enforce criminal law, while the administrative power over all proceedings is vested within the Director of Public Prosecutions.</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• Inadequate personnel in the Chambers of the Director of Public Prosecutions (DPP) which has caused a serious problem in the dispensing of justice.</li> <li>• The Director of Public Prosecution has vested too much power in criminal cases.<sup>206</sup></li> </ul>

properly sanctioned?		<ul style="list-style-type: none"> <li>Budgetary constraints in the DPP Chambers.</li> </ul>
<b>Non-Discrimination Law</b>  Has the State put in place anti-discrimination laws and regulations to support ethical corporate behaviour and business respect for human rights?	<p>There is no stand-alone non-discrimination law. However, the principle of non-discrimination is captured in the Constitution and other individual laws. There are also specific laws addressing different rights-holder groups, including: The Law of the Child Act (2009), the Persons with Disabilities Act (2010) and the HIV&amp;AIDS Act (2008).</p> <p>Although Tanzania has ratified various international instruments and enacted laws prohibiting discrimination in all forms, laws against discrimination still lack effective enforcement mechanisms. Apart from the enactment of certain non-discrimination laws in Tanzania, there are still other current laws that support discriminatory practices, such as the Law of Marriage Act (1971),<sup>207</sup> Tanzania Citizenship Act,<sup>208</sup> and Customary Law (Declaration) order.<sup>209</sup> In practice, discrimination on various grounds remains problematic.</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>Lack of public knowledge on non-discrimination and about the specific laws that address vulnerable rights-holder groups.</li> <li>Limited number of government programmes to promote non-discrimination and to empower individuals and groups who may be subject to discrimination.</li> </ul>
<b>Civil Law</b>  Has the State put in place civil laws and regulations to ensure investigation, punishment, and redress of business-related human rights harms?	<p>Company directors and staff can be held liable under civil law.</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>Lack of equality between parties under the Civil Procedure Code.</li> <li>Delays in bringing cases to conclusion due to procedural technicalities.</li> <li>System is too adversarial and it is difficult to enforce decree/court orders.</li> <li>Lack of predictability, too complex and incomprehensible procedures.</li> <li>Non-adherence/compliance with the principles set out in Article 107A of the Constitution.</li> <li>Litigation is too expensive for most people to afford.</li> </ul>
<b>Privacy and Information and</b>	Tanzania's Cybercrime Act (2015) <sup>210</sup> and the Media services Act	Gaps include:

<p><b>Communications Technologies (ICT) Law</b></p> <p>Has the State put in place information security and privacy laws and regulations to support ethical corporate behaviour and business respect for human rights?</p>	<p>(2017) have greatly restricted the right to information. Other laws which significantly limit access to information are the 2017 Amendments to the Mining Act, the Statistics Act (2015), the National Security Act (1970), the Electronic and Postal Communications Act (2010), the Records and Archives Management Act (2002) and the Public Services Act (2002).</p> <p>The Statistics Act (2015) limits the publication of statistics that have not been approved by the chief government statistician.<sup>211</sup></p> <p>The Media Services Bill is a proposed bill that has yet to be enacted by parliament and would replace the existing Newspaper Act (1972) and the Broadcasting Services Act.<sup>212</sup> The Newspaper Act limits freedom of expression by granting the Minister discretionary powers to ban the publication of newspapers.<sup>213</sup> While the new bill would bring minor improvements, it contains a provision requiring journalists to request permission from government regulatory bodies. This would jeopardise Tanzania's freedom of expression and breach the country's international obligation to uphold freedom of expression.<sup>214</sup></p>	<ul style="list-style-type: none"> <li>• The Cybercrime Act is unconstitutional because it restricts the right to information.</li> </ul>
<p><b>Other Laws and Regulations</b></p> <p>Has the government put in place any other relevant laws and regulations aimed at protecting and promoting human rights from business-related harms, including torture, genocide, and crimes against humanity? Do such laws and regulations extend extraterritorially, as permitted by the UNGPs and international human rights law?</p>	<p>The Anti-Human Trafficking in Persons Act (2008) was enacted to combat human trafficking in all forms, including forced labour and sexual harassment, by mandating stricter investigation and prosecution standards, and affording protection to victims of trafficking.<sup>215</sup></p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• The law includes legal language that is not familiar to laymen and is not effectively enforced by the government.</li> </ul>

## 1.6 Investigation, Punishment, and Redress Measures

Do relevant State agencies responsible for law enforcement address business and human rights?

Indicators & Scoping Questions	Implementation Status	Gaps
<b>Sector Risk Assessment</b>  Is the State undertaking or supporting any specific activities to identify specific business sectors or activities that may have particularly negative impacts on human rights, such as the extractive, apparel, and other sectors?	<i>None found.</i>	The State has not undertaken or directly supported any activities to identify specific business sectors or activities that may have particularly negative impacts on human rights, such as the extractive industries, agricultural or tourism sectors. These constitute Tanzania's three key industry sectors.
<b>Vulnerable Group Assessment</b>  Is the State undertaking or supporting any specific activities to identify specific impacts on particularly vulnerable groups, such as women, children, minorities, and indigenous peoples?	<p>Local government authorities in each district have funds allocated for vulnerable groups, but securing these funds involves complicated procedures. This funding is provided by the central government (budget allocated), not the business sector.<sup>216</sup> The TASAF-Tanzania Social Action Fund has been formed for the purpose of identifying vulnerable groups who require government support or a start-up fund. In some districts the vulnerability assessment is conducted by social welfare officers and the local authorities.</p> <p>Some business sectors have started providing voluntary support to vulnerable groups but not statutorily.<sup>217</sup></p>	Gaps include: <ul style="list-style-type: none"> <li>• The local government authorities in each district have allocated funds for vulnerable groups, but securing these funds involves complicated procedures.</li> <li>• There is a lack of comprehensive and accurate data on what constitutes vulnerability and that the groups benefitting from the initiative are in fact the most vulnerable.</li> </ul>
<b>Police</b>  Have police authorities been provided with information and training on issues related to business and human rights? Are the police given statutory authority to address business-related human rights harms?	<i>None found.</i>	Gaps include: <ul style="list-style-type: none"> <li>• The Police Forces are not adequately trained on human rights. Although they have received training, they do not conform to national or international standards related to arrest, interrogation and confinement.</li> </ul>



<p><b>Labour, Health, and Safety</b></p> <p>Are relevant labour, health, and safety authorities aware of potential or actual adverse impacts by business on labour, health, and safety? Are such State actors given statutory authority to address business-related human rights harms?</p>	<p>The Occupational Health and Safety Authority (OHSA) tries to visit and empower relevant stakeholders. It also undertakes some investigations in affected areas, however, its capacity in terms of funds and human resources is quite low. Each year, OHSA runs health and safety courses available to all workplaces on the Tanzanian mainland.<sup>218</sup></p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• The capacity of the OHSA in terms of funds and human resources is quite low.</li> </ul>
<p><b>Environment</b></p> <p>Have relevant environmental authorities been provided with information and training on issues related to business and human rights? Are such State actors given statutory authority to address business-related human rights harms?</p>	<p>The Environment Section under the Office of the Vice President deals with environmental issues.<sup>219</sup> The Section has the authority to conduct inspections and impose sanctions for non-compliance with the Environmental Law.</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• There are enforcement gaps due to e.g. lack of financial resources, equipment, skilled personnel (e.g. may not be trained on social and human rights issues or the linkages between environment and social and human rights issues).</li> <li>• Community stakeholders may not be aware of where they can report adverse environmental impacts.</li> <li>• There is limited interaction between the Environment Section and other relevant government agencies and bodies, i.e. there is a lack of coordination within the Government on addressing environmental matters in a holistic manner.</li> </ul>
<p><b>Tax</b></p> <p>Have relevant tax authorities been provided with information and training on issues related to business and human rights and connections to local tax laws? Are such State actors given statutory authority to address business-related</p>	<p>There is no clear evidence of any capacity building efforts. However, following a discussion with the LHRC, the Tanzania Revenue Authority (TRA) drafted a Memorandum of Understanding (MOU) outlining how it could work together with the LHRC to introduce human rights into its business operations.</p>	

human rights harms?		
<b>Judicial and Non-Judicial Grievance Mechanisms</b>	<i>See Pillar III below.</i>	<i>See Pillar III below.</i>
<b>PRINCIPLE 2</b> States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.		
<b>2.1. Home State Measures with Extraterritorial Implications</b> Has the State adopted domestic measures which set out clearly the expectation that businesses domiciled in their territory and/or jurisdiction respect human rights abroad?		
<b>Indicators &amp; Scoping Questions</b>	<b>Implementation Status</b>	<b>Gaps</b>
<b>Expectation Setting</b> Has the State set out and fully disseminated to relevant government agencies (including embassies and consulates) clear policy statements on the expectation that all companies domiciled in its territory and/or jurisdiction respect human rights?	<i>None found.</i>	Gaps include: <ul style="list-style-type: none"> <li>The State has not set out relevant government agencies that have created policy statements for companies in Tanzania, this is because the government has not published any information related to business and human rights policies.</li> </ul>
<b>Criminal or civil liability regimes</b> Has the State introduced criminal or civil liability regimes that allow for prosecutions or civil lawsuits against corporations based on where the corporation is domiciled, regardless of where the offence occurs?	<i>None found.</i>	Gaps include: <ul style="list-style-type: none"> <li>The State has not been involved in assigning criminal liability to businesses. Although the LHRC sued African Barrick Gold Mining Company in the UK, the Tanzanian Government was silent.<sup>220</sup></li> </ul>
<b>“Duty of care” for parent companies</b> Has the State established a “duty of care” for parent companies in terms of the human rights impacts of their subsidiaries, regardless of where the subsidiaries operate?	<i>None found.</i>	As above.
<b>Reporting requirements</b>	<i>None found.</i>	Gaps include:

Has the State introduced requirements on companies to publicly report on their operations abroad, including on human rights and labour issues?		<ul style="list-style-type: none"> <li>There is little supervision of business and human rights issues as the government is primarily concerned with revenue collection. This is demonstrated by the government's formation of the Tanzania Mining Audit Agency (TMAA), which is primarily responsible for auditing mining production and revenues paid to the government.<sup>221</sup></li> </ul>
<b>Support for soft law measures</b>  Does the State support and participate in relevant soft-law instruments, such as the OECD Guidelines and the Due Diligence Guidance for Responsible Supply Chains?	<i>None found.</i>	As above.
<b>Performance standards for over-seas investments</b>  Do State institutions that support overseas investment have and enforce performance standards that support the protection and promotion of human rights?	<i>None found.</i>	As above.
<b>2.2. Implementation of Recommendations from International or Regional Bodies</b>  Has the State received and followed-up on recommendations from international or regional bodies, such as the UN Human Rights Council and UN treaty bodies, regarding steps to prevent abuse abroad by business enterprises domiciled within the State's territory or jurisdiction?		
<b>Indicators &amp; Scoping Questions</b>	<b>Implementation Status</b>	<b>Gaps</b>
<b>Human Rights Council Recommendations</b>	Tanzania was reviewed under Universal Periodic Review (UPR) in 2011. <sup>222</sup> It received comments and there is currently an ongoing process to review the implementation of the UPR recommendations. Most recommendations in the first cycle were accepted, e.g. the recommendation on implementing the Human Rights Action Plan was accepted and implemented, and the Human Rights Action Plan itself addresses a number of issues raised in the UPR.	Gaps include: <ul style="list-style-type: none"> <li>Some human rights concerns raised in the UPR report have still not been accepted by the State, e.g. Indigenous Peoples rights, the ratification of the CAT and the 2<sup>nd</sup> optional protocol to the ICCPR.</li> </ul>
<b>UN Treaty Body Recommendations</b>	Tanzania submits reports to the Treaty Monitoring Bodies (TMBs) as required by United Nations conventions. However, Tanzania often combines periodic reports from different years and submits them to	Gaps include: <ul style="list-style-type: none"> <li>Relevant recommendations are not always fully implemented.</li> </ul>

	multiple treaty monitoring bodies. <sup>223</sup>	
<b>Other International or Regional Body Recommendations</b>	Tanzania has put very little effort into creating recommendations for international or regional bodies. For example, Tanzania failed to submit any reports to the African Commission on Human and Peoples Rights. <sup>224</sup>	Gaps include: <ul style="list-style-type: none"> <li>Relevant recommendations are not always fully implemented.</li> </ul>
<b>GUIDING PRINCIPLE 3</b> In meeting their duty to protect, States should: <ul style="list-style-type: none"> <li>(a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;</li> <li>(b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;</li> <li>(c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;</li> <li>(d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.</li> </ul>		
<b>3.1. Development and Enforcement of Relevant Laws and Regulations</b> What laws and regulations exist that directly or indirectly regulate business respect for human rights?		
<i>See section 1.5., above.</i>		
<b>3.2. Relevant Policies</b> Have policies that seek to foster business respect for human rights been adopted and publicly communicated by the State?		
<b>Indicators &amp; Scoping Questions</b>	<b>Implementation Status</b>	<b>Gaps</b>
<b>National Action Plans (NAPs)</b> Has the State introduced and/or implemented policies to help facilitate business respect for human rights through the adoption of National Action	The Government has committed to a NAP in the Human Rights Action Plan 2010-2017.	Gaps include: <ul style="list-style-type: none"> <li>There is not yet a governmental process in place setting out how and when the NAP will be developed.</li> </ul>

Plans (NAPs) on business and human rights, corporate social responsibility, development, anti-discrimination, government transparency, women's rights, or human rights in general?		
<p><b>Sector-Specific Policies</b></p> <p>Has the State introduced and/or implemented sector-specific policies to help facilitate business respect for human rights within particularly high-risk industries, such as the extractive, apparel, and other sectors?</p>	<p><b>Agri-business</b></p> <p>Tanzania considers agriculture a priority sector and adopted the Agricultural Sector Development Strategy (2005) (ASDS) to modernise agriculture through active private sector involvement. Implemented through the Agricultural Development Programme (ADSP), this strategy provides an agricultural policy framework prioritising high value crop exports.<sup>225</sup></p> <p>In 2011, the government launched the Tanzania Agriculture and Food Security Investment Plan (TAFSIP), a ten-year investment plan “coordinating and harmonising” existing agricultural initiatives and aiming to achieve 6% annual growth in the sector.<sup>226</sup> Most recently, the National Agricultural Policy (2013) was developed to alleviate poverty and promote economic growth through enhancing food security and attracting foreign investment.<sup>227</sup></p> <p>The Agriculture First “Kilimo Kwanza” Policy was implemented in 2009 with the Southern Agricultural Growth Corridor of Tanzania (SAGCOT) following in 2010. SAGCOT is a public private partnership (PPP) comprising the Tanzanian government, companies and farmers working together to improve food security and ensure environmental sustainability.<sup>228</sup></p> <p>In 2015 the government implemented four large agricultural programmes together with the Agricultural Sector Development Programme, Eastern Africa Agricultural Productivity Programme, Japan Policy and Human Development, and Southern Agricultural Growth Corridor of Tanzania.<sup>229</sup> These projects have boosted productivity and helped farmers to access markets.</p>	<p>Gaps regarding natural resources include:</p> <ul style="list-style-type: none"> <li>• There is very little public participation in implementing various developmental programs for natural resources. Even local government authorities in resource rich areas are not consulted. For instance, no major mining companies provide data on their operations at district level; this data is only available at ministry level.<sup>245</sup></li> <li>• The National Natural Gas Policy of Tanzania (2013); National Petroleum Policy (2014) and National Energy Policy (2015) all contain provisions referring to workers' safety; environmental protection: women and transparency but do not mention human rights explicitly.</li> </ul> <p>Gaps regarding tourism include:</p> <ul style="list-style-type: none"> <li>• Reluctance of the government to encourage investors to consult local communities.</li> <li>• Lack of staff trained in hospitality and tourism.</li> <li>• Difficult for small enterprises to access credit facilities.</li> </ul>

	<p>To further support agricultural development, the government owned, Tanzania Agriculture Development Bank (TADB) was established in 2012 to provide low interest rate loans (8-12%) to subsistence farmers. Improving access to finance is intended to guarantee food security and promote commercial farming.</p> <p>The National Policy on Youth Development (2007) highlights the importance of providing employment opportunities for young people in animal husbandry and animal husbandry.</p> <p>In addition, the National Agriculture Policy specifies the importance of publicising information on land laws and encourages the government to enforce current land management provisions.</p> <p>Promoting the production of food crops, meeting domestic food needs; exporting surplus supplies and ensuring food imports comply with internationally accepted safety and quality standards is dealt with by the Food Security and Nutrition Policy.</p> <p>Other relevant frameworks include:</p> <ul style="list-style-type: none"> <li>• Agricultural Marketing Policy (2008)</li> <li>• EAC Agricultural and Rural Development Policy (2006)</li> </ul> <p><b>Mining</b></p> <p>Tanzania’s Mineral Policy (2009) outlines the policy framework for sustainably developing the country’s mineral resources to accelerate socioeconomic development.<sup>230</sup> Human rights are not referred to directly, but the policy stipulates that mining companies are required to provide “credible corporate social responsibility policies” and are encouraged to involve local communities in designing these projects.<sup>231</sup></p> <p>In the 2016/17 budget the Government proposed introducing training and subsidies totalling TZS 900 million for artisanal miners. It also plans to designate areas for artisanal miners and increase the capacity of inspection and safety institutions to reduce mining accidents.<sup>232</sup></p>	<ul style="list-style-type: none"> <li>• Poorly coordinated land management for tourism development.</li> <li>• Complicated and expensive application procedure for business licenses. Multiple separate licences are required to operate in this sector including car/bus rental licenses; tour operator licences and travel agency licences.</li> <li>• Local communities are not sufficiently involved in planning tourism projects and often do not benefit fully from them.</li> <li>• Lack of comprehensive policy, legal and institutional frameworks that provide clear guidelines and procedures for development and implementation.</li> <li>• Lack of realistic and comprehensive technical, socio-economic and commercial feasibility analysis which leads to poor project design.</li> <li>• Inadequate enabling environment which includes lack of long-term financing instruments and appropriate risk sharing mechanisms.</li> <li>• Insufficient capacity in negotiations, procurement, implementation and management.</li> </ul> <p>Gaps regarding agri-business include:</p> <ul style="list-style-type: none"> <li>• Although the existing investment framework for has played a key role in attracting domestic and foreign investment</li> </ul>
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	<p>To protect the environment and workers' safety, the government will strengthen its institutional capacity to enforce the relevant laws; require mining companies to set aside funds for environmental rehabilitation and mine closure obligations and provide education on health and safety.<sup>233</sup> The government has also committed to promoting the participation of women in mining and to more effectively enforce laws prohibiting child labour.<sup>234</sup></p> <p>Investors are required to provide compensation, relocation and resettlement for communities displaced by mining activities.<sup>235</sup> Transparency is considered critical, with the government committing to review the current legal and regulatory framework.<sup>236</sup> In 2006, Tanzania joined the Extractives Industry Transparency Index (EITI) and was deemed compliant in 2011, following the publication of its first report.</p> <p>Other relevant policies:</p> <ul style="list-style-type: none"> <li>• The Environmental Impact Assessment (EIA) Guidelines – Mineral Sector (2014).</li> </ul> <p><b>Oil and gas</b></p> <p>With its latest gas discovery valued at over \$8 billion, Tanzania has affirmed its status as one of Africa's "Gas Giants."<sup>237</sup> The state owned Tanzanian Petroleum Development Corporation has led efforts to develop the country's natural gas reserves through the construction of a pipeline and LNG export terminal.</p> <p>In July 2015, the government passed the Petroleum Act; the Tanzania Extractive Industry (Transparency and Accountability) Act and the Oil and Gas Revenues and Management Act to consolidate existing legislation.</p> <p>Management of the oil and gas industry rests with the government and the Minister for Energy and Minerals is responsible for granting licences.<sup>238</sup> Publication of extractives industry concessions, contracts and licences is mandatory, with non-compliance a criminal offence punishable with a TSh 150 million fine.<sup>239</sup></p> <p>The Oil and Gas Revenues Act establishes the Oil Fund which is responsible for</p>	<p>in agriculture, it could be improved further by addressing: investment incentives, protection of land tenure; intellectual property rights; access regulations for foreign investors in some sectors.</p> <ul style="list-style-type: none"> <li>• Access to land for instance, remains a challenge for investment in most economic sectors, particularly agriculture.<sup>246</sup></li> <li>• Centralization of TIC and lack of clear links with local government authorities (many investors would need support at the local level).</li> </ul>
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	<p>maintaining fiscal stability, promoting socio-economic development, and protecting existing resources for future generations.<sup>240</sup></p> <p>Despite this new legislation, uncertainty still looms over the current oil and gas regulations.<sup>241</sup> The 2016/2017 budget committed to training public servants to perform specialised audits throughout the extractive industries to help boost revenue collection.</p> <p>Other relevant policies include:</p> <ul style="list-style-type: none"> <li>• Local content Policy of Tanzania for Oil and Gas Industry (2014)</li> </ul> <p><b>Tourism</b></p> <p>The Tanzania National Tourism Policy (1999) provides the framework for promoting sustainable tourism and is supported by the Tourism Act (1998).</p> <p>Tour operators must be licensed and tour guides registered in accordance with this Act, with the failure to do so constituting a criminal offence punishable by a fine or imprisonment.<sup>242</sup></p> <p>The Tanzania Tourism Licensing Board (TTLB) is responsible for issuing the requisite licenses and comprises a chairman appointed by the Minister, six members of the public and five private sector representatives.<sup>243</sup></p> <p>Tanzania's Wildlife Policy (2007) outlines the Ministry of Natural Resources and Tourism's policy for boosting sustainable conservation while developing responsible tourism.<sup>244</sup> The government emphasises the role of the private sector in supporting tourism through the provision of the necessary infrastructure and communications technology.</p> <p>To further strengthen investment the Government helped to establish the Tourism Confederation of Tanzania (TCT), to represent private sector interests. Tanzania's Tourism Board replaced the Tanzania Tourist Corporation in 1992 and is responsible for promoting the country as an international tourist destination and educating Tanzanians about the importance of the industry.</p> <p><b>Infrastructure Policy Framework</b></p>	
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	<p>The regulatory framework to encourage private participation in infrastructure has recently been enhanced by the PPP Act (2010); PPP Regulations (2011) and the Public Procurement Act (2011).</p> <p>These legal instruments could have a very positive impact, especially if they are properly implemented by procurement entities and by Tanzania's PPP Unit.</p>	
<b>3.3 Corporate Reporting and Public Communications</b> What types of business enterprise reporting and public communications, that describe how they address their human rights impacts, are required by law?		
Indicators & Scoping Questions	Implementation Status	Gaps
<b>Financial Reporting</b> Is corporate financial reporting required by the State? Are human rights impacts are "material" to the economic performance of the reporting company?	Corporate financial reporting in Tanzania is governed and regulated by the National Board of Accountants and Auditors (NBAA). <sup>247</sup> The NBAA describes the mandatory requirements that corporate entities must comply with when submitting financial reports written by corporate directors.	Gaps include: <ul style="list-style-type: none"> <li>Human rights impacts are not considered "material" to the economic performance of the reporting company according to the NBAA.<sup>248</sup></li> </ul>
<b>Non-Financial Reporting</b> Is corporate non-financial reporting required and enforced by the State? Is the law clarifying that, in some cases, human rights impacts are "material" to the performance and operations of the reporting company?	Mandatory non-financial reporting includes Environmental Impact Assessments (EIAs). <sup>249</sup>	Gaps include: <ul style="list-style-type: none"> <li>Local communities may not understand all the information in EIAs and greater efforts must be taken to include non-technical summaries to make this information accessible to them.</li> </ul>
<b>Public Consultations</b> Are there legal requirements for companies to have public consultations before, during, and after the commencement of a major project that may impact local communities? Is there a requirement to gain free, prior, and informed consent (FPIC) of impacted communities? Is there a mandatory public release of	The Village Land Act, Environmental Management Act, and the Tanzania Investment Act <sup>250</sup> demand companies publish environmental and social impact assessments. In addition, this legislation requires companies to conduct public consultations before, during, and after the commencement of any major project that may impact local communities. However, the government still lacks the power to effectively implement these provisions due to corruption and a	Gaps include: <ul style="list-style-type: none"> <li>Despite the legal provisions demanding public consultations, these do not always occur in practice. Even when they do occur, steps are not always taken to ensure that all relevant rights-holders (including vulnerable groups) can participate.</li> <li>Local communities may be informed that the consultation is occurring but often they are not</li> </ul>

environmental and social impact assessments by companies?	lack of qualified personnel. <sup>251</sup>	<p>provided with sufficient information to participate meaningfully.</p> <ul style="list-style-type: none"> <li>• It is the Village Assembly that ultimately determines whether investments should be accepted. However, not all villagers many attend; further incentives are necessary to encourage people to attend.</li> <li>• Consultation may occur between village leaders and investors, without input from other local community members.</li> <li>• Information on the attendance at public consultations and records of important issues raised are not properly documented.</li> </ul>
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#### 3.4. Guidance and Incentives

Does the State provide guidance and incentives for companies in terms of respect for human rights?

Indicators & Scoping Questions	Implementation Status	Gaps
<p><b>Guidance based on industry sectors, human rights issues and company size</b></p> <p>Has the State developed guidance for businesses on respecting human rights that is appropriate to different industry sectors (for example, high-risk sectors such as extractives), particular human rights issues (for example, working conditions, discrimination), and different types of corporations (for example, MNEs, SMEs)?</p>	<p>Tanzania has enacted various laws to regulate certain industry sectors by prohibiting discrimination in the workplace,<sup>252</sup> and promoting health and environmental standards that conform to human rights standards.<sup>253</sup></p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• Implementing this legislation in practice is challenging.</li> </ul>
<p><b>Guidance on expected outcomes and best practice</b></p> <p>Has the State provided indicators of expected human rights outcomes, information regarding relevant national laws and regulations, and examples of best practice and due diligence methods?</p>	<p><i>None found.</i></p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• There is currently no guidance provided to investors regarding expected outcomes and best practice.</li> </ul>
<p><b>Incentives</b></p>	<p><i>None found.</i></p>	<p>There are currently no incentive structures in</p>

Has the State provided incentives for business respect for human rights, such as favourable treatment following non-mandatory self-reporting by companies of human rights policies and practices?		place whereby the State encourages business respect for human rights.
<b>3.5. National Human Rights Institutions (NHRIs)</b> Has the State formally recognised and supported the role of NHRIs in promoting implementation of the UNGPs?		
Indicators & Scoping Questions	Implementation Status	Gaps
<b>NHRI Establishment, Recognition, and Support</b>  Has the State established a National Human Rights Institution (NHRI)? If so, how was the NHRI established, and what kind of recognition and support does the State provide for the NHRI?	<p>Tanzania's NHRI was established in 2001 to accommodate the establishment of the Commission of Human Rights and Good Governance (CHRAGG), following amendments to the Constitution <sup>254</sup></p> <p>CHRAGG operates under the Ministry of Constitutional and Legal Affairs, and the State of Tanzania provides support to CHRAGG, including both employment and financial resources. Commissioners are appointed to CHRAGG by the Chairperson of the central government, who is appointed by the president of United Republic of Tanzania.</p> <p>More specifically, the Basic Duties and Enforcement Act<sup>255</sup>, outlines the necessary procedures that should be used to enforce sections 12 to 29 of the Constitution of Tanzania. It also informs people of their rights to redress through the court system.</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• The establishment of Tanzania's NHRI, CHRAGG, is mandated by the Constitution of the United Republic of Tanzania,<sup>256</sup> which is implemented through the Commission for Human Rights and Good Governance Act of 2001.</li> <li>• CHRAGG decisions are non-binding and the Commission has no legal authority to enforce its decisions.<sup>257</sup></li> <li>• CHRAGG is partially independent in the sense that the Commissioners are presidentially appointed, but they subsequently function as separate entities.<sup>258</sup></li> <li>• The President has the power to bar any investigation of particular persons by CHRAGG, and can also request special reports from CHRAGG Commissioners.<sup>259</sup></li> </ul>
<b>NHRI Focus on Business and Human Rights</b>  Does the NHRI's mandate include business and human rights? Does the State finance NHRI activities within the field of business and human rights? Does the State support the	<p>Tanzania's NHRI, CHRAGG, works to implement the country's National Action Plan on Human Rights and has committed to promoting business and human rights throughout Tanzania by making it one of the Commission's thematic working areas.<sup>260</sup></p> <p>CHRAGG has carried out a National Baseline Assessment and is committed to supporting and promoting the development</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• CHRAGG receives little resource support from the government to work on strengthening the institution's work on business and human rights. It has also received limited support to develop a national action plan on business and human rights together with the government.</li> </ul>

NHRI in providing guidance on human rights to business enterprises? Does the State support the NHRI in monitoring the national business and human rights situation and to provide access to justice for victims of corporate-related human rights abuses? Has the role of the NHRI in promoting implementation of the UNGPs been formally recognized, and, if so, does the State support the NHRI in that role?	of a National Action Plan on Business and Human Rights.	<ul style="list-style-type: none"> <li>No active and structured collaboration is currently in place between CHRAGG and the key government stakeholders responsible for the development of a National Action Plan on Business and Human Rights. Although government stakeholders participated in consultations about the development of a baseline assessment, there is currently no systematic and structured collaboration. This is problematic as effective collaboration is critical to the development and success of a National Action Plan.</li> </ul>
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#### GUIDING PRINCIPLE 4

States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

#### 4.1. Businesses Owned or Controlled by the State

Does the State exercise special measures to support the human rights performance of State-owned or controlled business enterprises?

Indicators & Scoping Questions	Implementation Status	Gaps
<b>Human Rights Due Diligence Requirements</b>  What types of human rights due diligence measures by State-owned or controlled business enterprises are required by the State? How do associated government departments ensure that effective human rights due diligence is being carried out? What type of scrutiny and oversight	<p>Through the Treasury Registrar, Tanzania's government owns interests and shares in 214 public parastatals, companies and statutory corporations including the National Housing Corporation (NHC) and Tanzania Petroleum Development Corporation.<sup>261</sup></p> <p>State-owned enterprises may be established by the President under S(4) of the Public Corporations Act,<sup>262</sup> incorporated under the Companies Act,<sup>263</sup> or created by an Act of Parliament. The Public Corporations Act includes very general guidance on the establishment of a board of directors,<sup>264</sup> share allocation of newly formed public corporations,<sup>265</sup> and powers of</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>Creating human rights due diligence requirements is still a major challenge in Tanzania. There is no legal framework that obliges business enterprises to conduct due diligence, except the Environmental Management Act. This Act requires corporations to conduct Environmental Impact Assessments (EIAs), supporting the right to a healthy environment.<sup>274</sup></li> </ul>

<p>do such government departments have over these enterprises (for example, inclusion of human rights performance information in management reports to relevant State agencies)?</p>	<p>parent Ministries over public corporations.<sup>266</sup></p> <p>Board members must be properly qualified with appropriate experience in public affairs.<sup>267</sup> All prospective appointments will be reviewed by the Treasury Registrar to ensure these requirements are fulfilled.<sup>268</sup></p> <p>State-owned enterprises are required to report finances to the Central Bank, and make payments through a centralised system. The Public Audit Act (2008) establishes a Controller and Auditor General, responsible for auditing reports on the accounts of all public authorities and other bodies.<sup>269</sup></p> <p>If public corporations are created by an Act of Parliament, this legislation may include more detailed corporate governance and reporting provisions. The National Housing Corporation Act (1990) requires the NHC's Board of Directors to provide annual reports on the conduct of the business, including the Minister's directions from the last financial year and the state of their implementation.<sup>270</sup></p> <p>Current governance policies have been criticised by the Controller and Auditor General of Public Authorities due to the lack of clarity regarding boards of directors' responsibilities and blurred separation of powers between the government, National Assembly and boards of directors.<sup>271</sup> In addition, internal audit departments are weak and there is no composite law outlining corporate governance principles.<sup>272</sup></p> <p>Apart from the establishment of CHRAGG, the Tanzanian Government has also established the Public Ethics Secretariat whose primary responsibility is to ensure the ethical behaviour of public officials.<sup>273</sup></p>	<ul style="list-style-type: none"> <li>• The Tanzania Investment Centre (TIC), established by the Investment Act (1997) plays a minor role in safeguarding human rights.<sup>275</sup> However, the Act's main purpose is to promote investment in Tanzania.</li> <li>• Tanzania has not adopted a human rights-based approach to development projects, with government policies prioritising foreign investment over the protection of human rights.</li> <li>• There are no express legislative provisions demanding public corporations comply with environmental, social, and human rights laws. They are, however, required to adhere to national laws and treaties ratified by the country.</li> </ul>
<p><b>Supply Chain Management Requirements</b></p> <p>What types of supply chain management measures by State-owned or -controlled business</p>	<p><i>None found.</i></p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• There is no evidence in laws or policies that the government requires State-owned or controlled businesses to undertake supply chain management to ensure respect for</li> </ul>

enterprises are required by the State? How do associated government departments ensure that effective supply chain management is being carried out? What type of scrutiny and oversight do such government departments have over these enterprises (for example, inclusion of supply chain information in management reports to relevant State agencies)?		human rights.
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#### 4.2. Businesses Receiving Substantial Support and Services from State Agencies

Does the State exercise special measures to support the human rights performance of businesses receiving substantial support and service from State agencies (for example, export credit agencies, public banks, public pension funds, official investment insurance or guarantee agencies, development agencies, or development finance institutions)?

Indicators & Scoping Questions	Implementation Status	Gaps
<b>Human Rights Considerations</b>  Has the State required that businesses receiving substantial support and services from State agencies take into account human rights considerations?	<i>None found.</i>  The government has substantial interests in several banks including the National Bank of Commerce (NBC), in which it has a 40% share. The Tanzanian Women's Bank is government owned and the Tanzania Postal Bank is a government institution. Consequently, increasing the human rights requirements of such institutions is important.	Gaps include: <ul style="list-style-type: none"> <li>There is no evidence in laws or policies that businesses receiving substantial state support are required to take human rights considerations into account.</li> </ul>
<b>Human Rights Due Diligence Requirements</b>  What types of human rights due diligence measures by State-supported businesses are required by the State? How do associated government departments ensure that effective human rights due diligence is	Although various laws have been enacted to regulate corporate operations, <sup>276</sup> most corporate enterprises in Tanzania do not conduct due diligence, nor are they required to do so in order to minimise negative impacts on society and the	Gaps include: <ul style="list-style-type: none"> <li>There is no evidence in laws or policies that businesses receiving substantial state support are required to include human rights in their due diligence systems and processes.</li> </ul>

being carried out? What type of scrutiny and oversight do such government departments have over these businesses?	environment.	
<b>GUIDING PRINCIPLE 5</b> States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.		
<b>5.1. Public Service Delivery</b> Does the State ensure that human rights are protected in situations where private enterprises provide for government services that may impact upon the enjoyment of human rights?		
<b>Indicators &amp; Scoping Questions</b>	<b>Implementation Status</b>	<b>Gaps</b>
<p><b>Legislative or Contractual Protections</b></p> <p>Has the State adopted legislative or contractual protections for human rights in delivery of privatised services by the central or local government, for example, for the provision of services related to health, education, care-delivery, housing, or the penal system? Do such protections include a State-performed human rights impact assessment of the potential consequences of a planned privatisation of provision of public services, prior to the provision of such services? Do public procurement contracts clarify the State's expectation that businesses respect human rights in delivering services and comply with human rights standards?</p> <p><b>Awareness-Raising</b></p> <p>What measures does the State take to promote awareness of and respect for human rights by businesses that the State commercially contracts with?</p>	<p>Both public and private public services provided, however, public services are provided by the government and not contracted out. Some private public service providers receive government subsidies, e.g. in the area of health. Water and electricity infrastructure is provided by the government.</p> <p>There are no legal frameworks or contractual obligations to provide social services in Tanzania.<sup>277</sup> For instance, Corporate Social Responsibility (CSR) reports are just considered good practice for corporations and are not required by law. In Tanzania, it is a privilege to receive a CSR report, not a right.</p> <p>As far as social rights are concerned, corporations have ensured that the neighbouring villages close to their operations have access to health, education, water services, and in some areas, they have offered electricity.<sup>278</sup></p> <p>Social services are frequently provided as part of</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>Stakeholders misunderstand the respective duties and responsibilities of the state and companies regarding the provision of social services.</li> <li>In areas where companies provide some social services the government has proved less willing to offer these services and/or ensure that sufficient good quality public services are provided.</li> <li>Limited government or third party oversight, to ensure that social services provided by companies conform to relevant national and international standards.</li> <li>There is no evidence that the government has undertaken an analysis of the human rights impacts of private companies providing public services where this is not</li> </ul>

<p><b>Screening</b></p> <p>What kind of screening processes does the State have in place to promote business respect for human rights? Does the State engage in selective processes that give preferential treatment to companies that demonstrate respect for human rights? Does the State exclude from the bidding process those companies that have demonstrated poor respect for human rights (such as poor and hazardous working conditions, as well as excessive use of force or maltreatment of individuals receiving care)?</p> <p><b>Monitoring and Oversight</b></p> <p>Do relevant State agencies effectively oversee the activities of the enterprises that provide services on behalf of the State? Does the State provide for adequate independent monitoring and accountability mechanisms of the activities of the private providers? Does the State provide for specific oversight of high-risk services, such as those related to health and security?</p>	<p>corporate charity initiatives and not in the form of CSR. It is sometimes argued that companies provide social services to advertise and promote themselves.<sup>279</sup></p> <p>There are examples of companies constructing buildings as part of government contracts or CSR programmes. However, the staff or additional resources required to make these services operational are not provided.</p> <p>The EITI reported that mining companies paid almost USD 15,5 million in corporate social responsibility payments in 2014, this constitutes approximately 2% of total government revenue from the extractives sector.<sup>280</sup></p>	<p>part of their core business, e.g. private mining companies providing health care facilities to workers and local communities.</p>
<p><b>GUIDING PRINCIPLE 6</b></p> <p>States should promote respect for human rights by business enterprises with which they conduct commercial transactions.</p>		
<p><b>6.1. Public Procurement</b></p> <p>Which types of requirements or incentives to respect human rights can be found in legislative measures or in terms of public procurement?</p>		
<p><b>Indicators &amp; Scoping Questions</b></p>	<p><b>Implementation Status</b></p>	<p><b>Gaps</b></p>
<p><b>Planning for Procurement Needs and Risks</b></p> <p>Have State agencies decided whether their contractors must comply with specific human rights or protect against defined human rights harms as a</p>	<p>Tanzania's Public Procurement Act (2011) was enacted to overhaul the country's fragmented and largely unenforced public procurement regulations and is considered critical to achieving good financial management.<sup>281</sup> Corrupt and fraudulent practices</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>Ensuring compliance with public procurement policies has proved problematic, with almost all Public</li> </ul>



<p>contract obligation? If so, have State agencies made an effort to expand the scope of protection and clarify specific human rights definitions to resolve vagueness?</p>	<p>including bribery are strictly prohibited and potentially punishable with a ten year ban on submitting tenders for publicly financed contracts.<sup>282</sup></p> <p>The Act states that the Public Procurement Policy Division (PPPD), established under the Ministry of Finance and Economic Affairs is responsible for reviewing procurement policies, regulations and other similar directives.</p> <p>The Public Procurement Regulatory Authority (PPRA) regulates public procurements and ensures the application of fair, competitive, transparent and non-discriminatory standards.<sup>283</sup> This Authority should also “organise and maintain a system” for publishing information on procurement opportunities, awards or any other information it determines to be of public interest.<sup>284</sup></p> <p>Disputes between procuring entities and tenderers are ordinarily dealt with by the accounting officer, who may choose to constitute an independent review panel to review complaints.<sup>285</sup> This decision is final unless the tenderer refers the matter to the Public Procurement Appeals Authority for review and administrative decision.<sup>286</sup></p> <p>Importantly, the Act allows both local and foreign companies to submit unsolicited Public Private Partnership (PPP) proposals to procuring entities. The procuring entity may, upon consultation with the competent authority, acknowledge intellectual rights over the project idea of the original proponent and recognise it in the tendering process.<sup>287</sup></p> <p>Although tenderers of any nationality may generally participate in procurement proceedings, Tanzanian contractors and consultants will be granted a margin of preference provided they meet the criteria specified by the Act.<sup>288</sup></p> <p>Although the 2011 Act makes no reference to environmental or</p>	<p>Procurement Regulatory Authority (PPRA) annual reports detailing incidences of procurement entities failing to comply with existing regulations. Although the compliance rate increased by 30% between 2007 and 2011, the average level of compliance in 2011 according to PPRA audit reports was 68%.<sup>291</sup></p> <ul style="list-style-type: none"> <li>• There is a lack of market value information available to inform public procurement practices.</li> <li>• Tanzania could develop more attractive incentives to draw on the creative and innovative capabilities of local and international firms, which significantly contribute to economic growth and job creation. Public procurement is an important source of business for firms in a variety of industries. Therefore constantly improving the efficiency Tanzania’s public procurement system by removing access barriers should be considered a key priority for current and future government leaders.</li> </ul>
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	<p>social concerns, the first draft of Tanzania’s National Public Procurement Policy (2012) recognises the importance of these issues.<sup>289</sup> In this document the government commits to ensure:</p> <ul style="list-style-type: none"> <li>• The environmental impacts of public procurement are addressed by all relevant institutions and legislation.</li> <li>• The Public Procurement System is consistent with national and international principles governing environmental protection and climate change. Environmental sustainability is an explicit and an implicit consideration throughout the procurement process.</li> <li>• Companies understand that procurement activities are expected to support wider economic, social and environmental objectives in a manner that can offer real long-term benefits to present and future generations.</li> <li>• The environmental impacts of the contracts are minimised, including waste production, water pollution, emissions and destruction of wildlife habitats.</li> <li>• During the tender evaluation, projects’ potential for environmental and social improvements will be appraised including the creation of economic opportunities for local communities.</li> </ul> <p>Although the government acknowledges little effort has been put into promoting socially responsible public procurement, in the light of mounting complaints from local communities, the government has committed to:<sup>290</sup></p> <ul style="list-style-type: none"> <li>• Use public procurement to achieve social objectives including increased employment, better living standards and social inclusion.</li> <li>• Provide a framework ensuring socially responsible public procurement policies translate into practical benefits for the</li> </ul>	
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	<p>population and are sensitive to gender balance and poverty reduction.</p> <ul style="list-style-type: none"> <li>• Ensure the system is continuously reformed to be consistent with equality and social justice.</li> </ul> <p>There is no human rights due diligence requirement for public procurement contractors.</p>	
<p><b>Providing Notice During Bid Solicitation</b></p> <p>Do State agencies notify potential contractors when there is a significant risk of a human rights violation that undermines fair competition? Does such notice trigger specific disclosure and compliance obligations?</p>	<p>Tanzania has enacted the Public Procurement Act, which regulates public procurement.<sup>292</sup> The Act specifically prohibits corrupt practices, such as illegal bidding by contractors.<sup>293</sup></p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• The Act does not stipulate any human rights considerations on the part of contractors (bidders) in the procurement process.</li> </ul>
<p><b>Screening and Selection</b></p> <p>In addition to evaluating price and capacity, do State agencies evaluate whether potential contractors are responsible, based on integrity and business ethics and on compliance with domestic law that protects the safety and health of workers and communities? Do State agencies engage in selective or targeted public procurement, such as preferential award to discriminated groups (for example, ethnic minorities) or to companies working to achieve specific human right objectives (for example, gender equality)? Do State agencies require contractors to certify that they know their subcontractors, including specific locations of production or supply, and that they have management systems to ensure compliance? Do State agencies exclude companies with commercial contracts in high-risk countries or a</p>	<p>There are no such screening and selection practices in Tanzania. However, the Fair Competition Act provides room for contractors to challenge what they consider to be biased decisions or unfair trade practices through State agencies.<sup>294</sup> Despite the protection of contractors, the Act fails to demand that procurement in Tanzania requires human rights due diligence. For instance, in 2014, \$120 million USD was illegally withdrawn from the Tanzanian central bank in a deal involving three top tier government officials and Independent Power Tanzania Ltd (IPTL), a joint venture between a Tanzanian and Malaysian company.<sup>295</sup> Not only was this action corrupt, but it failed to take taxpayers' rights into consideration and therefore constitutes a rights violation.</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• Environmental, social and human rights considerations are not actively considered in the screening and selection of service providers.</li> </ul>

bad human rights record from public procurement?		
<b>Award Stage</b>  Do State agencies have criteria and sub-criteria for what constitutes the most economically advantageous tender, including human rights criteria? Have State agencies taken steps to clarify how human rights standards and policies might be used to form part of the award criteria for a particular contract? Do State agencies require contractors to disclose information on their supply chain, including specific subcontractors and the addresses of factories or sites of supply? Do State agencies confirm a contractor's assurances and required development of compliance plans during the award stage?	<i>None found.</i>	As above.
<b>Contract Terms</b>  Is the State taking steps to ensure that human rights requirements, material to the procured good or service, are a part of contractual performance clauses? Have State agencies inserted compliance obligations into contract terms? When a State agency identifies a risk of harm or human rights violations, does it authorize contract officers to insert into the contract an obligation to comply with the domestic law of the country of production or supply?	<i>None found.</i>	As above.
<b>Auditing and Monitoring</b>  Do State agencies have information systems to audit and monitor contractors to ensure that the	<i>None found.</i>	As above.

contractor meets its performance or compliance obligations and does not adversely impact human rights? Do such systems respond to work complaints? Are such systems independent from, yet accountable to, the State?		
<b>Enforcement of Contract Terms and Corrective Action</b>  Do State agencies dedicate staff to enforcement of the contract terms and provide them with detailed policies? Have State agencies put in place procedures to correct adverse human rights impacts identified, such as financial or other remedies if a contractor violates human rights? Do the procedures favour changing the behaviour of the contractor to improve their human rights performance rather than simply terminate the relationship? Do State agencies provide for due diligence as both a defence and as a remedy for breach of compliance standards?	<i>None found.</i>	As above.
<b>6.2. Other Commercial Activities</b>  Has the State taken measures to promote awareness of and respect for human rights by other enterprises with which the State conducts commercial activities?		
<b>Indicators &amp; Scoping Questions</b>	<b>Implementation Status</b>	<b>Gaps</b>
<b>Business Partnerships</b>  Does the State take measures to promote respect for human rights among other businesses with which it engages in commercial relationships, such as through business partnerships for economic development and innovation (for example, growth funds, or strategic support for innovation in certain sectors, such as green energy or medical technology)?	Tanzania has not taken any measures to promote respect for human rights in businesses that are working under partnerships for economic development and innovation (for example, growth funds, or strategic support for innovation in certain sectors, such as green energy or medical technology).	Gaps include: <ul style="list-style-type: none"> <li>There are no legal or policy-based frameworks providing guidance on business conduct regarding human rights in Tanzania.</li> </ul>

## GUIDING PRINCIPLE 8

States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.

### 8.1. Policy Coherence

Have efforts been made within the State to support knowledge and understanding for human rights and business and the State duty?

Indicators & Scoping Questions	Implementation Status	Gaps
<b>Clear Commitment</b>  Has the State developed a firm written commitment to business and human rights, and has this commitment been communicated to governmental departments? Further, does this commitment help to clarify the role of different departments (for example, labour, business, development, foreign affairs, finance, or justice)?	<i>None found.</i>	Gaps include: <ul style="list-style-type: none"><li>• The State has made no clear commitment to directly support knowledge and understanding regarding business and human rights.</li></ul>
<b>Roles and Responsibilities</b>  Has the State developed a clear division of responsibilities to help coordinate human rights and business issues between and across different government agencies and departments?	<i>None found.</i>	Gaps include: <ul style="list-style-type: none"><li>• There is too little coordination between different government departments working on business and human rights topics.</li><li>• There can also be a lack of clarity between government bodies and authorities regarding their oversight responsibilities: often the roles of different agencies and institutions overlap.</li></ul>
<b>Resources</b>  Has the State provided the responsible entity or office with adequate resources in terms of economic funding and political backing, in order for it to work actively in contributing to meeting the duty of the State to protect human rights within individual areas of responsibility and expertise?	<i>None found.</i>	Gaps include: <ul style="list-style-type: none"><li>• There is no specific entity or office provided with the mandate and resources for dealing with business and human rights issues.</li></ul>
<b>Guidance and Training</b>	<i>None found.</i>	Gaps include:

Has the State developed guidance and training materials to help clarify the roles of different departments in promoting and protecting human rights with regard to the role of business?		<ul style="list-style-type: none"> <li>The State has not developed guidance material or conducted training to help clarify the roles of different departments in promoting and protecting human rights in business.</li> </ul>
<b>GUIDING PRINCIPLE 9</b>  States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.		
<b>9.1. Bilateral and Multilateral Investment Agreements and Arbitration of Disputes</b>  Has the State put in place policies, guidance, monitoring, and reporting for relevant ministries or agencies with regard to the conclusion of bilateral and multilateral investment agreements and with regard to the arbitration of disputes?		
Indicators & Scoping Questions	Implementation Status	Gaps
<b>Human Rights Provisions in IIAs and BITs</b>  Has the State worked at promoting the inclusion of specific human rights provisions in International Investment Agreements (IIEs) and Bilateral Investment Treaties (BITs)?	There is little evidence of state support for human rights provisions in IIEs and BITs because these agreements remain confidential. Although Members of Parliament have attempted to make these agreements publicly available, in rea they usually remain confidential. Consequently, NGOs are unable to ensure that these agreements comply with human rights principles	Gaps include: <ul style="list-style-type: none"> <li>IIEs and BITs remain confidential, despite lobbying efforts by members of parliament, CSOs, community members and academics demanding their publication.</li> <li>Even the newly enacted Transparency Act has not led to the publication of most investment contracts.</li> </ul>
<b>Inclusion of Social Issues in IIAs and BITs</b>  Has the State worked at promoting the inclusion of social issues, such as the environment, labour rights, or social rights, in International Investment Agreements and	The Investment Act demands foreign companies guarantee employment opportunities for native Tanzanians. <sup>296</sup> Therefore, labour rights are safeguarded to a certain extent because foreign companies must respect employment laws such as those in the Employment and Labour Relations Act and the Labour Institutions Act. These laws act as safeguards for employment related human rights in Tanzania. <sup>297</sup>  Additionally, mandatory environmental impact assessments and audits under the Environmental Management Act presumably require that	Gaps include: <ul style="list-style-type: none"> <li>There is no systematic inclusion of environmental, social and other human rights issues in bilateral and multilateral investment agreements.</li> </ul>

Bilateral Investment Treaties?	corporations' contracts include provisions to safeguard the human right to a healthy environment. <sup>298</sup>	
<b>Stabilisation Clauses</b>  Has the State put in place measures to ensure that stabilisation clauses do not limit the host government's ability to meet its human rights obligations?	The stabilisation clauses included in many foreign investment contracts play a significant role in impeding the government's ability to meet its human rights obligations. <sup>299</sup> This is demonstrated by the Tanzanian government's inability to alter any of these contractual provisions to benefit the country's people. <sup>300</sup> The government cannot increase taxes or royalties from foreign businesses because they are not politically stable enough to request those changes. Consequently, unless it is able to change the political climate and poverty levels of the country, the government cannot focus on development or improving the lives of its people. Although Tanzania is endowed with significant natural resources, <sup>301</sup> making it ripe for foreign investment, poverty encourages stabilisation clauses, which prevent the government from requesting more money to aid development.	Gaps include: <ul style="list-style-type: none"> <li>There is no policy on avoiding stabilisation clauses in agreements, and whether they are to be used to favour economic equilibrium over full freezing clauses.</li> </ul>
<b>9.2. Government Agreements</b>  Has the State put in place policies and guidance for relevant ministries and agencies with regard to the conclusion of government agreements?		
<b>Indicators &amp; Scoping Questions</b>	<b>Implementation Status</b>	<b>Gaps</b>
<b>Human Rights in Government Agreements</b>  Does the State take measures to ensure that human rights considerations are made in agreements between the State and corporations? Are such agreements aligned with the UN's principles for responsible contracts?	There is no publicly available information to determine whether the State takes human rights into consideration when creating contracts because government agreements are confidential. Citizens cannot gain access to this information, despite the new transparency requirements under the EITI Implementing Act.	Gaps include: <ul style="list-style-type: none"> <li>There is no clear evidence demonstrating that the government normally takes measures to ensure that human rights considerations are part of the agreements between the State and corporations. However, some agreements are apparently aligned with the United Nation's Principles for Responsible Contracts.<sup>302</sup> Typically, the problem with the majority of these agreements is the lack of transparency.<sup>303</sup> Not only are the contracts unavailable to the public, but they are also unavailable to most members of parliament.<sup>304</sup> Consequently it is impossible to find evidence of contracts conforming the UN Principles for Responsible Contracts or</li> </ul>



		human rights principles generally.
<b>The Role of the Home State</b>  How does the home State ensure that companies headquartered within its jurisdiction respect the principles of responsible contracting when those companies enter into agreements with host States?	None found.	Gaps include: <ul style="list-style-type: none"> <li>There is no clear information on Tanzania's role in ensuring that companies headquartered within its jurisdiction respect the Principles of Responsible Contracting when they enter into agreements with the government.</li> </ul>
<b>GUIDING PRINCIPLE 10</b>  States, when acting as members of multilateral institutions that deal with business-related issues, should: <ul style="list-style-type: none"> <li>(a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;</li> <li>(b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;</li> <li>(c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.</li> </ul>		
<b>10.1. Membership in Multilateral Institutions</b>  How does the State seek to ensure that the institutions it is a member of neither restrain its duty to protect nor hinder the business responsibility to respect?		
<b>Indicators &amp; Scoping Questions</b>	<b>Implementation Status</b>	<b>Gaps</b>
<b>Internal Procedures and Commitment</b>  Has the State established procedures and measures to ensure support for business and human rights frameworks, including the UNGPs, in positions taken internationally and regionally (for example, on human rights screening and documenting of negotiating positions, as well as training of trade and development officials on business and human rights	None found.	Gaps include: <ul style="list-style-type: none"> <li>The State has not established procedures and measures to ensure that it support business and human rights frameworks, including the UNGPs. Tanzania's position, both internationally and regionally, does not yet include human rights screening or the documentation of negotiating positions, nor does it include the training of trade and development officials on business and human rights frameworks. Currently, the only State initiative supporting business and human rights has been undertaken by CHRAGG in collaboration with the Legal and Human Rights Centre (LHRC) to ensure respect for human rights in the business realm.<sup>305</sup></li> </ul>

frameworks)?		
<b>Promotional Activities</b>  Does the State promote its duty to protect and the corporate responsibility to respect in multilateral institutions, including international trade and financial institutions, the UN system, regional institutions, and with business organisation and workers associations?	There are no government efforts to promote a better understanding of business and human rights. Only a few NGOs are now championing the movement towards holding corporations accountable for human rights abuses. <sup>306</sup>	Gaps include: <ul style="list-style-type: none"> <li>• Very few NGOs, including LHRC, are trying to disseminate knowledge of the UNGPs throughout the country.<sup>307</sup> For instance, LHRC's research shows that most mining companies in Tanzania have a history of human rights violations, however, the government protects these corporations instead of condemning them.<sup>308</sup> Thus, it appears that the government does not actively engage in its duty to protect and ensure corporate responsibility nor does it adequately protect the human rights of its citizens.</li> </ul>

### PILLAR III: ACCESS TO REMEDY

<b>GUIDING PRINCIPLE 25</b>  As part of their duty to protect against business-related human rights abuse, states must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.		
<b>25.1. Redress for Business-Related Human Rights Abuses</b>  Has the State put in place measures to ensure redress for business-related human rights abuses?		
<b>Indicators &amp; Scoping Questions</b>	<b>Implementation Status</b>	<b>Gaps</b>
<b>Sanctions</b>  Has the State put in place mechanisms that introduce civil liability, criminal sanctions, and administrative sanctions, such as fines or limited access to government funding, for human rights abuses?	<b>Environment</b>  The Environmental Management Act (2004) lists both the environmental offences and their requisite sanctions <sup>309</sup> If the right to a healthy environment has been violated, fines should be paid as compensation to affected communities. <sup>310</sup> The Act also lays out a legal and institutional framework for the prevention of harm and for sustainable management procedures. <sup>311</sup> These sections outline the principles for environmental management, impact and risk assessments, prevention and control of harms such as pollution, waste management, environmental quality standards, public participation, and	Gaps include: <ul style="list-style-type: none"> <li>• Lack of non-State-based mechanisms.</li> <li>• Cumbersome procedures in filling human rights petitions in the High Court.</li> <li>• Lack of protection for economic, social, and cultural rights in the Constitution of the United Republic of Tanzania (1977).</li> </ul>
<b>Financial or Non-Financial compensation</b>  Has the State put in place mechanisms		

that ensure compensation, such as fines or restoration for livelihoods for human rights abuses?	compliance and enforcement. <sup>312</sup>	<ul style="list-style-type: none"> <li>Limited resources of enforcement agencies.</li> </ul>
<b>Prevention of harm</b>  Has the State put in place mechanisms that introduce processes for the prevention of harm, such as injunctions or guarantees of non-repetition, for human rights abuses?	<p>Apart from the mandatory requirement of conducting Environmental Impact Assessments (EIAs), there are no other clear processes like injunctions or assurances of non-repetition to prevent human rights abuses.</p> <p><b>Employment</b></p> <p>The Employment and Labour Relations Act (2004) lists specific offences and sanctions, including fines and imprisonment, for any employer who fails to comply with requirements of the Act.<sup>313</sup> It also empowers the district and resident Magistrate's Courts to impose penalties such as fines not exceeding five million shillings, imprisonment for a term of one year, or both, depending on the circumstances of the case.<sup>314</sup> Additionally, the Act provides civil sanctions against employers for the unfair termination of an employee.<sup>315</sup></p> <p>The Labour Institutions Act (2004) gives power to labour officers to inspect and prosecute enterprises for the violation of any labour laws.<sup>316</sup></p> <p>The Employment and Labour Relations Act (2004), also provides both financial and non-financial compensation for employees who have unfairly dismissed. Unfair dismissals do not comply with fair procedures and do not provide employees with substantive reasons for their termination.<sup>317</sup></p> <p><b>Occupational Health and Safety</b></p> <p>The Occupational Health and Safety Act (2003) (OHSA) allows inspectors to issue improvement notices for corporations and provides them with a deadline to remedy the problem.<sup>318</sup></p> <p>The Worker's Compensation Act (2008) allows the Director General of the Workers Compensation Fund to institute proceedings for civil liability. Proceedings can be filed if an occupational injury or disease resulting in the disablement or death of an employee can be attributed to an employer or anyone working under the employer.<sup>319</sup> If this harm was caused by a breach of statutory duty, an employer's wrongful act/omission or the wrongful act/omission of an employee who the employer was responsible for, then</p>	
<b>Apologies</b>  Has the State put in place mechanisms to promote apologies for human rights abuses?		

	<p>courts will allow the victim to recover compensation under civil law.<sup>320</sup></p> <p>The primary objective of the Occupational Health and Safety Act's (OHSA) is to ensure the creation and maintenance of work environments free from occupational hazards that could cause injuries to employees<sup>321</sup> Labour Inspectors help implement the Act by inspecting workplaces to ensure workers' access to their rights of health and safety.<sup>322</sup> It protects against health and safety hazards arising out of or in connection with activities of persons at work.</p> <p><b>Social security</b></p> <p>The National Social Security Fund Act (2013) details the offences and penalties for any person or enterprise that fails to pay within the time prescribed by the Act.<sup>323</sup> Moreover, the regulations state that if a company or person fails to pay the contributions that they owe, this is considered an offence punishable by fines, a term of imprisonment not exceeding six months, or both.<sup>324</sup></p>	
<p><b>State-based Mechanisms</b></p> <p>Has the State put in place judicial and non-judicial, criminal and civil mechanisms where grievances can be raised and addressed? Has the State identified and removed barriers (financial, legal, practical, and evidentiary) to accessing those mechanisms? Are such mechanisms available to address extraterritorial harms, as permitted by the UNGPs and international human rights law?</p>	<p><i>See Guiding Principle 27, below.</i></p>	<p><i>See Guiding Principle 27, below.</i></p>
<p><b>Non-State-Based Mechanisms</b></p> <p>Has the State supported non-State based mechanisms?</p>	<p><i>See Guiding Principle 28, below.</i></p>	<p><i>See Guiding Principle 28, below.</i></p>

25.2. Roles and Responsibility Within States		
Has the State defined clear roles and responsibilities within the State on access to effective remedy?		
Indicators & Scoping Questions	Implementation Status	Gaps
<b>Competent Authorities</b>  Has the State defined competent authorities to investigate allegations of business-related human rights abuse? If so, are these authorities equipped with the knowledge necessary in order to attribute the abuses to the relevant redress mechanism?	<i>See Guiding Principles 26 and 27, below.</i>	<i>See Guiding Principles 26 and 27, below.</i>
25.3. Public Information-Sharing and Accessibility		
Has the State developed measures through which to inform about grievance mechanisms available, grievances received, and relevant processes?		
Indicators & Scoping Questions	Implementation Status	Gaps
<b>Public Information on the Mechanism</b>  Has the State made efforts to promote public awareness and understanding of remediation mechanisms, including how they can be accessed and their accessibility? Does the State inform about the outcome of grievances and actions for follow-up when systemic issues are identified?	<i>None found.</i>  Some information about remediation mechanisms is available through CHRAGG. Civil society also makes efforts to inform people while trade unions share information about CMA with their members.  However, there are no specific State initiatives.  Legal aid in Tanzania is mainly provided by civil society organisations.  Tanzania has enacted the Legal Aid Act No./2017 which regulates legal aid services.	Gaps include: <ul style="list-style-type: none"> <li>• There is little publicly available information on mechanisms providing redress for victims of business-related human rights abuses.</li> <li>• There are no specific State initiatives in place to promote public awareness of remedy mechanisms and their applicability to business-related complaints.</li> <li>• Human rights based education is not embedded in either formal or informal education systems.</li> <li>• The State plays no role in empowering communities to understand their rights or educating them about their rights.</li> <li>• Though Legal Aid Act 1/2017 is in place, the Regulation is not yet made.</li> </ul>
<b>Accessibility</b>  Does the State ensure that the mechanisms are available to all affected stakeholders (including, for example, women, peoples with disabilities, children, and indigenous peoples)? This includes providing services such as legal aid and legal counselling, as well as support to, for example, the NHRI, CSOs, or trade unions that work to ensure greater accessibility within grievance		

mechanisms.		
<b>GUIDING PRINCIPLE 26</b> States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.		
<b>26.1. Judicial Mechanisms</b> Has the State put in place a judicial mechanism with the competency to adjudicate business-related human rights abuses within the national jurisdiction of the State? If so, are these mechanisms in line with the criteria of impartiality, integrity, and ability to accord due process?		
Indicators & Scoping Questions	Implementation	Gaps
<b>National and Regional Courts</b> Do the national and regional courts have the competency to adjudicate business and human rights abuses, including for abuses that take place outside of their territorial jurisdiction, as permitted by the UNGPs and international human rights law? If so, do they do so in a way that is impartial and with integrity and ability to accord due process?	Claims of human rights violations are admissible in the High Court of Tanzania. <sup>325</sup> The Tanzanian court system includes the following: <ul style="list-style-type: none"> <li>• Primary courts</li> <li>• District courts</li> <li>• Resident magistrate courts</li> <li>• The High Court</li> <li>• The Court of Appeal</li> </ul> The courts have jurisdiction over a wide range of business and human rights related matters including occupational health and safety, labour and land.	Gaps include: <ul style="list-style-type: none"> <li>• Inadequate Funding of the judiciary.</li> <li>• Tanzanian citizens have raised complaints to the East African Community Court, the African Human and Peoples' Rights Court and other international mechanisms.</li> <li>• However, there are no government initiatives to actively promote knowledge of, and access to, these mechanisms. Even the NGOs that strive to educate the public about human rights are not able to provide information about them.</li> </ul>
<b>Labour Tribunals</b> Do national labour tribunals have the competency to adjudicate business and human rights abuses? If so, do they do so in a way that is impartial and with integrity and ability to accord due process?	Labour disputes are adjudicated by labour institutions (The Commission for Mediation and Arbitration and The High Court for the Labour Division) established under the Labour Institutions Act. <sup>326</sup> The Labour Institutions Act created the Commission for Mediation and Arbitration (CMA), this institution is responsible for hearing all cases related to the Act in the	Gaps include: <ul style="list-style-type: none"> <li>• Theoretically, the Commission for Mediation and Arbitration should be located in almost every region but due to financial constraints and a shortage of personnel this may not be the case</li> <li>• Some mediators and arbitrators are social workers not</li> </ul>

	<p>first instance. If a complainant is not satisfied, they can then access the court system. CMA decisions are binding. An exception is public servants; public servants raise complaints to the Public Service Commission and can appeal to the President of the Republic of Tanzania. If they are not satisfied with the decision, they can apply to the courts for judicial review of the administrative decision.</p>	<p>lawyers so they may not have all the necessary skills.</p>
<p><b>Other Mechanisms</b></p> <p>Do other judicial mechanisms have the competency to adjudicate business related human rights abuses? If so, do they do so in a way that is impartial and with integrity and ability to accord due process?</p>	<p><b>Land</b></p> <p>Complaints and disputes regarding land can be addressed by the Ward Tribunals in the first instance and the District Land and Housing Tribunals on appeal. These are the mechanisms responsible for hearing land-related complaints in the first instance, with appeal to the court system. The land tribunals have the authority to make binding award decisions.</p> <p>In some instances, village councils have a mandate to manage village land and hear related complaints. However, the council's role is only to advise and its decisions are not binding; if the parties are still dissatisfied they can go to the land tribunals. This only applies to registered villages, in urban areas land related matters are heard by the Ward Tribunals and the District Land and Housing Tribunals.</p> <p><b>Tax</b></p> <p>Tax Appeal Tribunals can be accessed by individuals and companies not satisfied with the decision of the Tanzania Revenue Department. In the first instance disputes are resolved through mediation and where this fails through arbitration; appeal is to the court system.</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• There are too few Land and Housing Tribunals; in some regions there are only two tribunals in a region comprising 60 districts. However, there are sufficient Ward Tribunals.</li> <li>• Corruption and abuse of office is a problem.</li> <li>• General public are often unaware of land laws</li> <li>• Accessing the court system is expensive</li> </ul>
<p><b>26.2. Barriers for Access to Judicial Remedy</b></p>		

Has the State taken measures to ensure that there are no barriers to access to judicial remedy for addressing business-related human rights abuses?		
Indicators & Scoping Questions	Implementation	Gaps
<p><b>Legal Barriers</b></p> <p>Has the State taken measures to ensure that there are no legal barriers to prevent legitimate cases from being brought before the courts? This includes: (1) ensuring that it is possible to hold corporations accountable under domestic criminal and civil laws, meaning that liability exists under the law; (2) ensuring that all members of society can raise complaints, including indigenous peoples, migrants, women, and children, and are afforded the same legal protection as for the wider population; (3) ensuring that extraterritorial harms can be addressed within the courts, as permitted by the UNGPs and international human rights law; and (4) ensuring that issues such as conflicts of law, statutes of limitation, parent company liability, and standards of liability do not result in barriers to victims of business-related human rights harms in accessing the courts?</p>	<p>There has been little progress on developing a legal regime that safeguards human rights in Tanzania. However, in certain circumstances, corporations are held liable for human rights abuses, for example, under the domestic criminal and civil laws.<sup>327</sup></p> <p>In some cases, the State has prevented legitimate cases from being brought before the courts due to the sensitive issues brought up by the cases. Even in civil cases, there are legal barriers stipulated under the Law of Limitations Act (1971), which creates a short time limit for instituting a civil suit in a court of law.</p> <p>There are some provisions for legal aid made, including through:</p> <ul style="list-style-type: none"> <li>• The Legal and Human Rights Resource Centre (LHRC);</li> <li>• University of Dar es Salaam School of Law legal aid programme;</li> <li>• Tanzania Law Society also provide legal aid services.</li> </ul>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• The State has not taken measures to remove barriers in the procedural and substantive law which impede access to justice.</li> <li>• Civil Procedure and Court Rules (both the High Court and the Court of Appeals) still prevent legitimate cases from being heard by the courts.<sup>328</sup> Additionally, decisions made from non-judicial mechanisms have no legal enforceability unless the matter is brought before the High Court.</li> </ul>
<p><b>Practical and Procedural Barriers</b></p> <p>Has the State taken measures to ensure that there are no practical or procedural barriers to prevent legitimate cases from being brought before the courts? This includes: (1) ensuring financial support, (2) providing legal</p>	<p>No clear information available from the judicial branch of the Tanzanian government describing best practices on procedural requirements for adjudicating business and human rights cases could be found.</p>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>• NGO registration involves a lengthy vetting procedure. Furthermore, an NGO that is perceived to be acting against the State's interests may have its registration request denied.</li> <li>• As discussed above, there are some limitations in terms of accessing land-related dispute mechanisms due to physical</li> </ul>



representation or guidance, (3) providing opportunities for class-actions and multi-party litigation; (4) allowing for recovery of attorneys' fees; (5) preventing retaliatory actions against claimants; (6) reforming access to evidence; and (7) providing training for prosecutors and judges.		<p>accessibility.</p> <ul style="list-style-type: none"> <li>• Securing access to legal representation in court is difficult.</li> <li>• Financial constraints, e.g. court fees required to engage an advocate.</li> <li>• Courts are legalistic and citizens may not understand the process or find it difficult to follow.</li> <li>• Physical accessibility: Villagers have to travel to the regional headquarters to attend court. Some regional districts might not have a high court etc.</li> <li>• Victims often lack legal representation while companies employ high profile private lawyers.</li> <li>• Accessing justice can prove slow, with cases involving pastoralists and hunter-gatherers subjected to unreasonable delays. For example, the Loliondo constitutional case (MISC.CIVIL CAUSE No.15 of 2010) has been pending in the High Court of Tanzania, Arusha Registry since December 2010.</li> <li>• Public authorities have proved unwilling to follow court rulings. In 2015 a Joint UPR submission by Pastoralist and Hunters-Gatherers reported that a Wildlife Management Area had been established without the free, prior and informed consent of pastoralists in Vilimavitatu Village. On March 5, 2013 the Court of Appeal<sup>329</sup> ruled in favour of the Barabaig pastoralists, declaring the land should be returned to the community. However, on September 4, 2013, the government demanded the Barabaig leave immediately and burnt down 44 houses. Allegedly the Babati District Council and Vilimavitatu Chairman authorized the evictions which were carried out by police and private security guards.</li> </ul>
<b>Social Barriers</b>	<i>None found.</i>	Gaps include:

Has the State taken measures to ensure that there are no social barriers to prevent legitimate cases from being brought before the courts? This includes: (1) addressing imbalances between the parties, (2) targeted awareness-raising among vulnerable groups (for example, women, indigenous people, and children), (3) availability of child-sensitive procedures to children and their representatives, (4) legal aid and other type of assistance, (5) efforts to combat corruption, and (6) protection of human rights defenders.		<ul style="list-style-type: none"> <li>• The State has not taken any measures to remove social barriers preventing cases from being brought before the courts. As stated earlier, there are many barriers within the court systems themselves.</li> <li>• Women may not be allowed to attend public meetings.</li> <li>• Some parts of society are nomadic e.g. Maasai, this might make it more difficult for these people to access remedy.</li> <li>• Cost issues mean that vulnerable people may find it particularly difficult to access the judicial system.</li> </ul>
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### 26.3. Remedy for Abuses Taking Place in Host-States

Has the State taken measures to address the issue of access of victims to judicial remedy for abuses by domiciliary companies in host States?

Indicators and Scoping Questions	Implementation Status	Gaps
<b>Remedy of Extraterritorial Effect</b>  Has the State put in place measures to promote access to remedy of claimants (including vulnerable groups such as indigenous peoples, women, and children) that have been denied justice in a host State, enabling them to access home State courts?	<i>None found.</i>	Gaps include: <ul style="list-style-type: none"> <li>• The State has not put any measures in place to promote access to remedy for claimants that have been denied justice in a host State.</li> </ul>
<b>Forum Non Conveniens</b>  Does the State allow a court considering a forum non conveniens motion to consider factors against dismissal in addition to factors in favour of dismissal?		

### GUIDING PRINCIPLES 27 & 31

States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

27.1. Types of Non-Judicial Mechanisms		
Has the State provided effective and appropriate non-judicial grievance mechanisms?		
Indicators & Scoping Questions	Implementation	Gaps
<b>Mediation-Based Mechanisms</b>  Does the State provide access of claimants to mediation-based non-judicial mechanisms such as National Contact Points under the OECD Guidelines? Can these mechanisms be used for remedying business-related human rights abuses? Do these mechanisms meet the effectiveness criteria set out in UNGP 31?	In addition to its civil and criminal courts, Tanzania has established a number of non-judicial bodies for addressing human rights abuses, including the Commission for Human Rights and Good Governance (CHRAGG), National Environmental Management Council (NEM) and the Commission for Mediation and Arbitration. The Tax Revenue Appeals Board is mandated to hear tax complaints while non-judicial grievance mechanisms administered by companies can receive complaints related to their activities. Accessing these mechanisms can prove prohibitively expensive due to court and lawyers' fees. <sup>330</sup>  Sometimes Alternative Dispute Resolution (ADR) is used by the courts before proceeding to full adjudication. Mediation agreements registered by the court are binding .  The Prevention and Combating of Corruption Bureau have the authority to arrest those suspected of corruption, investigate the allegations and suspects before a court of law.	Gaps include: <ul style="list-style-type: none"><li>• There are no adequate enforcement mechanisms to ensure that businesses respect human rights.</li><li>• Most stakeholders, including government actors, the business community, civil society, the public and the media are not fully aware of the frameworks available on business and human rights.</li><li>• The absence of policies and laws to regulate business and human rights in Tanzania also prevents realisation of human rights.</li><li>• There are insufficient courts and magistrates in rural regions, some villages are very far away from the nearest court.</li><li>• Many citizens, including the victims of human rights abuses by companies, are unaware of the grievance mechanisms available to them.</li></ul>
<b>Adjudicative Mechanisms</b>  Does the State provide access of the claimant to adjudicative mechanisms such as government-run complaints offices? Can these mechanisms be used for remedying business-related human rights abuses? Do these mechanisms meet the effectiveness criteria set out in UNGP 31?		
<b>Other Mechanisms</b>  Does the State provide access to other types of non-judicial mechanisms? Can these mechanisms be used for remedying business-related human rights abuses? Do these mechanisms meet the effectiveness criteria set out in UNGP 31?		
27.2. Role of the NHRI		

Has the State provided specific competency to the national human rights institution (NHRI) to perform the role as a non-judicial mechanism for addressing grievances?		
Indicators & Scoping Questions	Implementation Status	Gaps
<p><b>Complaints-Handling Role</b></p> <p>Has the State given the NHRI the mandate that allows it to receive and handle complaints relating to corporate human rights abuses?</p>	<ul style="list-style-type: none"> <li>Tanzania's National Human Rights Institution, the Commission on Human Rights and Good Governance (CHRAGG) has a broad mandate, including to:</li> <li>Receive and handle complaints relating to human rights abuses and to give recommendations to the parties, although such recommendations are not binding.<sup>331</sup> The Commission is also mandated to receive allegations and complaints regarding violations of human rights and to institute court proceedings to redress these violations in accordance with Tanzania's Constitution.<sup>332</sup></li> <li>Instigate investigations of its own accord, including to enter premises and to summon a person;</li> <li>Promote awareness of human rights through public education. Although the CHRAGG mandates training should be provided on good governance and human rights, it doesn't specify which stakeholders should receive it. Consequently, CHRAGG arguably has a mandate to provide training to all business and human rights actors including companies.</li> <li>Conduct research and publish information – the promotion and publicity mandate extending broadly to all human rights and good governance issues.</li> <li>Provide legal counselling and advice.</li> <li>Issue interim injunctions if human rights breaches are found.</li> <li>Complaints Handling: This may involve a preliminary investigation into the allegations, summoning the parties involved and mediation. Recommendations cannot include a binding award, but if a party fails to comply with the Commission's recommendation they can be taken to court (within three months of the recommendation being issued).</li> </ul>	<p>Gaps include:</p> <ul style="list-style-type: none"> <li>There are only two zone/branch offices, in Mwanza and Lindi, and a sub-head office in Zanzibar. This impedes access to the Commission in practice.</li> <li>Financial constraints impede the Commission's ability to exercise its mandate.</li> <li>Although the Commission's staff have diverse professional backgrounds, further resources are required to ensure all CHRAGG staff are appropriately trained on human rights and good governance.</li> <li>Recommendations are not binding.</li> <li>CHRAGG has limited resources, which limits its effectiveness.</li> </ul>
<p><b>Supportive Role</b></p> <p>Has the State given the NHRI the mandate that allows the NHRI to be in a supportive role to claimants, such as through mediation, conciliation, expert support, or legal aid?</p>		
<p><b>Awareness-Raising</b></p> <p>Has the State given the NHRI the mandate to promote awareness on remedy to and redress for corporate human rights abuses?</p>		
<p><b>Training</b></p> <p>Has the State given the NHRI the mandate to provide training of relevant stakeholders on their access to remedy for corporate human rights abuses?</p>		

<b>Counselling</b>  Has the State given the NHRI the mandate to provide counselling on which remedy to access?		
<b>27.3. Barriers for Access to Non-Judicial Remedy</b>  Has the State taken measures to ensure that there are no barriers to access to non-judicial remedy for addressing business-related human rights abuses?		
<b>Indicators &amp; Scoping Questions</b>	<b>Implementation Status</b>	<b>Gaps</b>
<b>Practical and Procedural Barriers</b>  Has the State taken measures to ensure that there are no practical or procedural barriers to prevent legitimate cases from being heard by non-judicial mechanisms?	<i>See Guiding Principle 26, above.</i>	<i>See Guiding Principle 26, above.</i>
<b>Other Barriers</b>  Has the State taken measures to ensure that there are no other barriers to prevent legitimate cases from being heard by non-judicial mechanisms?	<i>See Guiding Principle 26, above.</i>	<i>See Guiding Principle 26, above.</i>
<b>PRINCIPLES 28 &amp; 31</b>  States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.		
<b>28.1. Facilitating Access to Mechanisms</b>  Has the State supported access to effective non-State-based grievance mechanisms dealing with business-related human rights harms?		
<b>Indicators &amp; Scoping Questions</b>	<b>Implementation Status</b>	<b>Gaps</b>
<b>Business-Based Grievance Mechanisms</b>  Has the State supported access to business-based grievance mechanisms (such as whistle blower mechanisms or project-level and operational-level grievance mechanisms) through efforts such as dissemination of information and support for access	Consumers Boards in the area of Gas and Petroleum, Civil Aviation.  These boards hear consumer complaints related to these areas and make a decision that is supposed to be implemented by a company or an oversight institution. The complainants can be individuals or corporate	Gaps include: <ul style="list-style-type: none"> <li>Although Tanzania has ratified various International and Regional instruments on Human Rights,<sup>333</sup> there are still no non-judicially based mechanisms in place to support citizen access to business-based grievance mechanisms outside of the cumbersome court system.</li> <li>Tanzanian law does not require companies to establish</li> </ul>

(for example, through guidance documents and tools)?	actors.	grievance mechanisms to hear employee or community complaints.
<b>Multi-Stakeholder Grievance Mechanisms</b>  Has the State supported access to multi-stakeholder grievance mechanisms through efforts such as dissemination of information and support for access?	<i>None found.</i>	Gaps include: <ul style="list-style-type: none"> <li>There is no State supported access to multi-stakeholder grievance mechanisms. The Government is not actively supporting access to multi-stakeholder grievance mechanisms.</li> </ul>
<b>Organizational-Based Grievance Mechanisms</b>  Has the State supported access to organizational-based grievance mechanisms (including the union systems) through efforts such as dissemination of information and support for access?	<i>None found.</i>	Gaps include: <ul style="list-style-type: none"> <li>There is no State support for organisational-based grievance mechanisms, primarily due to the absence of policies and laws that would govern grievances related to business and human rights.</li> </ul>
<b>International Grievance Mechanisms</b>  Has the State supported access to international grievance mechanisms through efforts such as dissemination of information, support for access (for example, through legal aid) as well as support for establishing contact between the claimant and the international system?	<i>None found.</i>	As above.
<b>Regional Grievance Mechanisms</b>  Has the State supported access to regional grievance mechanisms through efforts such as dissemination of information and support for access (for example, through legal aid)?	<i>None found.</i>	As above.
<b>GUIDING PRINCIPLE 31 EFFECTIVENESS CRITERIA FOR NON-JUDICIAL GRIEVANCE MECHANISMS</b>  <b>PRINCIPLE 31</b> <i>(this principle is addressed above in conjunction with the relevant principles on guiding principles on non-judicial mechanisms)</i>  In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:		

- (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) Right –compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

Operational-level mechanisms should also be: Based on an engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

## ANNEX II: STAKEHOLDERS CONSULTED

Stakeholder consultation formed part of the activities in the process of conducting the NBA. CHRAGG consulted stakeholders through bilateral engagement, field missions and stakeholder consultation workshops. The information during the bilateral engagement was obtained from government, business and civil society stakeholders through detailed questionnaires, focus group sessions and interviews. Three field missions – in the extractives industry (Singida-Dodoma), tourism (Zanzibar) and agribusiness (Mbeya) industries – were conducted with local government authorities, selected companies and local communities to verify the accuracy of desk review and fill in missing information. CHRAGG also organised three stakeholder dialogue workshops, in collaboration with BHRT, to share findings of the draft baseline assessment and solicit more inputs. An overview of the stakeholders consulted is provided in the following tables.

**Table 1.0 Overview of stakeholders consulted throught bilateral engagement**

Sector	Institutions
<b>Government</b>	<p><b>MAINLAND</b></p> <ol style="list-style-type: none"> <li>1.Ministry of Constitution and Legal Affairs</li> <li>2.Office of Attorney General</li> <li>3.President’s Office, Regional Administration and Local Government</li> <li>4.Ministry of Lands, Housing and Human Settlements Developments</li> <li>5.Ministry of Energy and Minerals</li> <li>6.Prime Minister’s Office, Labour, Youth, Employment and Persons with Disabilities</li> <li>7.Prime Minister’s Office, Labour, Youth, Employment and Persons with Disabilities, Ministry of Industry, Trade and Investment</li> <li>8.Office of the District Commissioner - Mbarali</li> <li>9.Office of the District Commissioner - Bahi</li> <li>10.Office of the District Commissioner - Ikungi</li> <li>11.Tanzania Investment Centre (TIC)</li> <li>12.Environmental Management Council (NEMC)</li> </ol> <p><b>ZANZIBAR</b></p> <ol style="list-style-type: none"> <li>1.Ministry of State, President’s Office, Constitution, Legal affairs, Public Service and Good Governance (Zanzibar)</li> <li>2.Office of the Attorney General- Zanzibar</li> <li>3.Ministry of Information, Culture, Tourism and Sports- ZANZIBAR</li> <li>4.Ministry of Labour, Youth Development (Zanzibar)</li> <li>5.Zanzibar Investment Promotion Agency (ZIPA)</li> <li>6.Zanzibar Commission for Tourism</li> </ol>
<b>Business</b>	<p><b>MAINLAND</b></p> <ol style="list-style-type: none"> <li>1.State Mining Corporation (STAMICO)</li> <li>2.Tanzania Petroleum Development Corporation (TPDC)</li> </ol>



	3.Tanzania Chambers of Commerce, Industry and Agriculture(TCCIA) 4.Tanzania Chambers of Mineral and Energy  <b>ZANZIBAR</b> 1.Zanzibar Association of Tours Operators (ZATO) 2.Zanzibar Association of Tourism Investors (ZATI) 3.Fisherman Tours and Travel Ltd, 4.Migao Tours 5.Serena Hotels 6.Zanzibar Ocean View Hotels
<b>CSOs</b>	<b>MAINLAND</b> 1.Legal and Human Rights Centre 2.Tanzania Human Rights Defenders Coalition 3.Oil and natural gas environmental alliance 4.CESOPE(Civil education is the solution for poverty and environmental management) 5.Hakimadini 6.HakiArdhi 7.Kivulini Women’s Rights Organization 8.Trade Union Congress of Tanzania (TUCTA 9.Conservation Hotel, Domestic and Allied Workers Union (CHODAWU), 10.Tanzania Mining Corporation (TAMICO 11.Women’s Action Towards Economic Development (WATED) 12.Business and Human Rights Tanzania  <b>ZANZIBAR</b> 1.Zanzibar Legal Service Centre (ZLSC) 2.Zanzibar Trade Union Congress (ZATUC);
<b>Remarks</b> In bilateral engagement a total of 18 government stakeholders, 14 CSOs and 10 companies were engaged.  Detailed questionnaires and checklist were developed for government, CSOs and business stakeholders in order to gain insights into issues that are related to Pillars I, II and III of the UNGPs. The questions asked focused on the general understanding of human rights and the UNGPs, initiatives available, land, labour, environment, security issues and corporate responsibility issues like how businesses perceive human rights, the initiatives in place to manage human rights and the general understanding of human rights by corporates.  Questionnaires and checklist were sent in writing depending on the nature of each stakeholder. Follow-ups were made through telephone and physical visits.  Mission meetings were held and feed-back obtained.	

**Table 2.0 Overview of stakeholders consulted on field missions**

Sectors	Areas visited
<b>Tourism</b>	Business companies operating in tourist hotels, galleries and tour guide; trade unions; civil
<b>Agri-busines</b>	society organizations and communities around tourist hotels and settings were

<b>Extractive industries</b>	<p>interviewed.</p> <ul style="list-style-type: none"> <li>-Mbeya, Singida and Dodoma Regions</li> <li>-Kapunga Rice Co. Ltd</li> <li>-CSOs</li> <li>-Communities</li> <li>-Shanta Mining LTD</li> <li>-Community representatives</li> <li>-Community leaders</li> <li>-Village and Ward Executive officers</li> <li>-Districts Executive officers</li> <li>-Representatives of professionals</li> <li>-District Technical officers (Environment and Land)</li> <li>Management and workers of companies</li> </ul>
<p><b>Remarks</b></p> <p>Three sites were visited on: (i) extractive industry; (ii) agri-business; and (iii) tourism. Total of 83 respondents were interviewed, being 21 females and 62 males.</p> <p>Introduction letters were sent in advance. Physical follow-up was made and mission meetings with district executive officers and technical persons from the departments of land and environment were held. Responses have been received.</p> <p>Some of the unique information that was earmarked to be obtained from the local communities during the field missions was on issues such as: consultations/engagements before commencement of the project, appropriate and effective payments of compensation, security and access to remedies. The meetings and group discussions focused on the insights into the State's duty to inform communities about corporate activities.</p> <p>A focus group session was conducted with CSOs working around communities in order to obtain their views on business and human rights. In particular, the discussion sought to explore the information CSOs had on the main human rights challenges related to Tanzania corporate activities. Further, the interviews also sought to consider issues around awareness raising and sources of information relating to business and human rights in the communities.</p> <p>Through separate arrangements the team conducted interviews and focus group discussion with the companies' management.</p>	

**Table 3.0 Overview of Stakeholders consulted as part of the stakeholder consultation workshops**

<b>Stakeholder Group</b>	<b>Institution</b>
<b>Government</b>	<p><b>MAINLAND</b></p> <p>1.Ministry of Constitution and Legal Affairs</p> <p>2.Office of Attorney General</p>

	<p>3.President's Office, Regional Administration and Local Government</p> <p>4.Prime Minister's Office, Labour, Youth, Employment and Persons with Disabilities</p> <p>5.Ministry of Lands, Housing and Human Settlements Developments</p> <p>6.Ministry of Energy and Minerals</p> <p>7.Ministry of Industry, Trade and Investment</p> <p>8.Vice President Office</p> <p>9.Ministry of Natural Resources and Tourism</p> <p>10.Ministry of Health, Community Development, Gender, Elders and Children</p> <p>11.Tanzania Investment Centre (TIC)</p> <p>12.Environmental Management Council</p> <p>13.Tanzania Prison Service</p> <p>14.Tanzania Police Force</p> <p><b>ZANZIBAR</b></p> <p>1.Ministry of State, President's Office, Constitution, Legal affairs, Public Service and Good Governance (Zanzibar)</p> <p>2.Office of the attorney General</p> <p>3.Ministry of Information, Culture, tourism and Sports- ZANZIBAR</p> <p>4.Ministry of Labour, empowerment, Elder, Youth women and children</p> <p>5.Ministry of Lands, Water, Energy and Environment</p> <p>6.Zanzibar Investment Promotion Agency (ZIPA)</p> <p>7.Zanzibar Commission for Tourism</p> <p>Zanzibar Environmental Management Authority (ZEMA)</p>
<b>Business</b>	<p><b>MAINLAND</b></p> <p>1.State Mining Corporation (STAMICO)</p> <p>2.Tanzania Petroleum Development Corporation (TPDC)</p> <p>3.Business Registration and Licensing Authority (BRELA)</p> <p>4.Energy Utilities Regulatory Authority (EWURA)</p> <p>5.Rural Energy Agency (REA)</p> <p>6.Shanta Gold Mine Ltd</p> <p>Statoil Company</p>
<b>CSOs</b>	<p><b>MAINLAND</b></p> <p>1.Christian Council of Tanzania (CCT)</p> <p>2.Legal Human Rights Centre</p> <p>3.Tanzania Human Rights Defenders Coalition</p> <p>4.Tanzania Mining Corporation (TAMICO),</p> <p>5.Tarime ENVIR CARE</p> <p>6.Children Education Society</p> <p>7.Legal and Child Right</p> <p>8.MISATAN- Media Institute of Southern Africa Tanzania Chapter</p> <p>9.NACUM- National Coalition for Urenium Mining</p> <p>10.Youth Coalition on Land</p> <p>11.Save the Children</p>

	<p>12.ONGEA-Oil and natural gas environmental alliance</p> <p>13.Business and Human Rights Tanzania</p> <p>14.Women’s Action Towards Economic Development (WATED)</p> <p><b>ZANZIBAR</b></p> <p>1.Zanzibar Utilities Regulatory Authority (ZURA)</p> <p>2.Zanzibar Association of Tourism Investors (ZATI)</p> <p>3.Zanzibar Legal Service Centre</p> <p>4.Zanzibar female Lawyers Association (ZAFELA)</p> <p>5.Association of NGOs Zanzibar –ANGOZA</p> <p>6.Zanzibar Law Society</p> <p>7.Zanzibar Trade Union Congress (ZATUC)</p> <p>8.Community Development and Conservation of Environment Zanzibar- CODECOZ</p> <p>9.Jambian Marine and Beach Conservations JAMADEC</p> <p>Tumbatu Association for Social Promotion</p>
<p><b>Remarks</b></p> <p>CHRAGG held three stakeholder consultation workshops, one held in Zanzibar and two Dar es Salaam on 21, 23 and 24 August, 2017 respectively. The third workshop was co-organised and hosted by Business and Human Rights Tanzania and CHRAGG. The workshops were designed to share and review the findings of the draft Baseline obtained from desktop research, bilateral engagement and field missions, as well as to gather input from government, business and civil society stakeholders. The workshops brought together key representatives of six companies, 18 government institutions, eight media houses and 24 CSOs to engage in interactive discussion. Others who attended the two workshops included CHRAGG staff, representatives from Business and Human Rights Tanzania (BHRT) and UNICEF, from both the mainland and Zanzibar.</p> <p>Total of 28 (being 17 male and 11 female) stakeholders from Tanzania mainland and 24 (being 15 male and 5 female) from Zanzibar including CHRAGG staff attended.</p>	

## ENDNOTES

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- <sup>1</sup> United Nations Human Rights Council (2011), Guiding Principles on Business and Human Rights, [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).
- <sup>2</sup> Report of the Human Rights Council at its 26th session (A/HRC/26/2), 10-27 June 2014.
- <sup>3</sup> For an up to date list of National Action Plans in progress and completed see the Business and Human Rights Resource Centre National Action Plans page, here <http://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans>.
- <sup>4</sup> Danish Institute for Human Rights and International Corporate Accountability Roundtable (2014), National Action Plans on Business and Human Rights: A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks, <https://www.humanrights.dk/business/tools/national-action-plans-business-human-rights>.
- <sup>5</sup> The current review of the Toolkit will include the development of a Pillar II template.
- <sup>6</sup> Ernst & Young (2015), Tanzania enacts legislation impacting the oil and gas industry.
- <sup>7</sup> Burgess J (2016), \$8 Billion Natural Gas Find Re-Affirms Tanzania's Status as Gas Giant, OILPRICE.com, <http://oilprice.com/Energy/Energy-General/8-Billion-Natural-Gas-Find-Re-Affirms-Tanzanias-Status-As-Gas-Giant.html>.
- <sup>8</sup> World Bank (2017), The World Bank in Tanzania, <http://www.worldbank.org/en/country/tanzania/overview>.
- <sup>9</sup> PWC (2013), Africa Gearing Up, pp. 74-81.
- <sup>10</sup> World Bank (2017), The World Bank in Tanzania, <http://www.worldbank.org/en/country/tanzania/overview>.
- <sup>11</sup> Tanzania Invest, Tanzania Agriculture, <http://www.tanzaniainvest.com/agriculture> (last accessed 26 July 2017).
- <sup>12</sup> Tanzania Invest, Tanzania Agriculture, <http://www.tanzaniainvest.com/agriculture> (last accessed 26 July 2017).
- <sup>13</sup> Food and Agriculture Organization of the United Nations (2014), Tanzania Country Programming Framework.
- <sup>14</sup> NewAgriculturist (2003), Country Profile- Tanzania, <http://www.new-ag.info/en/country/profile.php?a=861> (last accessed 26 July 2017).
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<sup>229</sup>

<sup>230</sup>Mineral Policy of Tanzania (2009)

<sup>231</sup>Mineral Policy of Tanzania (2009) S5.2

<sup>232</sup>Deloitte (2016), Tanzania economic outlook 2016: The story behind the numbers

<sup>233</sup>Mineral Policy (2009) S6.1

<sup>234</sup>Mineral Policy (2009) S6.2

<sup>235</sup>Mineral Policy (2009) S5.8

<sup>236</sup>Mineral Policy (2009) S5.3

<sup>237</sup>Burgess J (2016), \$8 Billion Natural Gas Find Re-Affirms Tanzania's Status As Gas Giant , OilPrice.com, <http://oilprice.com/Energy/Energy-General/8-Billion-Natural-Gas-Find-Re-Affirms-Tanzanias-Status-As-Gas-Giant.html> (last accessed 27 July 2017)

<sup>238</sup>Petroleum Act 2015

<sup>239</sup>Tanzania Extractive Industry (Transparency and Accountability) Act (2015)

<sup>240</sup>Ernst & Young (2015), Tanzania enacts legislation impacting the oil and gas industry

<sup>241</sup>Deloitte (2016), Tanzania economic outlook 2016: The story behind the numbers

<sup>242</sup>Tourism Act (2008)

<sup>243</sup>Tourism Act (2008) S18(2, b)

<sup>244</sup>The Wildlife Policy of Tanzania (2007)

<sup>245</sup>Mining corporations' operational information is only available through the Ministry of Energy and Minerals, UNITED REPUBLIC OF TANZANIA, <https://mem.go.tz> (homepage)

<sup>246</sup>OECD (2013), Overview of progress and policy challenges in Tanzania, OECD Investment Policy Reviews: Tanzania 2013, OECD Publishing.

<sup>247</sup>The National Board of Accountants and Auditors are governed by the Auditors and Accountants (Registration) Act 33 (1972), S31, as amended by Act No. 2 (1995)

<sup>248</sup>The National Board of Accountants and Auditors are governed by the Auditors and Accountants (Registration) Act 33 (1972), S31, as amended by Act No. 2 (1995)

<sup>249</sup>The EMA(2004) as amended by The Environmental Impact Assessment and Audit Regulations (2005); The Tanzania Investment Act 7 (1997); The Occupational, Health and Safety Act 5 (2003)

<sup>250</sup>The Village Land Act 5 (1999) S8(I, 3, b); See generally, Environmental Management Act S17- 18; Tanzania Investment Act.

<sup>251</sup>The Village Land Act S8(I, 3, b); The Environmental Management Act Part IV S12(c); The Investment Act Part II S6(c).

<sup>252</sup>ELRA (2004), S7

<sup>253</sup>EMA(2004), S2(4, 1), "Every person living in Tanzania shall have a right to a clean, safe and healthy environment."

<sup>254</sup>TANZ. CONST(1977), S129(1) as amended by Act 3 (2000), The Commission for Human Rights and Good Governance (CHRAGG) is an independent governmental department. It was established as the national focal point for the promotion and protection of human rights and good governance in Tanzania.

<sup>255</sup>See generally, The Basic Rights and Duties Enforcement Act 33 (1994) S1-5.

<sup>256</sup>TANZ. CONST (1977), S129-131.

<sup>257</sup>TANZ. CONST (1977), S17 (Commission for Human Rights and Good Governance Act of 2001) [hereinafter CHRAGG Act (2011)].

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<sup>258</sup>TANZ. CONST (1977), S7(2) (Security of tenure is given by the President of Tanzania to CHRAGG Commissioners under S10 of the CHRAGG Act).

<sup>259</sup>CHRAGG Act S10

<sup>260</sup> Commission for Human Rights and Good Governance (CHRAGG), NHRAP Project, <http://www.chragg.go.tz/index.php/our-projects/nhrap-project> (last visited July 27 2017).

<sup>261</sup>US Embassies abroad, (2016), Tanzania- Competition from state-owned enterprises, export.gov, <https://www.export.gov/article?id=Tanzania-Competition-from-State-Owned-Enterprises> (Last accessed 27 July 2017)

<sup>262</sup>Public Corporations Act No 2 (1992) , as amended by Act No. 17 (1999)

<sup>263</sup>Companies Act No. 22 (2002)

<sup>264</sup>Public Corporations Act (1992) S8

<sup>265</sup> The Public Corporations Act (1992) S5

<sup>266</sup> The Public Corporations Act (1992) S6

<sup>267</sup> The Public Corporations Act (1992) S11

<sup>268</sup> The Public Corporations Act (1992) S12

<sup>269</sup> The Public Audit Act (2008) S(9, iv)

<sup>270</sup> National Housing Corporation Act (1990) S(6)

<sup>271</sup>Mwapachu J (2013), Parastatals: Architecture of corporate governance, The Citizen, <http://www.thecitizen.co.tz/News/national/Parastatals--Architecture-of-corporate-governance--2/1840392-1967210-th7fp9/index.html>, (last accessed 26 July 2017)

Mwapachu J (2013), Parastatals: Architecture of corporate governance, The Citizen, <http://www.thecitizen.co.tz/News/national/Parastatals--Architecture-of-corporate-governance--2/1840392-1967210-th7fp9/index.html>, (last accessed 26 July 2017)

<sup>273</sup>TANZ. CONST (1977) S132; UNITED REPUBLIC OF TANZANIA PRESIDENT'S OFFICE –ETHICS SECRETARIAT, <http://ethicssecretariat.go.tz/>(homepage) (last visited July 27, 2017): “The Ethics Secretariat is an Independent Department of the Government under the President's Office which is established under. Its main function is to implement the Public Leadership Code of Ethics Act 13 (1995) S398, specifically to monitor the ethical behavior and conduct of Public Leaders.”

<sup>274</sup>See EMA (2004)

<sup>275</sup>See the Tanzania Investment Act; Embassy of Tanzania (Germany), Tanzania Investment Centre, <http://www.tanzania-gov.de/tourism/the-coastal-circuit/2-stories/documents/15-tanzania-investment-centre-tic-or-centre>(last accessed 27 July 2017). The TIC indirectly supports human rights by ensuring that all investors, “including those who are not bound by the provisions of the Tanzania Investment Act, 1997...obtain all necessary permits, licenses, approvals, consents, authorizations, registrations and other matters required by law for a person to set up and operate an investment[.]”

<sup>276</sup>See e.g., EMA(2004); OHSA(2003); The Employment and Labour Act(2004).

<sup>277</sup>See generally, Karin Mader, CSR Advisor and certified sustainability reporter, “Corporate Social Responsibility in Tanzania: An Overview” Presentation (June, 2012) available at <https://csroverviewtanzania.files.wordpress.com/2012/08/csr-overview-tanzania3.pdf> (discussing the lack of mandatory CSR reporting in Tanzania as well as the influx of voluntary reporting in mining corporations).

<sup>278</sup>Aloysius Marcus Newenham-Kahindi (2011), A global mining corporation and local communities in the lake Victoria zone: The case of Barrick Gold multinational in Tanzania, J. OF BUS. ETHICS99(2): 253-266

<sup>279</sup>Emel J et al. (2012), Problems with reporting and evaluating mining industry community development projects: A case study from Tanzania, SUSTAINABILITY 4(2): 257-277

<sup>280</sup>EITI Tanzania website.

<sup>281</sup>Kibuuka P (2015), Tanzania: Public Procurement Regulation in Tanzania - a Key Driver of Investments and Economy , allAfrica, <http://allafrica.com/stories/201508031359.html> (last accessed 27 July 2017)

<sup>282</sup> Tanzania Public Procurement Act (2011) S(83)

<sup>283</sup> Tanzania Public Procurement Act (2011) S(8)

<sup>284</sup> Tanzania Public Procurement Act (2011) S9(1, f)

<sup>285</sup> Tanzania Public Procurement Act (2011) S96

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- <sup>286</sup> Tanzania Public Procurement Act (2011) S97
- <sup>287</sup> Tanzania Public Procurement Act (2011) S80
- <sup>288</sup> Tanzania Public Procurement Act (2011) S54
- <sup>289</sup> National Public Procurement Policy: First Draft (2012)
- <sup>290</sup> National Public Procurement Policy: First Draft (2012)
- <sup>291</sup> National Public Procurement Policy: First Draft (2012)
- <sup>292</sup> See generally, The Public Procurement Act9 (2011)(Focusing on public procurement in Tanzania).
- <sup>293</sup> The Public Procurement Act 9 (2011) S61-62 (blacklisting contractors that engage in corrupt practices).
- <sup>294</sup> See The Fair Competition Act8 (2003), S61
- <sup>295</sup> Kabendera E (2014), Tanzania House committee wants heads to roll over IPTL saga, THE EASTAFRICAN, <http://www.theeastafican.co.ke/news/-120m-scandal-on-heads-of-Tanzania-central-bank-officials/-/2558/2531654/-/ik7o59z/-/index.html> (last accessed 27 July 2017)
- <sup>296</sup> See The Tanzania Investment Act (1997) S24.
- <sup>297</sup> See The Employment and Labour Act(2004); The Labour Institutions Act7 (2004)
- <sup>298</sup> See EMA S24.
- <sup>299</sup> See Sikka P (2011), Accounting for human rights: The challenge of globalization and foreign investment agreements, CRITICAL PERSPECTIVES ON ACCOUNTING22(8): 811-827
- <sup>300</sup> See generally, Lauwo S& Julius Otusanya O (2014), Corporate accountability and human rights disclosures: A case study of Barrick Gold Mine in Tanzania, ACCOUNTING FORUM38(2): 91-108 (stating that Tanzania in particular is limited by stabilization clauses because they restrict the ability of the government to enforce regulations that promote corporate accountability).
- <sup>301</sup> See generally, Friis Lund J (2007), Is small beautiful? Village level taxation of natural resources in Tanzania, PUB. ADMIN. & DEV. 27(4): 307-318(stating that there is an abundance of natural resources in Tanzania that could generate significant tax increases for corporations).
- <sup>302</sup> UN Human Rights Council (2011), Principles for Responsible Contracts
- <sup>303</sup> Mainhardt-Gibbs H (2007), Transparency of Extractive Industry Contracts: Understanding World Bank Group Influence,Bank Information Center (BIC); See generally, Mwaijage Mweyunge E (2012), The potential impacts of contract review on foreign direct investments in mining resources: case study of Tanzania and Democratic Republic of Congo, Unpublished LLM thesis, University of the Western Cape, South Africa, (discussing mining contract review programs and their lack of efficiency in Tanzania).
- <sup>304</sup> In 2014, a leaked document between Norway's Statoil and the Tanzania Petroleum Development Corporation brought this issue to light, creating debate over whether Tanzania's lack of transparent contracts was grossly unfair to the country; See C.O. & E.B. (2014), Tanzania's troubles over gas revenue: Sharing the spoils, THE ECONOMIST, <http://www.economist.com/blogs/baobab/2014/09/tanzanias-troubles-over-gas-revenue> (last accessed 27 July 2017); Manley D&Lassourd T (2014), Tanzania and Statoil: What Does the Leaked Agreement Mean for Citizens?, Natural Resource Governance Institute
- <sup>305</sup> International Corporate Accountability Roundtable (ICAR) (2015), Project Update: Workshops on Business & Human Rights in Tanzania and South Africa, <https://www.icar.ngo/news/2015/7/29/project-update-workshops-on-business-human-rights-in-tanzania-south-africa> (last visited July 27, 2017).
- <sup>306</sup> For example, CHRAGG and the Legal and Human Rights Centre (LHRC) are two of the most prolific NGOs involved in this struggle.
- <sup>307</sup> See Legal and Human Rights Centre (LHRC), About Us, <http://www.humanrights.or.tz/> (last visited June 21, 2016); LHRC (2015), TANZANIA HUMAN RIGHTS REPORT 2014
- <sup>308</sup> LHRC (2015), Tanzania Human Rights Report 2014, pp. 227-231, 281.
- <sup>309</sup> EMA (2004)Part XVI (providing for the compliance and enforcement of environmental laws, where several offences are listed alongside the punishment for those offenses, which includes fines and imprisonment).
- <sup>310</sup> EMA (2004)Part XX
- <sup>311</sup> EMA (2004) Part V S18(1, m)
- <sup>312</sup> EMA (2004) S45 – 75.
- <sup>313</sup> ELRA(2004)S102(2) (explaining that is an offence to employ a child or to procure a child for employment, thus the sanctions listed for these activities are under this section of the act).



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<sup>314</sup>ELRA (2004) S102.

<sup>315</sup>ELRA (2004) S37.

<sup>316</sup> The Labour Institutions Act(2004), Part VI S45(however, this power is subject to the National Prosecutions Service Act 27 of 2008 which first requires that the labour officer be appointed as a public prosecutor by the Director of Public Prosecution.)

<sup>317</sup>ELRA (2004)S37.

<sup>318</sup>See OHSA, 2003; In the case of imminent danger, the inspector can issue a stop work order or prohibit the use of certain hazardous equipment. If such an order is not respected and the employer takes no action to remedy the problem, a case may be put before the courts. For this last procedure, the OHSA legal adviser is in charge of preparing the legal claim. Instead of taking the case to court, OHSA also has the option of levying an administrative fine (a “compound”). However, experience shows that going to court is the only option for dealing with an uncooperative employer.

<sup>319</sup>See generally, The Worker’s Compensation Act 20(2008)(citing to employer negligence as a fineable offence).

<sup>320</sup>Worker’s Compensation Act (2008), Part IV.

<sup>321</sup>OHSA (2003), Part I.

<sup>322</sup>OHSA (2003), S100-105.

<sup>323</sup> The National Social Security Fund Act 45 (2013), Part VII(providing the amount of sanctions against the employers who fail to remit the contributions to the Fund).

<sup>324</sup>The National Social Security Act (2013), Part VIII, S72(1-2)

<sup>325</sup>African Court on Human and Peoples’ Rights (2011), Mtikila C v. Tanzania, Application No. 009/2011 & No. 011/2011, <http://dev.ihrda.org/doc/009.11-011.11/view/> (last accessed 26 July 2017)

<sup>326</sup> The Labour Institutions Act (2004), Part VII.

<sup>327</sup>PENAL CODE [PRINCIPAL LEGISLATION ISSUED UNDER CAP. 1, S. 18] Cap.16, (1981); CIV. PRO. CODE [CHAP. 33, NO. 49], (1966)

<sup>328</sup>Cases where the High Court of Tanzania has dealt with the right to a clean and satisfactory environment are usually unreported and also are difficult to bring before the court in the first place, as evidenced by there being only two cases involving this right: 1) Joseph D. Kessy and Others v. The City Council of Dar es Salaam, High Court of Tanzania at Dar es Salaam, Civil Case No. 299 of 1998 (unreported), Lugakingira J. 157; 2) Festo Balegele and 794 Others v. Dar es Salaam City Council, High Court of Tanzania at Dar es Salaam, Miscellaneous Civil Cause No. 90 of 1991 (Unreported), Rubana, J. 163.

<sup>329</sup> Civil Appeal No.77 (2012)

<sup>330</sup> See Gloppen S (2003), The accountability function of the courts in Tanzania and Zambia, Democratization (10)4: 112- 114(The study concludes that there are signs in the Tanzanian judiciary of a certain willingness to hold the government accountable in politically salient cases, but that their opportunity to do so is limited, due to institutional, social and political factors restricting the flow of constitutional cases).

<sup>331</sup> The United Republic of Tanzania, National Human Rights Action Plan 2013-2017; Commission for Human Rights and Good Governance Act(2001).

<sup>332</sup> The Commission for Human Rights and Good Governance (CHRAAG) is established under Article 129 of the Constitution of United Republic of Tanzania. The mandate and functions of CHRAAG are governed by the Commission for Human Rights and Good Governance Act (2001).

<sup>333</sup> See page 4 of this document, listing all of the human rights based instruments to which Tanzania is a signatory.