

Legal and Human Rights Centre



Mini-Study on Human Rights Compliance in Transportation Sector -2013

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Legal and Human Rights Centre
Justice Lugakingira House, Kijitonyama
P.O. Box 75254, Dar es Salaam, Tanzania
Tel: 255222773038/48
Fax: +255222773037
Email: lhrc@humanrights.or.tz
Website: www.humanrights.or.tz

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Researchers

Pasience Mlowe
Paul Mikongoti

Writers

Pasience Mlowe
Paul Mikongoti
Fundikila Wazambi

Editors

Dr. Helen Kijo Bisimba
Ms. Imelda Lulu Urrio
Ms. Anna Henga
Ms. Felista Mauya
Ms. Rose Mwalongo
Mr. Castor Kalemera

LAYOUT & DESIGN

Rodrick Maro

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List of Abbreviation

AKIBOA	Arusha Kilimanjaro Bus Owners' Association
ATD	Association of Transporters in Dar es Salaam
BRT	Bus Rapid Transit
CHAMATA	Chama cha Madereva Tanzania
CHAMAWATA	Chama cha Madereva wa Malori Tanzania
COTWU	Communication and Transport Workers Union of Tanzania
DARCOBA	Dar es Salaam of Bus Commuter Bus Owners Association
DART	Dar es Salaam Rapid Transport Agency
LHRC	Legal and Human Rights Centre
SUMATRA	Surface and Marine Transportation Regulatory Authority
SUMATRACC	SUMATRA Consumer Consultative Council
TABOA	Tanzania Bus Owners Association
TANROAD	Tanzania Roads Agency
TAREMIA	Tanga Region Minibus Association
TARWOTU	Chama cha Wafanyakazi wa Usafirishaji kwa Njia ya Barabara
TATOA	Tanzania Truck Owners Association
TDA	Tanzania Drivers' Association
TPF	Tanzania Police Force
TRA	Tanzania Revenue Authority
TTAITDA	Chama cha Madereva wa Malori na IT
UMA	Umoja wa Madereva Arusha
UMAWATA	Umoja wa Madereva wa Mabasi Tanzania
UWADAR	Umoja wa Wasafirishaji Dar es Salaam

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List of Legislations

International Labour Organization Convention No. 131.

International Labour Organization Convention No. 94.

International Labour Organization Convention No. 95.

The Constitution of the United Republic of Tanzania, 1977.

The Employment and Labour Relations Act, 2004.

The Executive Agencies Act, Cap 245.

The Fair Competition Act, 2003

The Labour Clauses (Public Contracts) Convention, 1949.

The Labour Institutions Act, 2004.

The Merchant Shipping Act, 2003

The Minimum Wage Fixing Convention, 1970.

The Ministerial Responsibilities (Instruments) Vide Government Notice No. 494 of 17th December, 2010.

The National Policy on HIV/AIDS, 2001.

The National Social Security Fund Act, 1997.

The Police Force and Auxiliary Services Act, CAP 322 [R.E 2002]

The Protection of Wages Fixing Convention, 1949.

The Railways Act, 2002.

The Road Traffic Act, 1973(Act No. 30 of 1973)

The Roads Act No. 13 of 2007.

The Shipping Agency Act, 2002

The Social Security (Minimum Standards) Convention, 1952.

The Social Security (Regulatory Authority) Act, 2008.

The Surface and Marine Transport Regulatory Authority Act, 2001 (Act No. 9 of 2001).

The Tanzania Ports Act, No. 17 of 2004.

The Transport Licensing Act, 1973 (Act No. 19 of 1973).

The Universal Declaration of Human Rights, 1948.

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Legal and Human Rights Centre (LHRC) extends its appreciation to leaders of drivers' associations in the survey mentioned regions. They were very collaborative during the whole study. These include the leaders of regional branches of *Chama cha Madereva Tanzania (CHAMATA)* and other welfare associations found in the visited regions.

Further, LHRC would like to extend its appreciation to development partners for their continued support to the organization. The conduct of this survey would not have been possible without them.

Lastly, cognisance is taken of the efforts done by its researchers and writers of this report. The LHRC recognises and appreciates support and collaboration of research assistants in the following regions; Tanga, Arusha, Shinyanga (Kahama district), Mwanza, Mbeya, Iringa, Dodoma and Dar es salaam. The research assistants played a vital role of assisting researchers to administer questionnaires and introduce them to relevant authorities. Also, LHRC extends its gratitude to Mr. Abuu Abdalah Makumuli, the transportation officer, for his support during the study. His work is highly recommended as he walked an extra mile supporting the research team.

About the Legal and Human Rights Centre

The Legal and Human Rights Centre (LHRC) is a private, autonomous, voluntary non-governmental, non-partisan and non-profit sharing organization, envisioning a just and equitable society. It has a mission of empowering the public to promote, reinforce and safeguard human rights and good governance in the country. Its broad objective is to create legal and human rights awareness among the public and in particular, the underprivileged section of the society through legal and civic education, advocacy linked with legal aid provision, research and human rights monitoring.

The LHRC was established in 1995 out of experiences and lessons generated from The Tanzania Legal Education Trust (TANLET) and the Faculty of Law of the University of Dar es Salaam (UDSM). The founders of the LHRC were lawyers who had participated in legal Aid Committee of the Faculty of Law of the University of Dar-es-Salaam and its legal Aid camps.

The LHRC's operations mainly focuses on Tanzania mainland with specific interventions in Zanzibar. LHRC is a member of different national, regional, international NGO networks and human rights bodies. The LHRC has an observer status in the African Commission on Human and People's Rights and is a member of the Federation of Human Rights Defenders (FIDH).

Vision

The LHRC envisages a just and equitable society. A just and equitable society is such a society where - the three arms of the State [Parliament, Judiciary and the Executive] as well as non-state actors are practicing accountability, transparency and there is rule of law; and where there is public awareness, respect and engagement for human rights and good governance; where justice and respect for human dignity are reality.

Mission

The LHRC is a non-partisan, non-profit sharing, non-Governmental organization striving to empower the public, promote, reinforce and safeguard human rights and good governance in Tanzania through legal and civic education and information; sound legal research and advice; monitoring and follow-ups of human rights violations; and advocacy for reforms of policies, laws and practices in conformity with international human rights standards.

LHRC's Values

LHRC has a number of core values that guide the way the members, the board, staff and partners relate and operate. The values in the context of LHRC mean:

Integrity

LHRC strives to always uphold quality of being honest; trustworthy; adherence to moral and ethical principles; and being of strong moral uprightness. It means doing the right thing even when no one is watching. LHRC strives to be an organization that is able to be trusted as being honest, safe, and reliable. LHRC ensures that integrity underlies all of its operations.

Equality

LHRC ensures that individuals or groups of individuals are treated fairly and equally and no less favorably, specific to their needs. LHRC does not discriminate against its clients and employees on the grounds of age, gender, nationality, tribe, place of origin, political opinion, race, colour, disability, occupation, or on any other status. LHRC when focusing on specific marginalized group will not contravene this principle in provision of services to just that group.

Transparency

Save for circumstances where confidence is required, LHRC will ensure that it operates in an honest way of doing things that allows other people/stakeholders to know exactly what LHRC does.

Accountability

LHRC always positions itself to a situation in which people know who is responsible for something and can ask them to explain its state or quality. LHRC respects and discharges its duties of care; therefore its accountability is not an afterthought.

Professionalism

LHRC professionally handles all of its beneficiaries with competence, respect and courtesy. LHRC strives to provide timely and quality services to the society.

Voluntarism and Volunteerism

LHRC staff operate and are guided by the spirit of volunteering by ensuring that they undertake their responsibilities willingly and with dedication not necessarily working for payment but working while believing more on the value of the work rather than the amount of money or material benefit that one gains.

Executive Summary

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

The LHRC decided to conduct a mini-study on human rights compliance in transport due to increase of labour-related dispute in the sector. The study focused on the following objectives:

- To find out compliance of fundamental rights and protection of labour laws in transport sector especially to drivers driving passengers vehicle and cargo trucks;
- To assess compliance to employment standards as set out in *the Employment and Labour Relations Act, 2004*;
- To examine the security of employment;
- Assess cutting issues like HIV, torture and racial discrimination of treatment between native drivers and those with Asian origin;
- To assess freedom of association at work place, in particular the right to form and join trade unions;

The study was conducted in eight regions, which are; Tanga, Arusha, Shinyanga (Kahama district), Mwanza, Mbeya, Iringa, Dodoma and Dar es Salaam. The following were some of observations;

- (a) The study revealed that over 90 percent of employees working in transport sector as drivers, truck assistants and bus conductors do not have employment contracts. Some employers only issue employment contracts in order to facilitate obtaining transportation license from SUMATRA.
- (b) The study revealed that 83.6 percent of employees do not enjoy any type of leave, including sick leave. Most respondents during the study said that when one falls sick, they have to take medication and continue with work. If you abstain from work and attend clinic or hospital the next day you are likely to lose your job.
- (c) Majority of employees in the transportation sector work beyond recommended working hours. The study revealed that 59% work between 11 to 16 hours;

whereas 21.5% work beyond 17 hours without overtime payment.

- (d) There is delay in salary payment for employees with working contracts. The study revealed that 75% of the respondents do not receive their entitled salary timely.
- (e) Right to join social security funds is a legal requirement in any formal and informal sector. However, the majority of employees working in transportation sector do not enjoy this legally fundamental right. It was found out that 85.5% of the respondents are not registered in any social security scheme.
- (f) Right to health and medical care is highly denied, as it was revealed that 88% of the respondents do not receive medical care from their employers.
- (g) The study revealed that workers employed in companies owned by Tanzanians with black race are treated differently in comparison with those employed in companies that are owned by Tanzanians of the Asians and Arab origin. Employees working in companies owned by Tanzanians with Asian and Arab origin are being discriminated upon and receive psychological torture due to harassment, abusive language and sometimes physical beatings. The findings revealed that 38.3% experienced torture; whereas 36.6% experienced discrimination at work place.

LHRC commits to conduct mini-studies on different thematic areas in order to capture specific information on specific issues. This mini-study on transportation sector is an advocacy tool to initiate reforms in legal framework and practice. The transportation sector is a fundamental engine for economic growth of the country. Due to its nature of operation, the transportation sector is characterized by extreme informal employment arrangements, that causes loss of government revenues in form of *Pay As You Earn (PAYE)*, as no income tax deductions accrue from transportation companies. Equally on part of employees, they are poorly paid; do not enjoy employment standards as of labour rights are concerned.

The report went further to provide recommendations as to what should be done on part of government, employees, employers and other stake holders. This sector needs transformation in order to realize the value chain in the labour market together with the establishment of trade unions in the sector to guarantee protection of labor rights.

Dr. Helen Kijo Bisimba
Executive Director - LHRC

Chapter One

Introduction

1.0 Background Information

The transportation sector is one of the key drivers of the country's economy. The sector employs a number of people, including drivers, conductors, and mechanical repairs, etc. Apart from that, it facilitates other sectors such as the fuel, roads and infrastructure among others. It also helps in the movement of people and goods throughout the country, thus boosting the economy as well as people's income. However, the sector faces many challenges both as a sector and people employed within it. It is due to these reasons that LHRC decided to conduct a study on human rights compliance in the transportation sector in a bid to address the said challenges and thus advocate for positive changes given the importance of the sector.

1.1 Objectives of the Study

The study dwelt on the following objectives:

- To find out compliance of fundamental rights and protection of labour laws in the transport sector, especially to drivers of passenger vehicle and cargo trucks;
- To assess compliance to employment standards as set out in *the Employment and Labour Relations, 2004*;
- To examine the security of employment for those employed in the sector;
- Assess cross-cutting issues like HIV, torture and racial discrimination in the sector;
- To assess freedom of association at work place, in particular the right to form and join trade unions;

1.2 Methodology of Data Collection

Various methods were employed in the course of collecting data. These methods included;

- 1) Administer questionnaires to be filled by drivers, driver assistants, conductors and mechanics;
- 2) One-to-one interview with the following stakeholders:
 - ✓ Drivers, assistant drivers and mechanics of cargo tracks;
 - ✓ Drivers, assistant drivers and conductors of passenger vehicle;

- 3) Visit to associations of workers in the transportation sector; and
- 4) Observation of the situation on ground.

1.2.1 Sample size and Sampling Rationale

The LHRC was able to administer 600 questionnaires, out of which 95% were filled in and brought back. The questionnaires were designed in Kiswahili language and were for most of respondents easy to fill in and return the same. However, there were some few respondents who could neither read nor write; thus the team had to assist them in filling the questionnaires.

1.2.2 Data Analysis

Data captured during opinion survey were analysed by using Statistical Package for Social Science (SPSS). The tool is very useful to the study as it captures all information obtained, making it easy to interpret the data.

1.2.3 Study Schedule

Data collection in the selected regions was conducted for 21 days, from the 18th June to the 8th July, 2013. The schedule for data collection was as follows:

- ✓ 18th – 21st June, 2013 – Tanga city;
- ✓ 22nd – 25th June 2013 – Arusha city;
- ✓ 26th - 28th June 2013 – Kahama township;
- ✓ 30th June – 1st July 2013 – Tunduma town and Mbeya City;
- ✓ 2nd – 4th July – Iringa;
- ✓ 6th – 8th July – Dodoma;
- ✓ 8th July 2013 – Misugusugu check point, Kibaha.

1.2.4 Characteristics of the Respondents who took part in the Study

(a) Gender

Majority of respondents who took part in the study were men. The composition of men versus women was 97.10% and 2.90% respectively. This clearly indicates that the transport sector employs more men than women. There were few instances where the study found women engaged in transport-related activities, as far as jobs related to driving are concerned. The graph hereunder is a pictorial representation of gender.

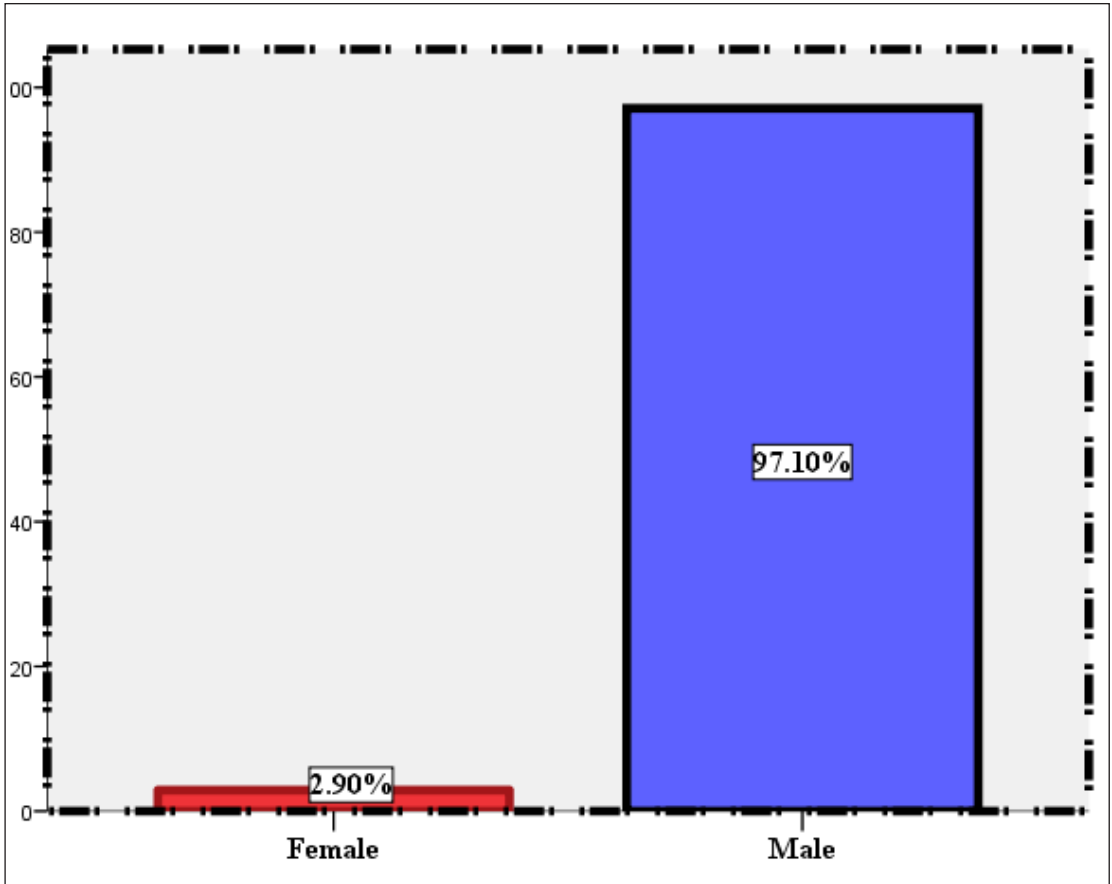


Figure 1: Gender Presentation of the Study

(b) Age

Another characteristic of the respondents who took part in the study was the age group. Majority of workers employed in the transportation sector are young energetic people, aged between 19 to 50 years old. The graph below depicts the same:

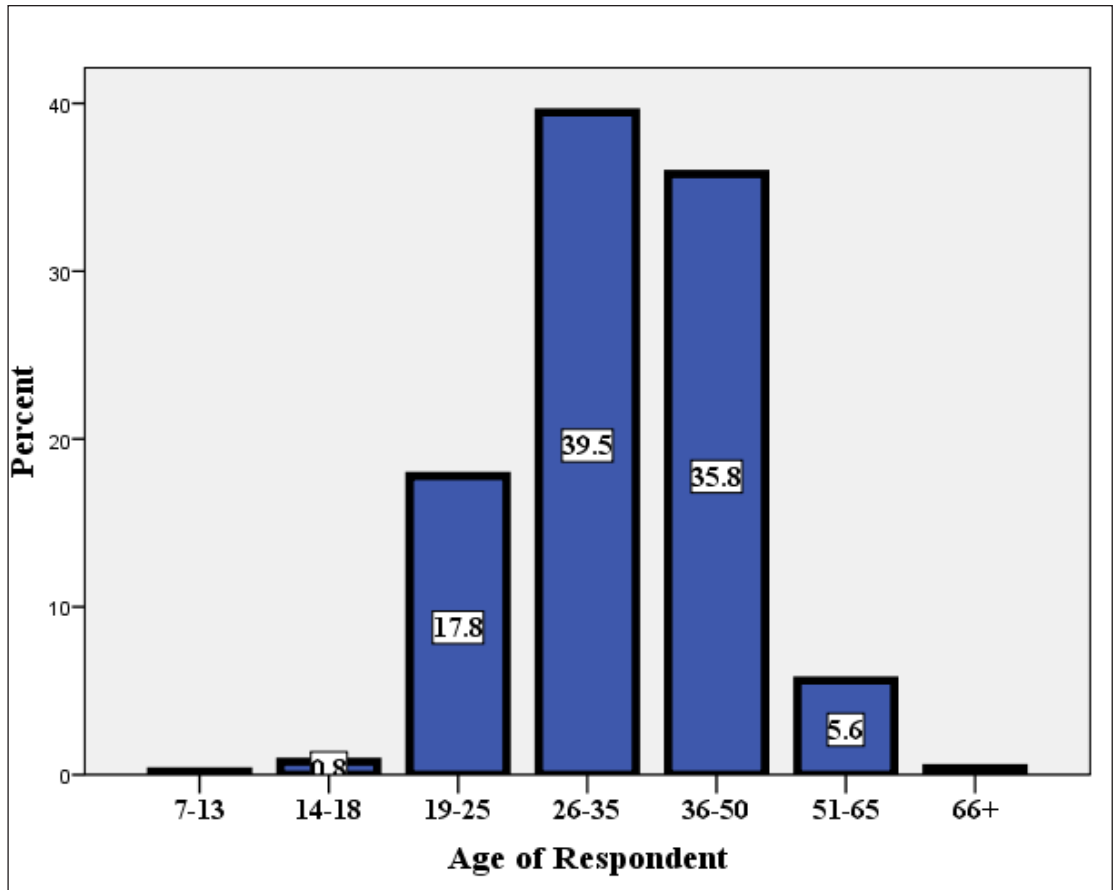


Figure 2: Age of those Involved in the Study

(c) Position in Transport Sector

Majority of respondents in the study were drivers, accounting for 81.8% of all respondents interviewed. The remaining cadres work as assistant drivers, conductors and mechanics and were thus hard to identify. Some were reluctant to take part in the study their reason being that, they were not directly employed. Thus it was the drivers who responded to most of the questions for they are known by employers. The graph hereunder provides a summary of findings on position of workers in the transportation sector who took part in the study:

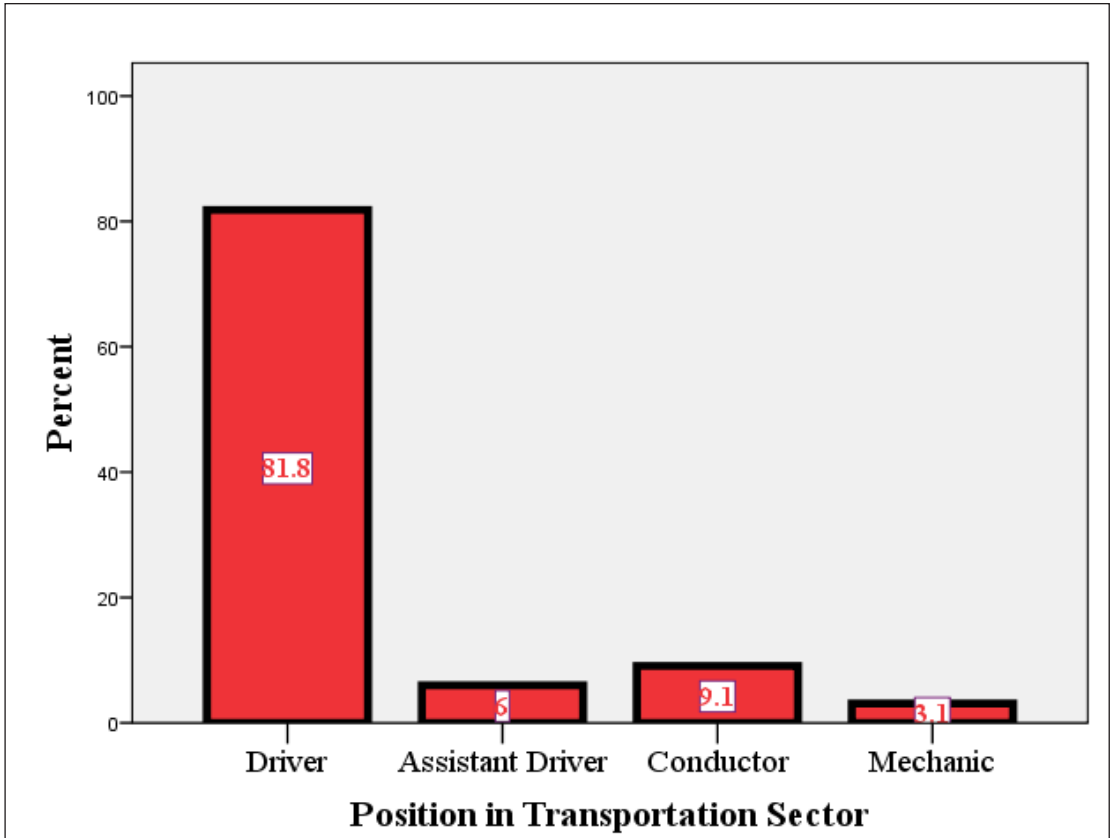


Figure 3: Summary of the Findings in Transportation Sector

(d) Experience

In terms of experience, the majority of the respondents were found to have experience of 1 to 5 years. Respondents in this category were 81.4 percent as the graph indicates below.

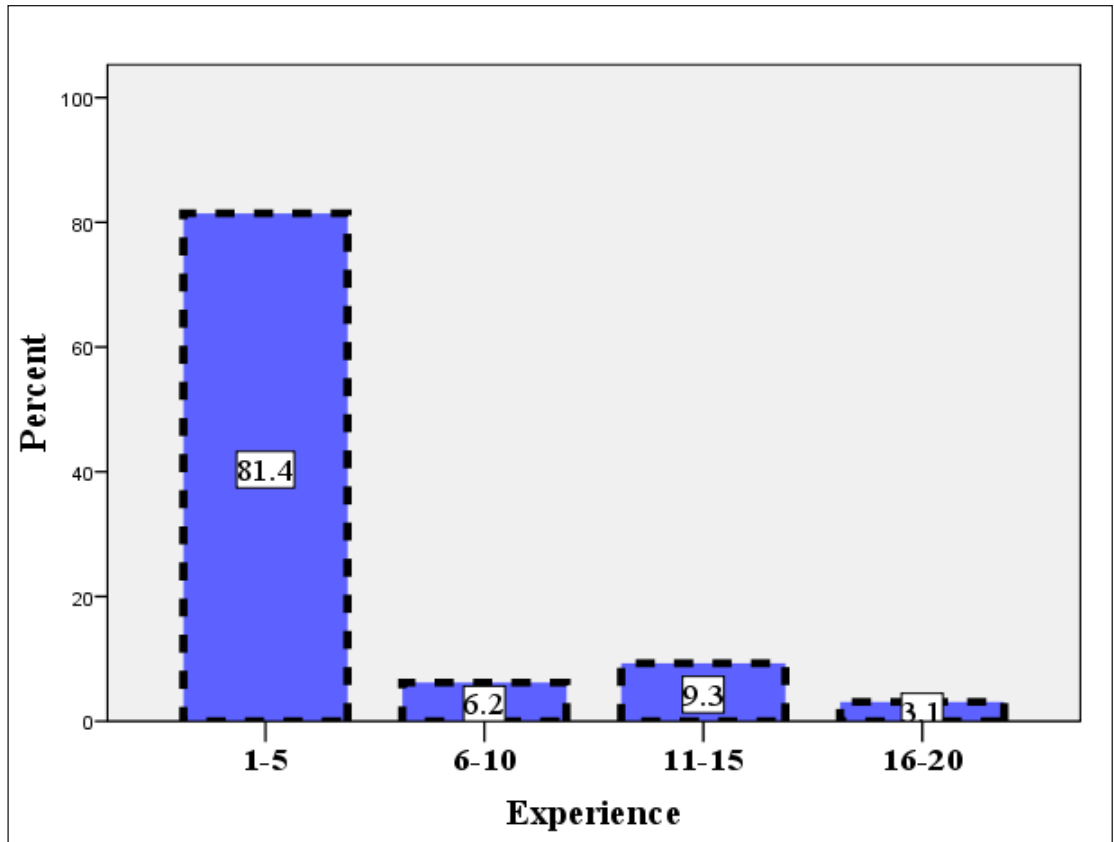


Figure 4: Experience of those who were involved in the Study

The study was systematically conducted whereby LHRC managed to forge good working ties with various associations which represent workers in the transportation sector. These associations were such as:

- ✓ UWAMATA (*Umoja wa Madereva wa Mabasi*) - Mwanza;
- ✓ *Umoja wa Madereva Daladala* - Mwanjelwa Mbeya;
- ✓ Tanzania Driving Association (TDA) – Dodoma branch;
- ✓ *Umoja wa Madereva wa Coaster Tanga*;
- ✓ *Chama cha Madereva Arusha*.

Chapter Two

Legal, Regulatory, and Institutional Framework of the Road Transport Sub-Sector in Tanzania

2.1 Legal Framework

The road transport sector in Tanzania is governed by several laws, as follows:

- *The Surface and Marine Transport Regulatory Authority Act, 2001 (Act No. 9 of 2001);*
- *The Road Traffic Act, 1973 (Act No. 30 of 1973);*
- *Roads Act, 2007;*
- *Transport Licensing Act, 1973 (Act No. 19 of 1973).*

2.2 Regulatory Framework

2.2.1 Surface and Marine Regulatory Authority (SUMATRA)

Surface and Marine Regulatory Authority (SUMATRA) is a multi-sectoral regulatory agency established by the Act of Parliament, CAP 413 to regulate rail, road, ports and marine transport services. In the road transport sector, SUMATRA has a duty of issuing, renewing, cancelling or amending road service licenses.¹ Before the establishment of SUMATRA, the task was performed by the Central Transport Licensing Authority and Regional Transport Licensing Authority, established by the *Transport Licensing Act of 1973*.² The *Surface and Marine Regulatory Authority Act 2001 (the SUMATRA Act)* amended the *Transport Licensing Act, 1973*, vesting in SUMATRA the powers and functions originally granted to the licensing authorities.³ Thus, anybody who wishes to operate a public service vehicle must seek a road service license from SUMATRA, subject to conditions stipulated in the *SUMATRA Act* and any other conditions as the authority may think fit. Section 31(1) of the Act provides, in relation to issuance of road service license, that:

- All authorized vehicles be maintained in a fit and serviceable condition*
- Provision of any law relating to limits of speed and weight and the number of passengers to be carried are complied with*
- Provisions of any law with respect to the time for which drivers may remain continuously on duty and the time for resting are observed.*

1 See SUMATRA website at <http://www.sumatra.or.tz/index.php/services/roads>, accessed on 20th February 2014

2 Section 11(1).

3 Section 51(2).

Specifically, SUMATRA's functions in the road transport sub-sector are:

- Licensing of commercial vehicles;
- Determining the reasonableness of rates or tariffs charged by the road transport service providers;
- Formulating and reviewing the code of conduct for road transport service users and providers; and
- Investigating road accidents, in collaboration with other stakeholders.

SUMATRA is also tasked with regulating tariffs and charges; searching vehicles for compliance with the law and license terms; developing rules and regulations on road transport; and liaising with the Police, Ministry of Public Safety and Security and Ministry of Infrastructure Development on issues affecting road transport and road safety.⁴ the Authority works with the Police to enforce road safety

2.3 Institutional Framework

There are various institutions which are responsible for regulating the road transport sub-sector. These are as reflected below:

2.3.1 Ministry of Transport

The Ministry of Transport of the United Republic of Tanzania, is a government body, mandated to formulate transport policies and its implementation. It also has the responsibility for planning and coordination as well as oversight of infrastructure delivery and assets management.⁵ The Ministry was established in 2010 by a Notice issued by *Ministerial Responsibilities (Instruments) Vide Government Notice No. 494 of 17th December, 2010*.⁶ The *Roads Act, 2007* gives the Ministry, in regard to road transport sector, the responsibility of road management.⁷

2.3.2 Tanzania Roads Agency (TANROADS)

The Tanzania Roads Agency (TANROADS) was established under section 3(1) of the *Executive Agencies Act, Cap 245* and section 5(1) of the *Roads Act, 2007 Act No. 13 2007*; and became into operation in July 2000. The main responsibility of the Agency, which is semi-autonomous, is to manage, maintain and develop public road network and related facilities in Tanzania Mainland.⁸ The Agency also enforces axle-load limits and is empowered to erect weighbridges.

4 SUMATRA website at <http://www.sumatra.or.tz/index.php/services/roads>, accessed on 20th February 2014

5 www.mot.go.tz, accessed on February, 2014.

6 *Ibid.*

7 Part II of the *Roads Act, 2007*.

8 Section 6 of the *Roads Act, 2007*.

2.3.3 Roads Authority

The Minister for Transport is empowered by the *Roads Act No. 13 of 2007* to appoint a road authority and give it an area over which it will have mandate in terms of construction, alteration, maintenance, protection and supervision of the roads in such area. He/she may nevertheless delegate such powers. The roads authority performs functions such as:

- Developing roads
- Preparing and implementing short and long term road maintenance programme
- Controlling the use of roads
- Carrying out engineering, traffic and economic studies
- Conducting research for planning, development, and maintenance activities
- Establishing, maintaining and updating road management systems
- Ensure road safety

2.3.4 Dar es Salaam Rapid Transport Agency (DART)

This agency is under the Prime Minister's Office, Regional Administration and Local Government through the Ministerial Advisory Board. The agency has responsibility of establishing and operating the Bus Rapid Transit (BRT) in Dar es Salaam. This is an effort by the government to tackle the problem of public transport in the city and traffic congestion. The BRT system is already underway, having been launched in August 2010 by President Jakaya Kikwete.

2.3.5 Tanzania Revenue Authority (TRA)

The role of TRA in the transport sector is mainly issuance of motor vehicle licenses. The *Road Traffic Act of 1973*, prohibits the use of motor vehicles without license, and provides for a fine and/or punishment for anyone who contravenes the provision.⁹

2.3.6 The Tanzania Police Force

The Tanzania Police Force (TPF) has the role to enforce traffic laws. Traffic matters are dealt with by the Traffic Department of the Tanzania Police Force. The Police Force has the following duties and powers as provided in the *Road Traffic Act, 1973*:

- Regulation of all traffic and keeping order and preventing obstruction in all roads, parking places, thoroughfares, or other places of public resort;¹⁰
- Diverting traffic temporarily, to close and deny public access to any road,

9 Section 8 states that: *No person shall use on any road a motor vehicle or trailer other than a motor vehicle or trailer exempted from the provisions of this Act, unless such motor vehicle or trailer is registered under the provisions of this Act.*

10 Section 73 of the *Road Traffic Act, 1973*.

- parking place, thoroughfare or other place of public resort;¹¹
- Keeping records of traffic offences;¹²
 - Filing traffic accident and safety reports;¹³
 - Power to demand production of driving license;¹⁴
 - Power to demand the name and address of the owner of the vehicle, where there is a reasonable cause;¹⁵
 - Power to examine and stop any motor-vehicle or trailer on a road or public place suspected of not being in a good condition;¹⁶
 - Power to order examination of the vehicle or trailer suspected of no longer being fit for the purposes for which it was registered by vehicle inspector;¹⁷
 - Removal of abandoned and a broken-down vehicle or trailer where owner has failed to do so;¹⁸
 - Take possession and remove any motor-vehicle in a metered parking place;¹⁹
 - On suspicion of its involvement in commission of a crime, require motor vehicle to be driven to a police station and detain it;²⁰
 - Power to require any person driving or attempting to drive or who is in charge of a motor vehicle or a trailer to undergo a “breath test” at a police station on suspicion of being drunk or having committed a crime.²¹

The *Police Force and Auxiliary Services Act CAP 322 [R.E 2002]*, empowers the Police Force to inspect licences and search vehicles;²² keep order on public roads by regulating and controlling traffic for public interest;²³ and place road barriers for the sake of public order or prevention of crime.²⁴

11 *Ibid*

12 Section 74 of the *Road Traffic Act, 1973*.

13 *Ibid*, Section 75.

14 *Ibid*, Section 7.

15 *Ibid*, Section 78.

16 *Ibid*, Section 81.

17 *Ibid*, Section 82.

18 *Ibid*, Sections 84 & 85.

19 *Ibid*, Section 86.

20 *Ibid*, Section 87.

21 *Ibid*, Section 46 as amended by s. 4 of the *Road Traffic (Amendment) Act of 1990*.

22 See the *Police Force and Auxiliary Services Act, Cap 322*, Section 39.

23 *Ibid*, Section 40.

24 *Ibid*, Section 41.

2.3.7 SUMATRA Consumer Consultative Council (SUMATRACCC)

The SUMATRA Consumer Consultative Council (SUMATRACCC) is established by the *SUMATRA Act, 2001*.²⁵ The main function of SUMATRACCC is to protect the interests of transport services consumers in Tanzania. In protecting such interests, the Council is obliged to do the following:

- Provide views and information on matters affecting consumers to the minister concern.
- Establish and consult with regional and sector consumer committees;
- Consult with industry, government and other consumer groups on matters of interests to consumers of regulated goods and services; and
- Establish and consult with local and sector consumer committees.²⁶

2.3.8 Employers and Workers Associations

Institutional framework in the transport sector can be divided into two categories, namely the employers' associations and the employees' associations. The *Constitution of the United Republic of Tanzania, 1977* guarantees the freedom of association of any person. Specifically Article 20(1) of the Constitution states that:

“Every person has a freedom, to freely and peaceably assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests.”

The *Employment and Labour Relations Act, 2004*²⁷ also provides for freedom of association.²⁸ Thus, freedom of association is provided to both employers and employees.²⁹ In that regard, employers in the transport sector formed associations, both national and regional to protect their interest. The employers' nationwide associations include *the Vehicle Owners Associations, the Tanzania Truck Owners Association (TATO) and the Tanzania Bus Owners Association (TABOA)*. Those operating in specific regions are such as the *Dar es Salaam Commuter Bus Owners' Association (DARCOBA)*, the *Association of Transporters in Dar es Salaam (UWADAR)* and *Arusha-Kilimanjaro Bus Owners' Association (AKIBOA)*.

25 Section 29.

26 *SUMATRA Act*, Section 30(1).

27 *Act No. 6 of 2004*

28 Sections 9 and 10.

29 *Ibid.*

On the other side, employees have also formed associations to safeguard their interests in the formation of trade unions. These associations are such as Tanzania Drivers' Association (TDA), Chama cha Wafanyakazi wa Usafirishaji kwa Njia ya Barabara (TARWOTU), Chama cha Madereva wa Malori Tanzania (CHAMAWATA), Chama cha Madereva wa Malori na IT (T.T.A.I.T.D.A), Umoja wa Madereva wa Mabasi Tanzania (UMAWATA), Umoja wa Madereva na Makondakka wa Mabasi ya Abiria (Daladala) Mkoa wa Dar es salaam (UWAMADAR) and Communication and Transport Workers Union of Tanzania (COTWU). There are several other workers association in different regions of the country with the purpose of mainly assisting members on social issues.

Chapter 3

Research Findings

3.0 Introduction

In order to attain the objectives of this study, it is important to assess fundamental rights and employment standards as set out in the country's labour laws. The *Employment and Labour Relations Act, 2004* sets these prerequisites of labour rights. For instance, issues of discrimination and torture at work place are strictly prohibited under the labour laws, employment standards working hours, right to leave, right to form and join trade union are clearly stipulated in the labour laws, among others. Henceforth, this chapter will dwell in assessing compliance to prohibitions and standards in the transport sub sector as revealed in the research findings over the same.

3.1 Fundamental rights and protection

The fundamental rights and protection are legally guaranteed in *the Employment and Labour Relations Act, 2004* and *the Labour Institutions Act, 2004*. It includes the right to non-discrimination at work place, prohibition of child labour, freedom from torture and harrasment, right to form and join trade union and other fundamental freedoms for workers, according to the International Labour Organisation (ILO) conventions. In the mini study carried out by LHRC, it was discovered that most employee do not have written contracts. Due to this fact most of the workers' entitlements are highly denied by employers.

The fact that one is engaging with employer for a considerable period of time suggests that the employment relationship has been established. During the mini study it was revealed that most employees do not have written contracts. They argued that most of their fundamental rights and protection are violated because there is no written contracts. Therefore they do not enjoy all cycles of leave, security of tenure is so fragile and do not enjoy other employment-related rights. The following case provides a clear legal position where there is no written contract and employment status defined:³⁰

30 *In the High Court of Tanzania, Labour Division at Dar es Salaam, Labour Revision No. 291 of 2009 (Unreported)*

In this application, the employer seeks an order for revision of the Commission for Mediation and Arbitration (CMA) award dated 19/11/2008, wherein the employer was ordered to pay each employee. T.Shs. 390,000/= being payment of notice, leave entitlement and severance. The applicant believes the decision was in err so far as the arbitrator's decision was based on the finding that the respondents were employees.

The background information to this matter is as follows; In this application, the employer seeks an order for revision of the Commission for Mediation and Arbitration (CMA) award dated 19/11/2008, wherein the employer was ordered to pay each employee. T.Shs. 390,000/= being payment of notice, leave entitlement and severance. The applicant believes the decision was in err so far as the arbitrator's decision was based on the finding that the respondents were employees.

The background information to this matter is as follows. The respondents' employment was terminated on 15/10/2007 and they filed a dispute to CMA claiming for terminal benefits. The key issue of contention at the CMA was whether the respondents were employees in terms of the law or not. The arbitrator decided that the respondents were employees as defined under section 14(1) of the Employment and Labour Relations Act, 6/2004) (the Act) and presumed employees under section 61 of the Labour Institutions Act, 7/2004 (LIA) He reasoned as follows;

“Kwamba kwa mujibu wa Sheria hiyo, walalamikaji walikuwa wafanyakazi chini ya uelekezaji/uangalizi wa mlalamikiwa na kwamba wameshafanya kazi zaidi ya masaa 45 kwa mwezi kwa miezi mitatu mfululizo. Vile vile kwamba walalamikaji walikuwa wanapewa vifaa vya kinga na mlalamikiwa na kumfanyia kazi yeye.

“Kwamba mlalamikiwa anapinga ajira yao, lakini hakutoa mikataba yoyote ya maandishi ili kuthibitisha kuwa wao sio waajiriwa wake. Hivyo wanaombwa kulipwa stahili zao za kuachishwa kazi yani notisi, likizo, kiinua mgongo pamoja na masaa ya ziada kwa kuwa walikuwa wanaingia kazini saa 1.30 asubuhi na kutoka saa 12:00 au zaidi ya hapo”

He further decided that the respondents were employed on a contract of unspecified period but paid weekly and that they were retrenched by the applicant after he failed to provide uniforms. He found that as employees, they were entitled to terminal benefits in terms of section 41(1)(b)(i) of the Act which he found to be: Notice based on 4 days salary, 28 days leave; and severance pay.

The sum due was calculated based on the average of Shs. 60,000/= since others were paid 58,000/= and others 60,000/=. These entitlements in terms of the law were found to be; notice based of 4 days salary being

shs 40,000/=; leave in the sum of shs 280,000/= and severance Shs 70,000/=. The total awarded was shs 390,000/= per respondent.

The arbitrator also; found their overtime claims unproved and dismissed them and declined to decide the issue of fairness of retrenchment because it was not pleaded in the referral Form No. 1.

At the hearing of this application, the applicants were represented by **Mr. Lugaila** advocate and the respondents appeared in person although their pleadings were drawn *gratis* by **the Legal and Human Rights Centre**. The matter proceeded by way of written submission.

The gist of the applicant's submission was that ".....the arbitrator did not properly construe the law on who is an employee and as to whether the respondents herein were permanent employees of the applicant": They elaborated; that the respondents were employed for specific tasks, and were not part of the applicant's payroll; that payment was based on tasks performed i.e the amount of bags loaded and unloaded and were not on 12 months continues service.

In reply, the respondents submitted that they, were employees as their form of engagement qualify as a contract of employment under section 14(i)(c) of the Act include: "(a) a contract for unspecified period of time; (c) a contract for a specific task." They elaborated that they were employed to carry out specific tasks of loading and off – loading cement from train wagons, and the nature of their engagement amounts to employment in terms of section 61(a)(c)(e)&(f) of the Act. They worked for an average of 45 hours for more than 3 months and were provided with working equipment being protection equipments and gate passes

Further, they submitted that the applicant had a burden of proof as he failed to keep a record of their employment as required by section 15 (6) of Act.

The issue for decision is whether the arbitrator's decision that the respondents were employees was properly reached on the facts on record.

I have considered the parties arguments in light of the facts on record and the law. Under the law a persons who renders service to any other person including for a specific task is presumed to be an employee until the contrary is proved if one or more of the scenarios itemized under section 61 of LIA exists

That section provides and I quote;

“61. For the purpose of a labour law, a person who works for, or renders services to, any other person is presumed, until the contrary is proved, to be an employee, regardless of the form of the contract, if anyone or more of the following factors is present:

- a. *The manner in which the person works is subject to the control or direction of another person*
- b. *The person's hours of work are subject to the control or direction of another person;*
- c. *In the case of a person who works for an organization, the person is a part of that organization*
- d. *The person has worked for that other person for an average of at least 45 hours per month over the last three months;*
- e. *The person is economically dependent on the other person for whom that person works or renders services;*
- f. *The person is provided with tools of trade or work equipment by the other person; or*

On the facts before him, the arbitrator rightly found that conditions specified under section 61(a),(d) to (f) existed. In view of that, I find no grounds justifying revision of the arbitrator's award. The same is hereby confirmed and this application dismissed.

Therefore; the judgement cited recognises oral contract in employment and parties to it bear rights and responsibility associated with it. It entails that employees in this sector will enjoy all the benefits as in standard contracts. Lack of written contracts discourages employees to demand for their rights such as right to enjoy all employment benefits like health cover insurance, right to a leave cycles, right to work in reasonable and allowed working hours. Further, the employers in this sector do evade tax particularly income tax accrued from employment contracts remitted from employees salaries.

3.1.1 Prohibition of child labour

The *Employment and Labour Relations Act, 2004*, for instance, provides for protection of children against forced labour and exploitative practices that will endanger best interests of the child such as education and upbringing.³¹ In this study, it was revealed that less than 1% of young people below 18 years old were directly employed in the

31 Section 5.

transportation sector, despite the fact that employing a minor under this Act is a criminal offence.³²

3.1.2 Prohibition of Discrimination

The Employment and Labour Relations Act, 2004 also provides for prohibition of any form of discrimination at a work place.³³ The Act provides that;

“ Every employer shall ensure that he promotes an equal opportunity in employment and strives to eliminate discrimination in any employment policy or practice.”

In transportation sector, it was revealed that there is discrimination on basis of race in companies owned by Tanzanians with Asian origin such as Arabs and Indians. There is different treatment on remuneration, pay day, observance of employment standards such as sick leave and annual leave, and other benefits, including employment contracts. Below are some of the comments from some of the respondents;

Mimi mwafrika nikiumia au kuumwa sipewi ushirikiano wowote, lakini kwa Mwarabu ambaye ndiye mmiliki hupewa msaada na wenzake

(For me, an African, if i get injured or get sick I do not get any cooperation, for an Arab, who is the owner, receives assistance from his fellow Arabs.)

Mabosi wa kihindi wanadharau sana wafanyakazi wa Kiswahili
(Indian bosses look down upon employees who are of African origin)

Ni kwamba matajiri wamejiajiri wenyewe si wote hivyo kutufanya kama vibarua Anaweza kukuambia wewe ni sawa na nyani tu

(It is as if the bosses have employed themselves and treat us like casual workers. They can compare you to a monkey.)

Waarabu wanajaliana wenyewe kwa wenyewe
(Arabs are more considerate to their fellow Arabs.)

Kulipwa mshahara unaangaliwa usoni hata kupangwa route za masilahi mazuri hupewi. Pamekuwa na wingi wa viongozi ambao ni wahindi na waarabu ambao kazi yao haifahamiki

(There is discrimination in salary payments; even the allocation of higher earning routes goes in those lines. There has been an increase of supervisors with Asian and Arab origins with questionable assigned duties.)

32 Section 5(7)

33 Section 7

The above comments are responses of respondents who replied YES to a question that triggered any experience on discrimination. According to the findings in this study, 36.6% of the respondents responded that they have experienced discrimination at their workplace. For instance, one respondents working with Agrawal Transport Co. Ltd said that; “*Waafrika hatupendwi*” (Africans (black) are neglected/not loved) connotes discrimination according to race at work place.

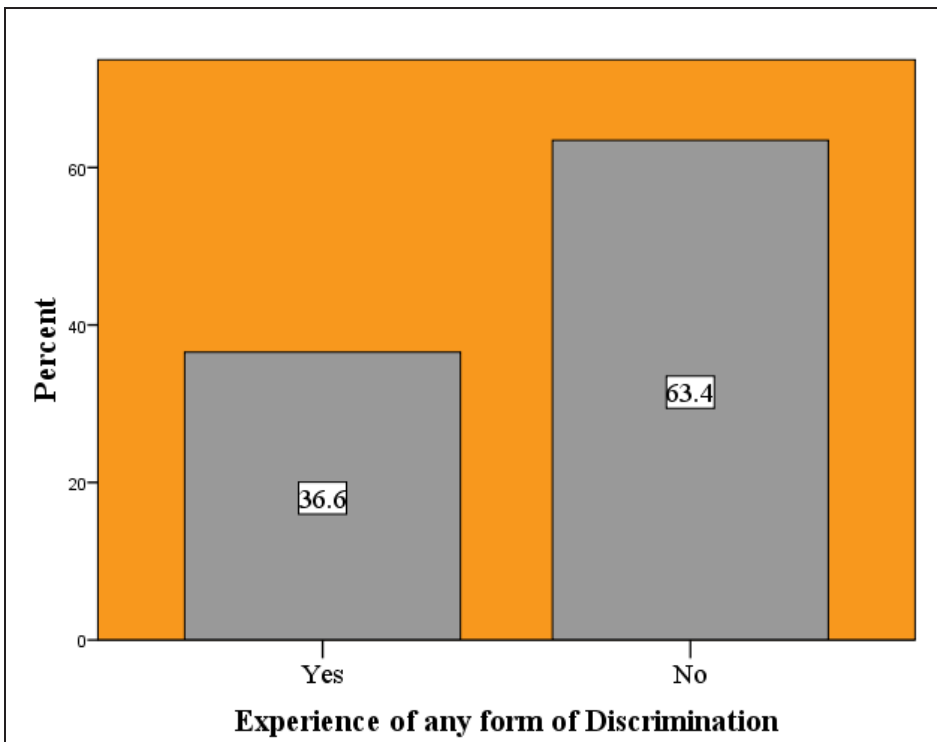


Figure 5: Discrimination in the Transport Sector

3.1.3 Use of abusive language

During the study, respondents claimed that there is use of abusive language against them. The employers disrespect even aged employees, by using abusive language towards them. There is no correction of such behaviour as workers are wary of being at employers' discretion. Thus one remains obedient and suffers psychologically as there is nothing he/she can do. The respondents from these companies claimed that they were abused in a number of different ways at work place; Bansal Transporter, LIM Safaris, Mtei Express, Mahamba Express, Top Story, Taf Gong, Mghamba Express, Bab Fes, Kandahar, Tango Transport, Sunvic Transport Co. Ltd, AIM – Steel, GVS Transportation Co. Ltd, Simba Trading and Company Limited and Amafu Distributors. For instance, the following are some of testimonies on the use of abusive language from few respondents;

Ninapomaliza kazi kwa siku hesabu ya tajiri isipotimia huanza kunitusi, hata kupigwa vibao

(When I finish my job and I have not met the daily required collection, the boss will insult and even slap me.)

Matusi na kupewa adhabu za kufanya usafi wa magari wiki 1-2 bila malipo
(Insults and punishment to clean the vehicles for 1 to 2 weeks without pay.)

Tajiri anaweza kukutukana matusi ya nguoni mpaka vya mama yako
(The boss may use vulgar insults against you, even in relation to your mother.)

Manyanyaso yanayopatikana ni kama vile mileage ndogo, mshahara haukidhi mahitaji, matusi yasiyo na sababu maalumu

(Among the abuses are such as being given shorter mileage [amount of money given to cover the transportation expenses per mileage], the salary that does not meet ones needs and unnecessary insults.)

Kwanza kupangiwa ruti usiku bila kujali umechoka au bado na kupangiwa bila sababu

(Being assigned to night routes regardless of whether you are tired or not.)

3.1.4 Other forms of Harrasment and disrespect

The study aimed at finding out the extent of harrasment employees in transport sector do suffer. The respondents from various companies admitted to have been harrassed in one way or another. Respondents from the following companies complained about their employers; Simba Logistics (T) Ltd, the respondent claimed that when one is involved in an accident, he is supposed to pay for maintainance and repair of the damaged truck, otherwise, he will be remanded after being arrested by police officers, who are in the pockets of employers, and possibly imprisoned. Similar complaints came from other companies such as; Inara Investment Co. Ltd, Banadir Co. Ltd, Transport Africa Ltd, Faisal General Company, Kimole Logistics Co. Ltd, Eastern Union Company Limited.

According to the findings, 38.3% of the respondents admitted to have been harassed to the extent that suffering physical and psychological torture as depicted by the graph hereunder:

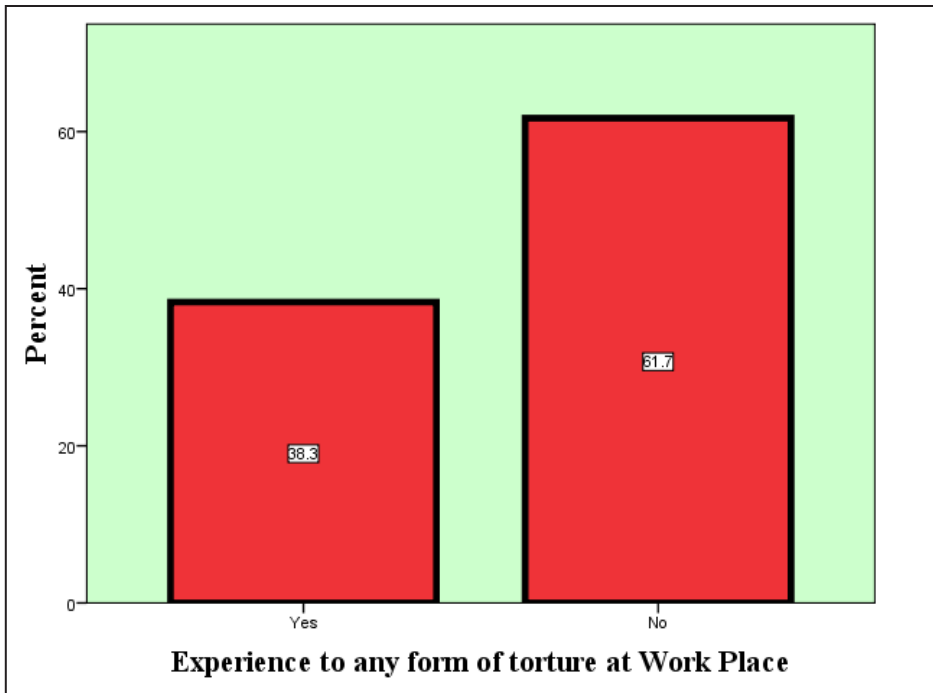


Figure 6: Harassment in the Transport Sector

3.1.5 Collective Bargain and Right of Association

The transportation sector plays a vital role in enhancing the country’s economy. In order to facilitate movement of people, goods and other services, the sector plays a great role. The sector employs a considerable number of youths, as from the research conducted in 8 regions; it was revealed that 58.1 percent of individuals employed in the sector are youths aged between 14 to 35 years. However, workers in this sector are faced with numerous challenges, such as lack of trade unions to address their working conditions and collective bargaining, lack of security of employment, lack of medical care, including sick leave, non-entitlement to annual leave, working for more than 17 hours per day, poor remuneration and non-enjoyment of social security protection.³⁴

During this study, it was revealed that 90.1 percent of employees in the transportation sector do not belong to any trade union. The study also revealed that there are no trade unions or trade union branches at work place.³⁵ When asked as to why there is no trade union or trade union branches at their workplaces, most of the respondents gave the explanation that their bosses do not prefer to have a trade union branch at their work place. LHRC could conclude the reason for not having trade unions at work places was due to ignorance of the employees as far as procedure of establishing trade union

³⁴ LHRC, (2013) Mini-Study on Transportation Sector Report, 2013.

³⁵ *Ibid*

branches at the work place is concerned. The other reason that LHRC established as the reason behind is the fact that the transportation sector lacks a single trade union which could advocate for rights of the employees in the transport sector. Employees include drivers and their assistants (turn boys), conductors and mechanics. Each group of employees has its own association that is meant to advocate for the rights of its members. However, these associations do not advocate for the labour rights of their members, rather these associations have been established to assist each other in social predicaments, such as burial ceremonies, weddings and to cover medical expenses. For example, drivers have formed their own association called *Chama Cha Madereva Tanzania (CHAMATA)*.³⁶ This association does not seriously handle labour issues affecting its members at work place, rather it is an association meant to assist one another in such social predicaments.

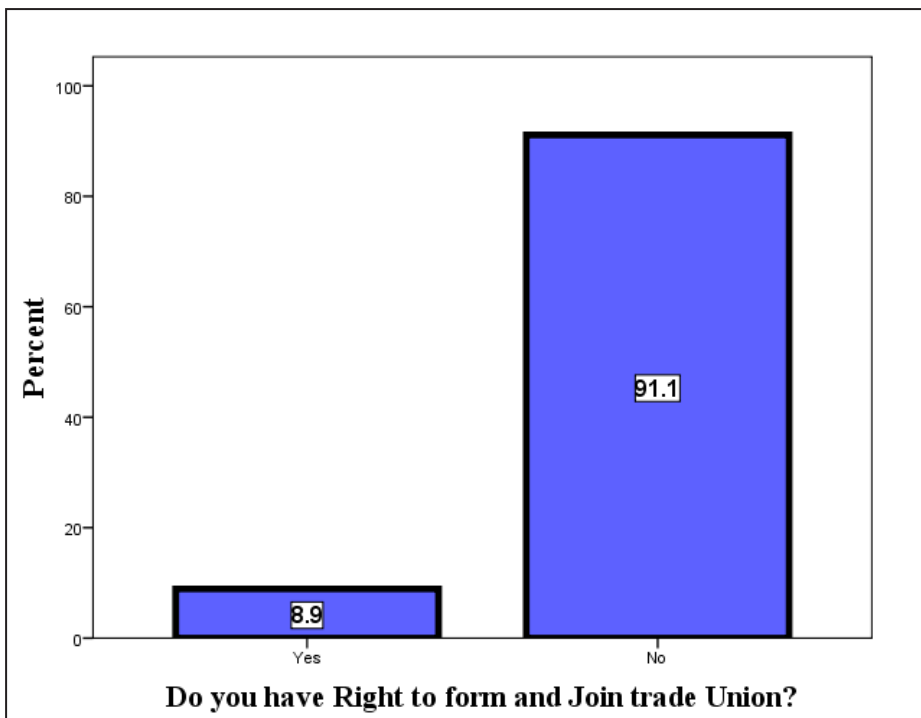


Figure 7: Right to Join in Trade Unions

The LHRC found out that employers in transportation sector are very powerful individuals economically in such a way that workers do not have a say in matters affecting their rights and welfare. According to LHRC study, most of transportation companies prohibit the formation of trade unions at work place. The study further revealed that once workers start forming trade unions, the employers intimidate

36 *Ibid.*

them with termination of their employment. For instance, during the study one of the respondents stated the following:

“Chama kwao ni mzigo mkubwa, hawapendi kuwe kuna chama cha wafanyakazi, ukisikika unasema habari za chama cha wafanyakazi unafukuzwa kazi mara moja. Na ajira hakuna ukifukuzwa kazi mwenzako anapata kazi hapo hapo, unafanyaje?”

(Having a trade union is a burden to them; they never like workers to form a trade union. If heard addressing issues concerning trade unions, you are likely to lose your job. Since jobs are in scarce, the moment you are fired, another person is immediately employed to fill your position.)

LHRC calls upon workers in transportation sector to unite and form one strong trade union so as to enable them to have collective and bargaining powers against their employers. The job they are engaged in is a very dangerous one thus a necessity to have life insurance as well as medical coverage. For that to be achieved, there is a need to formulate a strong trade union which will stand and fight for the labour rights of the workers in uniformity. Having individual associations cannot be a solution to solve workers' problems and challenges.

3.2 Employment Standards

The *Constitution of United Republic of Tanzania, 1977* provides for the right to work and fair remuneration.³⁷ Labour laws provide for minimum employment standards that must be adhered to by employers in private sectors. These standards are uniform and should be adhered to in labour market of any place. Such employment standards, including observance of set working hours, rights to leave cycles, right to social security and protection, right to remuneration which adequate and fair and right to know labour rights and standards.

LHRC conducted a mini survey on human rights employment standards adherence in the transportation sector, and during the study it was revealed that most of employment standards set out in labour laws are not adhered to by most employers. The following were issues found out during this survey with regard to employment standards

3.2.1 Non-Compliance with Working Hours

The eight working hours a day implying the 48 hours a week was a key demand of the working class all over the world before International Labour Organisation (ILO) was established.³⁸ The working hours as a matter of right developed in different stages in

³⁷ Article 23.

³⁸ Lee, S et.al; Working Time around the World: Trends in working hours, laws and policies in a global comparative perspective, ILO 2007 page 2.

the labour market. For instance, the first ILO Convention, the Hours of Work (industry) Convention, 1919 established a well known principle on working hours. The principle is famously known as “8 hours a day, 48 hours a week”. This principle was adopted by different states and incorporated into the respective countries’ labour laws. Thereafter other conventions came into place for workers in other sectors apart from industries. For instance, the Hours of Work (Commerce and Offices) Convention, 1930 extended the application of 48 hours a week to commerce and office employees.³⁹ In 1935, the Forty Four Week Convention was adopted, whereby the working hours were reduced to 40 hours a week. In considering working hours, the one day rest was equally enshrined in the Weekly Rest (Industry) Convention 1921 and the Weekly Rest (Commerce and Offices) Convention, 1957. These two conventions provided for a right to rest at least one day in every week.

The *Employment and Labour Relations Act, 2004* sets out working hours for employees and it stipulates that an employee is supposed to work six days a week, 45 hours a week and 9 working hours per day including 1 hour meal break.⁴⁰ The law does distinguish working hours in industries, commerce and offices. The law in a way prohibits an employer to allow an employee to work more than 12 hours a day.⁴¹ The law provides that, “*Subject to the provisions of this sub-part an employer shall not require or permit an employee to work more than 12 hours in any day*” The law further prohibits an employee to overtime work without prior agreement and the overtime should not exceed 50 hours in a cycle of four weeks.⁴²

This standard is not observed at all in the transportation sector. It was revealed that, most employees in the transportation sector work between 11 – 16 hours. The study revealed that 58.4 percent of the respondents were found to work between these hours (11-16) while 21.5 percent work beyond 17 hours and have little time to rest per day.

39 Convention No. 30.

40 Section 19 of the *Employment and Labour Relations Act, 2004*.

41 Section 19(1).

42 Section 19(3).



Figure 8: Working Hours for Drivers

LHRC observed that, this is among the reasons why there is frequent occurrence of road accidents caused by long distance and long working hours for truck and bus drivers. For instance, a bus driver from Mwanza to Dar es Salaam drives for about 16 hours, and they are supposed to do the same the next day, to traveling back to Mwanza. This is a tedious route and it is a total violation of the law as the maximum working hours provided by the law should not exceed 12 hours per day, including three hours of overtime if need arises. However, drivers are not accorded overtime pays by their employers.

3.2.2 Right to Work and Fair Remuneration

Right to work and fair remuneration is an important principle in labour market as an individual works in order to earn money to support livelihoods. However, in most cases there is no guarantee of fair remuneration for the work done. There are differences in terms of wages received by professionals and casual workers, national and international experts also thematic area of work determine the amount of wages to be paid. The International Labour Organisation (ILO) set standards in a number of Conventions in order to guarantee access to fair remuneration in labour market. For instance the

Labour Clauses (Public Contracts) Convention 1949,⁴³ which aims at ensuring respect for minimum labour standards in the execution of public contracts, the *Protection of Wages Fixing Convention, 1949*,⁴⁴ that safeguards the principle that “Wages shall be paid in legal tender at a regular intervals “and the *Minimum Wage Fixing Convention, 1970*⁴⁵ that requires ratifying states to establish a minimum wage fixing machinery capable of determining and periodically reviewing and adjusting minimum wage rates having the force of law.

The Constitution of United Republic of Tanzania provides the right to work and fair remuneration as a matter of right. Article 23 provides that; *-(1) Every person, without discrimination of any kind, is entitled to remuneration commensurate with his work, and all persons working according to their ability shall be remunerated according to the measure and qualification for the work.*

(2) Every person who works is entitled to just remuneration. This constitutional guarantee has been violated by transportation companies as during the study facts shows that employees in this sector do not have guarantee to equal pay and specified time.

The right to fair remuneration is protected by the Employment and Labour Relations Act, 2004 section 26 which clearly provides that;

(1) the provisions of this section apply, when, for any purpose of this Act, it is necessary to determine the applicable hourly, daily, weekly or monthly rate of pay. (2) The hourly, daily, weekly or monthly wage rates shall be determined in accordance with the Table provided for in the First Schedule. (3) Where an employee is employed on a basis other than time worked, that employee shall be considered, for the purposes of this section, to be paid on a weekly basis and that employee’s basic weekly wage shall be calculated on the amount earned (a) over the immediately preceding 13 weeks, or (b) if the employee has been in employment for less than 13 weeks, that period

The *Employment and Labour Relations Act, 2004* in the first schedule provides for the table that shows how to calculate comparable wages rates as shown hereunder:

43 ILO Convention No. 94
44 ILO Convention No. 95.
45 ILO Convention No. 131.

Table 1: How to Calculate Comparable Wages

Basis of Payment	To calculate hourly rates	To calculate daily rates	To calculate weekly rates	To calculate monthly rates
Employees whose basic wage is set by the hour		Multiply the hourly rate by the number of ordinary hours of work web day	Multiply the hourly rate by the number of ordinary hours of work each week	Calculate the weekly rate then multiply the calculated weekly rate by 4,333
Employees whose basic wage is set by the day	Divide the daily rate by the number of ordinary hours of work each day		Multiply the daily rate by the number of ordinary days of work each week	Calculate the weekly rate, then Multiply the calculated weekly rate by 4,333
Employees whose basic wage is set by the week	Divide the weekly rate (or calculate weekly rate) by the number of ordinary hours of work each week	Divide the weekly rate (or calculated weekly rate) by the number of ordinary days of work each week		Multiply the weekly rate (or calculated weekly rate) by 4,333
Employees whose basic wage is set by the month	Divide the monthly rate by (4,333) times the number of hours ordinarily worked each week	Divide the monthly rate by (4,333) times the number of hours ordinarily worked each week	Divide the monthly rate by 4,333	

Therefore during the study 75.2 percent of the respondents revealed that they did not receive salary on time, for there is no specific date of receiving their payments. Sometimes their salary is channelled through mobile phone transfers denying the employee their right of receiving salary slips. This is contrary to ILO conventions that “Wages shall be paid in legal tender at regular intervals” One of the respondents was quoted saying that;

“Huku hakuna mshahara hizi ni kama posho tu kila mtu mwisho wa mwezi unapita hujapata kitu, unalipwa mwezi unaofuata tarehe 7 mara nyingine mpaka tarehe 10 kwa kutumia M-Pesa. Sisi hatuna haki ukilalamika tu kazi unaachishwa”

(There is no salary, what we are paid is just allowances. A month can pass without one obtaining their pay, you get paid the next month on the 7th or sometimes the 10th through M-Pesa [a popular mobile cash transfer]. We do not have rights; if you complain you are likely to lose your job.)

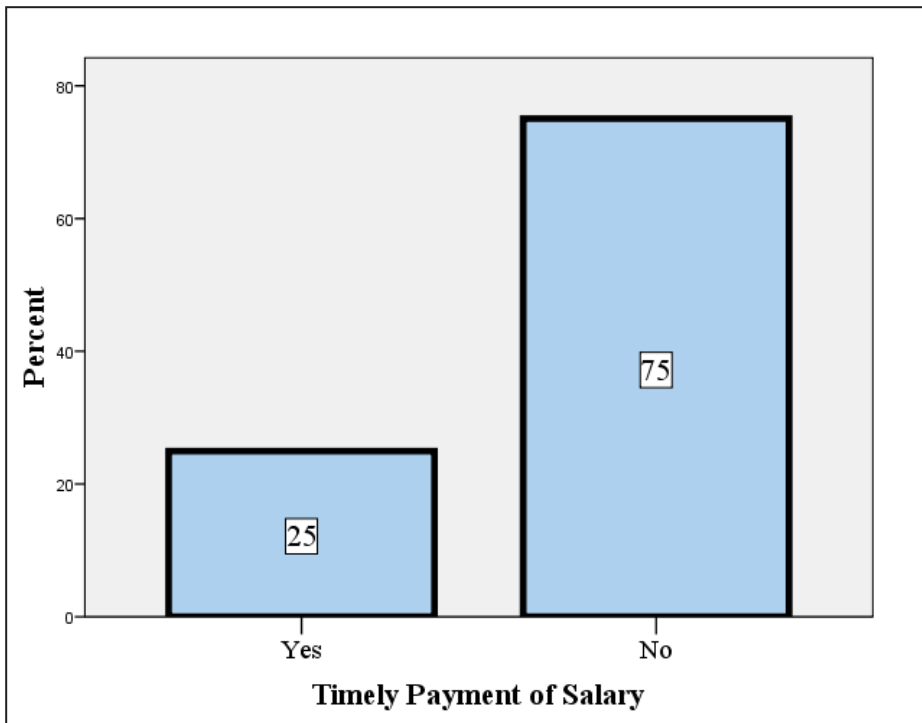


Figure 9: Payment of the Salary

The respondents from other companies such as Mahamba Express, Top Story, Bansal Transporters, A to Z Transporters, Amafu Distributors, Kandahar Transport Services. The respondent from Simba Logistics Company Limited said that; *“Kampuni yetu ya Simba Logistics wanalipa mshahara wa shilingi 170,000/= lakini wanalipa mshahara wanavyotaka wao na hakuna muda maalum. Unaweza kulipwa mshahara katikati ya mwezi unaofuata.”*

The salary structure during the study revealed that; 85.11 percent of respondents receive allowances which is a salary in a range of 50,000/= to 250,000/= per month. Whereby 11.99 percent receive salary/allowance in a range of 260,000/= to 500,000/= whereas only 2.9 percent of the respondents earn above 500,000/= per month.

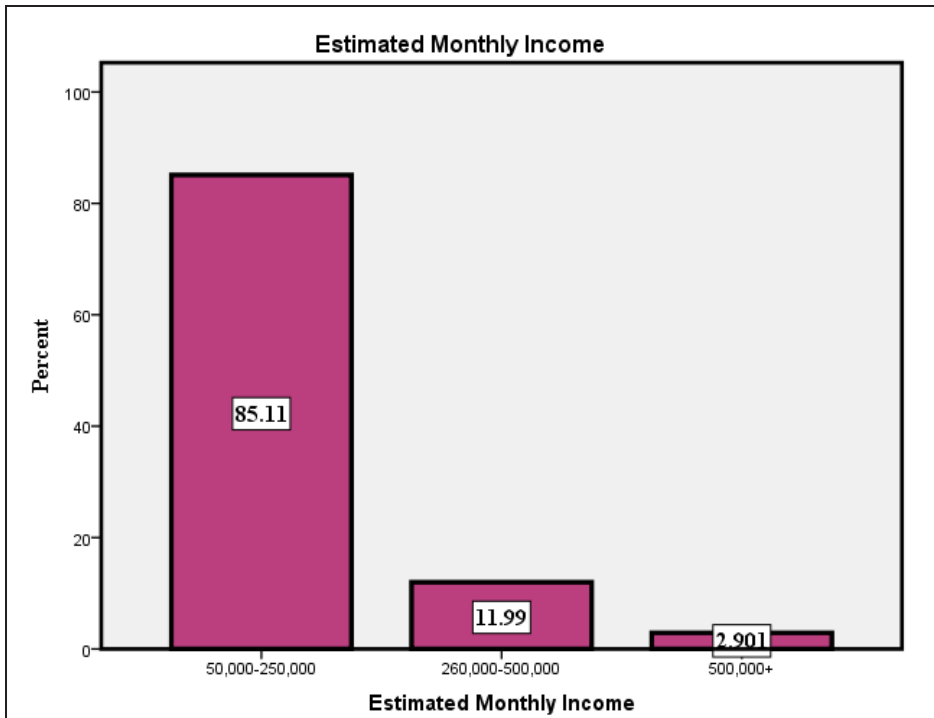


Figure 10: Estimated Monthly Income

LHRC opines that there is need for employers in transport sector to respect the fundamental right to work as provided in the *Constitution of United Republic of Tanzania, 1977*. The government through the Ministries of Transport and Labour should intervene to ensure that laws of the land are adhered to. Through such intervention livelihoods of employees will improve, government will raise its revenue collection and there will be reduction of road accidents as employees particularly drivers will be motivated to work observing safety rules.

Further, crime incidents will be reduced; for instance selling fuel on transit, spare parts and other goods. This practice will add value and confidence of neighbouring countries to use transportation companies from Tanzania and then increase contribution of transport sector to the countries economy.

The government should ensure that all the employees in transport sector are employed with proper written contracts. There is advantage on both sides, government and employees, to have written contracts with clear terms, including agreed salary or allowance payable. The findings revealed that employment contracts are signed in order to get transportation licences as mandatory requirement imposed by the Surface and Marine Transport Regulatory Authority (SUMATRA). The *Transportation Licensing*

Act, 1973 provides for the same.⁴⁶ The study revealed that the majority of employees in the transportation sector do not have employment contracts.

3.2.3 Right to Join Social Security Funds

The right to a social security scheme is a legal right and is provided by different security funds institutions. The ILO defines the overall objective of the social security scheme as to provide access to health care and income security. *The Social Security (Minimum Standards) Convention, 1952*⁴⁷ provides for a number of contingencies and benefits which include; old age, invalidity, survivorship, employment injury, maternity, medical care, sickness, unemployment and death.⁴⁸ The social security scheme is intended to all as a matter of right originated from the *Universal Declaration of Human Rights, 1948* which clearly provides that; “*Everyone as a member of society, has the right to social security.*”

In Tanzania, social security is run by different social security schemes. There are several social security schemes including; Local Authorities Pension Fund (LAPF), Public Services Pension Fund (PSPF), National Social Security Funds (NSSF), Parastatal Pension Fund (PPF) and Government Employees Provident Fund (GEPF). The social security funds are regulated by the Social Security Regulatory Authority (SSRA) which is established under the *Social Security (Regulatory Authority) Act, 2008*.⁴⁹

The provision of social security is a must to all employees in public and private sector. The legal enforcement of these statutory deductions is easily enforced in the formal sector compared to the informal sector. Non-compliance to such statutory deduction is an offence under enabling legislations which establishes the social security funds. For instance the *National Social Security Fund Act, 1997* provides that; “*Any person for the purpose of evading payment of any contribution by him or some other person knowingly makes any false statement or representation, or produces or furnishes or causes to be produced or furnished any document or information which he knows to be false in material particulars commits an offence and is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both that fine and imprisonment.*”⁵⁰

The legislation establishing the social security schemes are very clear, however not enforced in transport sector. Majority of respondents in the study were not registered in any of the social security funds available. In responding during the study, the 85.5 of the respondents answered no to question whether they are registered in any of the

46 Part V of the Act.

47 ILO Convention No 102.

48 <http://www.tccia.com/tccia/wp-content/uploads/legal/policy/socialsecuritypolicy.pdf>

49 Act No. 8 of 2008.

50 Section 72(1).

social security schemes and 14.5 said yes. This indicates that there is poor enforcement of the laws in place.

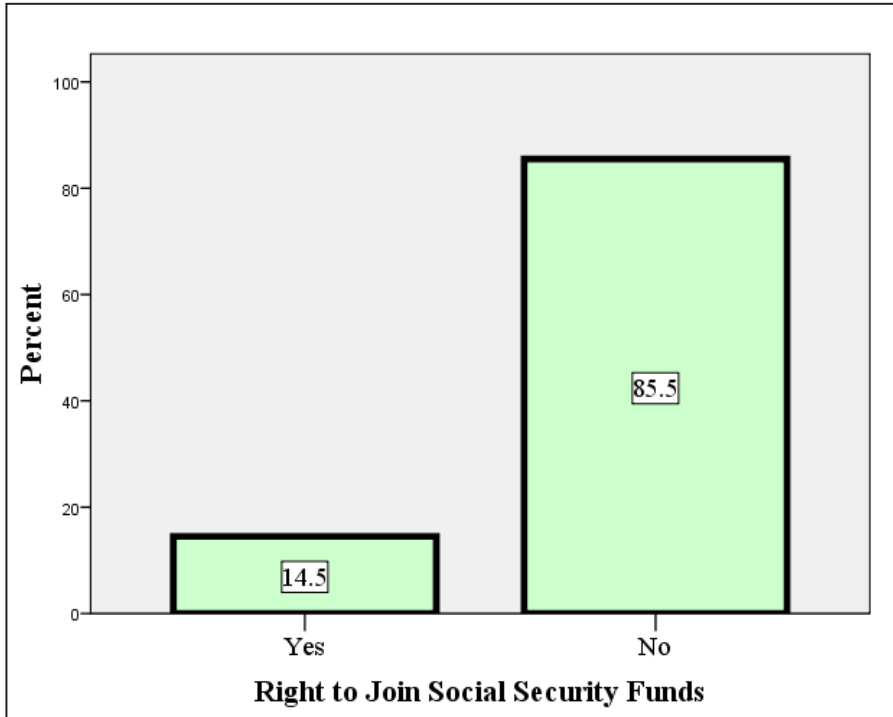


Figure 11: Right to Join Social Security Funds

LHRC urges the Social Security Regulatory Authority (SSRA) to be given powers to inspect companies to ascertain whether they comply with statutory deductions on social security. Most companies in Transport sector do not deduct and furnish the amount deducted to social security schemes. For instance AIM Group (T) Ltd in Dar es Salaam keeps the statutory deductions to social security schemes into the company's accounts. In paying terminal benefits to employee after termination of the employee contract, the company includes the money which was supposed legally to be paid by the Social Security scheme as withdrawal benefit. The letter below shows one of the termination letters- received by LHRC on such misconduct:

AIMGROUP

AIM Group (T) Ltd. Plot 11 Tunisia Road, Kinondoni Dar es Salaam Tanzania
info@aimgroup.co.tz PO BOX 12933 tel. +255 22 212530/3/550/800

TERMINATION OF CONTRACT OF EMPLOYMENT BY AGREEMENT

This agreement is made as of the 26 day of August, 2014

Between

AIM GROUP

P. O.Box 23282 Dar es Salaam
(Herein after referred to as the "Employer")

That, having discussed the matter related to the employment relationship, both parties have agreed to terminate the contract of employment effective from 25th August, 2014 under the following terms;

That, the employer will pay the employee as follows:

- i. Salary for days worked up to 25/08/2014 – TSH 416,666.70 /=-
- ii. Pending leave days 25 days – 383,333/-
- iii. One month salary as notice pay, - TSH 500,000/-
- iv. Severance Pay, - TSH 269,231/-
- v. NSSF – TSH 2,457,002/-
- vi. Certificate of Service

3.2.4 Right to Access Health Service and Medical Care

The *Constitution of United Republic of Tanzania, 1977* does not guarantee protection of right to health. However, right to life as provided under Article 14 of the *Constitution of United Republic of Tanzania, 1977* was interpreted by the court to include right to health in the case of *Festo Balegele & 749 others versus Dar es Salaam City Council* at the High Court of Tanzania at Dar es Salaam. This case sets a precedent on right to live in health and clean environment.⁵¹

The right to health and access to medical care is highly denied in transport sector. During the study, respondents admitted that they sometimes had to take their medication while on road. The respondents revealed that there is great fear of losing their jobs once admitted in hospital for treatment. Most of the employers do not accord employees with medical services. The study revealed that 88.07 percent of the respondents do not enjoy medical care from employers whereas only 11.93 percent do enjoy it.

51 High Court of Tanzania at Dar es Salaam, Miscellaneous Civil Cause No. 90 of 1991.

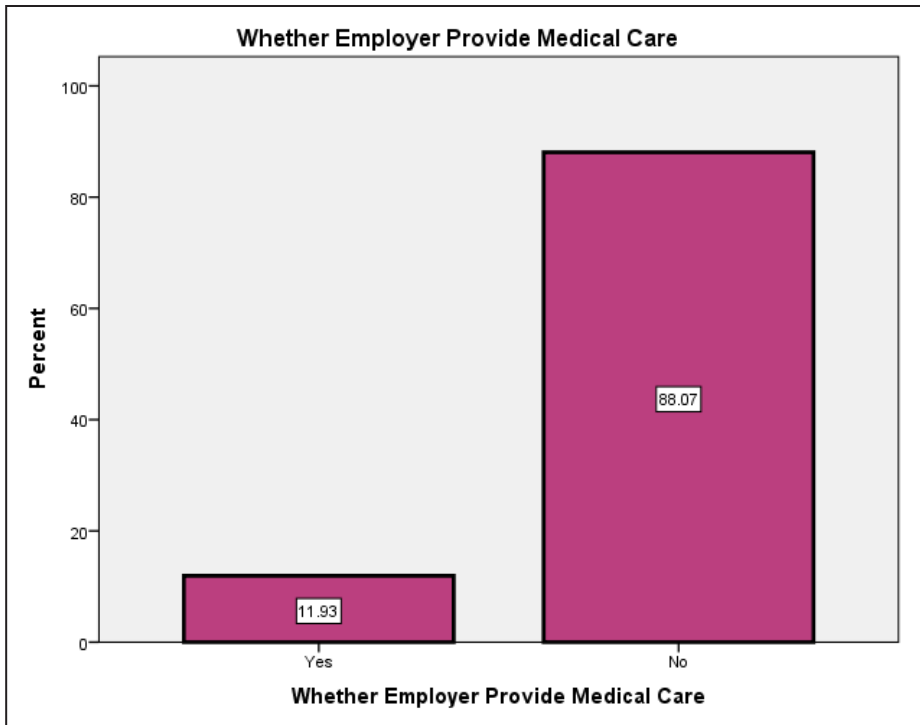


Figure 12: Medical Care for Employees in the Transport Sector

Long distance truck drivers are at the highest risk and are implicated in geographical spread of HIV/AIDS in Africa and Asian countries.⁵² Due to nature of their work, employees in transport sector are vulnerable to the spread of HIV/AIDS. This is because of the long distance that the track drivers cover; thus there are unofficial resting centres created for the truck drivers along the country’s highways. These centres have become hubs for prostitution and unprotected sex, leaving the truck drivers and other employees in the sector at the highest risk of contracting HIV/AIDS.⁵³ The Tanzania Commission for Aids (TACAIDS) estimates that HIV/AIDS infection rates at these centres exceed greatly the national rates.⁵⁴ Where the national HIV/AIDS infection rate lies at 5.1 percent, the infection rate at these centre stand at between 15-35 percent.⁵⁵ Thus, employees at the sector are in the highest risk in contracting HIV/AIDS, given the fact that employers have not taken enough initiatives in combating HIV/AIDS.

52 Jeff, Marck “Long distance truck-drivers sexual cultures and attempts to reduce HIV risk behavior amongst them: A review of the African and Asian Literature published in; Resistance to Behavior change to Reduce HIV/AIDS infection 1999 pages 91-100 also available at sitere-sources.worldbank.org/INTTSR/Resources/462613-11-350999994537/resistances_ch8pdf.

53 Elias Msuya, “Ngonzo zembe ilivyokithiri barabara ya kuelekea Zambia,” Mwananchi 11th May, 2013.

54 Tatu Mohamed, “Madereva wa masafa vinara wa VVU,” Tanzania Daima 9th September, 2014.

55 *Ibid.*

This was revealed during the study where 53.38 percent of the respondents revealed that their employers have not taken any initiative in combating HIV/AIDS at their working places. Only 9.7 percent of the respondents revealed that they are provided with Voluntary Counselling and Testing (VTC) services by their employers. Some of the respondents (2.5 percent) revealed that once diagnosed with HIV, an employee is likely to lose their job by termination of their contracts. This creates great fear among the employees, making the fight against HIV/AIDS very difficult, especially given the status of the risk that employees in the sector find themselves at.

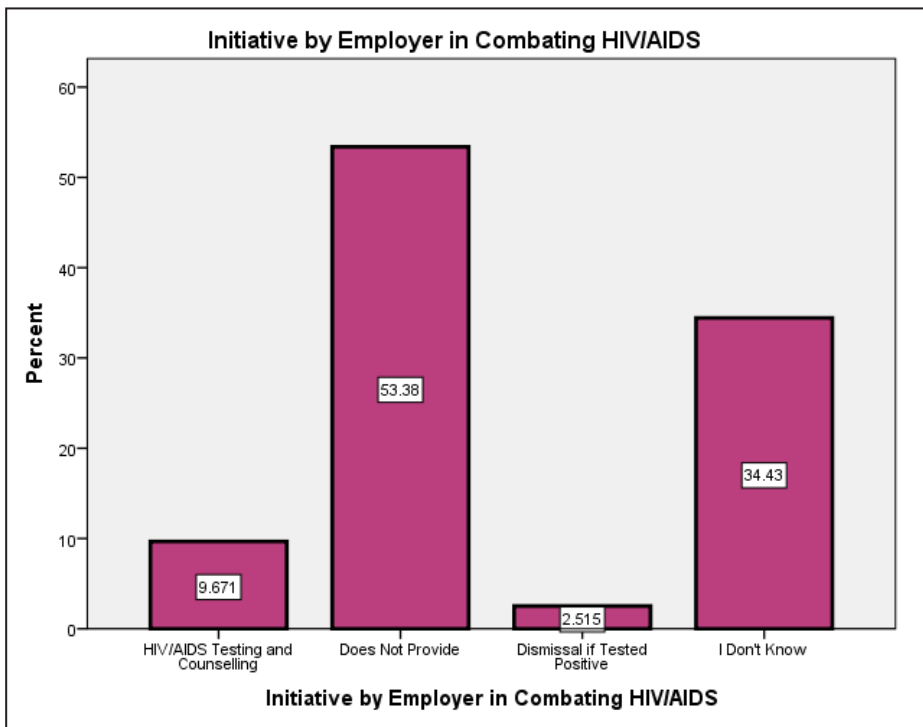


Figure 13: Employers’ Efforts in Combating HIV/AIDS in the Transport Sector

The LHRC reminds the community and employers in this sector that it is an obligation of every member of the community to participate and engage in prevention and control of HIV/AIDS. This reminder is provided for in the *National Policy on HIV/AIDS, 2001* whereby one of its core principles stipulate that; “*All members of the community have individual and collective responsibility to actively in the prevention and control of the HIV/AIDS epidemic. National response shall be multi-sectoral and multi-disciplinary.*”⁵⁶

56 Paragraph 1.7 of the National Policy on HIV/AIDS 2001.

3.2.5 Right to Leave and Its Cycles

Labour leave is the time of rest, i.e. temporary stop of working activities used at the own will of employee being in labour relations with employer and in accordance with the character of labour and job for normal rest, recreation of efficiency, health care and improvement.⁵⁷ Labour leave is provided annually for the adequate working year. Working year starts on the day of employee's employment and ends on the same day of the next year. Labour leave consists of the annual main leave given to employees, which perform their labour duties in accordance with their position, profession, specialty and additional leave given, depending on the character of job and labour, and may be provided both together and separately.⁵⁸

The *Employment and Labour Relations Act, 2004* provides five types of leave to be enjoyed by employees.⁵⁹ These include:

- (a) Annual Leave;
- (b) Sick Leave;
- (c) Maternity Leave;
- (d) Paternity Leave;
- (e) Compassionate Leave.

The act provides that every employee is entitled to annual leave of not less than 28 days consecutive in one leave cycle.⁶⁰ The annual leave cycle is constituted by 12 months in consecutive employment tenure. The annual leave includes public holidays that fall within those days and an employee is entitled to payment of full salary/remuneration despite his or her absence from work. Practice shows that there some employees who voluntarily decide to sell off their right to annual leave by accepting extra-payment to forfeit their right to annual leave.

Sick leave is entitlement of every employee who falls sick in any period during the course of employment.⁶¹ The ailing employee is entitled to at least 126-days sick leave whereby, in the first 63 days the employee is entitled to full wages whereas the remaining 63 days the employee will be paid half wages. The employee is entitled to the sick leave if clear evidence from certified medical doctor proves the sickness of the employee. Further, the employee will not be entitled to wages if there is another funding designated for that purpose.

57 Article 5 on Law of Leaves.

58 Ibid.

59 Section 21.

60 Section 31.

61 Section 32.

The *Employment and Labour Relations Act, 2004* provides for maternity leave for female employees for not less than 84 days during one leave cycle.⁶² However, 100 days can be granted if the employee give birth to more than one child with full payment. The ceiling for maternity leave is only four terms in order to promote family planning on part of legal framework among employees.

Equally, the law provides for paternity leave of 3 days to all male employees if it is proven beyond reasonable doubt that an employee is a biological father of the newly born child.⁶³ The condition in order for a male employee to enjoy paternity leave is that one must take it within seven days of the birth of the child.

Lastly, compassionate leave is an entitlement to every employee as provided by the law.⁶⁴ With this leave, the employee is entitled to a four days pay leave in case of sickness or death of employee's child; or death of employee's spouse, parent, grandparent, grandchild or sibling.

The study reveals that 83.6 percent of the respondents do not get annual leave from their employers. Only 16.4 of the respondents revealed that they receive annual leave from their employers. The chart below reveals the same.

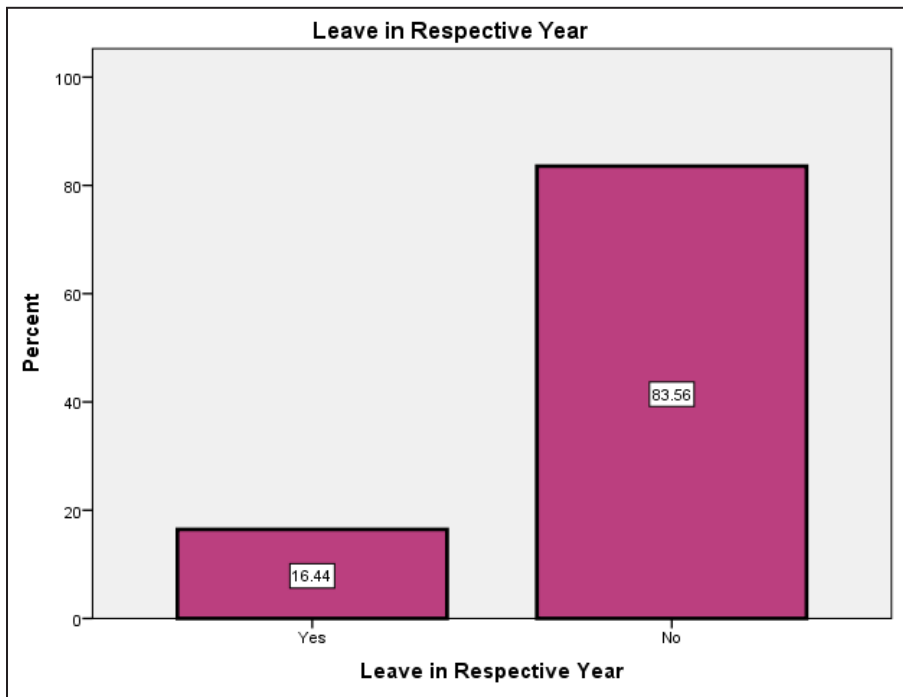


Figure 14: Annual Leave for Employees in the Transport Sector

62 Section 33.

63 Section 34 (1) (a).

64 Section 34 (1) (b).

LHRC condemns employers in transport sector for failure to recognise the right to leave as an important right of the employees. Right to leave increases efficiency and perfection of work as it gives the employee time to regain both physical and mental energy after a long period of work or following an event that an employee has gone through. Leave makes employees more productive in their activities. Further, there is need and necessity to formalise the transport sector in order to safeguard and to ensure there is security of tenure to employees. The current practice does not provide security of tenure as once an employee asks and goes on leave is likely to be replaced by another person. This practice should not be tolerated as it provide room for exploitation and torture to workers in transport sector.

3.2.6 Knowledge on Labour Laws

The Study went further to enquire the respondents as to whether they have elementary knowledge on labour laws. LHRC finds it important to know this fact as it is not easy for one to claim or demand his or her right when one is not aware of such right. The study revealed that the majority of employees in the sector do not have elementary knowledge of labour laws; as 95.4 percent of the respondents revealed that they do not have elementary knowledge of labour laws compared to only 4.6 percent of the respondents who answered to the contrary. The chart below reveals the same:

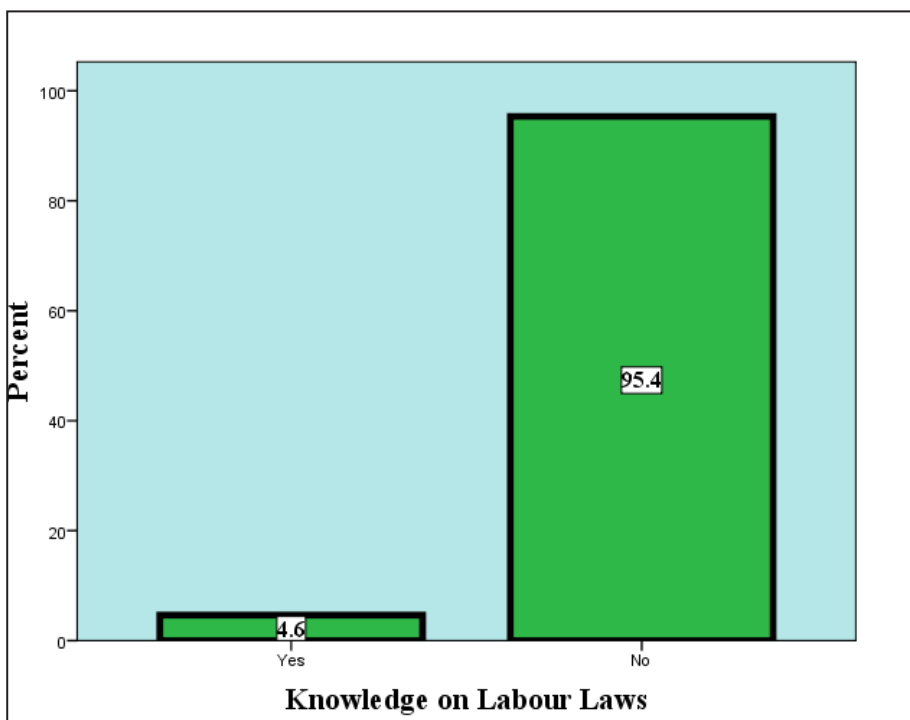


Figure 15: Knowledge on the Labour Laws by the Stakeholders in the Transport Sector

LHRC calls upon the Ministry of Labour and SUMATRA to ensure that employees in transport sector have basic understanding of labour laws and any other right accrued from employment. This can be done during safety week or other programmes by involving employees associations like DARCOBOA, TATOA, TABOA and civil societies. The knowledge gained will be useful to employees and the government in enforcing such laws.

Chapter Four

Advocacy Issues, Recommendations and Conclusion

4.1 Emerging Advocacy Issues

The study has revealed that, one of the biggest challenges facing the transport sector is lack of valid contracts for employees. This has been the source of violation of many rights of the employees in the sector. The sector in Tanzania is likely to lag behind the neighbours within the East African community and other sub regions. This is not good news for economic development of the country as many countries in the sub region are land locked, thus depend heavily on Tanzania for importing and transporting their goods. There is greater economic growth from these countries; thus the country's transport sector brings an urgent and greater need to transform the transport sector and make sure that it is in accordance to contemporary international standards to attract economic engagement with the subregion.

4.2 Recommendations

The findings of this study have revealed that there are violations of fundamental rights and employment standards, in the country laws, specifically labour laws and international instruments. Each finding in the report reveals out how employers violate the laws of the country. The general findings as well reveal the reluctance of the Government machinery to adhere to the country's laws. Thus, LHRC has the following recommendations:

- i. Share the findings of the study with the Government and other stakeholders of the transport sector. Sharing these findings will make the stakeholders have a clear picture of the situation on the ground. Stakeholders are called upon to make sure that; they take part in addressing issues brought forward by the findings of this report. The Government and institutions governing the transportation sector should make sure that stakeholders adhere to the laws governing the transportation sector in the country. Labor officers should make sure that they conduct regular inspections to working places to ascertain adherence of employers to the labor laws of the country. SUMATRA should make sure that laws and regulations regarding vehicle licensing are observed by vehicle owners. The police force should as well make regular checking. Vehicle owners on their part should make sure that they conduct their business in accordance to laws and regulations governing the transportation sector as well as the labor laws. Civil societies are called upon to conduct programs aimed at raising awareness to both employers and employees of the transport sector, on laws and standards that they ought to adhere in their daily conduct of business.

- ii. Conduct basic education on legal rights with the stakeholders in the transport sector; the findings of this report have revealed that, there is ignorance in basic legal rights by the stakeholders, especially the employees. This has led to their exploitation by employers. The Government should collaborate with civil society organizations and employees trade unions to arrange for regular provision of basic education in legal rights to stakeholders of the transport sector. Provision of legal education should go hand in hand with provision of legal aid to those employees in need once their rights have been infringed.
- iii. Educate the society at large on human rights and compliance thereto; the society at large should also be educated on basic legal and human rights issues.

LHRC urges the government to take measures and put pressure on all employers in the transportation sector to safeguard basic employment standards. This situation depicts the general picture, how the government loses substantial revenue which would have been accrued from this sector such as Income Tax and through the Pay as You Earn (PAYE) from the contribution of the workers' salaries. It was further noticed that, lack of social security protection for employees in the transport sector makes them work beyond minimum age and earn nothing upon retirement or inability to work. Lack of employment contracts makes it difficult for employees to have security of tenure, as employers have a wider loophole of the discretion to hire and fire at any time they think fit, hence no rights accrued thereof making employees' claims therefore they remain baseless.

LHRC recommends the Ministry of Labour and Employment to ensure that, employees in the transport sector form trade unions. . It is only through independent, uniform and strong trade unions that will contribute to collective bargaining towards achieving and raising employment standards. The result will be that the transport sector will be formalised to a formal sector that can contribute to the country's economy. LHRC's findings have revealed that 90.9 percent of the respondents are restricted to join trade union or form branches of trade unions.⁶⁵

4.3 Conclusion

The transport sector is one of the most important sectors in the country as far as the socio economic development is concerned. This has been revealed by the fact that the transport sector determines the price of goods and services, which in turn is reflected in the end product reaching the consumer (an ordinary Tanzanian). A proper and efficiently run transport sector has the potential to reduce poverty by promoting trade and higher productivity.

65 *Ibid.*

This mini research was conducted having in mind the potential of the transport sector to the country's socio economic development. The research have covered seven towns⁶⁶ and it clearly indicated the situation on the ground to adherence to human rights standards in the transport sector. LHRC have documented several reported incidents from its clients working in the transport sector concerning the failure by employers in adhering to labour and transportation laws. The findings of the report clearly indicates the extent of the violations of employees rights.

LHRC understands that the transport sector cannot prosper unless there is total adherence to legal and human rights as set out by the country's laws and international standards. The findings of this report indicates a clear connection between the non adherence to legal and human rights standards and poor performance of the transport sector in general.

LHRC expects that the findings of this report will enable stakeholders to take necessary measures to improve the transport sector for the development of the country's economy. However this will only be achieved when this sector is operated and adheres to legal, human rights, and international standards.

66 *Ibid.*

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Annexures

Questionnaire Used to collect Data



LEGAL AND HUMAN RIGHTS CENTRE

Justice Lugakingira House, Kijitonyama, P. O. Box 75254, Dar Es Salaam,
TANZANIA

Telephone: 2773048, 2773038, Fax: 2773037, E-mail: lhrc@humanrights.or.tz

Website www.humanrights.or.tz

DODOSO LA UKUSANYWAJI WA TAARIFA ZA HAKI ZA BINADAMU KWENYE SEKTA YA USAFIRISHAJI W ANCHI KAVU (BARABARA) NCHINI

Kituo cha Sheria na Haki za Binadamu, Dar es Salaam.

Kituo cha Sheria na Haki za Binadamu (LHRC) ni shirika lisilo la kiserikali linaloshughulika na maswala ya uelewa na ulinzi wa haki za binadamu na utawala bora. Moja ya majukumu yake ni kufanya tafiti katika masuala mbalimbali ya haki za binadamu. Hivyo basi, dodoso hili limeandaliwa mahususi kwa ajili ya utafiti mdogo wa masuala ya haki za binadamu katika sekta ya usafirishaji nchini.

Ukiwa mmoja wa vyanzo muhimu vya taarifa, tunakuomba ujaze dodoso hii na kuirudisha kwa mtu aliyekupa. Hii itatusaidia kupata taarifa ambazo zitasaidia kukamilisha utafiti huu mdogo.

Weka alama ya vema (✓) mbele ya jawabu sahihi au andika kwa kifupi katika nafasi (.....) iliyoachwa wazi au andika chini ama juu ya karatasi hii.

1.1 Jina (sio lazima)

.....

1.2 Jinsia/jinsi

(b) Ke

(c) Me

1.3 Umri wako

(b) 7 – 13

(c) 14 -18

(d) 19 -25

(e) 26 -35

(f) 36 -50

(g) 51 -65

(h) 66+

1.4 Kampuni unayofanya kazi

1.5 Nafasi ya utumishi katika sekta ya usafirishaji

(b) Dereva

(c) Msaidizi wa Dereva

- (d) Kondakta
- (e) Fundi

1.6 Miaka ya utumishi katika sekta ya usafirishaji

- (b) 1 -5
- (c) 6 -10
- (d) 11 -15
- (e) 16 -20
- (f) 21 -25
- (g) 26+

1.7 Je umeshawahi kupata likizo katika kipindi cha mwaka husika?

- (b) Ndiyo
- (c) Hapana

1.8 Unafanya kazi masaa mangapi kwa siku?

- (b) 5 -10
- (c) 11 – 16
- (d) 17+

1.9 Je, mshahara unalipwa kwa wakati?

- (b) Ndiyo
- (c) Hapana

1.10 Je, umejiunga na mfuko wa hifadhi ya jamii na makato hupelekwa kwa wakati?

- (b) Ndiyo
- (c) Hapana

1.11 Je mwajiri wako antoa huduma za matibabu?

- (b) Ndiyo
- (c) Hapana

1.12 Umewahi kupata mateso yoyote, kuteswa, kudhalilishwa kwa namna yoyote?

- (b) Ndiyo
- (c) Hapana

1.13 Kama jibu ni ndio elezea

.....
.....

1.14 Je, kuna ubaguzi wa namna yoyote ile katika sehemu yako ya kazi?

- (a) Ndiyo
- (b) Hapana

1.15 Kama ni ndiyo elezea aina ya ubaguzi

.....
.....

1.16 Je, umeshawahi kufukuzwa kazi?

- (a) Ndiyo
- (b) Hapana

1.17 Katika kampuni unayofanya kazi kuna tawi la chama cha wafanyakazi?

- (a) Ndiyo
- (b) Hapana

1.18 Kama jibu ni Hapana eleza mtizamo wa mwajiri juu ya kujiunga na vyama vya wafanyakazi

.....
.....

1.19 Kabla ya kujiunga na kampuni unayofanya kazi sasa umeshawahi kufukuzwa kazi kampuni nyingine?

- (a) Ndiyo
- (b) Hapana

1.20 Kama Ndiyo eleza kwa kifupi kama taratibu zilifuatwa na kupata haki zako zote

.....
.....

1.21 Unaifahamu Sheria ya Kazi na Mahusiano Kazini ya Mwaka 2004?

- (a) Ndiyo
- (b) Hapana

1.22 Katika kukabiliwa na janga la maambukizi ya virusi vya Ukimwi mwajiri amefanya jitihada gani kwa wafanyakazi wake?

.....
.....

1.23 Makadirio ya kipato chako kwa mwezi

- (a) 50,000 – 250,000/=
- (b) 260,000 – 500,000/=
- (c) 500,000/= +

