

# THE COMMISSION FOR HUMAN RIGHTS AND GOOD GOVERNANCE (CHRAGG)



## TRAINING REPORT ON COMPLIANCE OF LABOUR LAWS IN THE INDUSTRIES UNDER EPZA

The Commission for Human Rights and Good Governance  
Plot No. 8, Luthuli Street  
P. O Box 2643, DAR ES SALAAM  
Tel.: +255 22 2135747/8; 2137125; 2135222  
Fax: +255 22 2111281  
E-Mail: [chragg@chragg.go.tz](mailto:chragg@chragg.go.tz)  
Website: [www.chragg.go.tz](http://www.chragg.go.tz)

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## **ABBREVIATIONS**

CHRAGG	–	Commission for Human Rights and Good Governance
DDI	–	Domestic Direct Investment
ELRA	–	Employment and Labour Relations Act
EPZA	–	Export Processing Zone Authority
FDI	–	Foreign Direct Investments
SEZs	–	Special Economic Zones
TANESCO	–	Tanzania Electrical Supply Company
TANROADS	–	Tanzania National Road Agency
URT	–	United Republic of Tanzania

## EXECUTIVE SUMMARY

From 22<sup>nd</sup> to 29<sup>th</sup> November, 2014 CHRAGG conducted labour rights awareness and public inquiry in three (3) regions of Tanzania Mainland to ascertain the extent to which human rights and principles of good governance in industries operative under Economic Processing Zones (EPZ) are adhered to. The specific objectives were:-

- To raise awareness through training about labour laws, rights and how to protect, promote and preserve rights among employers and employees at work places.
- To monitor respect of human rights and compliance with principles of administrative justice, as well as laws governing employment sector in the country in order to positively recommend to relevant authorities on the areas of improvement and changes.
- To inquire on the existing violations of human rights and principles of good governance if any at work places and
- To educate employees in EPZ on the mandate, functions and activities of CHRAGG.

This report gives feedback about the labour rights awareness campaigns and summary of findings of the mini-survey on labour issues conducted to the employers and employees of 12 industries under the Export Processing Zone Authority (EPZA) located in Dar es Salaam, Pwani and Tanga regions. It also analyzes data and gives recommendations for improvement and change.

This activity was carried out basing on the various factors including the following:-

- Number of complaints CHRAGG has been receiving from the employees and the public related to the violation and contravention of labour laws.
- Basing on the number and nature of complaints received and having in mind that, industries under EPZA are new, growing fast and each has a considerably large number of employees, it was therefore necessary to have early intervention through awareness raising on labour laws and rights in this area.

- The issue of non-observance of labour laws in the private sector industries has repeatedly been reported by various local media.

During the training and public inquiry, 884 employees were involved, of whom 495 were male and 389 were female. Moreover, there were 45 respondents who filled questionnaires, of whom 40 were employees and 5 were from the management. Various topics in relation to employers/employees rights were covered. The topics include: Employment standards, Minimum wage, Contract of service, working hours, Leave, Procedures for strike and lockout, Termination of Employment, Terminal Benefits, Dispute resolution and Disability or Injury benefits.

During the training, it was revealed that employees were not aware of the labour laws and rights; for example a large number of employees were not covered by social security schemes and those who were covered did not know whether their deductions were submitted to their respective pension funds or not.

It was expected that, a larger number of communities working in the targeted industries could be reached but the poor cooperation from the management of the industries and poor attendance of employees ruined the expectations.

Despite the challenges noted during the training and public inquiry, there were some positive practices which were noted; for example, through observation it was noted that the working environments were conducive and employees in some industries were provided with safety facilities during working hours.

Generally, the training and inquiries were successfully conducted in all the visited industries, and the lessons learnt concluded that regular trainings on labour rights in the newly developing industries under EPZA are necessary. However, due to financial constrains just a few industries were covered. Plans are underway to collaborate with other stakeholders including CSOs in order to cover a large number of EPZ companies for promotion, protection and preservation of labour rights. Basing on the recommendations made during the training and inquiry, monitoring of the implementation of the recommendations should also be conducted.

# CHAPTER ONE

## 1.1 Introduction

Export Processing Zone Authority (EPZA) is an autonomous Government agency governed by a Board of Directors. It operates under the Ministry of Industry and Trade. EPZA is responsible for steering and implementing government policy on promotion of Special Economic Zones (SEZs) in Tanzania.

The Government of Tanzania established Special Economic Zones (SEZs) in 2006 as a strategy to achieve mini-tiger plan 2020, the objective being to promote quick and significant progress in economic growth, export earnings and employment creation as well as attracting private investment in the form of both Foreign Direct Investments (FDI) and Domestic Direct Investment (DDI) from all productive and service sectors.

Despite of EPZA good motive for creating employment opportunities through attracting investment, this motive however has come up with some challenges including violation of labour rights which compelled government and non-governmental institutions to intervene for the purpose of ensuring these rights are adhered to. The Commission being one of them in November 2014 carried out the awareness programme in attempt to make sure that employees and employers under EPZA observe and implement labour laws as stipulated in the ELRA of 2004.

This report therefore is about the awareness creation and inquiry on labour administration conducted by the Commission in industries under EPZA located in three regions Dar es Salaam, Pwani and Tanga. Both employers and employees were involved. It is organised into six chapters. Chapter one is an introduction part which explains the motive behind which moved the Commission to carry on the training, while chapter two covers methodologies employed by the Commission in the training sessions. Chapter three tells about topics covered which were entirely extracted from ELRA of 2004.

Chapter four is about achievements and challenges, while chapter five covers the emerging issues, and chapter six presents the conclusion and recommendations.

## **1.2 Background to Labour Issues**

The Commission for Human Rights and Good Governance (CHRAGG) is both Tanzania National Human Rights Institutions and Ombudsman. It was established under Article 129(1) of the United Republic of Tanzania Constitution CAP 2 R.E.2002. The general mandate of CHRAGG is to promote, protect and preserve human rights and good governance within the country as per article 130(1) of the Constitution and Section 6(1) of the Commission for Human Rights and Good Governance CAP 391 R.E. 2002.

Its core functions include:

- i. To promote within the country the protection and the preservation of human rights and duties to the society in accordance with the constitution and the laws of the land.
- ii. To investigate acts of violation on human rights and matters related to good governance.
- iii. To educate the public about human rights and good governance.
- iv. To advise the Government, public institutions, private sector and the public on human rights and governance issue.

Basing on one of its core functions mentioned above, CHRAGG has been receiving complaints from the employees working in various industries and most of them are about:-

- i. Unfair Termination from employment.
- ii. Non observance of employment standards.
- iii. Failure of employers to register employees into social security funds.

In response to the reports of investigation of these kind of complaints, and in order to promote and protect human rights and contravention of principles of good governance in working places, CHRAGG was compelled to conduct training and public inquiry on labour rights and obligations as per labour laws to employers and employees in various industries starting with industries under EPZA. The training and inquiry aimed at creating awareness and insisting on adherence to principles of good governance in relation to labour laws at work places.

### **1.3 Objectives of the Training**

The training had the following objectives:

- i. To introduce basic labour rights to the EPZA employees as per Employment and Labour Relations Act, 2004.
- ii. To learn from first-hand experience on how the industries observed Human Rights and Good Governance Principles.
- iii. To ascertain to what extent labour laws are complied within the industrial activities.
- iv. To sensitise reporting and monitoring of the violation of human rights and contravention of principles of good governance incidents.

### **1.4 Expected Outcome**

It was expected that the implementation of this project together with other efforts will result into a culture of respecting, observing and practicing human rights and good governance principles at working places specifically in a newly developing EPZA.

### **1.5 Expected Output**

Upon completion of the project, the following are expected:

- i. Knowledge on labour rights to employers and employees at the industries increased.

- ii. Compliance of the Employment and Labour Relations Act No. 6 of 2004 enhanced.
- iii. Conducive working relationship between employees and employers at the industries strengthened.
- iv. Number of complaints lodged with the Commission from the industries reduced.

## **CHAPTER TWO**

### **2.1 Methodology**

The selected team of officers prepared the training manual which was used in awareness training and set of questionnaire which guided in the public inquiries. Twelve industries under EPZA from three regions Pwani, Tanga and Dar es Salaam were selected. The teams of officers were from different professions including law, education, social work, administration, communication and political science. During the implementation of this activity three major methodologies were used such as desk review, participatory lecturing and observation.

#### **2.1.1 Desk review**

Various relevant documents were reviewed including policies, laws and regulations relating to labour industry for the purpose of having insights of the labour laws and other relevant Acts related to employment. The selected team of officers also reviewed and analyzed various complaints received by CHRAGG from employees and from media reports about violation and contravention of labour rights. Terms of reference and interview guidelines were developed to guide training and inquiry.

#### **2.1.2 Mode of training**

The training was participatory in nature and comprised of:-

- i. Lecturing
- ii. Group discussion
- iii. Questions and answers
- iv. Brainstorming
- v. Structured interviews.

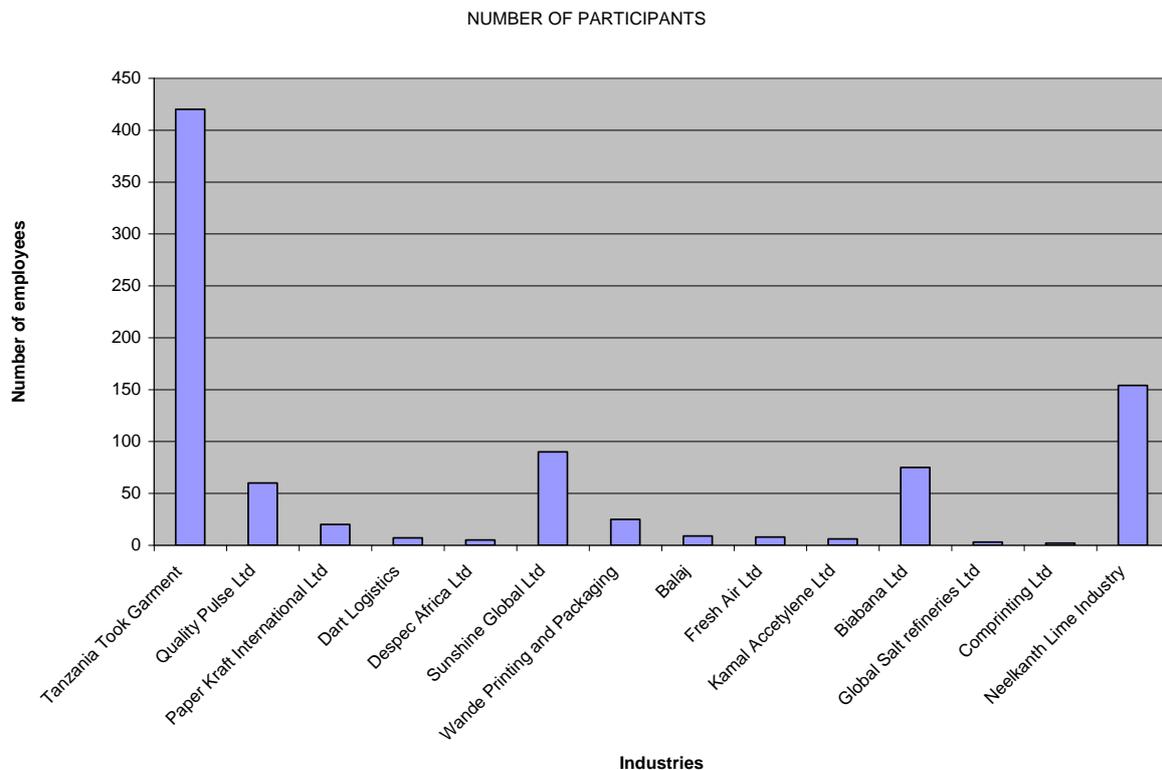
#### **2.1.3 Survey (observation)**

A set of checklist was provided to guide investigators to generally observe the environment.

# CHAPTER THREE

## 3.1 Training

Training on labour rights was conducted to the employees of twelve (12) industries in Dar es Salaam, Tanga and Pwani Regions. A total of 884 employees and employees benefited from the training as summarised in chart1 below.



## 3.2 Topics covered

Six (6) major topics were taught including:-

### 3.2.1 Employment standards

Participants were introduced to Employment standards as stipulated in the Employment and Labour Relations Act (ELRA) part III (sect. 12-44).

- Standards of which all employers are required to abide,
- To ensure that, all employees are legally employed.

Some of the employment standards are:

- Employment contracts (which are of three categories,
- A contract for unspecified period of time,
- A contract for a specified period of time and a contract for specific task),
- Wages,
- Deductions,
- Leave,
- Rights and procedures of organising strikes and lockouts,
- Employment termination (unfair),
- Severance pay and,
- Transport to a place of recruitment.



*Commissioner Ali Hassan Rajab conducting training in ABANA Industry located at Mwapinga area, Pwani Region.*

### **3.2.2 Minimum wage**

In this topic, it was aimed at insisting employer to adhere to the Labour Relation Act, No.7 of 2004, which provides among other things rates of the minimum wages. On the other hand employees were insisted on fulfilling their obligation through statutory channels to ensure that management adheres to this basic right. Both employers and employees were reminded on the issues to be taken into account when setting the minimum wage rates that; minimum

wage can either be calculated hourly, daily, weekly, fortnightly and or monthly. It can also be calculated per 45 hours per week. This is as per section 19 of The Employment and Labour Relations Act, 2004 which provides that ordinary working hours are 45 hours in a week and nine hours in a day and six days in any week.

### **3.2.3 Contract of service**

During the training, employers and employees were asked whether there were written and clear work contracts issued at the time of starting employment. Most of them said 'No'. The participants were therefore directed on the importance of ensuring that before starting work they should ensure that terms of employment are issued and are clear to both sides (employer and employee). It was insisted that, this process is important as it entices conducive labour relationship. This is an obligation to employers as per the Employment and Labour Relations Act of 2004 together with the Law of Contract Act both governing employment contracts in Tanzania.

In order to ensure that, employers and employees have a clear understanding of labour laws and right, three types of contracts under which one can be employed were highlighted as follows:-

- Contract of an unspecified period of time where the duration of the employment contract is unspecified. This can be termed as permanent contract.
- Contract of the specified period of time. This is a kind of contract in which the work duration is specified and come to an end within the specified time. Employers can prepare a specified contract of time for the duration of one month, three months, one year or two years and so on and
- Contract for a specific task. It was explained that this is a kind of contract in which a person is employed to perform a specific task and once the specified task is completed then that contract comes to an end. An example of a person employed to offload crates of soda from a truck

and once that task has been completed then the contract ends and get paid as per the agreed terms.

#### **3.2.4 Working hours**

In this category irrespective of few complaints that Commission has received, employers were reminded to clearly define the working hours upon issuing employment contracts which will at the end reduce complaints related to overworking and non-payment of overtime. Employees were as well reminded to ensure that the agreed working hours conform to the Employment and Labour Relations Act, 2004 sub part B which provides the maximum ordinary working hours of forty five (45) hours a week or nine (9) hours a day that an employee is allowed under the law to work. Also they were reminded to demand their rights of 60 minutes break when it happens that the employer has directed them to work for more than five hours continuously as per Section 21(1) of ELRA. On the issue of working overtime, employees were reminded that according to the Sub-Part B of ELRA of 2004, an employer shall not require or permit an employee to work overtime except in accordance with an agreement between employer and employees. During the training it was also insisted that overtime payment or compensation will only be considered for any hour (s) in excess of the forty five hours and should not exceed twelve hours in a day.

#### **3.2.5 Leave**

During the desk review, it was revealed that, terminal benefit complaints that the Commission has been receiving were related to non-payment of leave dues at the time of retirement. Therefore, during the training employers were insisted on adhering to Employment and Labour Relations Act of 2004 which provided that an employee is entitled to 28 days paid annual leave after completion of 12 months of continuous service inclusive of any public holidays that may fall during the period of leave. Employees were as well reminded that they have an obligation of demanding this statutory right but it was insisted that an employee with less than six months service is not entitled to paid leave under this provision.

It was also complained that, most of the private sectors do not approve maternity leave with full pay. It was therefore insisted that in order to reduce complaints related to maternity leave employer and employees should ensure that female employees get at least twelve weeks (84 days) of maternity leave with full pay and 100 days when an employee gives birth to more than one child at a time. It was as well insisted that an employee is entitled to an additional 84 days paid maternity leave within a leave cycle if the newborn dies within a year of birth and employer is required to grant paid maternity leave only four times during the entire duration of service.

### **3.2.6 Strikes and lockout**

When participants from various industries were asked whether in history there happened any strike and lockout at their work places, most of them said “Yes”. When they were also asked whether they know the proper legal procedures for organizing strikes and lockouts, they said “No”. Basing on these answers participants were passed through legal procedures as stipulated in the Employment and Labour Relations Act of 2004. It was further discussed and highlighted that, under this Act; every employee has the right to strike and employer entitled to lockout employees in respect of a dispute of interest. It was further elaborated that a dispute of interest refers to a labour dispute which does not arise from the application, interpretation or implementation of an agreement with an employee, collective agreement, the Employment Act or any other written law administered by the Minister responsible for labour.

### **3.2.7 Termination of employment**

During the training, employers and employees were tasked to mention reasons and types of employment termination they know. Most of the employees said they only know the so called unfair termination of employment. It was therefore highlighted that a lawful termination of employment can either be initiated by any of the parties to a contract of employment and can be for four reasons:-

- i. Termination of employment by agreement which comes into effect when the employer and employee agree to bring a contract of employment to an end in accordance with an agreement. For example, if there is a contract for a period of one year and the agreed period expires then the contract will obviously come to an end.
- ii. Automatic Termination of which a contract of employment may be terminated automatically in circumstances such as death or loss of business of the employer.
- iii. Termination of employment by the employee/resignation which happens when an employee due to material breach of the contract by the employer decides to resign from the employment.
- iv. Termination of employment by an employer according to either the provisions of the law and contract relating to termination.

However, given the above reasons it was explained to the participants that in order for the termination to be fair in the eyes of the law it has to be both substantive and procedural. Both employer and employee have to have valid reasons for termination.

### **3.2.8 Terminal benefits**

Non-payment, delays, unfair payment of terminal benefits at the end of employment contracts or retirement both in private and public sectors has been of major concerns to employees. In 2013/14 the Commission has registered more than 300 complaints in a year of this nature. During the investigation it was found out that this happened due to either employers being not aware of the procedure, lack of accountability or intentionally. The awareness raising to employers and employees focused on reducing or ending this problem so both participants were passed through the following terminal benefits aspects. The conditions and types of terminal benefits as stated by the ELRA of 2004 include:-

- i. Any remuneration for work done before termination.

- ii. Any annual leave pay due to an employee for leave that employee has not taken.
- iii. Any annual leave pay accrued during any incomplete leave cycle.
- iv. Any notice pay due.
- v. Any severance pays due if an employee qualifies for this.
- vi. Any transport allowance that may be due.
- vii. Certificate of Service.

However, participants were informed that, no employee shall be entitled to severance pay if the termination of employment was on the grounds of misconduct.

### **3.2.9 Dispute resolution**

The government has set out legal institutions mandated to resolve all forms of disputes arising from working places and outmost state institution is Commission for Mediation and Arbitration (CMA). During the training and discussion it was therefore insisted that when labour disputes failed at lower levels of trade unions at work places they should be referred to the CMA for mediation and the dispute should be resolved through mediation within 30 days unless the parties agree to a longer period. Furthermore, it was explained that if mediation failed at CMA it could be referred to the High Court, Labour Division (“the Labour Court”) where submission of evidence is required and hearing of both parties’ through legal submissions before rendering a decision on the merits of the case is taken into board.

### **3.2.10 Disability or injury benefits**

Participants were reminded on the type and procedures required for workman compensation in case of disability or injury during working hours. It was discussed that workman compensations are of four types: permanent total incapacity, permanent partial incapacity, temporary incapacity and fatal injury leading to death.

The accepted compensation rates as per type of disability or injury that were discussed were: In the case of permanent total incapacity/disability, the amount payable is 70% of average daily earning for the total period of disability. In the case of permanent partial disability, amount of compensation depends on the assessed degree of disability.

If the assessed degree of disability is less than 30%, a lump-sum amount is paid. The maximum partial disability benefit is 84 times the insured's average monthly earnings, according to the assessed degree of disability. In the case of temporary disability, an insured worker after certification from medical board can get temporary disablement benefit as 60% of his average daily earning up to 26 weeks. In the case of fatal injury, dependents (widow/widower/minor/ children/parents) receive survivors' benefits.

A lump-sum of twice the deceased worker's average monthly wages is paid to the dependents. A death benefit, for eligible survivors, is also available up to TShs. 300,000.

## CHAPTER FOUR

### 4.1 Achievements and Challenges

#### 4.1.1 Achievements

1. CHRAGG was able to visit 12 industries. As a result, 884 employees and employers participated in the training on labour laws which is vital for their participation in promotion of good industrial relations.



*Employees from Neelkanth industry keenly listening to the presentation.*

2. There was an increase of knowledge on labour laws to both employers and employees. This was evidenced by the issues and questions raised by the employers and employees in response to the labour laws education provided. Some of the key questions raised were about:
  - Whether the letter of offer of contract of service is the right or privilege to the employee,
  - Terms of contract for service,
  - Minimum wage,
  - Procedures for strike and lockout,
  - Disability benefits and
  - Annual leave.

Other questions raised were; who is responsible to pay terminal benefits if the deduction was not remitted to the social security schemes and why paternity leave is not equivalent to maternity leave?

3. During the inquiry through discussion with the management and observation CHRAGG's team managed to inspect the working environment and be able to relate employer/employees relationship in relation to productivity.
4. In some few instances the Commission managed to reinstate the conducive working environment after coming into agreement with management on some labour administration issues. At ABANA industry there was a strike due to unclear employment contracts whereas after discussion with the management, it was promised that the issue would be immediately worked on hence the resumption of in normal situation. The Management in two weeks responded to this concern and started issuing employment contracts.

#### **4.1.2 Challenges**

During the visits to the industries under EPZA, the following challenges were encountered:

- i. Some of the industries listed in EPZA headquarters for visits were currently not operational hence the EPZA report was as well not current.
- ii. Poor management cooperation from some industries and in some few cases CHRAGG team was denied meeting with employees for example in the Steel Rowling Industry because the industry is not under EPZA.
- iii. Un-proportional representation of workers by gender and technical staff.
- iv. The allocated time was very limited to extensively cover all topics.
- v. Budget constraints to cover larger area.
- vi. Non-availability of EPZA literature review.

## **CHAPTER FIVE**

### **5.1 Emerging Issues**

#### **5.1.1 Contract of service**

In some industries, it was noted that, majority of workers did not have contracts of service. The employees complained that despite the legal requirements, they were not given contracts of service, hence threatening employees' security of service. For example in Biabana Ltd, employees complained that they were not aware of their terms of contracts and in Global Salt Refinery Ltd the management told CHRAGG that they only employed casual employees because they were only needed during the production time which depended entirely on the availability of raw materials.

#### **5.1.2 Minimum wage**

The minimum wage to industrial employees varies from industry to industry depending on the occupation and agreement. It was revealed that a large number of employees were paid above statutory minimum wage. However, employees complained about overtime that it was not paid on time and was inadequate because it was entirely decided by employers.

#### **5.1.3 Social security schemes**

It was discovered that many workers in the visited industries had little or no social protection at all. When workers were covered by social security, they were not sure whether their deductions were being remitted by their employers to the Social Security Funds. Casual employees were not covered by social security.

#### **5.1.4 Strikes and lockouts**

Employees at Biabana Industry complained against delays in salary payment and incentive problems. They managed to go on strike as a means of enforcing their demands to be met. This was caused by the act of management not fulfilling their responsibility of paying salaries in time.

### **5.1.5 Discrimination**

Employees argued that there was discrimination in terms of salary payments between local and foreign employees. Although the amount of salary depended on the ability of the applicant to negotiate with the employer, foreign employees were paid handsome salaries compared to the local employees who possessed the same qualifications. Furthermore, foreigners were given lunch and accommodation while local employees were not.

### **5.1.6 Trade unions**

As required by ELRA of 2004, employees have a right to form trade unions. In a number of industries such as Wande Printing and Packaging, Kamal Accetylene Ltd, Global Salt Refineries Ltd, Comprinting Ltd, Neelkanth Lime Industry, Sunshine Global Ltd, Despec Africa Ltd, Dart Logistics, Paper Craft International Ltd, Quality Pulse Ltd and Tanzania Took Garments, employees were not allowed to form trade unions. The management thought that trade unions were the source of conflicts, though in some industries they promised to allow such unions to be formed.

# CHAPTER SIX

## 6.1 Conclusion and Recommendations

### 6.1.1 Conclusion

Through training and survey it is concluded that adherence of labour administration in the private sector is still very low. The government initiatives in increasing employment opportunities through SEZs is commended as at the time of implementation it was found that the area encompasses a large percentage of employment opportunities specifically to youth in the current employment setting. There was a low level of awareness on Labour laws to both employers and employees. Due to the low level of labour rights knowledge, some employers have taken an opportunity of this gap for not meeting some of the employees' basic rights. In spite of that, the training was successfully done with good attendance and concentration from the participants and increase in knowledge of labour rights was noted.

### 6.1.2 Recommendations

Based on the project findings and challenges identified, the following recommendations are put forward:

- i. All institutions mandated to carry out labour administration including inspection should regularly monitor issuance of employment contracts to all employees under EPZA at the time of recruitment.
- ii. CHRAGG in collaboration with other stakeholders including Civil Society Organizations (CSOs) should carry out labour rights awareness programmes to all industries under EPZA in the whole country.
- iii. With regard to their enabling instruments, all Social Security Funds institutions including Social Security Regulatory Authority (SSRA) should make sure that employers remit their employees' deductions timely.

- iv. The Management of Neelkanth Lime Limited should guarantee the three days paternity leave to all employees who deserve, and CHRAGG should make follow up of it.
  
- v. The Commission arrange meeting with Tanga City Management for the purposes of soliciting the possibility of allocating another plot of land for reconstruction of Kiomoni primary school. The management of Neelkanth Lime Ltd is ready to contribute to the shift cost of the school to another available plot away from the industry area for pupil's' safety and health.
  
- vi. CHRAGG should communicate with the Ministry of Works and TANROADS to see the possibility of allowing the Neelkanth Lime Limited to construct a 1.9 KM road to bitumen level for the purpose of reducing dust caused by vehicle movements which affects the community living around the road.
  
- vii. CHRAGG should have similar programmes in different arrears like in the mining areas and monitoring implementations of the recommendations.

## **APPENDICES**

## APPENDIX 1: INDUSTRIES LOCATION AND OWNERSHIP

S/N	REGION	INDUSTRY	OWNERSHIP
1.	DAR ES SALAAM	Tanzania Took Garment	Foreign owned
		Quality Pulse Ltd	Foreign owned
		Paper Kraft International Ltd	Locally owned
		Dart Logistics	Foreign owned
		Despec Africa Ltd	Foreign owned
		Sunshine Global Ltd	Foreign owned
		Wande Printing and Packaging	Locally owned
		Balaj	Foreign owned
		Fresh Air Ltd	Locally owned
2.	PWANI	Kamal Accetylene Ltd	Foreign owned
		Biabana Ltd	Joint venture owned (Locally & Foreign)
		Global Salt refineries Ltd	Locally owned
		Comprinting Ltd	Locally owned
3.	TANGA	Neelkanth Lime Industry	Locally owned