

United Republic of Tanzania

Technical Memorandum

**United Republic of Tanzania labour
administration and inspection audit**

LAB/ADMIN

**Labour Administration
and Inspection Programme**

Social Dialogue Sector

International Labour Office - Geneva

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Foreword

Effective national systems of labour administration and inspection are vital for good governance and economic progress. They contribute to improving working conditions and towards making decent work a reality. They also enhance employment and productivity, contributing to sustainable economic development.

This audit of Tanzania's labour administration and inspection services was carried out in the context of the ILO's project, *Improving Labour Law Compliance in the United Republic of Tanzania* (URT/08/03/USA), which is a project supported by the United States Department of Labour over a three-year period (2009-2012).

The audit covered both mainland Tanzania and Zanzibar, which have separate labour ministries, inspectorates and labour legislation. Initial fieldwork was carried out in September 2009, with additional interviews and data collection lasting through November 2009. The draft report was discussed with the mainland and Zanzibar governments in February 2010. Some government bodies also chose to submit written comments afterwards.

The overall aim of the audit was to help both jurisdictions improve the effectiveness and efficiency of their labour administration and inspection services and to draw up action plans for implementing these improvements. Using a methodology developed by the ILO that has been tried and tested elsewhere, the audit team interviewed numerous relevant government officials in mainland Tanzania and Zanzibar along with representatives of workers' and employers' organizations in both jurisdictions.

Based on these interviews and following a desk review of legislation and official reports, the audit team arrived at a number of findings and recommendations, contained in this report, for consideration by the mainland and Zanzibar governments and social partners. These recommendations cover several broad themes, including improving coordination between the central authorities and regional offices, strengthening methods for planning and evaluation, improving human resources, training and career development, developing better workplace registries as well as reinforcing existing dispute resolution and sanctioning procedures.

The ILO's Labour Administration and Inspection Programme (LAB/ADMIN) would like to thank the government officials from Tanzania mainland and Zanzibar for their hospitality and generous cooperation – in particular, Ayub Makoye from MoLEYD who accompanied the audit team during on the mainland and Halima Ahmed who joined the team in Zanzibar. We also extend our thanks to the social partners for their contributions and strong support of the audit team's work. Moreover, we are grateful for the logistical assistance and guidance provided by the ILO Office in Dar es Salaam under the direction of Alexio Musindo. In particular, we wish to thank Michael Lerner, the Chief Technical Advisor of the project on Improving Labour Law Compliance for his participation on the audit team. We are also grateful for the assistance of our ILO colleagues, Wael Issa, Fatma Rashid, Kassim Ramadhani, Flora Minja and Ansgar Mushi who helped in various aspects of this exercise. Thanks also to Teresia Ilemba for her background study on labour administration and inspection in mainland Tanzania. Lastly, thanks to Angela Onikepe for editing and formatting this report.

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List of acronyms

ARLAC	African Regional Labour Administration Centre
AU	African Union
BEST	Business Environment Strengthening - Tanzania
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
DANIDA	Danish International Development Assistance
EAC	East African Community
HR	Human Resources
ICT	Information and Communication Technology
ILFS	Integrated Labour Force Survey
ILO	International Labour Organization
IPEC	International Programme on the Elimination of Child Labour
ITC-ILO	International Training Centre of the International Labour Organization
JP	United Nations Joint Programme
SADC	Southern African Development Community
SME	Small and Medium Sized Enterprise
UNAIDS	United Nations Joint Programme on HIV/AIDS
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund

Mainland

ATE	Association of Tanzanian Employers
CMA	Commission for Mediation and Arbitration
ESC	Essential Services Committee
LESCO	Labour, Economic and Social Council
MoLEYD	Ministry of Labour, Employment and Youth Development
MPS	Ministry of Public Service
OPRAS	Open Performance Appraisal System
OSHA	Occupational Safety and Health Authority
PCB	Prevention of Corruption Bureau
SSRA	Social Security Regulatory Authority
TaESA	Tanzania Employment Services Agency
TUCTA	Trade Unions Congress of Tanzania

Zanzibar

CSD	Civil Service Department
DHU	Dispute Handling Unit
LAB	Labour Advisory Board
MOLYWCD	Ministry of Labour, Youth, Women and Children Development
WCU	Workers Compensation Unit
ZANEMA	Zanzibar Employers Association
ZATUC	Zanzibar Trade Unions Congress
ZSSF	Zanzibar Social Security Fund

1. Main socio-economic and political elements

The United Republic of Tanzania is one of the least developed countries in the world. Gross domestic product (GDP) per capita is only US\$400 per year and 89 per cent of the population live on US\$1.25 per day or less; 36 per cent of the population live below the national poverty line. The population is estimated at 41.3 million people (including 1.2 million in Zanzibar), of which 75 per cent live in rural areas. The 2009 United Nations Human Development Report ranked the country at 151 out of 182.

Before the global economic downturn, Tanzania sustained high rates of broad-based economic growth with generally low inflation over the past decade. Real GDP growth averaged about 7 per cent a year during 2000–2008, but recent estimates have reduced Tanzania's economic growth to 2.8 per cent due to the negative effects of the global financial crisis of the last two years.

Tanzania relies heavily on the rural economy, with the agriculture sector contributing 27 per cent to GDP and employing about 80 per cent of the labour force. While only 20 per cent of the work force was employed in industry and services, industrial activities accounted for 23 per cent of GDP and the service sector accounts for the remaining 50 per cent.¹

Within the agricultural sector, Tanzanian cash crops include coffee, cotton, tea, tobacco, cloves, sisal, cashew nuts, maize, livestock, sugar cane, paddy, wheat and pyrethrum. However, the great majority of crops never reach the market.

Tanzania's manufacturing sector targets mostly the domestic market, with most of the industry concentrated in Dar es Salaam and limited exports of manufactured goods. The industrial sector is greatly dominated by small and medium sized enterprises (SMEs) specializing in food processing (such as dairy products, meat packing, fruit and vegetable preserves), textiles and apparel, leather tanning and plastics. Only about 10 per cent of the manufacturing activities are concentrated in large factories including cement, rolled steel, corrugated iron, aluminium sheets, cigarettes, beer and bottling beverages, fruit juices, and mineral water. Mining (including gold) has been growing fast and is an important foreign exchange earner, but its contribution to GDP remains small at 3.5 per cent.

In the service sector, trade and tourism make up the largest proportion of the sector; tourism alone accounts for 16 per cent of GDP.

Despite good macroeconomic performance, progress on poverty reduction remains slow. Preliminary data from the 2007 Household Budget Survey show that the incidence of poverty has declined only modestly since 2000-01 (from 35.6 per cent of the population to 33.4 per cent), implying an actual increase in the absolute number of Tanzanians living in poverty.

¹ The contribution of each sector to GDP has changed dramatically in the last decade: in 1997, agriculture accounted for 46 per cent of GDP (compared to 27 per cent currently), industry for 14 per cent and services for 39 per cent.

Politically, and especially with respect to labour matters, it is important to note that Tanzania is not a unitary state. The United Republic of Tanzania was formed in 1964, as the union of Tanganyika on the mainland and the archipelago of Zanzibar – both of which had recently become independent.² However, Zanzibar retained considerable autonomy: it has a separately elected President and Government, its own political structure and judiciary, and some degree of fiscal independence.

Under the Constitution of the United Republic of Tanzania, labour and employment are not “Union Matters” – which means that they are not administered at the federal level but rather by the mainland and Zanzibar independently. As a result, mainland Tanzania and Zanzibar have wholly separate legislative, executive and judicial institutions in the area of labour, including different labour laws, Ministries of Labour, labour inspectorates, labour dispute resolution systems, trade unions and employer associations.

1.1 Labour market

The Tanzanian labour force is growing rapidly. Tanzania’s Integrated Labour Force Surveys (ILFS), which are carried out at five-year intervals, show that the labour force in mainland Tanzania increased from 17.8 million people in 2000/2001 to 20.6 million active people in 2005/2006, representing an increase of 2.8 million people or 16 per cent over those five years.

Jobs have grown during the same period. The unemployment rate dropped from 12.9 per cent in 2000/2001 to 11.7 per cent during the 2005/2006 period. Consequently, the absolute number of unemployed persons dropped from 2.3 million in 2000/2001 to 2.2 million in 2005/2006, a drop of about 4.3 per cent. The MKUKUTA³ operational target is to reduce the unemployment rate to 6.9 per cent by 2010, although it should be noted that this target was set before the global financial crisis and its impact on employment in Tanzania.

The 2005/2006 ILFS revealed that 40 per cent of all households in mainland Tanzania are engaged in informal economic activities as compared to 35 per cent in 2000/2001. It also showed that the concentration of informal economic activities is higher in urban households (55 per cent) than in rural households (33 per cent). The size of the informal economy and prominence of informal employment in Tanzania present a significant challenge for the extension of labour administration and inspection services to the labour market as a whole.

Zanzibar has a much smaller population, with a correspondingly smaller labour force of 0.5 million people, according to the Zanzibar ILFS carried out in 2006, out of a total population of 1.2 million. The unemployment rate, 5.5 per cent overall, but 11.4 per cent in urban areas and 19.6 per cent among youth aged 15-35 (and 31.3 per cent for youth in urban areas). Only 25 per cent of households receive income from wage employment (41 per cent in urban areas); 40 per cent of households receive income from agriculture, and 29 per cent receive income from non-farm business and the informal sector.

² Tanganyika achieved independence in 1961 and Zanzibar in 1963.

³ MKUKUTA is a Kiswahili acronym for the National Strategy for Growth and Reduction of Poverty.

2. Legislative framework of the labour administration/inspection

In mainland Tanzania, the Government has undertaken a comprehensive reform of the labour laws and regulations relating to various aspects of employment and labour relations. The labour law reform process was supported by the ILO and culminated in the enactment of a number of new laws, including the following:

- The Occupational Health and Safety Act, 2003
- The Employment and Labour Relations Act, 2004
- The Labour Institutions Act, 2004
- Workmen's Compensation Act, 2008
- Social Security (Regulatory Authority) Act, 2008

These laws have been supplemented by a number of regulations, including the following:

- The Employment and Labour Relations (Code of good practice) Rules, 2007
- The Labour Institutions (Mediation and Arbitration) Rules, 2007.
- The Employment and Labour Relations (Forms) Rules, 2007
- The Labour Institutions (Code of Conduct for Mediators and Arbitrators) Rules, 2007
- The Industrial Court Rules, 2007
- The Labour Institutions (Mediation and Arbitration Guidelines), 2007

Additional regulations are currently planned or are in the process of drafting.

Reform efforts in Zanzibar have paralleled those on the mainland. The labour law reform process in Zanzibar was likewise supported by the ILO and resulted in a number of new laws relating to various aspects of employment and labour relations, including the following:

- The Employment Act No. 11 2005.
- The Labour Relations Act No.1 of 2005.
- The Occupational Safety and Health Act No. 8 of 2005.
- The Workers Compensation Act No.5 of 2005.
- The Zanzibar Social Security Fund Act No 2 of 2005

Zanzibar is currently in the process of drawing up draft regulations for the first two pieces of legislation with assistance from the ILO.

3. Labour Administration in Context

3.1. Reform of the Tanzanian Public Sector

In 1999, the Government of Tanzania designed an 11-year Public Service Reform Program (PSRP) that would seek to improve accountability, transparency and resource management for service delivery. The PSRP was designed to support the attainment of economic growth by ensuring delivery of quality government services within priority sectors. While the program will be carried out mostly on the mainland, part of the PSRP's activities will support public sector reforms in Zanzibar.

The Government designed this long-term programme in three phases: installation of performance management systems (2000-2004); institutionalizing performance management culture (2005-2008); and realizing quality improvement cycles (2009-2011). Implementation of the program has taken longer than planned and the Government now expects to complete all the phases by 2015. The PSRP has been funded in part through the national budget but it also depends on funding from development partners. The Labour Administration has not been actively involved in this process.

3.2. Other donor projects dealing with labour administration

The ILO has long been engaged with the tripartite partners on a number of issues in Tanzania, including labour administration and labour inspection.

Current projects that are relevant to the institutions described in this audit include the ILO's work as lead on labour and employment related matters for the One UN/Delivering as One pilot initiative. Under the One UN in Tanzania, a number of Joint Programmes (JP) have been organized in order to address multiple aspects of a particular issue. In that context and for the purpose of this report, the ILO's work is especially relevant under the following Joint Programmes:

- JP 1 (Wealth Creation, Employment and Economic Empowerment): JP1 is working with the mainland Ministry of Labour and the regional and local authorities in Lindi and Mtwara on a number of activities. Most relevant for this report, JP1 seeks to establish labour market information systems in those regions;
- JP 2 (Maternal and Newborn Mortality Reduction): JP2 is working with the mainland Ministry of Labour and, at the downstream level, with the authorities in the Dodoma region in order to promote the rights at work of pregnant and nursing women and to raise awareness of maternity protection in the workplace;
- JP 5 (Capacity Building Support for Zanzibar): JP5 has been leading efforts to assist the Zanzibar Ministry of Labour and the social partners to build their capacity in the area of labour law and labour relations and to support the drafting of proposed regulations to implement the new labour laws.

In addition to the ILO, it is important to mention the Business Environment Strengthening – Tanzania (BEST) project. BEST is a multi-donor project with a labour market component. The project is funded by the World Bank and the bilateral development cooperation agencies of the United Kingdom, Netherlands, Denmark and Canada. Denmark (DANIDA) is the lead for the labour market component, which

follows up on earlier bilateral support that DANIDA provided in the area of labour markets and labour relations. BEST works with the mainland Ministry of Labour and the semi-autonomous agencies (OSHA, CMA) to improve their capacity.

4. ILO Conventions ratified by Tanzania

Thirty-four international labour conventions are in force in the United Republic of Tanzania including each of the eight fundamental ILO Conventions.⁴ In addition to these, four Conventions apply only to the mainland and two to Zanzibar owing to an internal arrangement at the time of unification in 1964 when it was agreed that certain Conventions would continue to apply only with respect to one or the other territory, as it was the case before the independence.

Consequently, the Labour Inspection Convention, 1947 (No. 81, a priority Convention) and the Employment Service Convention, 1948 (No. 88) are among five Conventions applicable on the mainland but not in Zanzibar.

During the course of the audit visit, the mission team spoke with the Permanent Secretary from the Zanzibar Ministry of Labour, Youth, Women and Children Development to explain this situation, saying that the ILO stood ready to advise on the extension of these, and potentially other, Conventions to Zanzibar.

None of the other Conventions specifically relevant to labour administration and inspection has been ratified by Tanzania, namely:

- C129 Labour Inspection (Agriculture) Convention, 1969.
- C150 Labour Administration Convention, 1978.
- C178 Labour Inspection (Seafarers) Convention, 1996.
- C187 Promotional Framework for Occupational Safety and Health Convention, 2006.

4.1. Comments by the Committee of Experts on labour administration and inspection matters

Of the above-mentioned Conventions, the comments from the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in Tanzania deal with Conventions 81 and 88.

Concerning labour inspection on mainland Tanzania, the Committee has noted on several occasions the government's inability to produce an adequate annual report on the work of the inspection services under its control as required by Convention No. 81. Such a report might allow the government to make more objective decisions on the performance and needs of its labour inspection system and would enable the Committee to make a better assessment of the application of the Convention.

⁴ See Annex 1 for the full list of ILO Conventions applicable in Tanzania as well as the list of Conventions that apply uniquely to the Mainland or Zanzibar.

With respect to Convention 88, and as referred to above, the Committee of Experts recalled that, in June 1964, the Government declared that Convention No. 88 would only be applicable to Tanganyika (mainland). The Committee of Experts asked the Government to specify if the provisions of Convention No. 88 are now applicable to the whole territory of the United Republic of Tanzania. In this regard, the Government was invited to communicate the above information to the International Labour Office for the purposes of its registration.

5. Social partner and tripartite structures

By 31st December 2007, a total of 24 free trade unions⁵ and one trade union federation, the Trade Unions' Congress of Tanzania (TUCTA), were registered in mainland Tanzania. TUCTA, registered in 2001, is made up of 14 affiliated trade unions.⁶

Two employers' associations have been registered with the mainland Registrar of Trade Unions and Employer Associations: the Association of Tanzania Employers (ATE) in 2003 and the Tanzanian Association of Agricultural, Commercial Industrial and Mining Employers (TAACIME) in 2008. Other industry trade groups exist, such as the Confederation of Tanzanian Industries (CTI), although these are not generally active in labour relations matters.

Mainland Tanzania, like many other African countries, has introduced a tripartite cooperation framework as an essential mechanism for promoting good labour relations, increasing productivity and building consensus on socio-economic issues. Some of the tripartite labour councils include the Economic and Social Council (LESCO), sectoral Minimum Wage Boards and Commission for Mediation and Arbitration.

The Labour, Social and Economic Council has been established under Part II, Section 3 of the Labour Institutions Act No. 7 of 2004. The Labour, Social and Economic Council is constituted of a Chairperson, appointed by the Minister responsible for labour matters who is supposed to be neutral with respect to the main actors of industrial relations. That is, he/she is not supposed to be a member, official or office bearer of a trade union, employers' association or federation or an employee in the public service of the Government of the United Republic.⁷

The Minister appoints also sixteen members the Council, comprising:

- a. The Permanent Secretary and three other members to represent the interest of the Government;

⁵ More details about these trade unions are in Chapter Three.

⁶ Tanzania Union of Industrial and Commercial Workers (TUICO), Tanzania Plantation and Agriculture Workers Union (TPAWU), Communication and Transport Workers Union of Tanzania (COTWU (T)), Tanzania Teachers Union (CWT), Tanzania Mines and Construction Workers Union (TAMICO), Tanzania Railways Workers Union (TRAWU), Tanzania Seamen's Union (TASU), Researchers, Academicians and Allied Workers Union (RAAWU), Tanzania Local Government Workers Union (TALGWU), Conservation, Hotels, Domestic and Allied Workers Union (CHODAWU), Tanzania Union of Government and Health Employees (TUGHE), Tanzania Union of Journalists (TUJ), Dock Workers Union of Tanzania (DOWUTA) and Telecommunications Workers Union of Tanzania (TEWUTA).

⁷ Section 4(1)(a) of the Labour Institution Act No. 7 of 2004

-
- b. Four members representing the interest of employers;
 - c. Four members representing the interest of employees;
 - d. Four members appointed because of their expertise in labour, economics, and social policy formulation.

The functions of the Council are provided under the Section 5(1) and (2) of the Labour Institution Act No.7 of 2004, and are described in greater detail below.

In Zanzibar, a total of thirteen trade unions⁸ and one federation, the Zanzibar Trade Union Congress (ZATUC), have been registered. ZATUC is made up of nine unions. There is also one employers' organization, the Zanzibar Employers' Association (ZANEMA), although there are also a number of industry trade groups, such as the Zanzibar Association of Tourism Investors (ZATI).

Zanzibar has its own tripartite consultative body, the Labour Advisory Board (LAB), established under the Employment Act No. 11 of 2005. The Board has ten members, which represent the interests of the Government (four members), employers (three members) and workers (three members). The chair of the Board is a Government representative, and there are two deputy chairs drawn from the employer and worker members. The functions of the LAB are wide-ranging, and are provided under Section 28 of the Employment Act.

Zanzibar also has a tripartite committee that oversees and advises on the labour dispute resolution system.

5.1. General Trends in Labour Relations

Labour relations in Tanzania have been challenging for a number of years. Employer associations have historically been weak and, with the economic transitions, trade unions have had to take new approaches.

In mainland Tanzania, a key issue for both employers and workers organizations over the past few years has been the minimum wage setting process. The sectoral Wage Boards, which were appointed and started work in 2007, were in themselves controversial. Both the Association of Tanzanian Employers (ATE) and the Trade Unions Congress of Tanzania (TUCTA) were dissatisfied with the membership of the bodies and the support they received from the Ministry of Labour. Many employers sought to avoid going through the formal process with ATE as their representative and instead approached the Minister for Labour or other high-ranking officials. At the same time, ATE has been able to use this process to attract new members and is currently larger than it has perhaps ever been. ATE's training programmes in the labour law have also been very successful. TUCTA, meanwhile, has recently been occupied with internal management struggles and there have been reports of increasing inter-union conflicts (e.g., unions seeking to recruit each other's membership).

In Zanzibar, both social partners have strived to maintain an effective tripartite relationship with the Ministry of Labour. This is made more challenging by the internal problems that each social partner faces: the Zanzibar Employers Association (ZANEMA)

⁸ ZATHOCODAWU, ZUPHE, TEWTA(z), ZAFITOW, ZALGWU, RAWU(z), ZAPSU, HORAWU, TUICO(z), ZPAWU, TASU(z), ZATU and COTWU(Z)

is small and has had a difficult time staying dynamic and attracting new members. The Zanzibar Trade Union Congress (ZATUC) is facing the challenge of having too many member unions with relatively few members in each and is currently trying to consolidate nine of its member unions into only four unions.

In both the mainland and Zanzibar, the public sector is a major employer. However, the negotiation of wages and working conditions in the public sector has been seen as a difficult matter.

6. Labour administration: Main features and developments in mainland Tanzania

The audit team held separate meetings in the mainland and Zanzibar with Ministry of Labour officers, social partners and other related government officials during its visit to Tanzania. This report presents the information on the structure and function of the labour administration and inspection systems in the two territories separately, describing mainland Tanzania first and then the systems in Zanzibar. The report then concludes with separate findings and recommendations for mainland Tanzania and Zanzibar.

Mainland Tanzania Ministry of Labour, Employment and Youth Development (MoLEYD)

The Ministry of Labour, Employment and Youth Development (MoLEYD) is headed by a Minister and Permanent Secretary. It has three core departments: the Labour Department, the Employment Department and the Youth Development Department. Each department is headed by a director who supervises the functioning of the department and its subordinate sections, and who reports directly to the Permanent Secretary.

The Ministerial structure is complemented by three semi-autonomous units: the Occupational Safety and Health Authority (OSHA), the Commission for Mediation and Arbitration (CMA) and the Tanzania Employment Services Agency (TaESA). In the last five years, the re-structuring of the Ministry has gone hand-in-hand with the creation of independent and semi-autonomous agencies responsible for specific labour-related matters. These agencies were formed by carving out responsibilities that had previously been held directly within MoLEYD. In this process, the managerial and technical links with the Ministry have not been fully preserved. As a result, these agencies operate with a great degree of independence from the Ministry in contrast with the principles of a system of labour administration as understood by ILO Convention 150.

MoLEYD has undertaken a revision of its structure, submitting a proposal for a new structure to the Ministry of Public Service in 2008. Some elements of this proposed structure seem to have already been adopted pending formal approval.⁹ While this proposed structure sets out the main shape of Ministry departments, MoLEYD has yet to formulate fully the underlying regulatory framework, including the actual functions and competencies of the various departments and sections in the Ministry.

Apart from the fact that the Ministry's structure has not been finalized, MoLEYD faces a number of challenges. One major challenge is that budget allocations to the

⁹ See Annex 3 for the most recent MoLEYD organization chart. Ministries cannot modify their own structure without prior approval from the Ministry of Public Service.

Ministry are usually small when compared with the Ministry's needs and when compared with the allocations granted to other line ministries. As a result:

1. there is always a shortage of funds for routine running expenses;
2. working tools and equipment are in short supply (e.g. apart from the head office in Dar es Salaam, no labour office outside the capital has an official automobile and only three offices have working motor bikes);
3. there is persistent understaffing (while there are around 100 Labour Officers in the entire country, most area offices have only one Labour Officer) as well as a lack of money for staff training and development; and
4. activities for training or raising awareness among workers and employers on labour legislation are underfunded and take place only exceptionally and usually are dependent on donor resources.

At the level of MoLEYD, it appears that the various departments (including the three core departments) and sections do not collaborate substantively with one another and that there is an absence of a real exchange of technical knowledge, information or collaborative working methods.

In comparison, the newly established semi-autonomous agencies mentioned above exhibit a high degree of independence in the structure and operation of their own work and appear much more efficient in comparison with their counterparts in MoLEYD. Their strong performance has been recognized as good public administrative practice, and is seen by the fact that they have been recent beneficiaries of increased staff and funding.

Among the other structures of MoLEYD, there are additional technical divisions¹⁰ and administrative support structures referred to as units.¹¹

Each of the MoLEYD structures will be briefly described in the following section.

6.1. Labour Department

The Labour Department is headed by the Labour Commissioner. The law provides that the President shall appoint a Labour Commissioner and Deputy Labour Commissioner, who shall be responsible for the administration of the labour laws.¹² However, the post of Labour Commissioner has been vacant for over a year and is currently occupied in an acting capacity by the Assistant Labour Commissioner in charge of the Labour Administration and Inspection Section. No Deputy Labour Commissioner has been appointed nor has an acting Deputy been named.

¹⁰ For example the Policy and Planning Division, the Administration and Human Resources Management Division (see again the organization chart in Annex 3) and the Trade Union and Employer's Association Registration Unit.

¹¹ Such as the Legal Service Unit, the Information, Education and Communication Unit, and the Finance and Accounts Unit.

¹² See Labour Institutions Act (No 7 of 2004), section 43(1). Note that in past years, the individual appointed as Labour Commissioner has generally come from the judiciary, and has not had significant expertise in labour matters prior to taking up the post of Labour Commissioner.

The main functions of the Labour Commissioner are to ensure the general coordination of the Labour Department and the carrying out of its activities in line with Ministry policy. The Commissioner also represents the Minister at the international level on labour matters (e.g. AU, SADC or the ILO) and is the most senior labour official who approves all administrative decisions. The Labour Commissioner is assigned by law¹³ to support the functioning of the Wage Boards and the MoLEYD Permanent Secretary has also designated the Labour Commissioner as Secretary to LESCO¹⁴ – and thus the Commissioner is further responsible for supporting these bodies (including the representatives of the social partners) in advising the Minister and participating in the development of legislation and implementation of policies (see the discussion below on the LESCO and Wage Boards).

Even though the Labour Commissioner may delegate administrative responsibilities such as recruitment, planning, policy and budget approval to subordinates, this work reportedly ends up consuming the bulk of his time. As one consequence of this workload, the acting Commissioner says that it contributes to a lack of follow-up on compliance notices issued by labour inspectors.

The Labour Department is staffed by labour officers. There is no formal distinction made between labour officers and labour inspectors – all labour officers are equally empowered to administer the labour laws,¹⁵ and the law provides that “there shall be as many labour officers as are necessary” for that purpose.¹⁶

6.1.1. Labour Relations Section

Within MoLEYD, issues related to industrial relations and collective bargaining (apart from the settlement of disputes dealt with by the CMA) are the responsibility of the Labour Department and more specifically the Labour Relations Section. This Section has 10 labour officers and is headed by an Assistant Labour Commissioner.¹⁷ Only one staff position (at the Principal Officer level¹⁸) is vacant but is unlikely to be filled since there is no expected budget available for the post.

The Labour Relations Section acts as the “focal point” for the following issues (issues are not divided on a one-to-one basis among the staff and responsibilities for some issues are shared by more than one labour officer):

- International Labour Affairs and the ILO;
- Child Labour;

¹³ See Labour Institutions Act (No 7 of 2004), section 42(1).

¹⁴ See Labour Institutions Act (No 7 of 2004), section 10(1)(b).

¹⁵ See Labour Institutions Act (No 7 of 2004), section 45.

¹⁶ See Labour Institutions Act (No 7 of 2004), section 43(4).

¹⁷ The law provides that Minister shall appoint Assistant Labour Commissioners to head the Labour Relations, Labour Inspection and Social Security sections. However, the position of Assistant Labour Commissioner appears not to have clearly defined powers. See Labour Institutions Act (No 7 of 2004), section 43(3).

¹⁸ See grading structure for Labour Officers below under *Human resources and career development*.

-
- Gender and HIV/AIDS;
 - Southern African Development Community (SADC);
 - African Regional Labour Administration Centre (ARLAC);
 - East African Community (EAC);
 - African Union (AU);
 - Social Dialogue and Collective Bargaining;
 - Receiving copies of Collective Bargaining Agreements;
 - Statistics and information technology.

While the areas of focus are clearly identified, it is not as clear why these various responsibilities fall under the mandate of the Labour Relations Section. It appears that relatively little of this section's work is devoted to traditional labour relations matters (i.e. consultation and collective bargaining between trade unions and employers). Most of the focal points relate either to international matters or donor funded projects (e.g., the issues of child labour and gender and HIV/AIDS) with limited connection to industrial relations. By contrast, in most ministries of labour, units responsible for international labour affairs are independent and report to higher management and often directly to the Minister's office.

The statistical service of this Section does not gather data on disputes (e.g. strikes and lockouts) or collective bargaining agreements, nor are there any forms or procedures in place for gathering or analyzing this data. In any case, staff in charge of statistics in the Labour Relations Section have limited computer equipment and no internal network capability or internet connection.

The Labour Relations Section produces yearly plans that are assessed at quarterly intervals. However, these plans are not developed as part of a centralized planning or programmatic exercise. Even more, basic communication is limited between the officials in Dar es Salaam and their counterparts in the area offices, presenting further obstacles to coordinated planning.

6.1.2. Labour Administration and Inspection Section¹⁹

At the central level, this Section is headed by an Assistant Labour Commissioner and includes six labour officers with no administrative support whatsoever. None of the labour officers in this Section (or elsewhere in the Labour Department) have been recruited or specifically trained as labour inspectors. The lack of specialized training in labour inspection is the most evident weakness of this section and is a recognized area where technical assistance is needed. Moreover, even though this Section's name includes a reference to labour administration, in fact it only deals with the labour inspection system and thus functions as a central labour inspectorate.

The main functions of this section include:

¹⁹ Other labour inspection functions carried out in connection with MoLEYD will be described later in the section dealing with the Occupational Safety and Health Authority.

-
- overall coordination of the labour inspections carried out by the area offices;
 - preparing, reviewing and recommending guidelines on the labour inspection services and the enforcement of labour legislation in general;
 - providing legal guidance upon request (in this capacity, the inspectorate may consult other governmental legal units including the Attorney General's office);
 - ensuring dissemination of information to employers and employees on their rights and obligations; and
 - where such need arises, assisting the area offices in conducting labour inspections.

The inspection staff in MoLEYD are in charge of coordinating the labour inspection system for all area offices, which are located in a number of regions and districts.²⁰ They are responsible in particular for planning, reporting, general guidance and the preparation of inspection forms. However, communication between the central authority and the regions is infrequent and there are no joint inspectorate meetings held either in Dar es Salaam or the regional offices.

The Section is supposed to prepare national inspection plans (quarterly and yearly) based on plans submitted by the area offices; it is worth noting that MoLEYD does not provide any guidance or guidelines for the inspection planning done by the area offices. Area office inspection reports are supposed to be submitted to the head office on a monthly basis. However, this reporting schedule is not always followed consistently. Even when reports are delivered, they are not always used in the development of the national inspection plans. This planning function (both at the central and area office levels) is further limited by the fact that there is no unified enterprise registry in Tanzania nor a coordinated system to collect such data.

The data contained in the inspection reports is not collected or analyzed to identify any trends, frequencies or the scale or scope of reported violations. Furthermore, the filing system for completed inspection reports is not well maintained and so past reports cannot always be easily retrieved for purposes of reference, enforcement or analysis. There does not appear to be any system in place to control the quality of the labour inspections performed by the area offices and a cursory examination of completed inspection forms showed that a great many were incomplete or incorrectly filled in.

Labour officers are vested with powers under the Labour Institutions Act, 2004 to inspect and prosecute enterprises. Section 45 grants accredited labour officers the right to freely enter premises at any reasonable time²¹ to examine documents, take samples, perform tests or question workers etc. Where labour officers find instances of non-compliance, Section 46 grants them the power to issue a compliance order, compelling the employer to rectify the problems reported. Section 45 also authorizes labour officers to institute proceedings in the Resident's or District Court in respect of any violation of

²⁰ For more detail on inspections carried out by the area offices see the discussion on the field structure below.

²¹ The ILO Committee of Experts asked the Government in its 2007 comments on Convention 81, to specify the practical scope of the expression "at any reasonable time" in Section 45 and to indicate how it is ensured that it is the labour officer who decides whether the time of the visit is reasonable (i.e. as opposed to the enterprises themselves).

any labour law and to appear and prosecute in the name of the Labour Commissioner. Apart from these provisions, there are no regulations, written procedures or internal rules that set out in greater detail the tasks and responsibilities of labour officers. Presently labour officers use prescribed inspection form No. LAI – F-1 as a guiding tool.²²

While labour officers have general competence for supervising the application of the law, the inspectorate is of the view that based on a strict interpretation of Section 5 of the Occupational Health and Safety Act of 2003, the Chief OSH Inspector must grant a special delegation before a labour inspector can perform an OSH inspection. Unlike labour officer, OSHA inspectors are governed by the OSH Act and not by Labour Institutions Act. The interaction of these two laws, regarding the competencies and authority of inspectors (both general and OSH) remains uncertain.

Inspectors in Tanzania use nine report forms in their work (mainly related to compliance orders and appeals). One of these forms is used to inform enterprises that a routine inspection will be conducted. The reason indicated for sending such advance notice is to make sure that the employer is present at the enterprise on the day of inspection. By contrast, inspections based on worker complaints are typically conducted unannounced. One of the consequences of these different visit procedures (announced versus unannounced) is that an employer would know if an inspection was based on a worker complaint or not, potentially undermining the anonymity of the complaints mechanism.

In case of any infraction the inspectorate can issue a compliance order that, if not respected in due time, can in principle be addressed to the Labour Court for enforcement (all compliance orders are sent to the MoLEYD Labour Department); certain specific violations may also be subject to fines²³ and even imprisonment.²⁴ Additionally, where a person hinders or obstructs the labour officers in their work (whether by act or omission), the law criminalizes that conduct.²⁵

The Labour Commissioner is responsible for ensuring ultimate compliance with any orders issued, including any follow-up with the Labour Court or regular courts.²⁶ However, such follow-up often does not take place. For example, the Arusha office confirmed that even upon the expiry of compliance order deadlines, often no further action is taken to enforce the order. Likewise, in Dar es Salaam, only one such case was filed with the court in the past year. As noted above, in some cases, the law confers jurisdiction on the courts to penalize an offending employer. However, in order for a labour officer to bring such a case to the court, the National Prosecutions Service Act

²² See Annex 4 for a copy of this form.

²³ Section 102 of the Employment and Labour Relations Act No. 6 of 2004 provides for penalties for violations relating to discrimination in the workplace, restrictions on freedom of association, failure to pay employees properly, operation of an unregistered trade union or employer association, and disclosure of confidential information. Likewise, section 64 of the Labour Institutions Act (No 7 of 2004) provides penalties for violations relating to

²⁴ See Employment and Labour Relations Act (No 6 of 2004), section 102(2), providing a penalty of imprisonment in cases of forced or child labour, and Labour Institutions Act (No 7 of 2004), section 64, providing penalties of imprisonment for a range of offenses, including fraudulent or improper interference with official functions.

²⁵ See Labour Institutions Act (No 7 of 2004), section 49.

²⁶ The District Court and Resident Magistrate's Court have the jurisdiction to impose penalties for offenses under the Employment and Labour Relations Act, 2004 (Section 102) and Labour Institutions Act (Section 64).

(No. 27 of 2008) first requires that the labour officer be appointed as a public prosecutor by the Director of Public Prosecutions. No such appointment appears to have been made and, apart from this rarely used procedure, there is no intermediate administrative sanction that can be applied directly by the Labour Department.

6.1.3. Social Security

The Social Security Section within the Labour Department was founded in 2002 but has not been fully operational for all that time. There are six staff members in total working under an Assistant Commissioner. This Section has four main areas of responsibility:

- Coordinating implementation and reviews of the National Social Security Policy;
- Workers compensation;
- Coordinating the drafting of new regulations regarding social security;
- Providing guidance regarding social security schemes and provisions;
- Overseeing the functions and activities of the social security schemes and in particular the National Social Security Funds and the Social Security Regulatory Authority (SSRA); and
- Providing policy advice for better operations in matters of social security.

In 2003, the Government of Tanzania adopted a national policy on social security with the aiming at making necessary reforms to the existing contributory schemes, extending coverage of contributing members and extending benefits to the wider population in the form of social assistance.

The ILO project on Social Protection and Coverage for All as a Means to Combat Poverty in Africa and Asia worked with the Ministry to examine the best options and most feasible outcomes for extension of coverage to Tanzanians and to support the process of implementation of the new social security laws.

The implementation of the Social Security Policy of 2003 is under way, with the new legislation [the Social Security (Regulatory Authority) Act of 2008] being a major outcome of the policy. The SSRA Act seeks to harmonize the previously-existing separate social security funds, which have been divided among four different authorities and which have had separate monitoring authority and registry, and even (in the case of the National Social Security Fund) its own inspectorate with prosecutorial powers.

The rationale behind the creation of the SSRA was to introduce a streamlined management structure for all of the funds to improve efficiency and to save on costs. At the time of this needs assessment, the transition between the individual funds and the SSRA was ongoing. Given this period of transition and the still undefined responsibilities of MoLEYD under the new SSRA, the work programme and function of the Social Security Section have yet to be defined. However, given the expected increase in the Social Security Section's responsibilities for the new SSRA, there will be a need to build the capacity of existing officials.

The Labour Department's Social Security section is also responsible for the area of workers compensation. The section oversees the work of the labour officers in the area

offices, who receive claims regarding employment-related injuries and illnesses suffered by workers employed in the public and private sectors.

In 2008, mainland Tanzania enacted a new Workers Compensation Act. This act has not yet been implemented, as MoLEYD has yet to draft regulations and rules for its operation. The new act will create a worker's compensation fund, to which all employers must contribute; claims will then be paid out of this fund, rather than the previous system of having claims paid by individual employers on a case-by-case basis.

Under the old (and still used) system, when a workplace accident results in injury to an employee, the employer must report the incident to the labour officer at the corresponding area office. The labour officer then issues a standard form for the employee to undergo a medical examination. Upon receiving the medical examination report, the labour officer then calculates the amount of the workers compensation payment.

If the employer is a private entity, the labour officer sends this assessment to the employer. In principle, the assessment is sent by post, but due to problems with lost mail and employers who claimed not to have received the assessment, the labour officer may also give the assessment to the injured worker, who then delivers it to the employer. The assessment specifies the amount that the employer must pay to the worker and gives a deadline (generally 21 days). The payment must be made under the supervision of the labour officer, at which time the employer and worker sign an agreement acknowledging the payment and affirming that no further claims shall be made.

If the employer fails or refuses to pay, the labour officer may follow up with the employer and even prosecute in the courts. However, officials said that this rarely happens and that no prosecutions had taken place since at least 2007. The worker has no standing to bring a claim against the employer for failure to pay and at best can make an informal complaint to the labour officer.

If the employer is an entity of the central government or its dependencies (e.g., the public school system), the labour officer sends the assessment to the Social Security section at MoLEYD for verification and approval by that section and the Labour Commissioner. Following this approval, the Social Security section requests the funds from the Treasury. When the funds are received, the section sends the money in the form of a check or voucher to the corresponding labour officer, who then informs the worker to collect the payment. For injuries reported in the Dar es Salaam area, the section itself contacts the worker to collect the payment.

The section has a designated budget line for workers compensation payments, but officials report that the amount budgeted is always too little and that it takes too long to receive the funds. The budget line is based on a proposal, which is in turn based on outstanding claims (that is, claims already received and where an assessment has already been made). There is no attempt to forecast the claims that are likely to be received in the future. The result is that there is always a backlog of unpaid claims and payment is delayed, sometimes for a long time. In some cases, payment is delayed for so long that the labour officer is no longer able to contact the worker, because the contact information is outdated, or the worker has left for other employment.

In the quarter for July to September 2009, officials reported paying around TZS 2 million in workers compensation. However, no precise information could be provided on the amount of outstanding claims, the size of the backlog or the delays experienced.

6.2. Employment Department

The Employment Department is headed by a director and is divided into three sections, although indications are that the department's structure is not yet fixed (e.g. the organization chart that figures in Annex 3 does not include the labour market information section of this department as described by MoLEYD officials). At the professional level, the department is staffed by employment officers; the position of employment officer is similar in grade to that of labour officer in the Labour Department, but does not carry with it the responsibilities or powers that are granted by law to labour officers.²⁷

The first section, employment promotion, consists of five employment officers. Its role is to coordinate the employment activities of all relevant partner institutions (e.g. local government authorities).

The second section, employment services, has seven employment officers. However, following the creation of TaESA (which consolidated employment services under a new semi-autonomous agency outside of MoLEYD), the employment services section now deals mostly with work permits. In fact, the coordination between the employment services section and TaESA is not clearly defined and, as described below, there is even some confusion over the responsibility for issuing work permits.

The third section, labour market information, has seven employment officers and works in collaboration with the National Bureau of Statistics. This section analyses data gathered by the bureau through household surveys. The statistics compiled by this section are not, however, published on a regular basis nor is there a permanent electronic database to house labour market information. This section is also responsible for drafting the National Employment Policy²⁸ and the main laws related to employment such as the currently pending Employment Bill. Currently, staff are in the process of completing an occupational classification dictionary.

6.3. Youth Development Department

This department is managed by a director. Its main focus is on youth empowerment (economic empowerment, youth participation and employment) and it advocates for the mainstreaming of youth issues across all of MoLEYD's technical units. The department has approximately 50 staff members including support staff. Approximately 25 to 30 of these staff members are youth officers.

This department is divided into three sections: mobilization and coordination, guidance and counselling, and skills development and training. With respect to this last section, there are three training centres located in the field that are owned and operated by the Ministry.

²⁷ As described above regarding employment officers in the Employment Department, the position of youth officer is similar in grade to that of labour officer in the Labour Department, but does not carry with it the responsibilities or powers that are granted by law to labour officers.

²⁸ Tanzania adopted a National Employment Policy in 2008 with seven principal objectives: to promote skills and competencies in the formal and informal economies; promote decent a productive employment; promote equal access to employment opportunities and resource endowments for marginalized and vulnerable groups; put in place a conducive and enabling business environment; ensure income security and social inclusion; safeguard basic rights and interests of workers in accordance with international labour standards; and foster faster economic growth and adequate allocation of investment resources to employment potential sectors.

The regional structure of the Youth Development Department is different from that of the other technical departments in MoLEYD. At the regional level, youth officers are part of the regional administrations and the central department in Dar es Salaam does not exert direct managerial control. At the district level, youth officers are instead under the authority of the local governments.

The Youth Development Department deals with issues that go beyond the strict scope of the classical labour administration system (e.g. promotion of responsible parenthood, HIV/AIDS awareness, adolescent reproductive health, drug abuse, life skills training). In this respect some of its primary donor partners include the UNFPA, UNICEF and UNAIDS. However this department does collaborate with the Employment Department and hopes to increase its interaction with the Labour Department, particularly on issues of child labour and awareness raising among the young population on labour legislation.

6.4. Trade union and employers' association registration unit

This unit has seven staff members under the supervision of the Registrar. Section 45 of the Employment and Labour Relations Act, No 6 of 2004, requires the registration of trade unions, employers' associations and federations. Sections 46 and 47 set out the requirements for registration and the minimum content of the constitutions of associations respectively. All registration is done centrally at the MoLEYD in Dar es Salaam. There are no registries kept in the area offices. If the Registrar wishes to gather information on organizations located upcountry, she must visit in person. Registry officials regularly visit organizations upcountry and are given a budget to do so.

Section 48 of the Act sets out a streamlined procedure for registration, which requires any association or federation, seeking registration to submit the following documents to the Registrar:

- a. a prescribed form that has been properly completed and signed by the secretary of the organisation or federation;
- b. a certified copy of the attendance register and minutes of its establishment meeting; and
- c. a certified copy of its constitution and rules.

When the Registrar is satisfied that an organization or federation has complied with the requirements of the Act, she registers that organization. If the Registrar is not satisfied that the organization or federation has complied with the law's requirements, the applicant may be given an opportunity to rectify its application within a given period of time, or the Registrar may refuse the application by sending a written notice of this decision along with the reasons. If the applicant disagrees with the Registrar's decision, a complaint may be lodged with the labour court.

After approving an application of an organization or federation, the Registrar enters the name of the organization or federation in the appropriate register (a handwritten ledger) and issues a certificate of registration. There are no fees for registration. Currently, there are 23 registered trade unions,²⁹ two trade union federations³⁰ and two

²⁹ Tanzania Union of Industrial and Commercial Workers (TUICO), Tanzania Plantation and Agriculture Workers Union (TPAWU), Communication and Transport Workers Union of

employers' associations.³¹ All registrations are kept by hand and are published in the official government gazette.

Every year, registered organizations are required to submit documentation including an audited budget and list of members. If these requirements are not met, the Registrar contacts these organizations to inquire as to their status. Any change in status or membership is recorded by the Registrar and appended to the original entry in the register. Should an organization be in non-conformity with the Act, its registration may be cancelled. Such cancellation of registration is done by the Labour Court and not the Registrar.

The Registrar does not monitor all information related to unions at the enterprise level. For example, the Registrar does not register or collect information on collective bargaining agreements. The law requires that parties to a collective bargaining agreement must lodge a copy of the agreement with the Labour Commissioner.³² Likewise, the CMA has the responsibility to register social dialogue forums that are established by collective bargaining agreements.³³ These three offices do not appear to coordinate or crosscheck in tracking union-related information and agreements and this division of roles may lead to some confusion or conflicting information.

Beyond the registration function, the Registrar indicated that from time to time her office conducts legal audits of registered organizations and provides training on industrial relations matters.

6.5. Administrative support units

6.5.1 Administration and human resources management division

This division is headed by a director and includes 56 staff. It is divided into two sections, each managed by a Principal Officer. The administration section is in charge of office administration and management and provides support staff to the various Ministry units (e.g. secretaries, drivers, etc.). The other section is the human resource management

Tanzania (COTWU (T)), Tanzania Teachers Union (CWT), Tanzania Mines and Construction Workers Union (TAMICO), Tanzania Railways Workers Union (TRAWU), Tanzania Fishing Crew and Allied Workers Union (WAMEUTA), Tanzania Seamen's Union (TASU), Researchers, Academicians and Allied Workers Union (RAAWU), Tanzania Local Government Workers Union (TALGWU), Conservation, Hotels, Domestic and Allied Workers Union (CHODAWU), Tanzania Union of Government and Health Employees (TUGHE), Industrial and General Workers Union of Tanzania (IGWUTA), Tanzania Social Services Industry Workers Union (TASIWU), Tanzania Union of Journalists (TUJ), Dock Workers Union of Tanzania (DOWUTA), Tanzania Union of Private Security Employees (TUPSE), Telecommunications Workers Union of Tanzania (TEWUTA), Tanzania Media Workers Union (TMW-UNION), Tanzania Pilots Union (TPU), Tanzania Agroforestry Workers Union (TAWU), Mufindi Paper Employees Trade Union (MPETU) and Tanzania High Learning Institution Trade Union (THTU).

³⁰ The Trade Unions Congress of Tanzania (TUCTA) and also the regional East African Trade Union Confederation (EATUC).

³¹ ATE and TAACIME.

³² See Employment and Labour Relations Act (No. 6 of 2004), section 71(7).

³³ See Employment and Labour Relations Act (No. 6 of 2004), section 72. Although the law does not explicitly provide for the CMA's role in registering the social dialogue forums, this has been established by practice.

section. Its main function is to recruit staff, plan for human resources and placement, training programmes, promotions and appointments as well as taking care of internal disciplinary matters.³⁴

6.5.2. Information, Education and Communication Unit

This is a small unit established in 2005 with only two staff members and limited budgetary resources. It is responsible for external public communication, including education and awareness raising regarding the Ministry's activities. It is also charged with internal communication at MoLEYD but this role has not been developed. Moreover, it deals with public relations (e.g. press releases, press conference, TV, radio, newspaper etc.). Despite its clear responsibilities, the unit has not developed any written strategy or work plan. One of its limitations is that the MoLEYD does not have an up-to-date website to publicize its activities. And unlike some other Ministries, this unit does not have staff with the necessary technical skills to manage a website. Moreover, the unit does not collaborate with the social partners either in planning or implementation. Beyond the Ministry itself, this unit noted that it also provides services to the autonomous/semi-autonomous agencies (CMA, OSHA and TaESA); however, these agencies also appear to have their own communications functions and it is not clear to what extent they collaborate with the MoLEYD communications unit.

6.5.3. Finance and Accounts Unit

This unit is responsible for accounts support, the application of financial rules and payroll matters within MoLEYD and for each of the autonomous/semi-autonomous agencies. It consists of 24 staff with one additional accounting staff located in five upcountry field offices. In the Ministry itself, each department has an accounts support focal point to coordinate financial issues. The payroll system is centralized in Dar es Salaam and salaries are deposited directly into staff bank accounts.

6.5.4. Procurement Management Unit (PMU)

This is the unit in charge of purchasing goods and services for MoLEYD and two of the semi-autonomous agencies (OSHA and TaESA) along with the area offices. It has six staff members who are all based in Dar es Salaam. There are two procurement procedures in the Ministry. The first procedure takes place on an annual basis covering requests for goods and services that originate from user departments within MoLEYD. The second procedure is for any exceptional requests outside of the normal yearly procurement cycle. The PMU has an annual budget of between TZS 2-3 billion (USD 1.5 – 2.3 million).

6.5.5. Internal Audit Unit

The MoLEYD unit for internal auditing is composed of three staff, who are all accountants by profession. These same staff are responsible for auditing the area offices along with the autonomous/semi-autonomous agencies (except TaESA for the time being). Due to the number of regions and difficulties with transport, the area office audits are not performed on a regular basis. This unit reports to an internal ministerial audit committee, which is composed of heads of departments and one member from the

³⁴ Further details about MoLEYD HR procedures will be dealt with in the section on human resources later in this report.

Ministry of Finance. External audits are also conducted on an annual basis by an official who sits in the Ministry of Finance and reports to the Auditor General.

Concerning the working methods of this unit, all the reporting is done by computer although payments and records are kept manually.

6.5.6. Policy and planning division

This division is divided into three sections with two staff members per section. It has received approval for the recruitment of three additional staff for the following budget year. The three sections include the policy section; planning and budgeting; and evaluation and monitoring.

The policy section has developed three recent policies on social security, youth employment, employment and occupational safety and health (this last one is still pending). The policies are developed on a 5-year calendar. Any final policy proposal is shared with stakeholders including workers and employers for consultation, although it is not clear that this is done via LESCO (the official tripartite consultative body for mainland Tanzania). In addition to each of these policies, there is a complementary strategic plan elaborated on a three-year basis. Over the life span of these policies, the policy and planning division conducts periodic reviews to assess implementation.

The second section, planning and budgeting, is responsible for preparing yearly strategic budgets in addition to quarterly reports. To support this work, they have focal points in each MoLEYD technical unit, although none in the regions. Officials indicated that for the financial year 2009/10 the total budget allocation for the Labour Department represents 30 per cent of the Ministry's entire resources.

The third section, evaluation and monitoring, is charged with preparing monthly and quarterly reports on the basis of information and reporting activities gathered from the different Ministry units. Part of their work is to also monitor the use of the donor funding for development projects. They use standardized report forms which are completed manually by all MoLEYD units and sent to the evaluation and monitoring section where they are entered into a unified database. In principle this section is responsible for unifying all of the various data and information gathered across the Ministry. However, in practice, the electronic evaluation and monitoring database is incomplete and not accessible by officials in the Ministry, let alone in the regions.

6.5.7. Gender

There is no unit dedicated to gender issues in the Ministry nor is there a specific MoLEYD policy on gender equality. There is however a broader Government policy on gender which the Ministry of Labour is co-responsible for implementing.

The Ministry does, however, have a Gender Focal Point and a Gender Committee (chaired by the Director for Administration and Personnel), which in turn includes the gender focal points from each department. During 2008/09, each department received a budgetary allocation for gender mainstreaming; for the 2009/2010 financial year, TZS 40 million has been allocated for gender mainstreaming. However, the challenges reportedly include limited capacity and a lack of entrenched institutional mechanisms.

With regard to the staffing balance between men and women, in 2008, out of a total of 384 MoLEYD employees, 156 were female (40.6 per cent). No information was available, however, on the gender balance according to grade in the Ministry.

6.6. Field structure

The United Republic of Tanzania is divided into 20 regions, 11 zones and 127 districts. At present there are 32 labour “area offices” covering mainland Tanzania. Twenty of these are regional labour offices (seven of which are so-called “principal offices”) and another 12 are district labour offices. One feature to bear in mind about the regional offices is that labour officers are responsible for a wide range of labour and employment matters, of which inspection is only a part, due to limited staffing. The small number of field offices and staff reveals that MoLEYD’s presence is weak, particularly outside of the main urban centres and that there is a need to expand its presence gradually in order to make the field structure workable and efficient.

With respect to the judicial system for dealing with labour cases, there are High Courts in 11 zones but only one of these zones has a Labour Court. This situation is unsatisfactory and does not meet the needs of neither workers nor employers.

MoLEYD has not decentralised its functions following the overall regional structures. In fact some Ministry of Labour units and even the semi-autonomous structures, have decided on their own decentralized arrangements. Moreover, there is neither a formal hierarchy linking the regional and district offices to each other, nor is there evidence of horizontal networking or coordination (formal or informal) between related technical officials. This is made all the more challenging given that few meetings are held between officials in the central authority (Dar es Salaam) and the regions due to travel constraints and lack of resources. In principle, all the regional and district field offices report directly to the Labour Commissioner, but it is not clear that any such reporting takes place on a regular basis.

The mission visited three field labour offices: Dar es Salaam (Ilala and Kinondoni districts), Temeke (another district in the Dar es Salaam urban area) and Arusha. In the Dar es Salaam office there are 17 total staff, 10 of whom are labour inspectors. The Temeke office has eight staff, five of whom are inspectors. Both offices are under the supervision of head officers. In Arusha, there are four labour officers (one of whom is the Regional Officer in Charge) and three supporting staff. This office covers the regions of Arusha (which comprises six districts) and Manyara (comprising five districts) and, among its other functions, it conducts labour inspections; trains the social partners; represents the ministry in meetings at the local level; reports and follows up on workers compensation claims; and deals with workplace disputes that have not yet been reported to the CMA. Although the responsibility for labour mediation now lies with the CMA, the Arusha office still has several disputes waiting for settlement under the old system and a number of cases pending before the Labour Court.

The professional profile of the labour officers includes lawyers and public administrators although none of the officers has ever received technical training specific to their role as labour inspectors. Neither the Dar es Salaam, Arusha or Temeke offices have cars (at times, staff in the Arusha office use the Officer in Charge’s personal car). As a result, inspectors often carry out visits using public transportation. All of the offices have telephones although the lines in the Dar es Salaam office are not currently connected. As for IT equipment, the Dar es Salaam area office has seven working computers and two printers but without any internal networking or access to the internet; the office also has one telephone line; the Temeke office has five computers and two

printers, which are likewise not networked, and one telephone line.³⁵ In Arusha, there are two working computers (one with internet access), one printer and three telephone lines.

Some area offices, including those in Dar es Salaam and Temeke, indicate that their inspection plans are based on a pre-selection of enterprises according to a number of priority sectors (e.g. tourism, industry etc.). The Dar es Salaam office plans 16 inspection visits per month and the Temeke office plans 12 inspection visits per month – a figure that does not include visits based on complaints or revisits to verify the implementation of compliance orders. In Arusha, the inspectorate plans its visits on a six-month forward basis with an average of 15 visits per month. However, the offices generally do not carry out all of the planned visits because of a lack of transport and funds to pay allowances for inspectors to visit remote workplaces. For example, the Dar es Salaam head indicated that in 2008 his office conducted only 20 inspections for the entire year.

Decisions on which enterprises are to be inspected may be based on:

- complaints received from workers related to low wages, unpaid leave, claims for overtime, hazardous working conditions, contract violations, discrimination, denial of collective rights etc.;
- the requirement of other authorities;
- on the normal routine duties of the inspector (i.e. each inspector is supposed to prepare an inspection work plan setting out which workplaces to inspect and how often);
- a request from the central authority based on its own inspection plan.

The Dar es Salaam and Temeke offices noted that there is little if no communication or exchange of information between field offices carrying out inspections. Furthermore, neither office works in a coordinated manner with OSHA although the Temeke head acknowledged that they had previously conducted a few joint inspections with OSHA inspectors. These offices do, however, inform OSHA whenever they encounter a dangerous health or safety situation in an enterprise. Both offices said that they do not encounter resistance from employers when carrying out their visits.

The administrative decentralisation reform process has not been well coordinated at the regional level. There are mixed competencies that create a situation in which the more prestigious tasks are going to the Regional Commissioner's office while the more routine matters stay with the regional labour office. Very often the labour advisor in the Regional Commissioner's office is considered to be an alternative to the regional labour office – as he or she is better equipped, better connected in political terms, better able to resolve labour disputes in a much easier – and faster – manner, thus bypassing the jurisdiction of the labour officers.

³⁵ The Dar es Salaam and Temeke offices are physically located next to the MoLEYD headquarters, however, and thus are sometimes able to benefit from the resources at the MoLEYD central offices.

6.7. Human resources and career development

In total there are 424 staff working in MoLEYD (labour officers and administrative support staff combined). They are regulated by the Public Civil Act of 2002. Among labour officers, the classification of grades, from highest to lowest are as follows:

- Principal Officer one (post-graduate degree with 12 years of experience);
- Principal Officer two (post-graduate degree with 10 years of experience);
- Senior labour officer (degree and 7 years of experience);
- Level one (degree and 5 years experience);
- Level two (degree).

While labour officer grades are clearly set out, there are no clear categories based on technical responsibilities or competence. In addition, all labour officers are legally empowered to act as labour inspectors, regardless of whether their positions entail specific labour inspection duties.

Advancement between labour officer grades is based on promotion. Until 2008, all promotions were carried out through advertised competitions. Since then, an internal administrative directive has converted this process into a merit system where internal competition is based on experience and performance appraisals. However, a number of labour officers noted that they had gone many years without promotion and/or were promoted without knowing why or having been told of a positive performance appraisal.

The Ministry of Public Service (MPS), must approve all requests from the Ministry of Labour to recruit new labour officers. This process begins with a request submitted by individual MoLEYD units based on staffing needs. The terms of reference developed for vacancies set out the general requirements for the grade as listed above, but do not detail the specific technical competencies for the position. Once the request is approved by the MPS, MoLEYD advertises vacancies in four different newspapers setting out the posts and deadlines for submitting applications. Subsequently, a selection panel composed of different MoLEYD technical directors and HR officials is convened to draw up a short list of candidates. Selected candidates are contacted by phone and the short list is published in local newspapers. Next, the selection panel, now joined by the Labour Commissioner and the director of the recruiting unit, interview short-listed candidates and make the final decision.

In MoLEYD, new recruits are enrolled in an induction course which is identical for all new public service staff and is delivered through the Public Service College. Later, MoLEYD provides a one-week general orientation course for its own labour officers. Although HR has conducted a training needs assessments for the Labour Ministry, there is no existing plan or programme for on the job training or professional development. However, HR staff indicated that it organized some internal training activities for labour officials. At the technical level, each unit is supposed to have a portion of its budget devoted to professional development of but there is no evidence that training activities have taken place or that these units have developed their own training plans.

Until 2006, performance appraisals in the Ministry were part of a confidential process that did not involve direct discussion with the staff person being evaluated. This system was suspended in 2006 and an alternative Open Performance Appraisal System

(OPRAS) developed. OPRAS has still not been introduced in practice but is intended to move to a more transparent appraisal system.

All government employees are governed by the Code of Ethics and Conduct for the Public Service under the authority of the MPS. There is also a government-wide Prevention of Corruption Bureau (PCB) that was established in 1991. Within MoLEYD itself, there is also a disciplinary committee with powers to investigate misconduct and to propose disciplinary measures (suspension, dismissal etc.). Disciplinary cases are infrequent, occurring at most once or twice a year.

6.8. Technical equipment³⁶

While officials generally complain about the lack of equipment (particularly vehicles and computers), the MoLEYD facilities, at least in Dar es Salaam, are well appointed and in reasonable condition. Despite the presence of modern computer hardware throughout the Ministry, there is a lack of internal networking between terminals and the availability of internet access is limited to only a handful of computers. Improving this network (both internal and external) would help to improve the coordination, sharing of information and communication between labour officers at the central level and with the regional staff. Also, the Ministry's data collection systems are not well developed primarily because of:

- a lack of computer skills;
- insufficient ICT equipment and support; and
- a lack of recognition among officers on the importance of labour statistics.

With regard to transportation, the shortage of official vehicles is a major obstacle to the effective performance of labour inspections across the country, particularly in the field offices. For example, there is only one vehicle at the Labour Department's headquarters and five motorbikes in five area offices (Lushoto, Korogwe, Tanga, Mbeya and Mtwara). The remaining 27 area offices have no transport equipment at all.

There has been a tremendous effort by the Ministry and donors as far as rehabilitating the physical condition of MoLEYD facilities. The following 13 offices have been recently renovated and refurnished:

- Korogwe, Lushoto, Same, Lindi, Kagera, Kigoma, Singida and Shinyanga (by MoLEYD);
- Arusha, Mwanza, Tanga, Morogoro and Dar es Salaam (by the BEST project).³⁷

Nineteen offices have yet to be renovated.

³⁶ The issue of technical equipment is also addressed in relation to specific Ministry functions, especially OSH and labour inspection.

³⁷ Business Environment Strengthening – Tanzania (BEST) is a multi-donor project with a labour market component. The project is funded by the World Bank and the bilateral development cooperation agencies of the United Kingdom, Netherlands, Denmark and Canada.

6.9. Registries and data collection³⁸

There is currently a lack of data that are essential for the proper functioning of a labour administration system – e.g. a detailed employers registry and labour market information in general. This is due in part to a lack of human and financial means in addition to the limitations of data collection inherent in developing countries with large informal economies. It is also partly due to poor communication between different units within MoLEYD who both gather and have a need for similar information in the course of their functions.

6.10. Autonomous and semi-autonomous agencies and commissions

6.10.1 *Occupational Safety and Health Authority (OSHA)*

The former occupational safety and health section within MoLEYD, popularly known as the “factory inspectorate”, was singled out to become an executive agency on 31 August 2001, pursuant to the Executive Agency Act. Even so, eight years later, OSHA is still awaiting formal approval from the Public Service Ministry for the new reorganized structure; in the meantime, it operates with a de facto structure as a semi-autonomous agency.

The objectives for establishing OSHA were to improve the delivery and quality of services and to create an environment conducive to efficient and effective management. The Head of OSHA is the Chief Executive (formerly known as the Chief Inspector of Factories) who is responsible for the operation of the agency. Its structure (pending approval) includes:

- a business support division to focus attention on good management and to develop a commercial operating environment;
- a legal affairs unit to advise the chief executive on legal matters;
- an ergonomics and industrial engineering division to draw attention on interventions and to control risk factors at the design stage;
- a counselling and rehabilitation unit to assist workers and employers who are already affected; and
- an environmental monitoring unit within the occupational hygiene and health division.

The services of OSHA include:

- work inspections;
- industrial hygiene surveys;
- medical health examinations;

³⁸ For information on the registry for trade unions and employers’ organizations, labour inspection and OSHA, see above.

- registration of new workplaces;
- training and awareness raising programmes;
- investigation of accidents; and
- gathering data and monitoring workplaces.

At the field level, OSHA is divided into six zonal offices covering all of mainland Tanzania (each zonal office covers several regions and may have sub-offices).³⁹ There are 61 total staff divided between 35 inspectors with the remaining staff comprising administrative support including finance, legal officers and administrative assistants. The inspectors are spread throughout the country with an average of 4 to 5 per zone. Currently, OSHA expects to add 15 new inspectors to its ranks in the near future, mainly in the zonal offices. As a semi-autonomous agency, OSHA controls its own recruiting.

There are also some 15 special positions reserved for what are known as “private” inspectors. In fact, these are technical specialists recruited under fixed term employment contracts with OSHA, to act as monitors in their field of expertise but without possessing any sanctioning or prosecutorial powers. Their actions are limited to reporting on the occupational safety and health situation of enterprises in their area of expertise.

OSHA has no established plan for external training; staff training takes place on the job.

OSHA develops yearly plans based on the previous year’s results, information on the state of workplace health and safety and on internal priorities. Annual reports from all the OSHA offices are delivered to the Minister setting out the results obtained, yet there is no apparent planning coordination between the central and field levels. It appears instead that each OSHA office works on the basis of its own plans without any reference to shared targets or strategies.

OSHA is empowered to charge fees for some of its services, including certain technical inspections (boilers or pressure vessels, hoists and lifts, electrical testing), for carrying out industrial hygiene surveys or medical examinations and for factory registration or re-certification. OSHA does not charge for general inspections related with OSH Act Compliance. Fees received go towards the general operation of OSHA and are coordinated at central level, disbursing monthly allocations to each office, although this is usually deposited on a personal account.

OSH labour inspection

OSHA inspectors carried out approximately 3,500 inspections in 2008. It is important to note that OSHA inspectors only have competence in OSH matters (i.e. compliance with the Occupational Health and Safety Act, 2003). OSHA inspectors are spread across the country and, in the regions, commonly share the same premises as labour inspectors. This close contact in the regions between OSHA and labour inspectors allows for an integrated approach to the different components of inspection. The Arusha office appears to be a particularly good example of this integrated approach (conducting

³⁹ Prior to the creation of OSHA, the functions were carried out by the Factory Inspections section of the Ministry of Labour under a different field structure. In 1992, five regional offices were staffed with six OSH inspectors (Dar es Salaam (2), Arusha, Iringa, Moshi and Tabora), while the remaining 16 factory inspectors at headquarters level also conduct field visits.

joint inspections and sharing information such as company registry data) even though it is largely done on an ad hoc basis. Such integration of activities, however, does not occur at the central level in Dar es Salaam partly due to the fact that OSHA and labour inspectors do not share the same premises. Labour inspectors at MoLEYD in Dar es Salaam said they have been trying, but without results to date, to develop an agreement for formal collaboration between the inspection services, for example to benefit from information in the enterprise registry kept by OSHA.

Within OSHA, there is generally poor communication between the central authority and the regional offices. For instance, joint meetings are seldom convened (the last one took place in 2008). Added to this, equipment limitations make communication difficult – whether between the different levels or even within the same office. Often, the only means of communication between OSHA inspectors is through the use of private mobile phones.

Overall, OSHA has six vehicles to perform their work (two at the central level and the other four in the zones). However, there is a lack of adequate technical equipment to carry out technical evaluations (e.g. measuring equipment for noise or air quality etc.) and many of the tools they currently have are either out of date or not working.

In the Arusha office, there are two OSHA inspectors and one so-called private inspector to cover the Arusha and Manyara regions.⁴⁰ These inspectors carry out an average of 20 planned visits per month (they go on visits together). For their work, they have a car, two working computers and two printers. The only working technical equipment at the Arusha office is a light meter.

OSHA has a specific register of workplaces that is the result of information gathered from inspections it performs. The law in fact requires enterprises to communicate to OSHA any newly established workplace, but this is not done consistently. In mainland Tanzania, there are around 4,000 workplaces registered out of an estimated total of 50,000.

OSHA inspectors are fully empowered to visit workplaces and to impose sanctions or other actions. Most inspections are routine or planned visits with only around 10 per cent based on worker complaints. When visiting a workplace, OSH inspectors must show their accreditation and inform a worker representative of their presence. If inspectors are denied entry, they can prepare an obstruction notice to send to the court and the police may be called to secure entry or at least to act as a future witness before the Court.

In case of an OSH deficiency or violation, inspectors can issue improvement notices with a deadline to remedy the problem. In the case of imminent danger, the inspector can issue a stop work order or prohibit the use of certain hazardous equipment. If such an order is not respected and the employer takes no action to remedy the problem, a case may be put before the courts. For this last procedure, the OSHA legal adviser is in charge of preparing the legal claim. Instead of taking the case to court, OSHA also has the option of levying an administrative fine (a “compound”) but OSHA staff noted that such a fine needs the signature of the employer admitting to the infraction,⁴¹ and so such fines

⁴⁰ There is also a Moshi region sub-office, covering that region and Tanga, which falls under the jurisdiction of the Arusha zonal office. The Moshi sub-office is staffed by one OSHA inspector and two private inspectors.

⁴¹ OSHA staff noted the requirement for the employer to sign such an admission for the compound to be applied, but this is not mentioned in the controlling provisions (see section 88) of the Occupational Health and Safety Act of 2003.

are almost never used in practice. Consequently, the court is the only option to deal with an intransigent employer.

Work accidents and diseases are not in practice communicated to inspectors who might be responsible for investigating such cases. In fact the obligation to communicate accidents is two-fold: first to the Labour Commissioner at the Ministry and to OSHA. Nevertheless, employers mainly notify the Labour Commissioner of any accidents and diseases (generally in relation to workers' compensation claims) and this information does not usually get passed along to the OSHA inspectors. This lack of information sharing is a significant obstacle in the investigation of workplace accidents (and any ensuing compensation claim) and hinders efforts at prevention.

6.10.2. *The Commission for Mediation and Arbitration*

The Commission for Mediation and Arbitration (CMA) is the principle organ for resolving labour disputes. The CMA was established under the Labour Institutions Act of 2004 and has been in operation since May 2007. Since its inception, the CMA has received some 19,000 cases, resolving 87.3 per cent of them; over 85 per cent of these cases are resolved through mediation, and only 625 cases have been appealed to the Labour Court for revision. New cases are generally disposed of within 3-4 weeks.

The basic attributes of the CMA according to the Labour Institutions Act are that it shall:

1. be an independent department of the Government (e.g. the CMA has an autonomous budget and programme);
2. not, in the performance of its functions, be subjected to the direction or control of any person or authority; and
3. be independent of any political party, trade union, employers association, and federation of trade unions or employers' association.

The CMA is governed by a Chairperson appointed by the President on the advice of the Labour, Economic and Social Council, and six other Commissioners similarly appointed (two each representing the interests of workers, employers and the Government).⁴² The CMA's organizational structure is set out in Annex 5. At present, the CMA has 64 staff members throughout the country, comprising 46 officers (mostly mediators/arbitrators) and 18 support staff (including three secretaries and one registry assistant). This number is set to double during the 2009/2010 financial year, with the addition of 34 officers (including 30 mediators/arbitrators) and 30 support staff in the coming year. All new mediators and arbitrators undergo a five-day training (generally combined with a quarterly review meeting; see below) and take an oath before a judge prior to starting work.

The CMA has both mandatory and discretionary functions. The mandatory functions are provided for under Section 14(1) of the Labour Institutions Act and include:

1. mediating any dispute referred to it in terms of labour law;

⁴² Section 16 of the Labour Institution Act No. 7 of 2004.

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2. determining any dispute referred to it by arbitration under a number of specific circumstance; and
 3. facilitating the establishment of a forum for workers participation if so requested in terms of Section 72 of the Employment and Labour Relations Act No.6 of 2004.

The discretionary functions are provided for under the Section 14(2) of the Labour Institutions Act, which provides that the CMA may:

1. upon request, provide employees, employers and registered organizations and federations with advice and training related to the prevention and settlement of disputes;
2. offer to mediate a dispute that has not been referred to it (such cases can originate from information provided by the labour inspectorate); and
3. conduct or scrutinize any election or ballot of a registered trade union or employers' association if:
 - a. required to do so by the Labour Court; or
 - b. at the request of the union or association concerned.

In discharging its functions, the CMA is given wide-ranging powers. Under Section 15 of the Labour Institutions Act, the CMA may:

1. summon any person for questioning or to attend mediation if that person's attendance may assist in the resolution of disputes;
2. summon any person believed to be in possession or control of any relevant book, document or object to appear and produce the same;
3. administer an oath or accept an affirmation from any person called to give evidence; and
4. question any person about any matter relevant to the dispute.

One of CMA's subsidiary units is the Workers Participation Unit, which registers and facilitates enterprise-level social dialogue forums (also known as workers councils or workers participation forums) that are established under collective bargaining agreements; the CMA has registered over 100 such forums, mostly in the public sector. The CMA's responsibilities in this area are set out under Section 73 of the Employment and Labour Relations Act, which makes provision for such forums and under Section 14 of the Labour Institutions Act.⁴³ Placing this task under the CMA and not the Labour Commissioner in the MoLEYD Labour Department or the Registrar of Trade Unions and Employer Associations has the potential to cause confusion, since it is the Labour Commissioner who is required by law to play the leading role in the implementation and enforcement of the Employment and Labour Relations Act; likewise, it is the Registrar who is responsible for registering and monitoring trade unions. Thus far there does not

⁴³ The laws provide that the CMA shall facilitate the establishment of social dialogue forums upon request. However, in discussions with CMA staff, they appeared to consider this a mandatory responsibility.

appear to be a problem or uncertainty about this role but in any case, the Labour Commissioner, the Registrar and the Director of the CMA have yet to sit together to coordinate their operations.

The CMA has demonstrated a high degree of effectiveness both at the central level and in the regions. For example, the CMA staff have received a higher level of training on their function and the content of their work in comparison with labour officers in the Labour Department. If any shortcomings can be identified it would be with respect to 1) the lack of data collection on the nature of disputes lodged with the CMA and 2) the lack of systematic dissemination of the CMA's jurisprudence. Although they prepare files for every case, this is done manually (with handwritten files rather than electronic ones). These manual or handwritten files could be used to compile data, but the CMA does not have the administrative capacity to systematically collect or analyze the information from its case files, nor to disseminate the jurisprudence that results from its decisions. CMA is aware of the need for an improved case management system (in particular following its study tour to South Africa and Swaziland in September 2009) and would benefit from technical assistance and training in this regard.

The CMA also has a decentralized structure of 20 field offices, ten of which are considered "zonal offices" (a zonal office has some management responsibility over other field offices in its jurisdiction). There is an average of two arbitrators/mediators per field office, and each field office may cover a number of regions or districts. For example, in Arusha, two arbitrators/mediators deal on average with a total of 15 cases per day covering the Arusha and Manyara regions (when necessary, travel between both regions is done with public transport); Arusha is also the zonal office, overseeing the operations of the Moshi region field office. CMA staff in Arusha are housed in the regional labour office building and are adequately equipped with telephones and computers although they have no network or internet access.

Decentralized CMA staff prepare annual plans which they submit to the central authority. The heads of the zonal offices meet with CMA headquarters to review the annual plans. All field offices submit quarterly reports.

Unlike other regional labour officers, all CMA field staff maintain regular contact with their counterparts in Dar es Salaam and jointly attend quarterly review meetings for planning, coordination and training purposes. Although the review meetings are generally held quarterly, they may occur less frequently due to budget constraints: at the time of this writing, in November 2009, the previous meeting had occurred five months previously.

6.10.3. *The Essential Services Committee*

In addition to the above roles, the CMA acts as the secretariat for the Essential Services Committee (ESC).

According to the Employment and Labour Relations Act (Section 76(1)(a)), no person may take part in a strike or lockout if that person is engaged in an essential service under the Act (Section 77). Instead, such a dispute must be resolved by way of compulsory arbitration. This led to the need for a body to determine which services in fact qualify as essential services for the purposes of the Act. As a result, the ESC was created under Part IV of the Act in 2004.

The functions of the ESC according to Section 30 of the Act are:

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- i. to designate essential services in terms of Section 76(3) of the Employment and Labour Relations Act No, 6; and
 - ii. to determine disputes about whether or not an employee or employer is engaged in a designated essential service.

The ESC consists of five persons appointed by the Minister of Labour. These appointees must possess knowledge and experience of Tanzanian labour laws and industrial relations. According to Section 31(1) the Minister must appoint one of those members to be the chairperson. The ESC members were appointed in 2007 but, according to the CMA, has insufficient knowledge in the areas of labour law, labour dispute resolution and essential services. No training has been provided in these areas for ESC members.

Under Section 32(1) of the Act, the ESC, somewhat like the CMA, may:

- i. Summon any person for questioning or to attend mediation if that person's attendance may assist in the resolution of disputes.
- ii. Summon any person believed to be in possession or control of any relevant book, document or object to appear and produce the same.
- iii. Administer an oath or accept an affirmation from any person called to give evidence; and question any person about any matter relevant to the dispute.

Following the appointment of the ESC members in 2007, the ESC held its first meeting in 2008. It met four times in 2008 and has met twice so far in 2009. The ESC has yet to receive a case since being constituted and does not yet have any rules or procedures in place. The CMA hopes to establish appropriate rules and procedures in 2010 and in September 2009 undertook a study tour funded by the Government of Tanzania to South Africa and Swaziland to learn how those countries address the issue of dispute resolution in essential services.

As the secretariat for the ESC, the CMA has designated a senior officer to coordinate support for that body.

6.10.4. *Tanzanian Employment Services Agency*

The Tanzanian Employment Services Agency (TaESA) is a semi-autonomous agency designed to provide high quality and efficient employment services in areas of labour market information, quality assurance and placement services for both the public and private sectors in Tanzania. In line with the requirements of ILO Convention 88,⁴⁴ the Government of Tanzania at first provided limited employment services via the Labour Department, and later (in the 1990s) via the Employment Department. More comprehensive employment services were provided by the predecessor of TaESA, the Labour Exchange Center (LEC), which was established in 2001 dissolved in June 2008 when TaESA started operations. In June 2008, TaESA was established (pursuant to the Executive Agency Act No. 30 of 1997) as a semi-autonomous agency and began working independently of the Ministry of Labour in July 2008.

⁴⁴ Note that Convention 88 is restricted in its application to mainland Tanzania only, and does not apply in Zanzibar. See discussion in section IV on *ILO Conventions ratified by Tanzania* above.

In principle, TaESA is governed by a board which includes the director of the MoLEYD Employment Department, as well as employer and worker representatives; however it appears that the board has not met since TaESA was established. The agency is headed by a Chief Executive and they have offices in both Dar es Salaam and Mwanza. At its headquarters, there are currently 52 staff but only 2 officers in the Mwanza office. Based on current approved budget proposals, TaESA is will add an additional 55 officers to their personnel in the 2009/2010 financial year, bringing the total number of staff to 109. This wave of recruitment will coincide with the opening of three more regional offices in Arusha, Dodoma and Mbeya.

TaESA is divided into three sections: employment services; planning and management information systems; and finance and administration.⁴⁵ The employment services section is further divided into a several units:

- i. Employment Facilitation. This section consists of four sub-units: job development and recruitment; job search and referrals; registration and interviews; and vocational guidance and counselling. Together, these units comprise the core functions of the agency, which involves matching job seekers and vacancies as well as providing information, advice and coaching to individuals looking for work.
- ii. Cross-border placement and work permits. This unit was established to oversee the placement and protection of Tanzanian workers in other countries and the facilitation of recruitment of suitably qualified individuals working or studying abroad. This unit is further divided into three sub-units: cross border placement; private employment services agencies; and work permits. In this respect there is some confusion over the responsibility of issuing work permits to foreign workers since the Minister of Labour has confirmed this task to be the competence of the Employment Department within MoLEYD.
- iii. Labour market information. This unit is composed of two sub-units: a labour market information unit and an advisory and consultancy services unit. Its functions are to collect, process, analyse and disseminate labour market information to various stakeholders. TaESA does not have the computer equipment to fulfil this function although they are in the process of looking for IT materials (e.g. server, networking) and technical support to improve their capacity in this respect.

The main challenges facing TaESA are that its structure remains ill-defined and it lacks sufficient training, equipment and tools. For example, there is only one computer with internet access for the entire agency. Furthermore, TaESA staff must contact all job-seekers by phone to discuss job openings – a practice that has significant costs to the agency. Moreover TaESA has a limited budget and depends on the support of the Employment Department.

6.11. Labour, Economic and Social Council

The tripartite Labour Economic and Social Council (LESCO) was established under Part II (Sections 3-11) of the mainland's Labour Institutions Act (No. 7 of 2004).

⁴⁵ The TaESA organizational chart is attached in Annex 6, although its structure is still not yet finalized.

LESCO's mandate is to advise the Ministry (and through it, the Government) on a broad range of labour, economic and social matters.

LESCO is composed of a chairperson and 16 regular members. Twelve members are appointed to represent the interests of the Government, employers and workers and an additional four members are appointed for their expertise in labour, economic and social policy formation. Pursuant to the law, the Minister of Labour appoints the tripartite members of LESCO, having first sought nominations from the trade unions and employers' associations.

LESCO has yet to convene regular meetings: despite the statutory requirement that meetings be held at least three times each year, only a few meetings have taken place since the Council's establishment. The primary justification for failure to convene meetings as required has been budgetary restrictions. The costs for convening LESCO meetings are not excessive,⁴⁶ but LESCO does not have its own dedicated line in the MoLEYD budget. LESCO costs are instead charged to the Ministry's "Other Charges" line, which appears to be a miscellaneous line covering many different costs, such as gasoline and official travel. As a result, LESCO meetings appear to be a competing priority and thus are not regularly funded.

The Permanent Secretary is required by law to provide staff members to function as a secretariat for LESCO, and has designated the Labour Commissioner as the Secretary. There is no single individual within the Ministry with the assigned responsibility to attend to LESCO's operational needs. Instead, the Labour Commissioner delegates secretariat tasks to labour officers on an ad-hoc basis. The LESCO chair, worker and employer representatives indicated that the secretariat function is understaffed, underfunded and lacks the necessary technical capacity to support the Council's work.

For example, the LESCO chair noted that for the Council to be able to carry out its mandate in full, it requires data and analysis, which should be provided by MoLEYD either directly or via the engagement of consultants. However, MoLEYD has neither the budget nor the capacity to undertake or contract out such research.

However, the challenges facing LESCO are not all budgetary in nature. For example, the LESCO chair and representatives of the social partners all point out that they are not involved or consulted in setting the LESCO work program or meeting agendas, convening meetings or determining priorities. MoLEYD decides if and when meetings will be convened, sets the agenda, and informs the chair and members, who receive documents only days before discussions are scheduled. In addition, even though the law provides that LESCO may enact rules to govern the performance of its functions and may create committees to deal with specific topics, neither of these have been done. There is also some question about the technical capacity of the members, some of whom have limited background in some areas of LESCO's mandate. Also, there is little awareness-raising among the social partners or other government agencies as to the role of these bodies.

⁴⁶ LESCO members are paid sitting honoraria and travel costs for each meeting.

6.12. Sectoral Wage Boards

The Labour Institutions Act (No. 7 of 2004) provides for tripartite⁴⁷ Wage Boards under Part V (Sections 34-42). The Wage Boards have the mandate to investigate and make a recommendation to the Minister on the minimum wages and conditions of employment in their respective sectors and to promote collective bargaining.

The Labour Commissioner is responsible by law to provide staff members to function as a secretariat for the Wage Boards and may designate officials to serve as secretaries for the Boards. The Labour Commissioner acts as the Secretary for all the Boards and delegates secretariat tasks to labour officers as needed. A senior labour officer in the Social Security Section has been assigned the task of coordinating the support for the Wage Boards. Wage Board members indicated that the secretariat function is understaffed, underfunded and lacks the necessary technical capacity to support their work.

In addition, the Wage Boards require detailed economic data on the various sectors subject to wage-setting, however MoLEYD is not able to furnish this data nor does it have sufficient research capacity to supplement the wage board investigations and deliberations. Moreover, some Wage Board members are said to lack technical capacity and knowledge in areas such as industrial relations, negotiation and wage mechanics, which has reported affected the deliberations.

The Wage Board members were appointed in April 2007 and carried out deliberations for several months, resulting in the Government's Minimum Wage Order of 2007. This order has generated some controversy, both in the selection and classification of sectors, as well as in the minimum wage and allowances set out therein. The resulting complaints from employers and workers organizations delayed the application of the order, and continued complaints led the Government to undertake a review of the order. The Government engaged a consultant in 2008 to carry out economic research, and the Wage Boards were reconvened in March 2009 to consider the consultant's report. The Wage Boards submitted their recommendations; instead of issuing a new or modified wage order, the Minister has sent the Wage Boards' reports to Parliament.

Similar to LESCO, the Wage Boards also face a budgetary crisis, with insufficient allocations. All Wage Boards sit at the same time and the exercise can be quite costly: the March 2009 meetings cost approximately TZS 64 million (close to USD 50,000). The Wage Boards are costed under the "Other Charges" line and as such, must compete with other priorities to secure the funds which are budgeted.

6.13. Work with other authorities outside Ministry of Labour

Certain MoLEYD units interact with other government agencies. For instance, the Labour Administration and Inspection Section and OSHA inspectors may collaborate with the police if they are denied access to a workplace when carrying out a visit.

⁴⁷ In the initial version of the Labour Institutions Act, the three-person Wage Boards were primarily bipartite, with a chair and two members (one each representing employer and worker interests) for each sector. The Act was amended in 2006, however, to increase the size of the Wage Boards to eight persons, including members to represent the interests of the government as well.

Further, if labour officers require additional legal advice to carry out their functions, they may address their questions to the Attorney General's office.

As another example of inter-agency collaboration, when OSH inspectors encounter problems concerning sanitary conditions in the workplace, they can inform health inspectors in the local government to follow-up and take the necessary actions. This arrangement exists because OSH inspectors cannot deliver sanctions on issues related to unsanitary working conditions.

6.14. Labour Court

In mainland Tanzania, the top labour tribunal is the Labour Court, which is a specialized division of the High Court. The Labour Court is provided for under the Labour Institutions Act of 2004 and started operations in July 2007. The Labour Court has jurisdiction over a range of labour matters, notably including revision (appeal) and execution of arbitral awards made by the CMA; some labour matters come instead under the direct jurisdiction of the Labour Court. Appeals from Labour Court decisions are made to the Court of Appeals.

The Labour Court has jurisdiction over the entire mainland; it is based in Dar es Salaam and maintains field offices in Arusha and Mbeya. The Court has three judges (one has recently retired and the position is currently vacant), who are appointed by the Chief Justice. There is also a Registrar and Deputy Registrar who, like the judges, are based in Dar es Salaam. Court officials travel on circuit duty to hear cases upcountry and use the High Court facilities to hear cases in the regions. The Registrars are responsible for normal registry functions (receiving cases, scheduling hearings, issuing summons and judgments, etc.), and also for executing all arbitral awards issued by the CMA. Registrars also conduct mediation to resolve cases.

The Labour Court is relatively well-resourced. It is currently housed in temporary offices next to MoLEYD and the CMA and expects to have its own facilities built by 2011-2012 in Dar es Salaam's Kinondoni district. In addition to the upcountry offices in Arusha and Mbeya, the court plans to open additional offices in Dodoma, Mwanza, Iringa and Tabora. Court offices are equipped with computers, printers and landlines; the head offices also have internet access and an internal network. The head office has two old vehicles, and each judge is also assigned a vehicle.

The Court has 53 total staff (including the judges and registrars), of which 48 are based in Dar es Salaam and five are stationed upcountry (three in Arusha and two in Mbeya). The Court plans to appoint another Deputy Registrar in Dar es Salaam and also Deputy Registrars in Mwanza and Arusha.

During the period of 1st July 2007 to 15 October 2009, the Labour Court received 1,831 cases. Over half of the cases received (1,022) are requests for execution of an arbitral award made by the CMA and another one-third of the cases (625) are appeals for revision of an arbitral award; of the latter, officials report that most cases deal with procedural questions in unfair termination disputes.

During the above period, the Court disposed of 776 of the cases received, leaving 1,055 pending matters. The average time for disposition of cases is around six months. Most of the matters still pending come from the Dar es Salaam region, although there are also significant case loads in Mwanza (129 cases), Arusha (80) and Mbeya (64). There have been three appeals from Labour Court decisions to the Court of Appeals and parties have given notice of their intent to appeal in another three cases. The Court also handles

the backlog from the old Industrial Court of Tanzania, which was the competent tribunal under the old labour laws.

According to the law, the Labour Court judges should be assisted by lay assessors, who represent the interests of the employers and workers. However, the Court has not operated with the assessors, as these had not been appointed; the Court just received the lists of assessors in October 2009.

Labour Court officials see as a key problem the fact that the Court's decisions are not published or disseminated. As a result, parties lack understanding and knowledge of the court's jurisprudence, which likely contributes to a higher proportion of cases being brought before the court and at times leads to plaintiffs filing improper complaints – which contributes in turn to the backlog of cases. For example, employers often do not follow the correct procedure in dismissing an employee, so that the dismissal is improper (even if valid substantive grounds exist). Workers, meanwhile, continue to bring claims to be paid wages when they strike.

Parties are often represented, though rarely by lawyers; many parties are instead represented by retired labour officers or union officials. Court officials have noted the need for training for parties, representatives and even court staff, including the judges, registrars and lay assessors. There is no regular training program for court staff.

With regard to court sanctions for violations of labour legislation, there is some confusion over whether the National Prosecutions Service Act requires that labour officers obtain a certificate issued by the Directorate of Public Prosecutions authorising them to take legal action. This authorization has in any case never been granted, which is a particular disadvantage to the powers of the labour inspectorate to prosecute egregious cases such as child or forced labour.

6.15. Relation with social partners

The audit team met with representatives from the Trade Unions Congress of Tanzania (TUCTA) and the Association of Tanzanian Employers (ATE) to solicit their views on the labour administration and inspections systems in mainland Tanzania and the extent to which they are consulted in the work of the Ministry of Labour or on more general socio-economic policy matters.

Both the workers and employers organizations expressed their frustration that MoLEYD is given scarce budget resources by the Government of Tanzania, which impedes its ability to do its work (for example, the lack of vehicles means that the labour officers are not able to carry out inspections, etc.). This is linked to what the social partners feel is a marginalization of labour-related issues, despite the fact that employment has been recognized as a key concern for the development of the country.

Both TUCTA and ATE have also noted what they see as internal problems at MoLEYD, including the Ministry's failure to appoint a Labour Commissioner in over a year, or to appoint a Deputy Labour Commissioner; the shortage of labour officers and the insufficient training that these receive; and the absence of effective advisory services in the areas of collective bargaining, labour dispute resolution, and the collection, analysis and provision of labour market information.

ATE also emphasized the lack of MoLEYD capacity to carry out labour inspections, noting that effective inspections could prevent or, at least, reduce labour disputes.

TUCTA and ATE both pointed out the insufficient support granted to the tripartite consultative bodies such as LESCO and the Wage Boards. Both social partners complained that the budgets allocated to these bodies were inadequate and that the support staff and members of the bodies lacked training and knowledge.

7. Labour administration: Main features and developments in Zanzibar

As noted earlier, the Constitution of the United Republic of Tanzania does not include labour and employment in the list of Union Matters. As a consequence of this Constitutional arrangement, Zanzibar is almost entirely autonomous in this area and has a separate set of labour institutions including its own ministry for labour and employment called the Ministry of Labour, Youth, Women and Children Development.

7.1. Zanzibar Ministry of Labour, Youth, Women and Children Development (MOLYWCD)

On Zanzibar, the Ministry of Labour, Youth, Women and Children Development is headed by a Minister, with much of the management delegated to the Principal Secretary (PS). The Ministry is divided into a number of top-level units, including the Labour Commission and the Departments of Women's and Children's Development, Community Development, Youth Development, Policy and Planning, and the Fund for Self-Reliance. Notably, the PS and all but two senior directors (the Labour Commissioner and the Director of Youth Development) are women. The Ministry's presence on Pemba is headed by an Officer in Charge, who reports to the PS.⁴⁸

Labour affairs are coordinated by the Labour Commission, which is equivalent in level to a department. A few other departments have only limited engagement in labour-related matters – for example, the Department of Women's and Children's Development cooperates with the Labour Commission on women's economic empowerment and child labour issues; the Department of Youth Development works on promotion of youth employment, and the Ministry's Fund for Self Reliance provides loans to self-employed individuals.

The Ministry's budget has been fluctuating (and in general, shrinking) since 2004, and the same has also been the case for the budget of the Labour Commission.⁴⁹ The Ministry generally suffers from a lack of material resources. The Ministry as a whole has four cars on Unguja and 2 on Pemba; 24 computers in Unguja and three in Pemba, and five telephone lines in Unguja with an additional line in Pemba. The Ministry headquarters facilities are in reasonable condition and include a Labour Information Centre built in 2009 with funds from UN Joint Programme 5, but which still lacks some equipment.

There are currently 236 staff (126 women, 110 men) working in the Zanzibar Ministry with an additional 50 staff working on Pemba. It is estimated that there are

⁴⁸ See Annex 7 for the organizational chart of Zanzibar's Ministry of Labour, Youth, Women and Children Development.

⁴⁹ Every year, the Ministry budgets for personnel costs and non-personnel expenses. The shrinking budget resources granted to the Ministry has largely affected non-personnel expenses.

currently 16 vacant posts in the Ministry as a whole and that it is typically a challenge to find qualified staff.

Human resources officials described with difficulty the grade structure for labour officers in the Ministry and admitted that they did not know their own grade levels. The salaries of labour officers are initially determined by one's level of education and there are automatic annual salary increases. There is no relation however, between an officer's grade and salary. Neither is there a performance appraisal or promotion process in place. In practice, promotions to more responsible positions (apart from positions at the director level, which are appointed by the President) are not accompanied by an increase in salary.

The range of net monthly salaries between the lowest and highest paid officers in the Ministry (excluding directors) is TZS 90,000 to 190,000 (USD 70 to 150). For new recruits (depending on education levels) this range is between TZS 90,000 and 135,000 per month (USD 70 to 105). Remuneration is determined by the Civil Service Department on the basis of objective salary scales.

As with all other government units, recruitment is conducted through the Civil Service Department, which does not actively advertise open positions but functions more as a registrar of vacancies for civil service jobs. For new hires, there is no budget allocation for training nor is there any regular training programme beyond an initial orientation session, which is provided to all Ministerial staff.

7.1.1. Planning and policy department

Within the Ministry of Labour, the planning and policy department is responsible for preparing annual budget plans as well as five year strategic plans for the entire Ministry. The department is currently headed by a Director overseeing 79 professional and administrative staff. The department is organized into several units including: policy and planning; finance; administration and human resources; procurement; monitoring and evaluation; internal audit and gender.

The yearly plans are submitted to the Ministry of Finance and Economic Affairs as part of the annual budgeting process, whereas the five year plan is a more strategic or programmatic plan for the Ministry. There is no consultation with the social partners in the preparation of these plans. The current five year plan will expire in 2011 but no mid-term evaluation of the Ministry's achievements under the plan has taken place as originally intended. Most of the budget resources destined to the Ministry of Labour, in fact, go to the planning and policy department since it is the department with the largest number of personnel.

The acting Director noted that the greatest needs of her department were for increasing the technical capacity of the staff and supplying the department with adequate equipment. In terms of office equipment, the planning and policy department has 10 working computers, two photocopiers and five printers.

7.2. Labour Commission

The Zanzibar Labour Commission consists of 53 staff headed by a Labour Commissioner. Established under the Employment Act No. 11 of 2005, the main

function of the Commission is to supervise all labour and employment matters within Zanzibar. It is divided into five technical departments:⁵⁰

1. Workers' education and participation;
2. Industrial relations and international labour standards;
3. Regional labour officers;
4. Planning and administration; and
5. Employment issues.

In addition to the above responsibilities, the Labour Commission also retains a number of other specific functions related to OSH, the registrar of trade unions and employers associations, the dispute handling unit and the labour officer in charge on Pemba. Furthermore, the Commission functions as the Secretariat for the tripartite Labour Advisory Board (LAB) and the tripartite Wages Board. The Labour Commissioner himself acts as the Secretary for these bodies with the budget for convening meetings and supporting their work covered directly by the Commission. The Commissioner indicated that in his capacity as Secretary, he calls the board meetings and helps to set the agendas. According to the law, the LAB is required to meet four times a year; however, only two LAB meetings have been held (2007 and September 2009) to date.

Geographically, the Commission covers five separate regions in Zanzibar (three on Unguja (the main island) and two on Pemba). Currently, only the three regions on Unguja are staffed (see the discussion on the regional offices below).

The Commission prepares plans on a quarterly and annual basis although the plans are prepared mostly for budgetary reporting purposes within the Ministry. However, the Planning and Administration unit does not currently have any staff members. The Labour Commissioner meets on a weekly basis with directors from the other technical departments in the Ministry. There is generally no set agenda for these encounters. More formal quarterly planning meetings are also held between department and commission management.

As on mainland Tanzania, the recruitment process for Zanzibar labour officers is not the direct responsibility of the Labour Ministry. Officers are recruited through the Civil Service Department (CSD), which is under the responsibility of the Chief Secretary in the Ministry of State (President's Office), State House. The CSD maintains a registry of recent government job vacancies. The Labour Commissioner indicated that about five staff positions in the Commission remain unfilled, but that this was not a problem with the recruitment process but due instead to a lack of available and qualified candidates.

With regard to staff development, apart from periodic training offered under projects such as the One UN Joint Programme,⁵¹ there is no regular induction course for new labour officers nor is there any ongoing professional development available to staff members, even though the Commission does have a small budget for such purposes. Commission staff noted that technical training for labour officers is a priority need. All

⁵⁰ See Annex 8 for the Zanzibar Labour Commission's organizational chart.

⁵¹ Joint Programme 5: Capacity Building Support to Zanzibar.

government staff including labour officers are said to undergo performance appraisals although this does not appear to take place on a regular basis.

The Labour Commission premises are old and in poor condition. The Commission has been housed in temporary facilities since September 2008, while the Commission building in Stone Town undergoes renovations. However, the renovations have been suspended and it is not clear when the work might be completed, as the Labour Commission so far does not have sufficient funds to pay for it.⁵² Staff complained about the lack of room saying that up to four officers share the same workspace and some staff members work in the hallway; even when renovations are completed, the situation is not expected to improve, as the Commission's facilities in Stone Town are small. As for equipment, the Commission has two cars, four computers (only one computer, in the Child Labour unit, has internet access), four printers, one photocopier and one landline telephone.

As already mentioned, the Zanzibar Labour Commission is divided into a number of technical departments in addition to holding other related functions. Each of these is briefly described below.

7.2.1. Workers education and participation

On paper, this department consists of two separate divisions (i.e. workers education and workers participation). In practice, however, activities are only undertaken with respect to workers' education. Moreover, the only labour officer working on these activities is said to in fact belong to the industrial relations department.

Worker education activities are carried out in person along with labour inspectors although not in the context of workplace inspections. In addition to onsite visits, the department pays for television and radio spots as well as inserts in newspapers to provide information to workers on labour and employment issues.

7.2.2. Industrial relations and international labour standards (IR/ILS)

The IR/ILS department in the Labour Commission deals with issues relating to the implementation of Zanzibar's obligations under relevant international law (ILO Conventions), including responding to inquiries and preparing reports for submission to the ILO Committee of Experts. It is divided into three sub-units: international labour standards; labour relations; and child labour. There is one labour officer in charge of the overall department assisted by the labour officer in charge of Workers' Education and Participation. The department also works at resolving unsettled industrial disputes in the regions and on other related industrial relations matters. The IR/ILS department does not, however, track strikes or collective labour disputes, nor does it provide guidance or advisory services to promote collective bargaining or workplace cooperation.

The child labour sub-unit is staffed by two Labour Officers and works primarily in monitoring and identifying situations of child labour. It works in collaboration with the Ministry's department of women's and children's development, with the IPEC project for the rehabilitation of children and with JP5.

⁵² The renovations are expected to cost at least TZS 12 million (the cost for minimal renovations), but the Labour Commission has received a budget of only TZS 500,000 for the renovations so far.

7.2.3. Regional Labour Offices

In addition to the regional structure on the island of Pemba, there are three regional labour offices on the main island of Zanzibar (Unguja), covering the North, South and Urban/West areas. All labour offices report directly to the Commissioner but do not have any other support, i.e. technical or administrative focal points, at the Labour Commission. The main function of these regional offices is to carry out labour inspections, but they still have some responsibility for the settlement of disputes and to represent the labour commissioner by request should the need arise in the regions. The regional offices are admittedly understaffed. Each has two inspectors and a clerk except in the North where only one of the three staff is a labour inspector. The regional offices are said not to have enough equipment, in addition to having inadequate office facilities. Each region does have a physical office but with no computers, printers or telephone lines; the North and South offices have one motorcycle each.

The three regions prepare quarterly and yearly inspection plans based on targets and on information contained in basic manual company registries kept at the regional level. For the past three years or so, however, these plans have not been communicated to the Labour Commissioner, who says he only receives progress reports on the activities carried out in the regions.

There is no centralized registry of enterprises or data collection in Zanzibar that would facilitate both the preparation and carrying out of inspections. Nevertheless, several authorities in other ministries keep registries of relevance to the work of the Labour Commission (e.g. business, school and hospital registries). Even so, labour officers and inspectors in particular, do not make use of these registries on a regular basis.

Another function of the Regional Labour Officers is the attestation of employment contracts. All employment contracts in Zanzibar are required to be submitted to the Labour Commission for attestation. Where the contract is for the employment of a foreigner, the attestation is carried out by the Employment Department (see below) at the time that it also processes the application for a work permit. For contracts of employments of Tanzanian nationals, however, the attestation is done by the Regional Labour Officer. Employers are required to pay for this service (TZS 1000 for each contract employing a national and TZS 5000 for each contract employing a foreigner). Attestation is done by the head of each regional office; at times this may be carried out at the same time that a lower-ranking labour officer carries out an inspection. Funds collected⁵³ are forwarded to the Zanzibar government treasury; the Labour Commission has no autonomy to use the funds it collects.

7.2.4. Labour Inspection

Labour inspectors in Zanzibar have general competence for supervising the application of the law. Like on mainland Tanzania, there is an accreditation process for authorizing inspectors to enter into enterprises. Routine inspections are carried out in the regions and districts as planned by officers/inspectors within their areas of jurisdiction and are complemented by re-inspections and complaint-based visits. Most of the inspections performed are planned visits with an average of seven to eight conducted per month per region. Inspectors generally perform visits together (in pairs). They do not

⁵³ The Labour Commission collects an estimated TZS 20 million annually in attestation fees and work permit fees.

regularly do so in coordination with OSHA inspectors although it is said that approximately 30 per cent of visits are done jointly between labour and occupational safety and health inspectors. Where labour officers perform inspections alone, they communicate any OSH irregularities to OSHA officials.

The Labour Commission does not have any written procedures or internal rules governing inspections and there are no proper check lists, procedures or forms for inspectors to use in the course of their work.

The obstruction of inspectors at enterprises is quite rare but in case such a situation arises, inspectors do not usually call the police for assistance. Rather, it is the labour commissioner who would normally intervene to try to solve the problem. Such an intervention is usually successful and to date, no legal process or sanction has been initiated in such a situation.

In cases of infraction or non-compliance with the law, inspectors can issue an inspection report that, if not respected in due time and after several visits (at the discretion of the inspector), can be forwarded to the court for appropriate follow-up. This procedure does not usually reach the courts however because in practice, if there is continued non-compliance, it is usually dealt with directly by the Labour Commissioner. In reality, it is the Commissioner who is ultimately responsible for ensuring compliance with an inspector's order.

Putting this practice aside, the court procedure in cases of infraction is regulated by law. However, as on mainland Tanzania, the law appears to require that labour inspectors receive special certification from the Directorate of Public Prosecutions in order to prosecute a violation before the courts. There is no intermediate administrative sanction that can be applied directly by labour inspectors.

The positions of inspectors are filled by competition (the competition is not, however, specific to the competencies inspectors). In fact, none of the labour officers in Zanzibar have been specifically trained as labour inspectors either before or after their appointment. The lack of training for inspectors is one of the most evident weaknesses in the Labour Commission and was identified by the Commissioner as an area requiring technical assistance for capacity building.

7.2.5. Planning and administration

The labour officer post for planning and administration is currently vacant although the administrative responsibilities are taken care of by the assistant to the Labour Commissioner. As briefly described above, the overall planning responsibility rests with the Labour Commissioner although, beyond reporting for budget purposes, little strategic or programmatic planning takes place within the Commission.

7.2.6. Employment issues

The Labour Commission's employment department is composed of three sub-units: the employment service unit; the employment policy unit; and the labour statistics unit. It deals with range of issues, including employment creation; the processing and issuance of work permits and attestation of employment contracts for foreigners; employment policy; labour market information (LMI) and statistics.

To date, there have been no private employment agencies in Zanzibar, although regulations have been drafted for this purpose (with the support of the ILO via the One

UN JP5) and are expected to be approved soon. Public employment services are provided by the Civil Service Department, which is under the Ministry of State.

The labour statistics unit is staffed by two persons, a recently-appointed labour officer and a clerk who share office space and one computer with other Commission staff. The labour officer in charge of has a university degree in social services and community development, but no formal training in statistics.

Because the statistics function was not staffed until recently, there have been few if any labour market indicators collected in recent years. As such, there is no up to date information on labour, employment, or industrial relations (strikes, labour disputes, collective bargaining, etc.). The staff plans to collect a range of information, including data on employment, job creation, and numbers of graduating students (i.e., labour market entrants). It has not yet been determined if this data will be published or otherwise made publicly available. It is expected that the statistics staff will collaborate in the Integrated Labour Force Survey (ILFS), which is coordinated by the Office of the Chief Government Statistician.

The employment service and employment policy sub-units lack adequate capacity, material and human resources.

7.2.7. *Dispute handling unit*

The Dispute Handling Unit (DHU) was established under the Labour Relations Act of 2005, and staff were appointed in the 2008/2009 fiscal year. To date, six staff have been appointed, comprising four Labour Officers (one of whom is the head of the unit) and two clerks. The Labour Officers assigned to the DHU have completed a one-month course on mediation and arbitration, provided under ILO's JP5 activities. The head of the unit has also partially completed some coursework on mediation and arbitration at the Institute of Social Work in Dar es Salaam.

The DHU has not yet commenced operations. The regulations governing the DHU are being drafted with ILO assistance, and are expected to be approved in the near future. Once approved, the regulations will establish a tripartite committee on dispute handling, which will appoint mediators to handle disputes. In the meantime, labour disputes are formally handled by the Industrial Court. Informal complaints are also channelled via the Regional Labour Officers to the Labour Commissioner, who at times mediates disputes personally.

The DHU is intended to have some autonomy, but it does not yet have any facilities and is currently co-located in the Labour Commission, where office space and equipment are limited. DHU staff currently share office space with other labour officers. There are no plans or budget for any DHU facilities (offices, hearing or mediation rooms, etc.)

7.2.8. *Registrar of trade unions and employers associations*

The registrar of trade unions and employers associations has three staff members (two labour officers and one administrative assistant) under the supervision of the registrar. It is part of the Labour Commission although its offices are located in the Ministry of Labour. The registrar reports directly to the Labour Commissioner as well as the Permanent Secretary in the Ministry of Labour. The registry is responsible for certifying workers' and employers' associations in Zanzibar in addition to providing some advisory and training services to these organizations. There are currently 12 unions and one employers' association registered in Zanzibar, in addition to two trade union

federations. The most recent registrations took place following the adoption of the Labour Relations Act of 2005, when three trade unions were certified.

For an association to registrar according to the law, it must complete forms provided by the Registry in addition to supplying a copy of its constitution and a list of its membership. The registrar then proceeds to verify the identity of members, making sure that they are not also members of other registered associations. This is followed by a mandated six month 'pause' during which time the registrar monitors the applicant to determine its authenticity. If there are no irregularities at the end of this six month period, the registrar manually records the association's information in the registry and issues a certificate of registration in accordance with Section 18 of the Labour Relations Act (new certifications are not published). The registration fee is 45,000 shillings (35 USD). According to the registrar, no applying association has ever been denied certification.

The registrar's office has limited equipment with one computer and printer (provided by ILO via JP5), but no land line telephone to carry out its work. In the past, this has made it difficult to verify the identity of association members who typically number between 20 and 30 individuals. The unit does however possess a government purchased scooter to carry out its work, although the monthly allowance for petrol is said to be inadequate.

The law provides that registered associations must submit annual reports to the registrar including financial statements, revised lists of members and changes in management. In practice, these reports are not always received. Instead, the registrar tries to arrange annual and sometimes bi-annual visits to registered associations. During these visits, registrar staff sometimes uncover internal problems (e.g. disputes between members and management). In such cases, the registrar will invite the concerned parties to his office to resolve the issue through informal mediation. Other times, the registrar receives requests to assist in resolving internal association disputes. No such request has been submitted in over 18 months.

Registrar staff indicated that they are in the midst of preparing training seminars for registered associations to help improve their internal management systems. Staff indicated that they hold regular training activities both on Unguja and Pemba islands. Moreover, the registrar is developing training modules on industrial relations and collective bargaining in collaboration with Labour Commission staff.

7.2.9. Occupational Safety and Health Directorate

In Zanzibar, the OSH function is carried out by the Occupational Safety and Health Directorate. The OSH Directorate is formally a part of the Labour Commission, but its offices are located in the Ministry of Education and Vocational Training. The office has very limited resources, including one motorbike in poor condition, one computer and one printer. The office has no telephone lines (aside from officials' personal mobile phones) and receives stationery supplies from the Labour Commission. The officials have very limited technical tools and equipment, and have no personal protective equipment.

The OSH Directorate has its own structure within the Labour Commission, and has a draft organizational chart. However, many positions are vacant, and officials said that only the positions at the top levels of the chart are filled (e.g. all inspectors currently employed have the grade of Senior Inspector). Currently, the OSH Directorate is staffed with four inspectors on Zanzibar's main island (Unguja), with support provided by one secretary and one statistician/program officer. On Pemba, there are another four inspectors, one of whom has the position of Officer in Charge.

All inspectors have technical specializations, such as mechanical, civil or electrical engineering, although officials noted the need for further training in their technical areas and on the new laws. All staff are civil servants, although the law provides for “private inspectors” (i.e., contract employees), as on the mainland. Officials noted the difficulty in recruiting staff, who must have technical backgrounds and thus have very good prospects for employment in the private sector, in jobs that provide better salaries and better resources.

The OSH Directorate creates weekly, monthly and quarterly plans, but it is not clear that these are coordinated, shared or monitored. The Directorate gathers information on new enterprises and workplaces by informal means; enterprises are required to register, but officials said that this does not happen and is not enforced. Under the old OSH laws, the OSH unit maintained a handwritten register of workplaces but has stopped this practice; currently, information is recorded in an unofficial notebook.

OSH inspectors carry and present accreditation when commencing an inspection visit. Officials said that employers rarely refuse entry; when inspectors are not allowed to enter a workplace, they report the incident to the Labour Commissioner, who calls the employer to meet at the Commission offices, in order to explain the law and resolve the matter.

The OSH Directorate carries out both regular and specialized or post-accident inspections. The first type of inspection is to verify that the workplace inspected complies with the laws. Such an inspection is carried out by surprise, without prior notification. The inspectors use a checklist but do not write a separate inspection report. No fee is charged. Where the inspection reveals a violation, the OSH Directorate will send an “improvement notice” and a follow-up visit is carried out approximately three to four months after the first visit. If no improvement is found, the OSH inspector will either issue another improvement notice or forward the case to the Labour Commissioner.

Specialized inspections generally originate with a call from the employer, who wishes to have an inspection of heavy equipment such as boilers or cranes.

Where a workplace accident occurs and the employer informs the OSH Directorate, an OSH inspector will inspect the workplace to find the source of the accident and determine what damage may have occurred. The inspector writes a report after this inspection, and instructs the employer to rectify the problem. A follow-up visit is carried out later, although there is no specific timeframe: the inspector will follow up after it is deemed that sufficient time has passed for the employer to rectify the problem. No fees are currently charged for this type of visit, although they are provided for under the recently enacted laws.

Officials said that they currently do not use any sanctions to enforce the law.⁵⁴ Where an inspection reveals a violation that constitutes a dangerous situation, the law permits the OSH officials to issue a prohibition notice; however, like much else of the new law, this is not yet applied in practice.

To reach inspection sites, OSH inspectors rely on the Labour Commission for transport, take public transportation or walk to workplaces in Stone Town. For specialized or post-accident inspections (which are notified in advance), sometimes the

⁵⁴ Unlike OSHA on the mainland, the OSH Directorate is not empowered to impose administrative fines, because it is not an independent authority.

employer will provide transportation, although the OSH officials said that tried to avoid this arrangement.

Joint OSH-labour inspections frequently take place in the North and South regions, but not in the Urban/West region. When carrying out a joint inspection, the labour officer has generally notified the employer about a labour inspection, but the employer is not notified in advance about the OSH inspection. When an OSH inspection is carried out without the presence of a labour officer, the inspectors report any probably labour violations to the Labour Commissioner for inspection and follow-up.

Despite its role in carrying out post-accident inspections, no records are kept on occupational accidents or diseases. The OSH Directorate does not receive information from the Worker's Compensation unit; it has requested such information in the past, but not received it.

7.2.10. *Workers Compensation Unit*

The Workers Compensation Unit (WCU) receives claims regarding employment-related injuries and illnesses suffered by workers in governmental and non-governmental employers. Although the new labour laws provide for this function to be the responsibility of the Labour Commission, the unit is still located (pursuant to the previous laws) in the Department of Social Welfare, under the Ministry of Health and Social Welfare. The WCU has minimal resources, with no vehicle (the officer uses his bicycle), computer or telephone,⁵⁵ and is staffed by two officers in Unguja and two officers in Pemba.

When a workplace accident results in injury to an employee, the employer must report the incident within six months to the WCU. The report consists of a standard form and the supporting medical reports. Injured workers must be examined by a specialist at an approved hospital, such as the Mnazi Mmoja Hospital in Stone Town. The WCU then calculates the amount of compensation, which it sends to the Attorney General for verification.

If the employer is a private entity, the employer must pay the compensation.⁵⁶ WCU mails a letter stating the verified amount to the employer, with instructions to pay the worker. The WCU also calls the employer to inform that this information is being sent. The worker is not provided with any information. Moreover, to initiate a claim, the WCU can only accept a letter from the employer. If the employer fails to initiate a claim, or to inform or pay a worker the compensation due, the WCU has no power to follow-up or sanction the employer, and is not even permitted to disclose information to the affected worker. WCU noted that employers often do not pay workers compensation in a timely manner, and in some cases do not pay at all. For example, WCU reported that in a recent case, the employer disavowed knowledge of the workers, claiming that there had been a change of management and that files had been lost; the workers came to the WCU to complain, but the WCU could not take any further action to compel the employer to pay.

⁵⁵ The WCU has occasional access to resources in the Department of Social Welfare, including a photocopy machine and two computers; however, all forms are filled out by hand and records are handwritten.

⁵⁶ Employers may pay compensation directly or, if they have taken out insurance to cover this risk, may ask their insurer to pay the compensation to the worker.

If the employer is a government entity, then government funds are used to pay the compensation. The WCU then sends a letter stating the verified amount to the Chief Auditor and the Ministry of Finance, which prepares a payment voucher and returns it to the WCU. Once the WCU has sufficient funds, it then contacts the government employer, to inform the worker to collect the money from the WCU.

This bureaucratic process appears to work quickly, taking approximately 6 weeks from initial claim until the WCU receives the payment voucher from the Ministry of Finance. However, there are long delays in making payments: as of September 2009, there were still outstanding claims from 2007. The WCU said that it does not receive a sufficient budgetary allocation to clear the outstanding claims: in 2008/2009, WCU requested TZS 12 million to pay outstanding claims, but received only TZS 6 million; for the 2009/2010 financial year, the WCU requested TZS 20 million to pay outstanding claims, but was allocated only TZS 9 million. The WCU reported a total of TZS 43 million in outstanding (unpaid) claims that had accumulated through the end of June 2009.

The WCU plans and requests its budget based on outstanding accumulated claims; it does not attempt to forecast the claims that are likely to be received in the future.

In general, the WCU noted that the new laws are not being applied: the WCU is still under the Ministry of Health and Social Welfare, and has not been moved to the Labour Commission. This may be due to the budgetary problems and the backlog of accumulated claims. Aside from using a new formula to calculate compensation, the WCU has made no other changes in its operations since the amendment of the Workers Compensation law in 2005.

The WCU also noted that awareness is low among workers and employers.

7.3. Industrial court

The Industrial Court of Zanzibar is a special division of the High Court. There are three High Court judges on Zanzibar, one of whom has been appointed as the Industrial Court judge; he hears industrial matters one day each week at the High Court in Zanzibar town, and devotes the rest of his time to other High Court cases. He is supported by a chief clerk, two lower-level clerks and a messenger who has no means of transport. There is no trained registrar, paralegal or legal assistant, and the support staff have not received any training on the labour laws, which means that they are not always able to provide effective support. Resources are minimal: the Industrial Court judge and clerks have no computers, and thus they depend on the general High Court staff to type judgments; this slows down the issuance of court decisions. The Industrial Court has no presence on Pemba, and thus all parties to a dispute must travel to Zanzibar town (Unguja) to have their cases heard.

As the Dispute Handling Unit is not yet in operation, all formal labour disputes are referred to the Industrial Court. Approximately 45 per cent of all matters are settled successfully via mediation by the Industrial Court judge, although this takes time and contributes to the backlog of cases. The judge noted that a functioning Dispute Handling Unit should be able to settle many of the cases, and thus reduce the caseload at the Industrial Court, thereby speeding up case resolution. As of September 2009, the Industrial Court had a backlog of approximately 68 cases, which had been filed but have not been heard. Currently, it takes around one to two months for an industrial case to be heard and decided.

Another challenge for the Industrial Court is the parties' low level of awareness of the labour laws. This leads at times to plaintiffs filing improper complaints, which contribute to the backlog of cases; this situation might also be avoided or minimized if the Dispute Handling Unit were operational, as it would be able to dispose of such cases prior to them reaching the court.

Because the Industrial Court does not have its own registry, all filings and execution proceedings are filed at the general High Court registry, which results in queuing problems and delays in cases being heard.

According to the law, the Industrial Court judge should be assisted by two lay assessors, who represent the interests of the employers and workers. The law provides that the lay assessors are to be paid allowances and transportation costs when they sit to hear a case. However, due to presumed budgetary problems, the payment of allowances has been delayed for up to six months – and, as a result, the lay assessors have at times refused to participate.

Industrial Court decisions are not published or disseminated in a timely manner. As a result, parties lack understanding and knowledge of the court's jurisprudence, which likely contributes to a higher proportion of cases being brought before the court.

7.4. Zanzibar Social Security Fund (ZSSF)

The ZSSF was established in 1998 under the Ministry of Finance and is directed by a tripartite board of trustees (two government, two worker and two employer representatives along with one chairperson). Its main role is to provide employees with benefits for a number of different contingencies (e.g. old age, disability and survivor benefits and soon maternity and medical benefits). The ZSSF has 774 employer members and some 55,000 worker members who contribute to the fund, though coverage remains low at only 10 per cent of the Zanzibar population.⁵⁷

The Managing Director said that while the ZSSF is in regular contact with the ILO on a project basis⁵⁸, there is no regular coordination between the ZSSF and the Ministry of Labour. They had in the past planned to carry out joint inspections with labour officers (i.e. Zanzibar Revenue Board and Labour Commission inspectors) but this never came about. The ZSSF in fact carries out daily inspections of its own member enterprises and non-member firms to ensure compliance and to raise awareness about its services. Inspections are also one of the principal ways the ZSSF gathers data on existing companies in Zanzibar. Despite a reasonably large registry of firms (manual), this information is not shared with the Labour Commission or Ministry of Labour as a matter of course. In this regard, the Managing Director acknowledged the need to improve inter-ministerial coordination to avoid unnecessary duplication.

⁵⁷ Concerns were raised by some public officials that the obligation to contribute to the ZSSF (and the benefits that may be obtained therefrom) are poorly understood by employers and workers, leading some to avoid registering or contributing to the Fund.

⁵⁸ Cooperation is carried out under the Tanzania component of the ILO Global Campaign on Social Security and Coverage for All as a Means to Combat Poverty in Africa and Asia.

7.5. Labour Advisory Board

As mentioned earlier, Zanzibar legislation provides for a tripartite consultative body, the Labour Advisory Board (LAB). The LAB was established under Sections 23-28 of Zanzibar's Employment Act No. 11 of 2005. The Act provides that the Minister of Labour shall appoint its nine members representing the Government, employers and workers interests. Members are appointed for a term of three years. The Board is required by law to meet four times a year and is mandated to advise the Ministry (and through it, the Government) on a broad range of labour and employment matters. With ILO assistance, the Government is currently preparing draft regulations for the governance of the LAB.

The LAB chair stated that the members were capable, and the appointments had been made in a balanced manner, but that some members lack training on certain aspects of the labour laws, labour relations, collective bargaining and economics.

However, there are many complaints that the LAB does not function effectively. The body has met only twice since its inception, presumably due to lack of budget. The budget is controlled by the Labour Commissioner, and the LAB chair does not even know how much is available for LAB purposes. In fact, there is no dedicated budget line for LAB: the LAB expenses are funded from the Labour Commission's "Other Costs" budget line, which means that LAB meetings must compete for funding with other priorities.

The Labour Commission serves as the LAB Secretariat, but does not provide much in the way of support. The Labour Commission is responsible for organizing LAB meetings, including circulating the agenda, paying honoraria, taking and distributing minutes. However, the Labour Commission does not provide any administrative support to the LAB chair. Likewise, the Commission does not have the technical capacity to carry out research, nor the resources to outsource the work.

The LAB does not have any means to report to the public or to gather information or opinions from the public through public hearings or the like.

7.6. Wages Advisory Board

Zanzibar's labour laws also provide for a tripartite Wages Advisory Board. The Board is established under section 92 of the Employment Act (No. 11 of 2005), which also contains provisions on the Board's tripartite-plus⁵⁹ composition (section 93) and its functions (section 94). The Board has not yet drafted any procedures or regulations governing its operations.

The Wages Advisory Board is required to meet at least once per year, and to advise the Minister for Labour on wage matters. However, the Board has only met once or twice since its inception. The social partners reported that they are not even sure who the chair

⁵⁹ Section 93(1) of the Employment Act provides that the Wages Advisory Board shall have "tripartite-plus" representation among its 13 members. The Government holds four seats, and the Minister for Labour is empowered to appoint the remaining members: employers (2 seats), workers (2), the informal sector (1), the Zanzibar Chamber of Commerce (1) and independent experts (3).

of the Wages Advisory Board is and further claim that the Wages Advisory Board was not properly consulted in the Government's deliberations over the minimum wage.

The Labour Commission is directed by section 95(3) of the Employment Act to serve as the secretariat to the Wages Advisory Board, but to date the Labour Commission has not provided any support. Likewise, the Commission does not have the technical capacity to carry out research, nor the resources to outsource the work.

7.7. Social partners

The audit team met with representatives from the Zanzibar Trade Union Congress (ZATUC) and the Zanzibar Employers' Association (ZANEMA) to solicit their views on the labour administration and inspections systems in Zanzibar and the extent to which they are consulted in the work of the Ministry of Labour or on more general socio-economic policy matters.

The ZANEMA representative noted that the Ministry of Labour is largely marginalized compared with other government ministries with a negative effect on available resources and ultimately the Ministry's ability to carry out its functions. He also voiced concern over the slow progress towards a functioning dispute handling unit in the Labour Commission. Moreover, despite upcoming discussions of the Labour Advisory Board, he pointed out the absence of regular and effective social dialogue in Zanzibar. For example, the ZANEMA representative did not know if the Ministry of Labour had a strategic vision or policy but said, in any case, that employer representatives had not been invited to discuss it.

He further spoke about the general lack of knowledge on the part of social partners on applicable labour laws and mentioned that even most Zanzibar lawyers are not familiar with the new labour legislation. ZANEMA is conducting legal seminars for its own members in an effort to raise awareness, but the representative concluded that there is a persistent need for capacity building of the social partners in this area.

The ZATUC representative confirmed the marginalization of the Ministry of Labour and noted that its weakness was contributing to an excessive case load at the Industrial Court. He further mentioned that the Industrial Court should once again be under the authority of the Ministry of Labour rather than the Ministry of State (President's Office) Constitutional Affairs and Good Governance as it is now.

He added that the OSH unit within the Labour Commission exists in name only and that there is a need for a properly functioning workers' compensation institution.

He further said that the negotiation process for the public sector was inadequate and that a national negotiation mechanism should be established for this purpose.

Although the ZATUC official acknowledged that there is a need for capacity building of government officials in Zanzibar, he emphasized that the social partners are also in need of training and awareness raising.

As concerns social dialogue in Zanzibar, the representative reasoned that the Labour Advisory Board was largely dormant because meetings were called at the discretion of the chairperson (a government official) and not held on a regular basis. He partly attributes this to current lack of budgetary resources to pay LAB members their expected sitting fees. He suggested that the workers' representatives would be willing to sit without compensation but was not sure if all constituents would agree to such an

arrangement. Currently, the usual practice of the Ministry of Labour, if there is consultation at all, is to come to the social partners at the end of a process of deliberation rather than at the start.

Finally, owing to the importance of the maritime sector in Zanzibar, the ZATUC official urged the ILO to provide technical assistance to the social partners on collective bargaining under the Maritime Transport Act, which includes provisions on collective bargaining and social dialogue that were inserted as a result of tripartite negotiation.

8. Findings

8.1. Mainland Tanzania

8.1.1. General comments

As an initial point, the audit team found that MoLEYD staff in Dar es Salaam are professional and motivated. They have a good knowledge of the recently adopted labour legislation and the powers and responsibilities conferred upon them as labour officers in their respective areas of work. The labour officers interviewed generally had university level education, though not necessarily relevant to their technical area of competence. They appear to have reasonable prospects as career civil servants, which likely contributes to the positive work environment observed at the Ministry.

The working conditions at the central level of the Ministry are of a reasonably high standard, with well-appointed and maintained facilities. Even so, staff at all levels noted the lack of adequate or functioning equipment. Many units have computers, but certainly not enough to cover every staff member. In addition, only a few of these computers have internet access and there is no internal network, email service, or system of electronic information sharing across the Ministry. As such, there is a general need in the Ministry for improved IT equipment and servicing capacity.

Inadequate equipment is symptomatic of the fact that the Ministry suffers from a lack of budgetary resources. In addition, the budgeting process in MoLEYD is highly centralized. As a result, the field offices have little if any influence over budget planning and no control over the timing of cash disbursements coming from the central authority.

8.1.2. Organizational structure

The recent organizational chart of the Ministry does not always accurately reflect the division of work or hierarchical structures within MoLEYD. Some units essentially do not operate or are undergoing reforms.

In addition to the fact that not all of the Ministry's organizational structures are in place, there is also confusion over the names or titles given to the different MoLEYD divisions and their management. For instance, the organizational chart contains three apparently equal technical units called divisions. Ministry staff, however, routinely refer to these as departments. Furthermore, there are several positions (such as those of Labour Commissioner and Deputy Labour Commissioner), which have been unfilled, or filled in an acting capacity, for long periods of time. It would appear that the proposed new plan for the Ministry has not properly dealt with the old structures and hierarchies in crafting the new one.

One of the departments in particular, the Youth Development Department, does not fit particularly well within the overall function of labour administration. While some of the department's work is relevant to the Ministry's overall mandate (e.g. child labour), much of its technical focus is on issues related to education and life skills for young people (youth empowerment, leadership skills, parenting, ICT), reproductive health and drug abuse, which match better with the government's work on community development, gender and health.

The current trend is towards establishing semi-autonomous agencies (e.g. CMA, OSHA and TaESA) as a way to improve the delivery of particular Ministry services. While this development has been successful in moving towards efficient and self-sustaining agencies, there is a risk that a lack of functioning linkages between MoLEYD and these agencies could weaken the coordinated system of labour administration.

On the whole, the administrative support units within the Ministry function poorly and need better planning and monitoring as well as coordination at the central level.

8.1.3. Human resources and professional development

While MoLEYD staff are educated and motivated, there is a clear need for capacity building in many of the technical areas covered by the Ministry. The recruitment process is such that selected applicants, especially new recruits, commonly do not have relevant training or experience in their areas of work. Rather, most of the knowledge gained comes through on the job training and very little, if any, through formal professional development. The Ministry lacks a structured training programme for its staff at all levels even though units are supposed to allocate a portion of their budget to training activities. Very few training activities for labour officers actually take place beyond what is organized and funded through donor projects; and when donor-funded trainings are offered, they may not be targeted: for example, when trainings were held on the subject of labour inspection, all labour officers in all sections attended, even those who do not carry out or oversee labour inspections.

MoLEYD's administration and human resources management division is well organized but the Ministry faces difficulties in actually finding qualified candidates for technical posts, even though new labour officers are not generally required to demonstrate competency (education or experience) in labour matters. Even so, the HR division does not have a training plan to improve the technical and professional skills of existing officials. Also, the current system for performance review and appraisal is inadequate. HR officials note, however, that they are introducing a more transparent system for staff to improve its effectiveness.

8.1.4. Planning and programming

The lack of a formal training strategy is symbolic of a larger weakness of strategic planning at the unit, department or Ministerial level (apart from budget preparation). Likewise, there is no systematic follow up or evaluation of the achievements and impact of the Ministry's work which would serve not only to monitor the effective allocation and use of resources, but would also be a valuable tool for longer term strategic programming.

8.1.5. The Labour Department

The Labour Commissioner is over-burdened, primarily due to structural reasons and lack of delegation. The Labour Commissioner is the head of the Labour Department, and all regional MoLEYD offices report directly to that position. The Commissioner also has a number of important administrative roles in MoLEYD at large, dealing with recruitment and oversight of policy implementation. The Commission also acts as Secretary of the LESCO and Wage Boards. As a result, much of the Commissioner's time is in fact consumed by functions beyond his technical responsibilities as head of the Labour Department. Yet, despite the enormous responsibilities resting in this single position, the job of Labour Commissioner has been vacant for a year and is currently filled by an acting Commissioner, and the Deputy Labour Commissioner has never been appointed – a situation that limits the day to day decision making and long term strategic planning of the Labour Department and Ministry as a whole.

The Labour Department does not have the capacity to gather employment data thus weakening its ability to formulate objectively-based policies on the matter.

8.1.6. Industrial relations

For the most part, the Labour Department's industrial relations section does not carry out work that relates to collective labour relations. Instead, it is largely preoccupied with international labour relations and the coordination of donor-funded projects – work that would appear better placed under the responsibility of the Permanent Secretary.

8.1.7. Statistics

The statistics section of the Labour Department does only very limited work on labour market indicators and does not appear to have sufficient staff or the technical capacity to fulfil its functions.

8.1.8. Labour inspection

The responsibility for inspections is divided between the labour inspection officers in the Labour Department, and the OSHA inspectors. While the Labour Department is responsible for general labour inspection, the Occupational Safety and Health Authority works independently. Consequently, the Ministry does not have an integrated inspection system.

Despite its name, the labour administration and inspection section deals exclusively with labour inspection matters. Even so, it does not have a written inspection strategy and no clear mandate, rules or procedures for carrying out its work. The overriding approach of this section is based on prevention rather than enforcement, and there is no intermediate administrative sanction or fine available to inspectors. As a result, labour inspectors are hindered in their ability to ensure labour law compliance because sanctioning an employer through the courts is cumbersome and appears to depend on the seldom-used delegation of prosecutorial authority from the Directorate of Public Prosecutions.

There is a shortage of inspectors, particularly in the regions. There is also a lack of training, monitoring and evaluation for labour inspectors. In addition, there is insufficient equipment (especially vehicles) for carrying out inspection visits as well as inadequate procedures and check lists for inspection visits. Moreover, there is some confusion

between the categories of labour inspectors and labour officers. It seems that all labour officers are also labour inspectors, even though some of them do not carry out inspections and work in other units unrelated to inspection activities.

At the Labour Department, the data contained in the labour inspection reports is not collected or analyzed to monitor any trends, frequencies or the scale or scope of reported violations. Furthermore, the filing system for completed inspection reports is not well maintained and so past reports cannot be easily retrieved. There is no effective system to control the quality of the labour inspections performed by the area offices.

8.1.9. Social security

The system of social security in Tanzania is undergoing major reforms including the consolidation of several social security funds under one single Social Security Regulatory Authority. During this transition period, the role of the MoLEYD social security section is in a state of transition. Once the restructuring of the funds is completed, the coordinating role of the MoLEYD social security section will need to be clarified with respect to the new SSRA.

The Workers Compensation Act of 2008 has yet to be implemented. There is no adequate information-sharing, analysis, follow-up or coordination between the related functions of workers compensation, labour inspection and occupational safety and health inspections under OSHA.

The Government does not allocate adequate budgetary resources for workers compensation Unit, with the result that it is under-resourced and unable to pay the claims of public sector employees in a timely manner. Furthermore, the Labour Department does not forecast the claims that it expects to receive, and does not plan or propose budgets based on any such prediction; instead, all plans are based on outstanding claims, which ensures that there will never be sufficient funds to clear the backlog of claims.

Similar to the problems in enforcement of inspections, the Labour Department does not follow up or prosecute private employers for their failure to pay claims and follow the law.

8.1.10. Social dialogue

Social dialogue does not take place on a regular basis on mainland Tanzania. The Labour, Economic and Social Council has only met a few times since its creation and is not functioning properly. Apart from political considerations that may limit the regular social dialogue, the LESCO lacks a strong Secretariat to assist it in its work. The Secretariat responsibility in fact rests with the MoLEYD Labour Commissioner but there is no dedicated staff to take care of the LESCO's administrative needs. Because LESCO does not have its own assigned budget line, it does not receive a specific allocation and competes with other MoLEYD units for resources, which means that meetings are not convened due to lack of funds.

8.1.11. Registrar of trade unions and employers associations

The trade union and employers association registration unit performs a number of activities that go beyond its mandate and even appear to overlap with the stated (though not practiced) function of the Labour Relations Section in the Labour Department and the work of the CMA on establishing enterprise-level social dialogue forums. In particular,

the registry provides training to workers and employers organizations on freedom of association, collective bargaining and social dialogue. The registry should limit its training activities to registry matters alone and should instead focus its work on improving its existing registry system. At the same time, the Labour Department carries out tasks (such as the registration of collective bargaining agreements) that might be better suited to the registry. At present, the registry uses a manual system which includes only limited information on the registered trade unions and employer organizations. Such a system could be expanded into a registry of companies which would greatly assist the work of other units within the Ministry, in particular the labour inspection section and OSHA.

8.1.12. *Field structure*

The regional Ministry offices are understaffed and underfunded. This weak presence outside Dar es Salaam means that a small number of regional labour officers are called upon to perform the full range of Ministry functions with small budgets and often inadequate facilities and equipment. Some regional offices function better than others (Arusha being a noteworthy example), yet even there, the work of labour officers focuses mainly on labour inspection, workers' compensation and dispute resolution. Similar to the central authority, regional offices lack the necessary equipment to effectively carry out their work. There is also a lack of technical coordination with the central level of MoLEYD. The impression given by regional officials is that they are isolated in their work and do not have a sense of the national vision of the Ministry. In addition, there is little coordination between the regional offices themselves and a lack of clarity with respect to their functions.

8.1.13. *Semi-autonomous agencies*

Commission for Mediation and Arbitration (CMA)

The Centre for Mediation and Arbitration was perhaps the best functioning agency encountered during the audit. Its services are in high demand and it is able to deal efficiently with most labour disputes. Much like OSHA, however, there is weak coordination between the CMA and the MoLEYD Labour Department, which has related competencies over industrial relations matters; as a result, there is no analysis of what types of labour disputes arise and how they might be dealt with or prevented at the level of law or policy. Moreover, the linkages with CMA officials in the field could be strengthened since the capacity of the field offices to deliver similarly high quality dispute resolution services is not as strong as at the central level. The audit team is encouraged to hear the CMA will double its staff in the near future, with many new officers placed in the regions. In this respect, there is a need for improving the technical capacity of existing and future officers through a more systematic training plan. There is also a need for more and better equipment including a system for electronic case management and internal networking.

Occupational Safety and Health Authority (OSHA)

The Occupational Safety and Health Authority is functioning and is set to expand the number of staff significantly. However, it lacks coordination with MoLEYD inspection officers. In this respect OSHA operations could be better integrated with the Labour Department in the Ministry.

There is a problem with the current sanctioning system, particularly with respect to issuing fines for non-compliance. If an employer does not address a workplace violation

after receiving an improvement order, OSHA may pursue the case in court or issue a fine. Fines, however, are seldom used (only twice), since they appear to require that the offending employer sign a statement admitting to the violation.

There is a lack of coordination between OSHA at the central and regional levels. For instance, the budgeting process is highly centralized and there is little strategic planning done in collaboration with regional OSH officials.

OSHA keeps its own registry of workplaces but it is incomplete, covering roughly only 10 per cent of formal enterprises. Officials say that OSHA and the Labour Department do not share such information.

OSHA officials indicate that there is a need for technical training of inspectors as well as a need for improved measurement equipment for carrying out inspections.

Tanzania Employment Services Agency (TaESA)

The Tanzania Employment Services Agency is, like the CMA, expanding to meet the increasing demand for its services. It too has weak linkages with officials in MoLEYD and there is, in fact, confusion between the Ministry and TaESA over who has responsibility for administering work permits. In this respect, there is a need to clarify the functions in addition to the structure and governance of TaESA. Like the other agencies, there is an acknowledged need for capacity building among the technical staff and for improved equipment, especially computers and network capabilities, so that its services matching employers with job seekers are more accessible and efficient.

8.1.14. *Data collection and statistics*

The Ministry's ability to collect, analyze and disseminate labour related information and statistics is limited. This is partly due to the technical capacity of officials and scarce funds for carrying out such work. It is also due to a lack of coordination both within and among the Ministry's units and with affiliated agencies who gather such data. For instance, company information is collected at different points across the Ministry, whether through the Registrar, the CMA, OSHA or TaESA. There is no system in place, however, to combine this data into one system that is accessible to all units who might need it (e.g. a computerized registry of companies or labour market information). In addition, there is no apparent publication policy in the Ministry to assist in disseminating its work or the information it gathers.

8.1.15. *Labour Court*

The Labour Court is well-resourced, but lacks technical training. Court staff and lay assessors need training on labour laws, international labour standards, and court and case management procedures.

The Labour Court has a significant backlog of cases. This is due to a number of factors, including the lack of training and parties' low level of awareness of the Court's jurisprudence. This is linked to the fact that there is no established mechanism for the timely dissemination of the Labour Court's decisions and jurisprudence, which hampers workers', employers' and government officials' ability to follow developments in the labour law.

8.1.16. *International labour standards*

Currently, Conventions 81 and 88 apply to mainland Tanzania but not to Zanzibar. Consideration may be given to extending the application of this Convention to the entire territory of the United Republic of Tanzania as well as promoting Conventions 129 and 150 which the country has not yet ratified.

8.2. Zanzibar

8.2.1. *General comments*

The Ministry of Labour, Youth, Women and Children Development's budget, while already inadequate, has been steadily shrinking for the past several years along with the budget of the Labour Commission. Both lack adequate office equipment such as computers and telephones and have limited internal and external network access. There is also a need for transport vehicles, particularly to carry out inspections.

8.2.2. *Organizational structure*

The Ministry of Labour covers a wide field of issues that are not all closely related to matters of labour and employment. This thematic division is reinforced by the fact that the Labour Commission's facilities are located at some distance from the Ministry compound – with the exception of the registrar of trade unions and employer associations, which is formally part of the Labour Commission but is based at the Ministry compound. Although there are a few areas of collaboration between the Labour Commission and the other Ministerial units, overall there is not a great deal of coordination at the technical level.

8.2.3. *Human resources*

Labour officers on Zanzibar are poorly paid. Salaries are initially determined by a recruit's level of education after which there are automatic yearly salary increases. Human resources officials say however that there is no relation between an officer's grade and earnings and that promotions and greater responsibility are not necessarily accompanied by a higher salary. In addition, there is no formal performance appraisal or promotion system in place. Taken together, these factors do not offer enticing prospects for a civil service career or provide incentives for good performance as a labour officer.

The recruitment process for Zanzibar labour officers is not the direct responsibility of the Ministry of Labour or the Labour Commission. Instead, recruitment is coordinated by the Civil Service Department, which does not advertise vacancies. The Labour Commission currently has five unfilled staff positions. The Commissioner indicated that that this gap was not because of problems with the recruitment process but due to a lack of available and qualified candidates.

8.2.4. *Professional development*

Apart from orientation sessions given to all new Ministry recruits, there are no regular training activities for labour officers. The Ministry does not have a formal training policy in place nor does it set aside a budget for staff development. The Labour Commission said that it has some funds for this purpose but that, aside from trainings

funded by donors, it does not hold any training courses. There is a clear need to develop a training programme to improve the technical and professional skills of labour officers.

8.2.5. Planning and policy

The largest portion of the Ministry of Labour's budget is allocated to the planning and policy department since it has the largest number of staff. This department prepares yearly budgets and five year strategic plans but does not consult with the social partners in this process. Although a mid-term evaluation of the five year plan is supposed to take place, no adequate monitoring or evaluating of the current plan has taken place. Within the Labour Commission itself, the planning and administration unit currently does not have any staff. And beyond reporting for budget or donor purposes, little strategic or programmatic planning takes place at the Commission.

8.2.6. Labour Commission

Some of the technical units mapped out on the Labour Commission's organization chart do not operate at their full potential or even at all, and other units do not perform all the functions implied by their titles (e.g. the Industrial relations and international labour standards department).

A great deal of day to day responsibility is vested in the position of Labour Commissioner. This responsibility is not always founded in law however and appears to arise out of informal custom or practice. For instance, the Labour Commissioner sometimes mediates between parties to a labour dispute when there are other formal procedures for resolving industrial disputes. Also, if an inspector is denied access to a workplace, the Commissioner may intervene to resolve the situation instead of cooperating with the police. While these informal actions of the Labour Commissioner may work in practice, there should be clearer guidelines on when the Commissioner can intervene in such matters to avoid arbitrariness and the lack of transparency.

The usual facilities of the Labour Commission are presently under renovation, although the timeline is indefinite and the budget is insufficient. In addition, the temporary building where the Commission is now located is woefully inadequate and is located some distance outside of the city centre, which discourages access by those who lack their own transportation. The current facilities do not have enough work space for the entire staff, and are ill-equipped and in very poor condition. In addition to the building's unpleasant working environment, the labour officers mentioned on different occasions that the lack of space made it difficult to work.

8.2.7. Workers' education and participation

Despite its name, this department only carries out activities related to workers' education. Moreover, there does not appear to be a real separation between this and the industrial relations department. Education activities are managed by one labour officer sometimes in coordination with labour inspectors (though not in the context of workplace visits).

8.2.8. Industrial relations and international labour standards (IR/ILS)

The main function of the IR/ILS department is to prepare reports responding to comments from the ILO's Committee of Experts. It also has two labour officers who focus on child labour detection and prevention in Zanzibar. It does not do much work on

industrial relations and has no contact with the social partners on matters such as collective bargaining or industrial action. Moreover, the department does not gather statistics on collective agreements, strikes or lockouts.

8.2.9. Employment

The department's labour statistics sub-unit has not been staffed for some time. As a result, the statistics gathering and analysis function of the Labour Commission has been dormant. A new labour officer was recently hired to run the department but this individual does not have an educational background in statistics and requires technical training.

The department's employment services and employment policy sub-units lack adequate capacity, material and human resources.

8.2.10. *Dispute handling unit*

The DHU was established in 2005 and has a staff of four labour officers and two clerks, but is still not operational. The regulations governing the DHU are being drafted with ILO assistance. Until such time as the DHU is operational, the current procedures for resolving labour disputes are inadequate. At present, formal labour disputes are dealt with by the Industrial Court, which does not have the resources or appropriate procedures to deal with the large volume of complaints. Also, some complaints are informally referred to the Labour Commissioner who mediates cases himself. These current dispute resolution practices are inefficient and unsustainable.

The DHU is intended to have some autonomy, but it currently shares facilities with the Labour Commission. The lack of office space at the Commission affords little privacy to meet with parties involved in a dispute. Also, the lack of computer and telephone equipment limits the DHU's ability to carry out its work professionally. An investment in adequate facilities and equipment is needed for the proper functioning of the DHU.

8.2.11. *Registrar*

The registrar of trade unions and employers associations is technically part of the Labour Commission but it is physically located in the Ministry of Labour compound some distance away. The registrar carries out the classical functions of registering and monitoring worker and employer associations but it also performs other functions that would appear beyond its mandate. For instance, if there is an internal problem with one of the registered associations (e.g. a conflict between management and membership), the registrar would normally invite the parties to his office and conduct an informal mediation. In some cases, the registrar is invited by the parties to assist in resolving an internal dispute. Also, registry staff are preparing training seminars for the social partners to help improve their internal management systems in addition to training modules on industrial relations and collective bargaining. These roles go beyond the usual responsibilities of a registrar and seem better placed under the responsibility of the industrial relations department in the Labour Commission.

The registrar does not maintain a database on workplaces or companies operating in Zanzibar although this would be a potentially suitable role to be carried out by this unit and would assist the Labour Commission's work, especially for carrying out labour inspections. Several authorities in other ministries keep registries of relevance to the

work of the Labour Commission (e.g. business, school and hospital registries). Labour officers and inspectors, however, do not make use of these registries.

8.2.12. *Regional labour offices*

The main function of the regional labour offices is to carry out labour inspections, but they also have responsibility for the settlement of disputes and to act as the representative of the labour commissioner upon request. The regional offices are however understaffed and have a serious lack of equipment to carry out their functions. There are inadequate vehicles and office space in the regions and the offices have no computers, printers or telephone lines.

There are communication and coordination difficulties between the regional offices and the Labour Commission. For instance, although the Labour Commissioner receives progress reports from the regions, for several years now, the regions have not sent the inspection plans they prepare on a quarterly and yearly basis.

The regional labour offices are responsible for the attestation of employment contracts, for which they charge a fee. This task is carried out by the officials who also perform labour inspections, and sometimes the attestation is done at the same time as a labour inspection. This situation may create the appearance of impropriety, as fees are charged at the same time or by the same person who conducts a labour inspection.

8.2.13. *Labour inspection*

As on the mainland, labour inspectors and OSH inspectors for the most part do not conduct workplace visits together, revealing that there is not a fully integrated system of labour inspection in Zanzibar. OSH and labour inspectors are said however to conduct joint visits 30 per cent of the time, and labour inspectors will share relevant information with OSH counterparts when an occupational safety or health infraction is detected.

The Labour Commission does not have any written procedures or internal rules governing inspections and there are no proper check lists, procedures or forms for inspectors to use in the course of their work.

Also similar to the mainland, there is no intermediate administrative sanction or fine that can be applied directly by labour inspectors. Instead, if an employer does not address a workplace violation within the time allotted after receiving an inspection report, the inspector may bring the case to court. To do this however, the inspector requires special authorization from the Directorate of Public Prosecutions, which, practically speaking, is never sought.

None of the labour officers in Zanzibar have been specifically trained as inspectors. The Labour Commission recognizes that improving the skills of inspectors is a priority need.

8.2.14. *Occupational Safety and Health Directorate*

The Occupational Safety and Health Directorate is understaffed, ill-equipped and lacks training and resources. In the urban areas, it also lacks coordination with labour officers. In this respect OSH operations could be better integrated with the Labour Commission; a first step would be for the Labour Commission to provide office space for the OSH Directorate in the Commission's facilities.

There is a problem with the current system for following up on violations. Officials say that no sanctions, fines, prosecutions or other enforcement penalties are imposed. If an employer does not address a workplace violation after receiving an improvement order, OSH officials merely forward the matter to the Labour Commissioner.

The OSH Directorate does not maintain an official registry of workplaces. Where such information is collected, officials say that OSH Directorate and the Labour Commission do not share it.

OSH officials indicate that there is a need for technical training of inspectors as well as a need for vehicles, tools and improved measurement equipment for carrying out inspections.

8.2.15. *Workers Compensation unit*

The Government does not allocate adequate budgetary resources to the Workers Compensation Unit, with the result that it is under-resourced and unable to pay the claims of public sector employees in a timely manner. For its part, the WCU does not forecast the claims that it expects to receive, and does not plan or propose budgets based on any such prediction; instead, all plans are based on outstanding claims, which ensures that there will never be sufficient funds to clear the backlog of claims.

The WCU has no power to sanction private employers for their failure to follow the law.

Despite legislative provisions to the contrary, the WCU has not yet been incorporated into the Labour Commission, and in general the new Workers Compensation law is not being implemented. In the current situation, there are few and weak functional linkages between the WCU and the various units of the Labour Commission, with the result that there is no information-sharing, analysis, follow-up or coordination between the related functions of workers compensation, occupational safety and health and labour inspection.

8.2.16. *Industrial court*

The Industrial Court needs additional resources and support staff to be effective, including a dedicated registry or staff that can advise parties on basic Industrial Court procedure. The support staff currently in place lack training in the labour laws. Budgetary resources are needed to pay the lay assessors to hear cases.

There is no established mechanism for the timely dissemination of the Industrial Court's decisions and jurisprudence, which hampers workers', employers' and government officials' ability to follow developments in the labour law.

The Industrial Court has a significant backlog of cases. This is due to a number of factors, notably the fact that the Dispute Handling Unit has not yet started operations.

The Industrial Court only sits at the High Court in Zanzibar town (Unguja), and potential parties need to travel to Unguja for their cases to be heard. This effectively restricts access to labour justice for Pemba workers who lack the resources for such travel.

8.2.17. *Wages Advisory Board*

The Wages Advisory Board is not operational, and is not adequately supported by the Labour Commissioner. As a result, there is no effective mechanism for tripartite consultation on wages and working conditions in Zanzibar.

8.2.18. *Zanzibar Social Security Fund*

The ZSSF does not coordinate its activities with the Ministry of Labour or the Labour Commission. Earlier intentions to conduct joint inspections between Labour Commission and Revenue Board inspectors never materialized. The ZSSF in fact carries out daily workplace inspections to raise awareness about its services and to ensure compliance. In this process it gathers information on enterprises operating in Zanzibar which it keeps in its own manual registry. This registry is not shared however with the Ministry of Labour or the Labour Commission though the information it contains would assist labour officers and inspectors in their work. Sharing this information could further help in the creation of a unified company registry for Zanzibar while avoiding unnecessary registry duplication.

8.2.19. *Labour Advisory Board*

Social dialogue does not take place on a regular basis on Zanzibar. As of September 2009, the Labour Advisory Board had only met twice since its creation and is not functioning properly. Apart from political considerations that may limit the regular social dialogue, the LAB lacks a strong Secretariat to assist it in its work. The Secretariat responsibility in fact rests with the Labour Commission but there is neither a dedicated budget line nor dedicated staff to take care of the LAB's administrative or technical needs.

9. Recommendations

9.1. Mainland Tanzania

9.1.1. *General recommendations*

Budget support at the central and regional levels should be increased to help fill longstanding staff vacancies and to provide the necessary tools, vehicles, computers and technical support for labour officers to carry out their work professionally and effectively. In addition, the centralized budgeting system at the Ministry and the procedures for transferring funds to the regional offices should be adapted to ensure that the field offices have greater control and certainty in the funding of their own activities.

9.1.2. *Structure and organization*

The structure of certain Ministry units should be rationalized. For instance, the work currently undertaken by the labour relations section would be better placed under a new office that reports to the Permanent Secretary. The labour relations section instead should focus on issues related to its mandate, such as collective bargaining, industrial disputes and support for workers' and employers' organizations, and should take over those of these tasks, which are currently performed by the Registrar. In general, the Ministry structure should be reviewed to clarify the responsibilities of the various units.

The posts of Labour Commissioner and Deputy Labour Commissioner should be filled by fixed appointment as soon as possible.

The Ministry should develop practices to improve technical and administrative coordination between the semi-autonomous agencies and the relevant MoLEYD technical units to ensure a properly coordinated system of labour administration.

The Ministry's planning and evaluation methods require strengthening. Specifically, the drafting and approval of strategic plans should involve greater input from the regional offices. These plans should also clearly reflect the Ministry's vision and work priorities (for the central and regional levels) for the entire planning cycle, and the Ministry may wish to consult the social partners during the planning process. Further, the Ministry needs to adopt a systematic process for evaluating achievements (mid-term and final) under its strategic plans as a way to improve the delivery and impact of its activities.

There is a need to clarify the responsibilities of TaESA and the Employment Development Department with regard to managing work permits.

9.1.3. Human resources and career development

The recruitment system of labour officers needs to be strengthened to include technical criteria in the job descriptions that are related to the position being filled.

To improve the effectiveness of MoLEYD staff, offer real prospects for a civil service career and improve work satisfaction, the Ministry should develop a national training and professional development programme for new recruits and labour officers. Such a programme should be accompanied by adequate budget resources to ensure its sustainability.

In addition to training, the Ministry needs to put in place transparent and regular procedures for staff evaluation to make sure that there is a regular and fair appraisal of staff performance and an objective basis for making promotions.

9.1.4. Labour inspections

Aside from the need for appropriate qualifications and training of newly recruited officials in the inspection services, it is also necessary to train existing officials, including refresher, on-the-job (in-service) or specialist training. A written plan for training inspectors should be developed. This plan should also be funded by adequate budget resources.

The successful implementation of a modern system of labour inspection will require determined human resources development efforts to rationalize and strengthen the labour inspection system and career. Vacancies need to be filled quickly; the government should provide budget resources to increase the number of staff members.

The Ministry should take steps to increase the number of inspectors at the central and regional levels and to provide better tools and transportation equipment, in order to enhance the number and quality of inspections and the efficiency of inspectors.

There needs to be better communication and coordination between OSHA and Labour Department inspectors so that there is an exchange of data on companies and workplaces as well as on information gathered during inspection visits..

Internal inspection procedures should be improved. This includes reviewing and revising inspection checklists and written procedures to make sure that visits are properly and consistently prepared and performed throughout the mainland.

The practice of informing employers in advance about upcoming labour inspections should be discontinued. While this may ensure that employers will be present with the necessary documentation in order, it affords an opportunity to temporarily disguise infractions that might otherwise be detected during an unannounced visit.

Considering the comments by the ILO Committee of Experts that the Government has been unable on several occasions to produce adequate annual reports on the work of the inspection services under its control, the Government should strengthen and systematize its information gathering and reporting practices on labour inspection to improve its understanding of how the system works, to analyse obstacles and constraints, to identify priority needs and to determine the budgetary allocations needed to meet them.

9.1.5. Sanctions and administrative procedures

The requirement that employers sign a document admitting to an OSH infraction before a fine can be issued should also be discontinued. Employers should not be given the discretion to limit an inspector's authority to enforce the law.

The Ministry should further consider introducing an effective administrative sanction or fine for violations of the labour laws. The current option of submitting a labour violation to the courts is an ineffective and cumbersome enforcement tool – which can be seen by the fact that it is seldom used in practice.

With respect to the prosecution of labour law violations, the Government should revisit or clarify the potential conflict between the Labour Institutions Act and the National Prosecutions Service Act, and the latter's apparent requirement that labour inspectors seek special certification from the Directorate of Public Prosecutions (a procedure that in practice is rarely or never used) before bringing a case to court; or the Government should arrange to provide such certification (and possibly seek to have a general certification granted a priori). The Government should consider ways to improve access to justice for Ministry officials, workers and employers in cases of labour law violations.

9.1.6. Registry and statistics

The government should establish a single, comprehensive and electronic workplace registry for the entire mainland, consolidating existing information that is spread across different Ministries, agencies and regional offices. It should further introduce a management and coordination mechanism for updating and sharing this data.

The Registrar of Trade Unions and Employer Associations should have sufficient resources to undertake its tasks, including computers and networking so that the registry's work can be carried out electronically. The Ministry should also consider consolidating the functions of the Registrar, including having the Registrar take responsibility for the registration of collective agreements (currently under the Labour Commissioner), while the Registrar's work in worker education might be better placed under the Labour Relations Section of the Labour Department.

The Ministry should improve its capacity to gather and analyse labour market information and industrial relations statistics. To do so, it should strengthen the capacity of labour officials in the labour market information section and industrial relations section through training and by providing the necessary computer equipment to record and analyze the data and to prepare it for publication.

9.1.7. Workers Compensation

The 2008 law on workers compensation should be implemented. The Government should ensure that sufficient funds are provided to clear the backlog of claims and to ensure that future payments are made in a timely manner.

The Government should consider introducing an effective administrative sanction or fine, to empower the labour officers to enforce compliance with the workers compensation provisions. Where private employers fail to initiate workers compensation claims, or to pay claims as instructed by, the Government should ensure that workers are able to initiate their own claims, and are provided with all relevant information relating to their own cases.

9.1.8. Occupational Safety and Health Authority

OSHA should be given adequate resources (vehicles, computers, equipment and tools), so that its inspectors can carry out their responsibilities effectively and professionally.

Aside from the need for appropriate qualifications and training of newly recruited OSH inspectors, it is also necessary to train existing officials, including refresher, on-the-job (in-service) or specialist training. A written plan for training inspectors should be developed. This plan should also be funded by adequate budget resources.

Internal inspection procedures should be improved. This includes reviewing and revising inspection checklists and written procedures to make sure that visits are properly and consistently prepared and performed.

OSH inspectors should have greater discretion to apply sanctions in cases of violations. In this respect, consideration should be given to introducing administrative fines to improve enforcement.

9.1.9. CMA and Labour Court

The decisions and jurisprudence of the CMA and Labour Court should be published and disseminated in order to increase parties' awareness of the law, with a view to promoting settlements and reducing claims. CMA and Labour Court officials should receive adequate training in the labour law, applicable international labour standards and case management procedures.

9.1.10. Social dialogue and LESCO

Considering that employers' and workers' organisations have essential roles in attaining the objectives of national labour administrations, the Labour, Economic and Social Council should meet on a more regular basis, as provided by law. To encourage regular tripartite consultations, the Ministry should create an annual designated budget line to cover the cost of LESCO meetings. To reduce the cost for each meeting, the

Government and social partners might consider waiving the sitting honoraria for LESCO members. The Ministry of Labour should also strengthen the administrative and technical capacity of the LESCO Secretariat in the Department of Labour to support the work of this body. LESCO should create procedural rules to govern itself effectively, and the chair and members should be involved in setting LESCO's agenda and work program, convening the meetings.

9.1.11. *International labour standards*

The Government should give consideration to ratifying the ILO Labour Administration Convention (C. 150), which provides guidelines regarding the over-all system of labour administration and can serve as an entry point for technical assistance from the ILO on labour administration. It should also consider ratifying the Labour Inspection (Agriculture) Convention (C. 129).

9.2. Zanzibar

9.2.1. *General recommendations*

Budget support at the central and regional levels should be increased to help fill longstanding staff vacancies, improve the low wages of existing Ministry staff and to provide the necessary tools, vehicles, computers and technical support for labour officers to carry out their work professionally and effectively.

Current renovations of the Labour Commission's facilities should be budgeted and completed as soon as possible. The renovations should ensure that there is sufficient space and the necessary computer and communications equipment for Labour Commission staff to perform their work effectively and in a good working environment.

9.2.2. *Structure and organization*

The work of the industrial relations and international labour standards department should be reoriented to also collect information on collective bargaining and industrial action, and to provide services (training and advisory) to the social partners to promote good industrial relations practices in Zanzibar.

The physical separation between the Ministry of Labour and the Labour Commission does not facilitate cooperation between certain units that have complementary responsibilities (e.g. the Registrar and Industrial relations and international labour standards department). Short of physically moving the Labour Commission to the Ministry compound, efforts should be made to improve the technical and administrative coordination between these two institutions.

There is a need to provide clarity on the role of the Labour Commissioner with respect to his personal involvement in resolving industrial disputes and intervening in problematic labour inspection cases. Currently, these interventions appear discretionary and not rule-based.

Communication between the regional labour offices and the Labour Commission should be improved to facilitate better joint programming and more consistent reporting practices, particularly on inspections conducted.

The Labour Commission's role in carrying out the attestation of employment contracts should be clearly separated from its labour inspection function, so that there is no appearance of impropriety that may arise when fees are charged by labour inspectors or at the time a labour inspection is carried out.

9.2.3. Human resources and career development

The recruitment system of labour officers needs to be strengthened by including technical requirements in job descriptions for advertised positions. The Ministry and the Labour Commission, in particular, may benefit from having a more active role in finding qualified candidates since the Civil Service Department, which controls the recruitment process, does not proactively look for qualified job seekers.

A national training and professional development programme should be developed for new recruits and labour officers. Such a programme should be accompanied by adequate budget resources to ensure sustainability. This will help improve the effectiveness of Ministry staff, offer real prospects for civil service careers and improve work satisfaction.

9.2.4. Labour inspection

Aside from the need for appropriate qualifications and training of newly recruited officials in the inspection services, it is also necessary to train existing officials, including refresher, on-the-job (in-service) or specialist training. A written plan for training inspectors should be developed. This plan should also be funded by adequate budget resources.

The Ministry should strive for a more integrated system of inspection between the labour inspectors and occupational safety and health inspectors. There needs to be better communication and coordination between these two branches of inspection so that there is an exchange of data on companies and workplaces as well as on information gathered during inspection visits. The Labour Commission might for instance consider increasing the number of joint visits carried out by OSH and labour inspectors.

Internal inspection procedures should be improved. This includes reviewing and revising inspection checklists and written procedures to make sure that visits are properly and consistently prepared and performed throughout Zanzibar.

9.2.5. Sanctions and administrative procedures

The Ministry should consider introducing an effective administrative sanction or fine for violations of the labour laws. The current option of submitting a labour violation to the courts is an ineffective and cumbersome enforcement tool – which is demonstrated by the fact that it is seldom used in practice.

With respect to the prosecution of labour law violations, the Government should revisit the current requirement that labour inspectors seek special certification from the Directorate of Public Prosecutions (a procedure that in practice is rarely or never used) before bringing a case to court, or should seek to have a general certification granted a priori. The Government might wish therefore to consider ways to improve access to justice for Ministry officials, workers and employers in cases of labour law violations.

9.2.6. Registry and statistics

The government should establish a single, comprehensive and electronic company registry for Zanzibar, consolidating existing information that is spread across different Ministries, agencies (including ZSSF) and regional offices. It should further introduce a management and coordination mechanism for updating and sharing this data.

The Registrar of Trade Unions and Employer Associations should have sufficient resources to undertake its tasks, including computers and networking so that the registry's work can be carried out electronically. The Ministry should also consider consolidating the functions of the Registrar, to eliminate responsibilities which overlap with those of other units in the Labour Commission, such as the Industrial Relations unit.

The Ministry should improve its capacity to gather and analyse labour market information and industrial relations statistics. To do so, it should strengthen the capacity of labour officials in the labour market information section and industrial relations section through training and by providing the necessary computer equipment to record and analyze the data and to prepare it for publication.

9.2.7. International labour standards

Zanzibar should consider the extension of ILO Convention 81 to its territory, which currently only applies to mainland Tanzania because of an arrangement dating back to the year of the country's unification in 1964. In doing so, the Ministry should seek the counsel of its counterparts on the mainland as well as ILO officials in the International Labour Standards Department (NORMES) for the necessary procedure to follow.

9.2.8. Dispute resolution and the Industrial Court

The Government should take every effort to make the dispute handling unit operational. This is an urgent need and attending to it will improve access to justice for complainants, resolve cases more efficiently and help reduce the unnecessary caseload currently that is currently overwhelming the industrial court.

To boost its effectiveness, the Industrial Court should be given additional resources and support staff. There should be a separate registry for the Industrial Court, with staff who have been trained in labour laws and procedures. The Court should ensure that parties based in Pemba are not denied access to justice due to lack of resources to travel to Unguja; this could be addressed through different means, including the opening of a registry sub-office on Pemba, or having the Industrial Court Judge travel occasionally to Pemba to hear cases based there.

The Industrial Court's decisions and jurisprudence should be published and disseminated.

9.2.9. Occupational Safety and Health

The OSH Directorate should be co-located with the Labour Commission in order to encourage better coordination and more joint inspections.

The Directorate should be given adequate resources (vehicles, computers, equipment and tools), so that OSH inspectors can carry out their responsibilities effectively and professionally.

Aside from the need for appropriate qualifications and training of newly recruited OSH inspectors, it is also necessary to train existing officials, including refresher, on-the-job (in-service) or specialist training. A written plan for training inspectors should be developed. This plan should also be funded by adequate budget resources.

Internal inspection procedures should be improved. This includes reviewing and revising inspection checklists and written procedures to make sure that visits are properly and consistently prepared and performed.

OSH inspectors should have greater discretion to apply sanctions in cases of violations. In this respect, consideration should be given to introducing administrative fines to improve enforcement.

9.2.10. *Workers Compensation*

The Workers' Compensation Unit should be incorporated into the Labour Commission as provided for by law, and the new law on workers compensation should be implemented. The WCU should analyze past data to make a forecast of estimated claims, and should plan and propose a budget based on that forecast. The Government should ensure that sufficient funds are provided to the WCU to clear the backlog of claims and to ensure that future payments are made in a timely manner.

The Government should consider introducing an effective administrative sanction or fine, to enforce compliance with the workers compensation provisions. Where private employers fail to initiate workers compensation claims, or to pay claims as instructed by the WCU, the Government should ensure that workers are able to initiate their own claims, and are provided with all relevant information relating to their own cases (for example, workers should receive copies of letters relating to their case, which the WCU sends to the employer).

9.2.11. *Social Dialogue and Labour Advisory Board*

Considering that employers' and workers' organisations have essential roles in attaining the objectives of national labour administrations, the Labour Advisory Board should meet on a more regular basis, as provided by law. To encourage regular tripartite consultations, the Ministry should create an annual designated budget line to cover the cost of LAB meetings. To reduce the cost for each meeting, the Government and social partners might consider waiving the sitting honoraria for LAB members. The Labour Commission should also strengthen the administrative and technical capacity of the LAB Secretariat in order to support the work of this body. LAB should create procedural rules to govern itself effectively, and the chair and members should be involved in setting the LAB agenda and work program and in convening the meetings.

9.2.12. *Wages Advisory Board*

The Wages Advisory Board should be revived and operationalized and should meet on a more regular basis. The Labour Commission should strengthen the administrative and technical capacity of the Wages Advisory Board Secretariat in order to support its work. The Board should create procedural rules to govern itself effectively and the chair

and members should be involved in setting the Board's agenda and work program, and in convening the meetings.

ANNEX 1

List of ILO Conventions ratified by the United Republic of Tanzania (Sept. 2009)
(in addition to Conventions applicable only on the Mainland and in Zanzibar)

United Republic of Tanzania (34)

C. 11	Right of Association (Agriculture) Convention, 1921 (No. 11)	19.11.1962
C. 12	Workmen's Compensation (Agriculture) Convention, 1921 (No. 12)	19.11.1962
C. 16	Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)	30.01.1962
C. 17	Workmen's Compensation (Accidents) Convention, 1925 (No. 17)	30.01.1962
C. 19	Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	30.01.1962
C. 26	Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)	19.11.1962
C. 29	Forced Labour Convention, 1930 (No. 29)	30.01.1962
C. 50	Recruiting of Indigenous Workers Convention, 1936 (No. 50)	30.01.1962
C. 59	Minimum Age (Industry) Convention (Revised), 1937 (No. 59)	30.01.1962
C. 63	Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63)	19.11.1962
C. 64	Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64)	30.01.1962
C. 65	Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65)	30.01.1962
C. 86	Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86)	30.01.1962
C. 87	Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	18.04.2000
C. 94	Labour Clauses (Public Contracts) Convention, 1949 (No. 94)	30.01.1962
C. 95	Protection of Wages Convention, 1949 (No. 95)	30.01.1962
C. 98	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	30.01.1962
C. 100	Equal Remuneration Convention, 1951 (No. 100)	26.02.2002
C. 105	Abolition of Forced Labour Convention, 1957 (No. 105)	30.01.1962
C. 111	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	26.02.2002
C. 131	Minimum Wage Fixing Convention, 1970 (No. 131)	30.05.1983
C. 134	Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)	30.05.1983

United Republic of Tanzania cont...

C. 135	Workers' Representatives Convention, 1971 (No. 135)	19.08.1983
C. 137	Dock Work Convention, 1973 (No. 137)	30.05.1983
C. 138	Minimum Age Convention, 1973 (No. 138) <i>Minimum age specified: 14 years</i>	16.12.1998
C. 140	Paid Educational Leave Convention, 1974 (No. 140)	30.05.1983
C. 142	Human Resources Development Convention, 1975 (No. 142)	30.05.1983
C. 144	Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	30.05.1983
C. 148	Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) <i>Has accepted the obligations of the Convention in respect of air pollution only</i>	30.05.1983
C. 149	Nursing Personnel Convention, 1977 (No. 149)	30.05.1983
C. 152	Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)	30.05.1983
C. 154	Collective Bargaining Convention, 1981 (No. 154)	14.08.1998
C. 170	Chemicals Convention, 1990 (No. 170)	15.03.1999
C. 182	Worst Forms of Child Labour Convention, 1999 (No. 182)	12.09.2001

Mainland Tanzania (5)

C. 45	Underground Work (Women) Convention, 1935 (No. 45)	30.01.1962
C. 81	Labour Inspection Convention, 1947 (No. 81) <i>Excluding Part II. Has ratified the Protocol of 1995.</i>	30.01.1962
C. 88	Employment Service Convention, 1948 (No. 88)	30.01.1962
C. 101	Holidays with Pay (Agriculture) Convention, 1952 (No. 101)	30.01.1962
C. 108	Seafarers' Identity Documents Convention, 1958 (No. 108)	26.11.1962

Zanzibar (2)

C. 58	Minimum Age (Sea) Convention (Revised), 1936 (No. 58)	22.06.1964
C. 97	Migration for Employment Convention (Revised), 1949 (No. 97)	22.06.1964

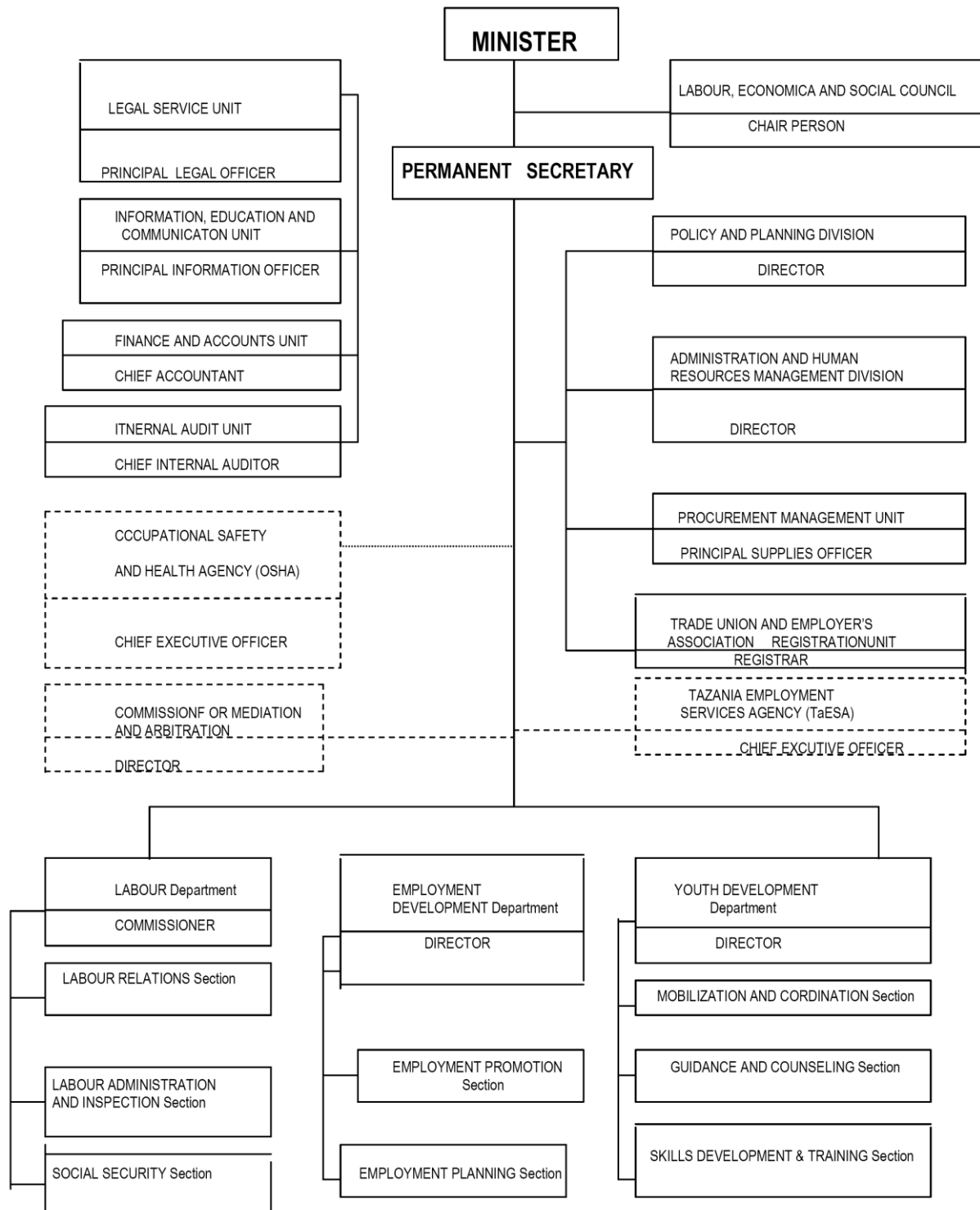
ANNEX 2

List of visited ministerial departments during the mission to Tanzania

TANZANIA MAINLAND	ZANZIBAR
Courtesy call and introductory briefing with MoLEYD officials (PS, directors, heads of departments and units)	Courtesy call with the PS, Labour Commissioner and Ministry Director of Policy and Planning
Meeting with Labour Commissioner, officials on Labour inspection, Labour administration, training for Labour Officers, etc	Labour Commissioner, labour inspectors, Labour Commission Planning and Administration Officer
Meeting with Assistant Labour Commissioner for Labour Relations	Labour Commission officers responsible for Industrial Relations, Employment (including labour statistics) and the Dispute Handling Unit.
Meeting with Assistant Labour Commissioner for Social Security	Director of Policy and Planning and heads of Finance, Administration and Human Resources departments/units
CMA (to discuss CMA and also Essential Services Committee, for which CMA is the Secretariat)	Registrar of Trade Unions and Employers Associations
Labour Court	Zanzibar Social Security Fund
Policy & Planning Division	Industrial Court Judge
Registrar for Trade Unions and Employer Organizations	ZANEMA and ZATUC (Zanzibar Trade Union Congress - Zanzibar Employers Association)
OSHA	
Admin & HR	
Information, Education & Comm. Unit	
Joint meeting: heads of Finance, Internal Audit and Procurement units	
TAESA	
Employment Division (including Statistics & Labour Market Information Unit)	
Youth Division	
ATE	
TUCTA	
LESCO (chair) and Wage Boards	
Dar Inspectorate (meeting with labour inspectors)	

ANNEX 3

MoLEYD Organization Chart



ANNEX 4

Inspection Form No. LAI – F-1

LAI-F-1

THE UNITED REPUBLIC OF TANZANIA

MINISTRY OF LABOUR, EMPLOYMENT AND YOUTH DEVELOPMENT



LABOUR ADMINISTRATION AND INSPECTION SERVICES DEPARTMENT

INSPECTION FORM

(Under Section 65 of Labour Institutions Act, 2004 and Section 98 of Employment and Labour Relations Act, 2004)

*NOTE: Please attach additional information or document(s) for each part, if any.

PART-I: GENERAL INFORMATION

1. (a) Name of the Employer:
.....
(b) Address, Tel., Fax, E-mail, etc:
.....
(c) Location (Plot No., Street, Area, District and Region)/...../.....
2. (a) Nature of Industry (eg;- manufacturing, retail shop, hotel, hospital, school, bar, household/domestic, private security guard services, etc):
.....
(b) Main Occupation or Production (eg;- tobacco processing, iron sheets manufacturing, telecommunication services, educational services, etc):
.....
3. (a) Date of Inspection.....
(b) Date of Last Inspection.....
4. Total Labour Force and Main Classifications of Jobs:

Fill in the Table 1.

S/No.	JOB CLASSIFICATIONS		FEMALES			MALES			TOTAL LABOUR FORCE
			NUMBER	WAGE		NUMBER	WAGE		
				MIN. (TSHS)	MAX. (TSHS)		MIN. (TSHS)	MAX. (TSHS)	
e. g:- 1.	Geologists-I	LOCALS	10	400,000	450,000	6	350,000	430,000	16
		FOREIGNERS	15	1,650,000	2,000,000	5	1,650,000	2,000,000	20
		LOCALS							
		FOREIGNERS							
		LOCALS							
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		FOREIGNERS							
		LOCALS							
		FOREIGNERS							
	TOTAL LABOUR FORCE								

(i) Employer.....

(ii) Employees.....

(b) Names of Trade Union/Employees' Representatives accompanying Labour Officer during inspection.....

PART-II: FUNDAMENTAL RIGHTS AND PROTECTIONS

1. (a) Are there young workers, (with less than 18 years of age), employed in the undertaking?(Yes/No)
(S. 5 ELRA, 2004)

If yes, please explain your observations.....

(b) Fill in the Table-2.

TABLE 2:

S/No.	JOB CLASSIFICATIONS		UNDER 14 YEARS (S. 5(1) and 20 (1) (c) ELRA, 2004)			WITH 14 YEARS (S. 5(2) and 20 (1) (c) ELRA, 2004)			BELOW 18 YEARS (S.5(3) and 20 (1) (c) ELRA, 2004)		
			Total	Start Hr	Fin Hr	Total	Start Hr	Fin Hr	Total	Start Hr	Fin Hr
e. g:- 1.	House girl/boy (Domestic services)	F	2	05AM	20.30PM	2	06AM	21.30PM	1	04AM	22PM
		M	3	06AM	21PM	1	05AM	21.30PM	1	04AM	22PM
		F									
		M									
		F									
		M									
		F									
		M									
		F									
		M									
		F									
		M									

Key: F=Females; M=Males; Start Hr=Starting Working Hour; Fin Hr=Finishing Working Hour

2. (a) Briefly explain how employees in 1. (b) above, are recruited and where are they obtained from? (S. 5 (7) and (8) ELRA, 2004)

.....

- (b) If the children explained in 1. (a) and (b) are engaged in the prohibited jobs, what are the reasons behind? (S. 5 (5) ELRA, 2004)

.....

3. Are there signs of any form of forced labour practices in this undertaking? (Yes/No) (S. 6 ELRA, 2004)

If Yes, explain briefly.....

.....

4. (a) Are there grounds of discrimination in the undertaking? (Yes/No) (S. 7 ELRA, 2004)

- (b) If the answer to the question (a) is Yes, please fill in the table 3, to explain briefly which grounds are observed and what is the number of victims?

TABLE 3: (please consider table 1, 2 and 4, in addition to other factors or grounds of discrimination)

S/No.	GROUNDS OF DISCRIMINATION	NUMBER OF VICTIMS		TOTAL
		FEMALES	MALES	
e. g:- 1.	Nationality, gender, etc (in relation to wages/fringe benefits, working hours, etc)	10	21	31

(c) Is there a plan to promote equal opportunity and eliminate any form of discrimination in the undertaking? (Yes/No) (S. 7 (1) ELRA, 2004)

(i) If the answer to (c) is No, briefly explain why?.....

(ii) If the answer to (c) is Yes, is the plan registered with the Labour Commissioner? (Yes/No) (S. 7 (2) ELRA, 2004)

(iii) If the answer to question (ii) is No, briefly explain why?.....

(iv) Does the plan consider employment policy or practice of the undertaking? (Yes/No) (S. 7 (2) ELRA, 2004)

(d) Is there a bipartite or other form of workplace committee to promote equal opportunity and eliminate all forms of discrimination in this undertaking? (Yes/No) (Rule 29, Order 8, 2007)

(i) If the answer to above question is No, briefly explain why?.....

(ii) If the answer to question (d) above is Yes; is the committee supportive, efficient and effectively operational? (Yes/No) If not, explain why?.....

5. (a) Is there any policy or practice that discriminate HIV/AIDS infected persons in this undertaking? (Yes/No) (S. 7 (4) (m) ELRA, 2004)

(b) Does the employer develop and implement a specific policy/plan/program for prevention, care, treatment and support for HIV/AIDS at workplace? (Yes/No)

(i) If Yes, please explain briefly, the services and products provided to the infected, non-infected employees and other affected persons (especially dependants).....

(ii) If answer to (b) is No, briefly explain why?.....

(iii) What is the number of confirmed infections in the undertaking? Females.....
Males.....

(iv) What is the number of infected and affected persons receiving support, treatment and care services provided by the employer? Females..... Males.....

(c) Does the policy/plan/program in (b), developed in line with the Tri-partite Code of Conduct on HIV/AIDS at the workplace in Tanzania Mainland, in terms of:-

(i) Prevention and Treatment (Yes/No)

(ii) Care and Support (Yes/No)

(iii) Confidentiality and elimination of stigma (Yes/No)

(iv) Information, counselling and training (Yes/No)

If answer to any of (i)-(iv) is No, briefly explain why?.....

6. (a) Are workers in the undertaking exercise the right to form/join trade union? (Yes/No) (S. 9 (1) ELRA, 2004)

(b) If the answer to question (a) is Yes, state which union?.....

(c) If the answer to question (a) is No, briefly explain why?

7. Is there a discrimination by a trade union or employer's association; or otherwise in terms of section 8 and 9, ELRA, 2004.

PART-III: EMPLOYMENT STANDARDS

1. (a) What types of employment contracts exist in the undertaking? (S. 14 (1) ELRA, 2004)

(b) Does the employer prepare, issue and maintain contract/written statement of particulars for each employee as required? (Yes/No) (S. 15 (1) ELRA, 2004)

If the answer is No, briefly explain why?.....

(c) Is there any employee who has neither been issued with a contract of service nor written statement of particulars? (Yes/No) (S. 15 (1) and (2) ELRA, 2004)

If the answer is Yes, explain briefly from which job classifications or groups and what is the number of victims, by filling in the table 4.

TABLE 4: (please check the list for the job classifications)

S/No.	JOB CLASSIFICATIONS	NUMBER OF VICTIMS		TOTAL
		FEMALES	MALES	
e. g:- 1.	Machine Operators/Watchmen/Bar Maids/Bank Tellers, etc	5	15	20

2. Does the employer display employees' rights in a conspicuous place? (Yes/No)

If the answer is No, explain why? (S. 16 ELRA, 2004).....

3. (a) (i) What are the minimum and maximum working hours in the undertaking: (S. 19 ELRA, 2004).

Fill in the table 5.

TABLE 5: (please check the list for the job classifications, if applicable)

S/No.	SHIFTS/JOB CLASSIFICATIONS	MINIMUM HOURS			MAXIMUM HOURS		
		PER DAY	PER WEEK	PER MONTH	PER DAY	PER WEEK	PER MONTH
c. g:- 1.	Night/Day Shift/Machine Operators/Miners/Watchmen, etc	10	60	240	13	78	312

(ii) What are the minimum and maximum working days per week, in this undertaking:
(S. 19 ELRA, 2004). Fill in the table 6.

TABLE 6: (please check the list for the job classifications, if applicable)

S/No.	SHIFTS/JOB CLASSIFICATIONS	MINIMUM DAYS PER WEEK	MAXIMUM DAYS PER WEEK
c. g:- 1.	Night/Day Shift/Machine Operators/Miners/Watchmen, etc	5	6

(b) Is there any break provided during working hours? (Yes/No) (S. 23(1) ELRA, 2004)

(i) If answer to the question (b) is Yes, how many minutes?

(ii) If answer to the question (b) is No, explain why?.....

(c) Are daily rest periods granted to employees? (Yes/No)

(S. 24 (1) (a) and 24 (2) ELRA, 2004)

(i) If answer to the question (c) is Yes, how many hours?

(ii) If answer to the question (c) is No, explain why?.....

(d) Are weekly rest periods granted to employees? (Yes/No)

(S. 24 (1) (b) and 24 (3) ELRA, 2004)

(i) If answer to the question (d) is Yes, how many hours?

(ii) If answer to the question (d) is No, explain why?.....

(e) Are public holidays observed? (Yes/No) (S. 25 ELRA, 2004) If No, explain why?.....

(f) Considering Table 7, are statutory overtime hours per day/week/month observed? (Yes/No)

(i) Fill in the table 7.

TABLE 7: (please check the list for the job classifications, if applicable and consider working hours in the table 5)

S/No.	SHIFTS/JOB CLASSIFICATIONS	MINIMUM OVERTIME HOURS			MAXIMUM OVERTIME HOURS		
		PER DAY	PER WEEK	PER MONTH	PER DAY	PER WEEK	PER MONTH
e. g:- 1.	Night/Day Shift/Machine Operators/Miners/Watchmen, etc	1	6	24	4	24	96

(ii) What is the employer's pay rate formula for each overtime hour worked by an employee?

- During public holidays/rest days?
- During ordinary working days?

(iii) If answer to the question (f) is No, briefly explain why?.....

(g) Does the employer observe hours for the night work given to employees? (Yes/No) (S. 20 (1), ELRA, 2004)

(i) If No, explain why?.....

(ii) If Yes, state from..... hours to hours

(h) Does the employer observe 5% night work allowance payable to employees for the night work?

(Yes/No) (S. 20 (4) ELRA, 2004)

(i) If No, explain why?.....

(ii) If Yes, state the formula used by employer.....

4. (a) Does the employer comply with the sector minimum wage? (Yes/No)

(S. 39 (2) and 41 (1) LIA, 2004)

(b) Does the employer comply with the standards stipulated by law on matters related to the manner and forms of payment of remuneration? (Yes/No) (S. 27 ELRA, 2004)

If No, explain why?.....

(c) Does the employer comply with the standards stipulated by law on matters related to the deductions of wages (Yes/No) (S. 28 ELRA, 2004) If No, explain why?.....

(d) Are employees issued with salary slip or statement of pay? (Yes/No) (S. 27(2) ELRA, 2004)

If No, explain why?.....

(e) (i) What other benefits or allowances does the employer provide in kind/monetary to the employees? (S. 27 (4) ELRA, 2004).....

(ii) What is the total estimated cost or value to these benefits?

(f) (i) Considering the trend shown in Table 1, does the employer comply with the principle of equal pay for the work of equal value? (Yes/No) (S. 7 (10) ELRA, 2004)

(ii) If No, briefly explain why?.....

5. (a) (i) Is annual leave granted to employees accordingly? (Yes/No) (S. 31 ELRA, 2004)
 (ii) If Yes, how many days?.....
 (iii) If No, briefly explain why?.....
- (b) (i) Is sick leave granted to employees accordingly? (Yes/No) (S. 32 ELRA, 2004)
 (ii) If Yes, what are minimum/maximum days in each 3 years cycle?...../.....days
6. Is maternity protection observed by employer in terms of:-
 (a) 84 or 100 days maternity leave in each 3 years cycle (Yes/No) (S. 33 ELRA, 2004)
 (b) Non-hazardous working environment for pregnant women and mothers (S. 33 (9) ELRA, 2004)
 (c) Night work for pregnant women and mothers (S. 20 (2) (a) and (b) ELRA, 2004)
 (d) The right to resume at work on the same terms and conditions of employment after maternity Leave (S. 36 (a) (iv) and 37 (3) (b) ELRA, 2004)
 (e) 2 hours daily breast feeding right (Yes/No) (S. 33(10) ELRA, 2004)
 (f) 3 days paternity leave in each 3 years cycle (Yes/No) (S. 34 (1) ELRA, 2004)
 (g) Is the annual leave in 5. (a) (i) above, granted to women employees without being forfeited for maternity leave granted in the same year? (Yes/No) (S. 31 (5) ELRA, 2004)
 (h) Are other forms of leave granted to employees accordingly? (S. 34 ELRA, 2004)
 • Leave on sickness or death of employee's child (Yes/No) If Yes, how many days?.....
 • Leave to employees on death of parents, grandparents, grandchild, or otherwise required by law? (Yes/No) If Yes, how many days?.....
7. (a) Does the employer prepare and maintain workplace rules and regulations (standards of conduct) to employees in line with their working environment? (Yes/No) (Rule 11, 2007)
 (b) If the answer in (a) is No, explain why?

8. (a) Is the employer aware of disciplinary or termination procedures as laid down in the labour laws? (Yes/No) (Rule 9, 2007)
 (b) If the answer to (a) is No, briefly explain why?.....

9. (a) Does the employer issue certificates of service to employees on termination of employment? (Yes/No) (S. 44 (2) ELRA, 2004)
 (b) If the answer to (a) is No, briefly explain why?.....

PART-IV: ORGANIZATIONAL RIGHTS

1. Is there a field branch in the undertaking? (Yes/No) (S. 60 (2) ELRA, 2004) If the answer is No, why?..

2. Are Union Representatives granted applied leaves as required by law? (Yes/No) (S. 63, ELRA, 2004)
 If the answer is No, briefly explain why?
3. Are Union dues deducted and submitted accordingly by employer? (Yes/No) (S. 61, ELRA, 2004)

- If the answer is No, briefly explain why?.....
4. Is there any union recognized as an exclusive bargaining agent? (Yes/No) (S. 67 (1), ELRA, 2004)
- (i) If yes, which Union?.....
- (ii) If No, briefly explain why?.....
5. Is there access to necessary facilities for Union to conduct its activities in the undertaking? (Yes/No) (S.60 (3) ELRA, 2004)
- If No, briefly explain why?.....
6. Has the employer ever been approached with a trade union that wants to exercise any other organizational right? (Yes/No) (S. 60 (1) ELRA, 2004)
- If Yes, does the union follow procedures as required by law? (Yes/No) (S. 60 (4) and 64 ELRA, 2004)

PART-V: COLLECTIVE BARGAINING

1. (a) Is there a collective agreement concluded between an employer and representative union for the employees? (Yes/No) (S. 70 and 71, ELRA, 2004)
- (b) If the answer to (a) is Yes, has the copy of it been lodged with the Labour Commissioner? (Yes/No) (S. 71 (7), ELRA, 2004)
- (c) If the answer to (a) is No, explain briefly why?.....
2. (a) Briefly explain, are there enabling environment and arrangements for collective bargaining in the undertaking? (S. 67, 68 and 70, ELRA, 2004).....
- (b) Are procedures and practices of workers participation in collective bargaining and/or agreements; fair, efficient and effective? (Yes/No) (Rule 49-58, 2007) If answer is No, briefly explain why?.....

PART-VI: LABOUR OFFICER'S REMARKS

Please give general remarks on any measures or steps taken during inspection.....

.....

.....

.....

.....

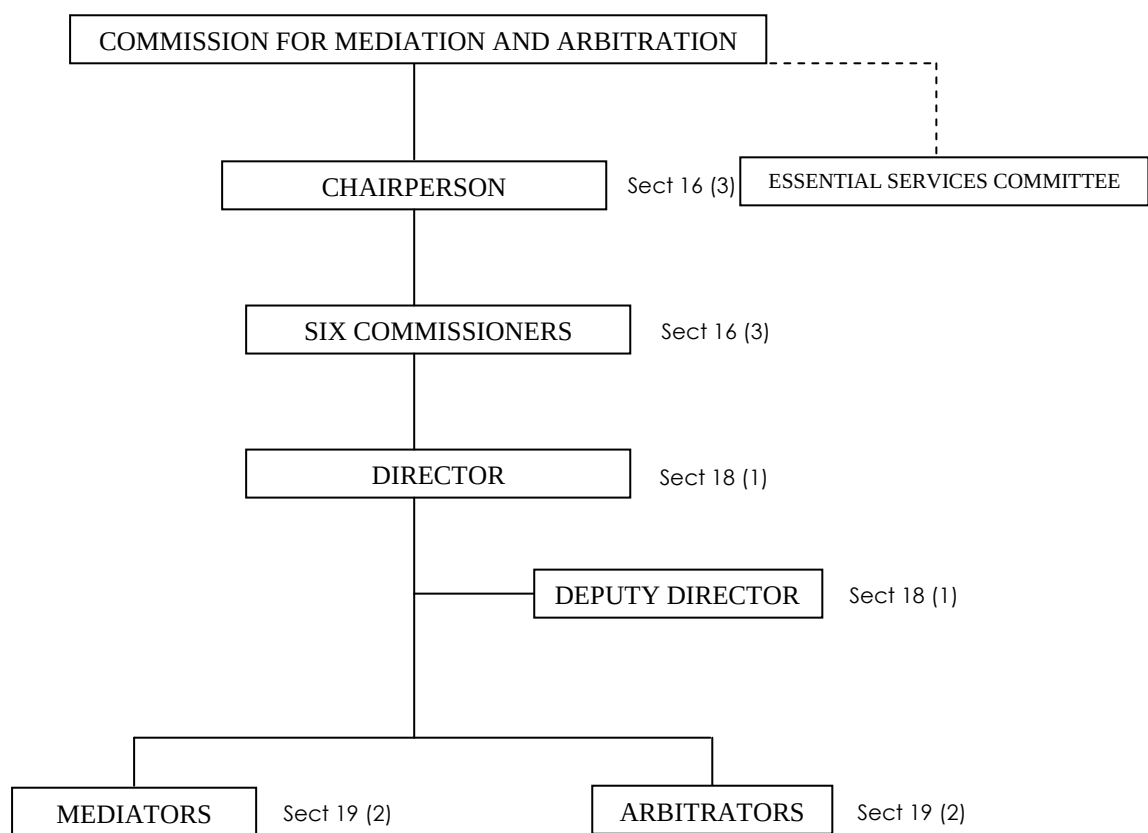
.....

Name and signature of Labour Officer
(Sign.)
(Name)
Date:
(Who undertook the inspection)

Counter signed by:
.....
.....
Date:
(Labour Officer In-charge)

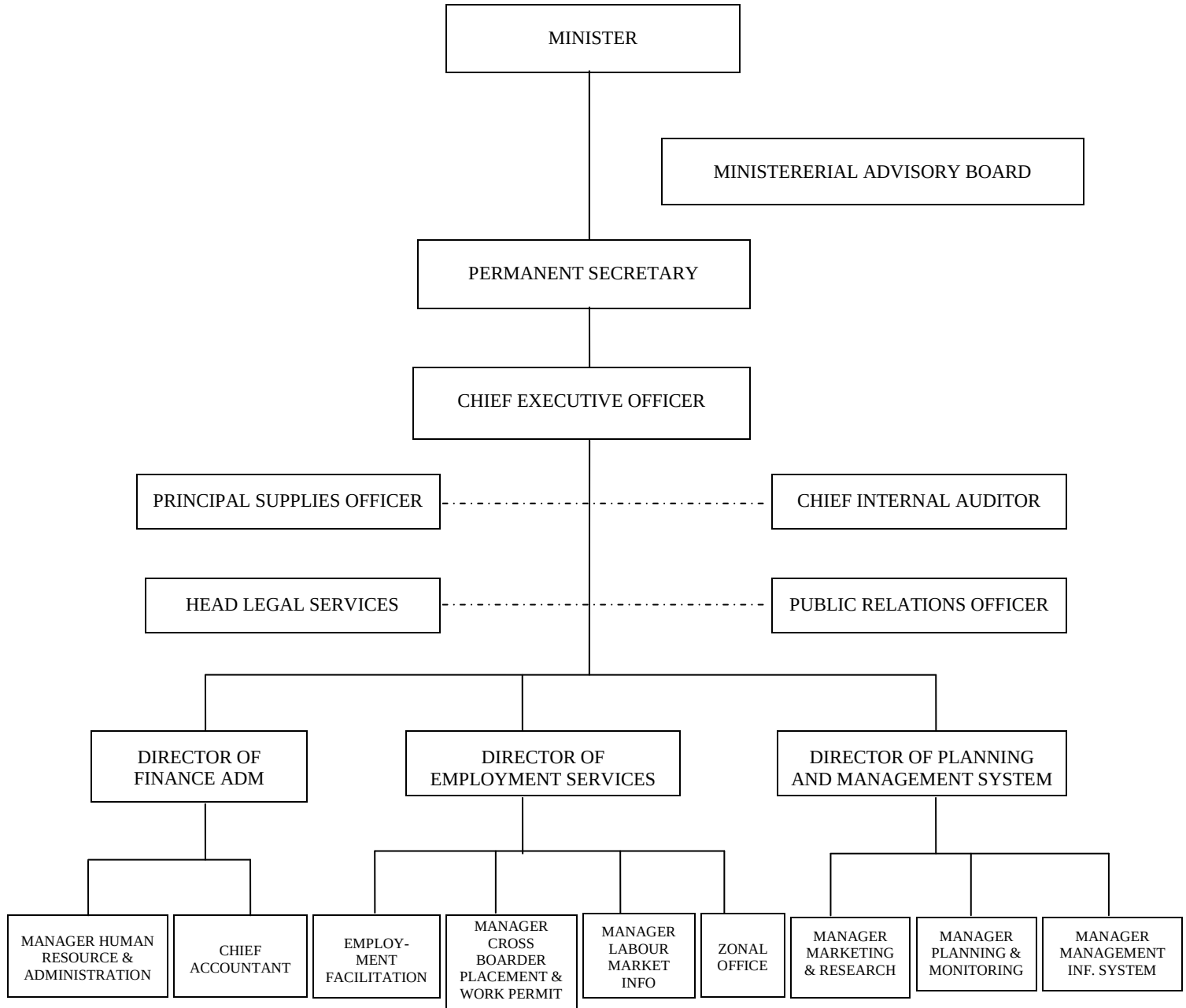
ANNEX 5

ORGANISATIONAL STRUCTURE FOR CMA ACCORDING TO LABOUR INSTITUTIONS ACT 2004 (LIA)



ANNEX 6

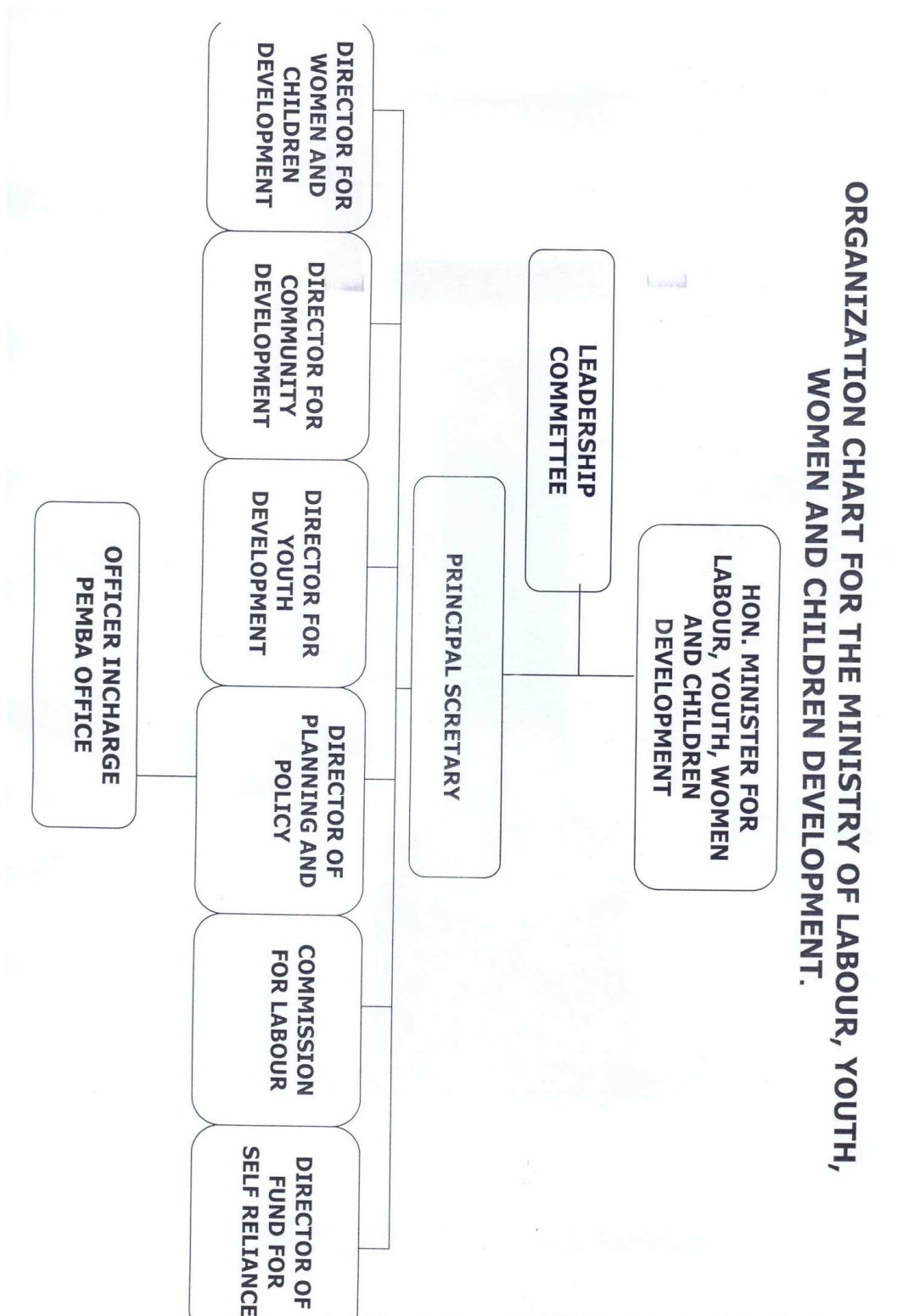
TaESA ORGANIZATIONAL STRUCTURE (PROPOSED AND PENDING APPROVAL)



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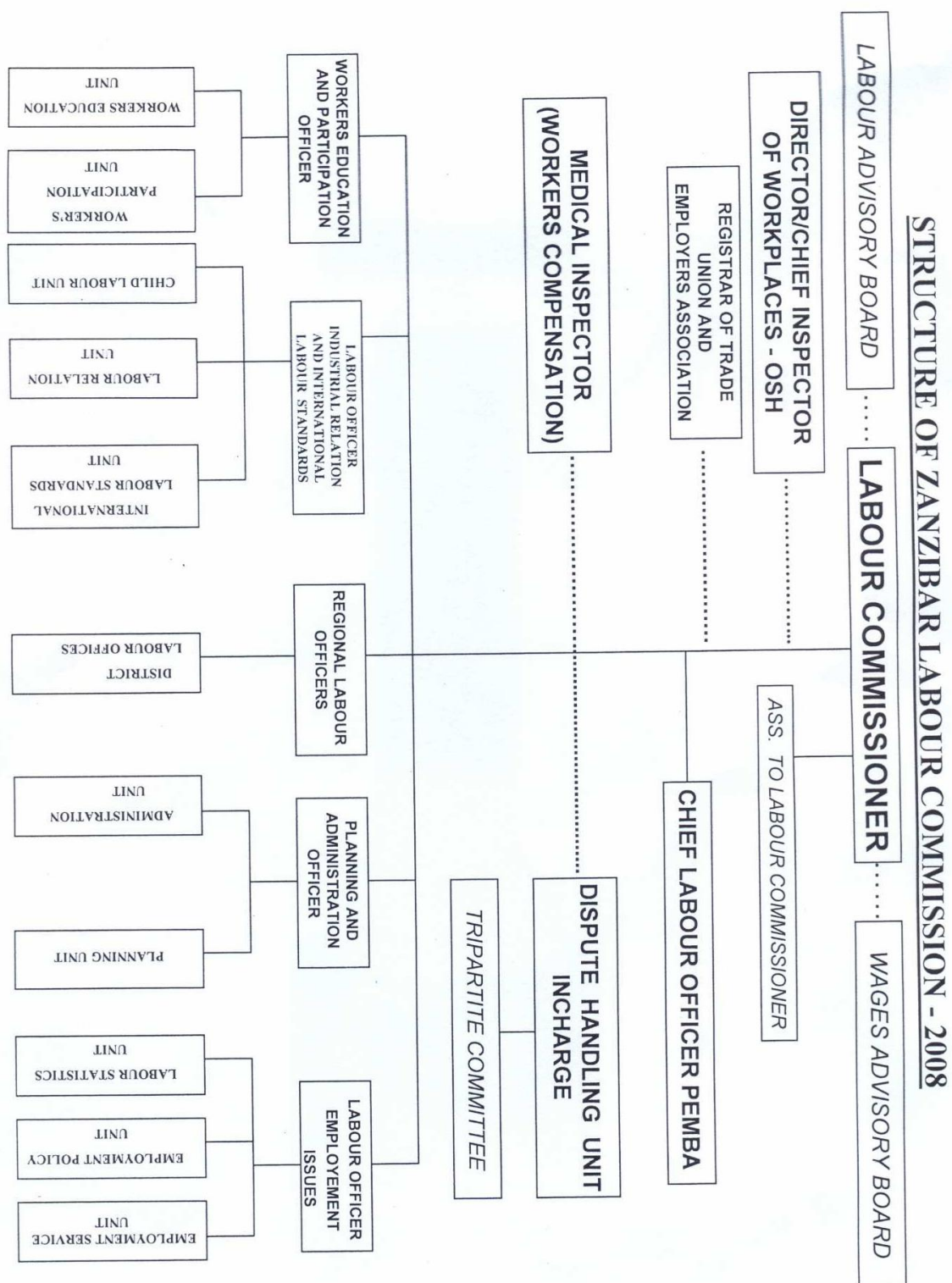
ANNEX 7

Organizational Chart for the Zanzibar Ministry of Labour, Youth, Women and Children Development and the Zanzibar Labour Commission



ANNEX 8

Organizational Chart for the Zanzibar Labour Commission



ANNEX 9

Labour Administration and Inspection Audit Tanzania (mainland and Zanzibar)

List of interviewees⁶⁰

MAINLAND

MINISTRY OF LABOUR, EMPLOYMENT AND YOUTH DEVELOPMENT (MoLEYD)

Edina Mangesho	Deputy Permanent Secretary
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MoLEYD POLICY AND PLANNING.

Wilson Ngowi	Director Policy and Planning.
Dismacy John	Economist.
Johnstone Ndayisabe	Economist.
Geofrey A.Mashafi	Economist.
Haji Y. Jamabi	Economist.
Joseph S. Nganga	Economist

MoLEYD ADMINISTRATION AND HUMAN RESOURCES

Albert E. Rutaihwa	Senior Human Resource Officer
Hilda Grace Makwinya	Principal Human Resource Officer
Ally Mapweya	Administrative Officer

MoLEYD INFORMATION, EDUCATION & COMMUNICATION.

Ridhiwan Wema	Head of Information, Education and Communication Unit
Mary Lyson Mwakapenda	Information Officer.

MoLEYD FINANCE, INTERNAL AUDITOR & PROCUREMENT

Dinah K. Bubelwa	Head of Accounts Department.
Murusalina Saidi	Head of Procurement unit.
Grace D. Mrema	Chief Internal Auditor.

MoLEYD REGISTRAR OF TRADE UNIONS & EMPLOYERS ASSOCIATION.

Dorothy Uiso	Registrar of Organisations
Gabriel W. Mirumbe	Deputy Registrar

MoLEYD LABOUR DEPARTMENT – LABOUR ADMINISTRATION AND LABOUR INSPECTION SECTION

Josephat M. Lugakingira	Labour Commissioner
Omary H. Sama	Labour Officer/Labour Inspector
Mkama J.Nyamwesa	Labour Officer/Labour Inspector
Rehama Moyo	Labour Officer/Labour Inspector
Mkama Nyamwesa	Labour Officer-Child labour unit

MoLEYD LABOUR DEPARTMENT - SOCIAL SECURITY SECTION

Kambete Mwinuka	Senior Labour Officer
Michael Mjinja	Director-PPF
Clara Melchior	Labour Officer
Gabriel Magambo	Labour Officer
Lilian Mwilligwa	Labour Officer

⁶⁰ Interviews were conducted mostly during the period 31 August 31 to 8 September 2009, with some additional interviews carried out from 23 September through 10 November 2009.

Zevyanji Silungwe Labour Officer.

MoLEYD LABOUR DEPARTMENT - LABOUR RELATIONS SECTION

Hawa Wenga Assistant Labour Commissioner
Ayub Makoye Labour officer

MoLEYD EMPLOYMENT DEPARTMENT

Ernest K. Ndimbo Director of Employment

MoLEYD YOUTH DEVELOPMENT DEPARTMENT

Mrs Joyce Shaidi Director of Youth Employment.

DAR ES SALAAM AND TEMEKE AREA OFFICES FOR LABOUR INSPECTION.

B.J Mushi Labour Officer In Charge (DAR ES SALAAM)
Matamus Fungo Labour Officer In Charge (TEMEKE)
Nestory Mloke Labour Officer Incharge Temeke
Mery D. Awe Labour Officer Dar es Salaam
Janeth J. Omolo Labour Officer Dar es Salaam
Ally A. Ngowo Labour Officer Dar es Salaam
Lilian Y. Muchuruza Labour Officer Dar es Salaam
Chrisensia B. Mrimi Labour Officer Temeke
Josephine Akilimali Labour Officer Dar es Salaam
Samweli Q. Mmao Labour Officer Dar es Salaam
Agnes M. Shio Labour Officer Temeke

ARUSHA AREA LABOUR OFFICE

Yusuph S. Nzugille Labour Officer Incharge-Arusha
Ramadhan Msimbira OSHA Zonal Manager-Northern Zone
Justine Ndubussa OSHA-Inspector.
Mnzava S. Joseph CMA-Mediator and Arbitrator

LABOUR DIVISION OF THE HIGH COURT

Hon. Ms Regina Rweyemamu Judge in charge
Samwel Karua Registrar

COMMISSION FOR MEDIATION AND ARBITRATION (CMA)

Cosmas Msigwa Director
Godwin Mpelumbe Assistant Director
Andrew H. Mwalwisi Workers Education Officer.
Sebastian N.C. Inoshi Senior Workers Education Officer.
Poul E. Sinje Senior Human Resource Officer.
Raphael Towo Senior Supplies Officer.
Merry Kamara Chief Arbitrator.

OCCUPATIONAL SAFETY AND HEALTH AUTHORITY (OSHA)

Hamisi I. Kitumbo Chief Executive Officer
Joshua Matiko Head Information Training and Research
Alex E. Ngata Safety Manager

TANZANIA EMPLOYMENT SERVICES AGENCY (TAESA)

E.A. Mwasele Chief Executive Officer.
Alfayo M. Allen Director of Employment Services.
Samwel W. Ammi Director- Planning and Management Information System
Jamila Mbarouk Public Relation Officer
Isaac Kalumuna Head Management Information System
Daudi Francis Momburi Head of Legal unit

SOCIAL PARTNERS.

Peles Jonathan Assistant General Secretary TUCTA.
Aggrey K. Mlimuka Executive Director-ATE.

TRIPARTITE BODIES.

Jones M. Sikiree	Chairman of Wage Board-Agriculture Sector.
Raphael Mollel	Chairman of LESCO

ZANZIBAR**MINISTRY OF LABOUR, YOUTH, WOMEN AND CHILDREN DEVELOPMENT-(MOLYWCD)**

Rahma M. Mshangama	Principal Secretary
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MOLYWCD –LABOUR COMMISSION (LABOUR ADMINISTRATION/INSPECTION)

Iddi R. Mapuri	Labour Commissioner
Idd J. Khamis	Labour Officer
Rashid K.H. Othman	Labour Officer (South Region)
Mustafa Hassan Makame	Head of Labour Statistic Section
Fatma Mussa Omar	Head Child Labour Unit
Khadija O. Omar	Labour Officer
Halima H. Ahmed	Labour Officer
Modest O. Hassan	Labour Officer
Hassan B. Othman	Labour Officer
Mohamed R. Khamis	Labour Officer

MOLYWCD-PLANNING, POLICY, HUMAN RESOURCE AND ADMINISTRATION

Mhaza Gharib Juma	Acting Director Planning and Policy
Mussa Makame Othman	Assistant Chief Accountant.
Mabrouk Seif Abbas	Assistant Personnel Officer

MOLYWCD REGISTRAR OF TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

Haji Simai Machano	Registrar
Khadija Abdallah Zakaria	Assistant Registrar Legal Officer

ZANZIBAR SOCIAL SECURITY FUND (ZSSF)

Abdulwakil H. Hafidh	Managing Director
Mohamed Fakih	Legal Officer
Khamis Filfilthan	Compliance and Research Manager

DEPARTMENT OF SOCIAL WELFARE – WORKERS COMPENSATION UNIT

Masoud Mrisho Sheba	Compensation Officer
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LABOUR ADVISORY BOARD

Othman Massoud	Chairman
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INDUSTRIAL COURT.

Mshibe AG. BAKARI	Chairman
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OSH DIRECTORATE

Mussa Mohammed Khamis	Senior OSH Inspector
Mohammed Mwinyi Sheha	Senior OSH Inspector

SOCIAL PARTNERS.

Juma H. Mussa	ZANEMA
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