The Gap between Law and Reality

EXECUTIVE SUMMARY

Despite the recent legal reforms increasing labor and employment protections for employees in Tanzania, workers do not benefit from uniform implementation or enforcement of the labor regulations. There is a significant gap between the requirements of the law and the reality for workers in Dar es Salaam. The most common issue revealed in the field investigation is the exploitation of the role of the daily worker.

THE DISPARITY BETWEEN DAILY WORKERS AND EMPLOYEES

Prior to passage of the ELRA, Tanzania recognized a “casual labor” system, in which workers could be hired without a contract. Casual workers, hired only for the day, had no expectation of continued employment. Employers paid them daily and offered them no benefits. Recognizing the vulnerability of these casual workers, the government reformed the national labor system in 2004 by passing the Employment and Labour Relations Act (ELRA). ELRA puts all employees in one of three categories: unspecified time, specified time (reserved for professionals and managers), and specific task. All workers, regardless of category, must have a contract specifying the timeframe of their employment, wages and any other expectations or benefits. Employers must also provide certain benefits to all workers, including maternity leave, sick leave, minimum wage, and limitations on hours of work.

Specific-time contracts are for professionals or managers and often last for several years. Unspecified time contracts are designed for non-professional, permanent positions. For example, a specific-time contract would be used for a doctor, whereas an unspecified contract would be used for a cook.

Specific-task contracts are meant to be used for discrete, short-term tasks, like painting a house. Lawmakers did not intend for these types of contracts to be used for what are essentially permanent positions. Employers, however, have seized upon this form of contract in order to avoid the legal protections afforded to permanent employees. While the law reform officially eliminated the casual worker, many employees feel it was a nominal gesture, simply changing the category of employment from that of a casual worker to a specific task worker; many

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8 ELRA §15.
9 ELRA §19 (limitations on hours), § 32 (sick leave), § 33 (maternity leave); Regulation and Terms of Employment Order 2010, GOVERNMENT NOTICE NO. 172 (2010).
10 ELRA § 7.
employers continued to use specific task workers to fill permanent positions as they had done before with casual workers.

Instead of hiring employees for an unspecified period of time, employers with permanent positions to fill will often hire daily workers. These are essentially casual workers by another name. Employers hire these workers for short periods of time ranging from one day to a week or more. Employers sometimes hire these workers directly, but often contract a separate agency to hire the workers in order to distance the company from the daily employment process. The employers claim little or no legal responsibility for the treatment of these workers as they contend that the agencies are responsible for the welfare of these employees.

Daily workers face significant hardships because of the nature of their employment. Because these workers do not have a long-term contract, they face the vulnerability of not being given repeat daily work. There is no guarantee they will be hired from day to day. In Dar es Salaam, the demand for work is higher than the supply, and many daily workers compete for the same jobs, often lining up outside factories in the hope of securing employment for the day. As such, some employees of the hiring agencies take advantage of the power imbalance and exploit daily workers. The delegation’s interviews revealed that these recruiters may demand sex or money in exchange for employment, or simply not give employment to anyone they personally dislike. Hiring agency employees often ask women for sex before they allow the women to enter the factory or to remain at the factory, while the agency employees are more likely to ask men for money, if anything at all. Although many daily workers are dissatisfied with their treatment and this systematic exploitation, there is a general mindset that they cannot protest because they risk losing their livelihood. There is no protection in the law for those who complain, so many daily workers see this treatment as something they cannot change.
WAGES

The current minimum wage in Tanzania for industrial workers is 80,000 Tanzanian shillings (TSH) per month. Based upon the estimated living costs found in the delegation’s research, this amount is not sufficient to cover basic living costs. However, because of the lack of availability of jobs and the sense of powerlessness felt by many low level employees, most feel they cannot protest this wage for fear of losing their sole source of income.

SOCIAL SECURITY

Tanzanian law entitles all workers to social security benefits. Yet, many employers do not deduct social security from wages and do not make the required employer contribution. And employers who do deduct social security sometimes fraudulently misuse the funds deducted from daily workers. Employers justify this behavior by saying that the daily workers do not want social security deducted in order to receive their full wages at the end of the day. Often, daily workers are unaware that they are entitled to social security or do not know how to access the social security funds. As such, the failure to withhold social security goes unreported.

LEAVE

Interviews revealed that workers feel they cannot complain about not receiving legally required leave because they will be terminated. The primary difference between leave and wages is that the leave mandated by the law appears to be adequate, but enforcement is lacking. Many employers deny employees leave, particularly maternity leave, and suffer no legal consequences.

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24 Regulation and Terms of Employment Order 2010.
25 See P. 19 supra.
26 Interview with Employee, Food Processing Plant #3, in Dar es Salaam, Tanz. (Mar. 7, 2012); Interview with Employee, Factory #8, in Dar es Salaam, Tanz. (Mar. 8, 2012); Interview with Multiple Employees, Factory #9, in Dar es Salaam, Tanz. (Mar. 9, 2012).
28 Interview with Multiple Employees, Food Processing Plant #3, in Dar es Salaam, Tanz. (Mar. 7, 2012); Interview with Multiple Employees, Factory #6, in Dar es Salaam, Tanz. (Mar. 8, 2012).
29 Interview with Multiple Employees, Factory #6, in Dar es Salaam, Tanz. (Mar. 8, 2012).
30 Interviews with Representatives, Ministry of Labour, in Dar es Salaam, Tanz. (Mar. 6, 2012); Interview with Multiple Employees, Factory #6, in Dar es Salaam, Tanz. (Mar. 8, 2012).
32 Interview with Multiple Employees, Factory #9, in Dar es Salaam, Tanz. (Mar. 9, 2012); Interview with Secretary, NGO #5, in Dar es Salaam, Tanz. (Mar. 9, 2012).
33 Interview with Multiple Employees, Factory #9, in Dar es Salaam, Tanz. (Mar. 9, 2012).
WORKING CONDITIONS

Most employees work between eight and twelve hours per day. Employers often require employees to stand for this entire period. Employees typically receive one break, ranging from one-half hour to a full hour. Sometimes employers provide food at this break, but the practice varies greatly. If employers provide food, it is often low quality and nutritionally inadequate.

Although the law requires employers to provide personal protective equipment to employees working in hazardous conditions, they often do not provide this equipment. Many employees work in unsafe conditions, spending hours working with toxic substances in factories with little ventilation. Employers often require employees to work long hours, constituting overtime, but do not pay the employees accordingly. In at least one case, employers prohibited employees from talking to each other while at work. As with the other substandard working conditions they experience, employees feel they cannot say anything for fear of losing their jobs.

UNIONS

There is a widespread feeling amongst workers in Dar es Salaam that unions do little or nothing for them, despite the fact that many workers belong to trade unions. Some employees

“There needs to be more enforcement of the rights of the casual worker and this has not happened. The unions are ignorant of the rights of the casual worker and as a result the workers don’t have faith in unions. Workers then tend to look for a political solution rather than a judicial solution. We don’t know why this is.” Interview with Senior Program Officer, ILO (Mar. 8, 2012).

34 Interview with Multiple Employees, Factory #3, in Dar es Salaam, Tanz. (Mar. 5, 2012).
35 Observations, Factory #6, in Dar es Salaam, Tanz. (Mar. 8, 2012).
36 Interview with Employee, Factory #8, in Dar es Salaam, Tanz. (Mar. 7, 2012); Interview with Employee, Food Processing Plant #3, in Dar es Salaam, Tanz. (Mar. 7, 2012); Interview with Multiple Employees, Factory #6, in Dar es Salaam, Tanz. (Mar. 8, 2012); Interview with Multiple Employees, Factory #1, in Dar es Salaam, Tanz. (Mar. 7, 2012); Interview with Multiple Employees, Factory #9, in Dar es Salaam, Tanz. (Mar. 9, 2012).
37 Interview with Management, Factory #6, in Dar es Salaam, Tanz. (Mar. 6, 2012); Interview with Employee, Food Processing Plant #3, in Dar es Salaam, Tanz. (Mar. 7, 2012).
38 Interviews with Multiple Employees, Factory #3, in Dar es Salaam, Tanz. (Mar. 5, 2012); Interview with Multiple Employees, Factory #1, in Dar es Salaam, Tanz. (Mar. 7, 2012).
39 Interview with Multiple Employees, Factory #9, in Dar es Salaam, Tanz. (Mar. 9, 2012); Interview with Multiple Employees, Factory #1, in Dar es Salaam, Tanz. (Mar. 5, 2012); Interview with Multiple Employees, Factory #8, in Dar es Salaam, Tanz. (Mar. 6, 2012).
40 Interview with Multiple Employees, Factory #6, in Dar es Salaam, Tanz. (Mar. 8, 2012).
41 Interview with Multiple Employees Food Processing Plant #4, in Dar es Salaam, Tanz. (Mar. 8, 2012).
42 Interview with Multiple Employees, Factory #6, in Dar es Salaam, Tanz. (Mar. 8, 2012).
commented that the union only makes its presence known when it is time to collect the union dues.\textsuperscript{43}

The field research revealed the many challenges that workers in industrial settings in Dar es Salaam face. There is a clear and consistent gap between the Tanzanian labor laws, as written, and the reality for employees on the ground. Greater enforcement and reforms are needed to adequately enforce the labor rights of Tanzanian workers.

\textsuperscript{43} Interview with Multiple Employees, Factory #6, in Dar es Salaam, Tanz. (Mar. 8, 2012).
RECOMMENDATIONS

Based on the delegation’s findings, it recommends the following:

For the Tanzanian government:

- Reform legislation to ensure that daily and permanent workers have equal rights and protections under the law.
- Include clear definitions for “casual” workers within legislation.
- Establish an enforcement agency charged with ensuring specific task workers are not consistently used to fill permanent positions.
- Reform legislation to provide limitations on how long specific task laborers can work for the same employer without becoming permanent employees.
- Institute educational outreach programs to inform workers of their rights, including the right to bring claims to the CMA.
- Regulate subcontracting agencies that provide specific task labor to employers; increase compliance with existing regulations and mandate that employers accept responsibility for subcontractors’ labor law violations.
- Increase the time limitations for filing unfair termination complaints with the CMA to more than 30 days; or, in the alternative, create a more permissive standard for deadline extensions.
- Reform the ELRA to prohibit sexual harassment in the workplace.
- Increase sexual harassment education and awareness initiatives for daily workers.
- Increase OSHA inspector authority to facilitate more random inspections conducted without management supervision.
- Impose more significant penalties for repeat OSHA violations.
- Set strict timeframes for companies to implement and correct recommendations given to them by factory inspectors.
- Increase transparency and worker access to Social Security Funds through the regulation of the Scheme by the government and easy access for employees to their social security funds, with an aim of build employee trust and employer compliance with mandated contributions.
- Ensure that the CMA deals with all complaints in a timely manner and that reasons are given for decisions.
- Adopt legislation to require that all work-related injuries or illnesses are paid for by a national workers’ compensation scheme.
- Review implementing legislation for international treaties with the goal of ensuring that the spirit of the treaty is incorporated in domestic laws as designed.
- Adopt anti-retaliation legislation to protect complainants and whistle blowers.
- Review the minimum wage law to conform to the current cost of living.
- Government should prioritize supporting unions.
For Unions:
- Increase employee knowledge of labor rights through focused education programs.
- Create a viable access method to union membership for daily workers.
- Maintain regular and continuous communication with union representatives.
- Advocate for reform of the gaps in the labor laws.
- Provide assistance and help negotiations between employees and employers.
- Ensure that membership fees are reasonable.

For NGOs:
- Prioritize training and education for workers, including programs on dispute resolution techniques and access to justice.
- Advocate for substantive reform to laws regulating specific task workers to eliminate loopholes.