

ROAD CLEANERS IN TANZANIA: AN ANALYSIS OF LABOUR LAWS

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ABSTRACT

The road cleaners are the crucial workers in ensuring the cities and towns are appealing to the people and more over are protecting the infrastructures of the same. As they are workers there are laws and legislations which protecting their labour interests in course of fulfilling their duties. The aim of this paper is to examine the laws which shelter their protection. This article examines the protection of the rights of the road cleaners in Tanzania. The discussion in this article solely based on employment standards, working condition and occupational health and safety and provide conclusion and recommendations.

INTRODUCTION

The road cleaners, as constituting the working class, are subjected to protection from both the local and international law instruments. This does cover all the working class in the said country. The employee and employer relationship is not a balanced scale tie. The employers always use their dominant position over the employees to maximize the profit and so forth to exploit the same. Therefore, the need for a strong piece of legislation that will balance the said tie is of the essence.

Currently, there are multiple laws, rules, and regulations concerning work-related well-being and care in Tanzania, established and enforced across different Offices, Departments, and Agencies. However, these legal measures fall short of meeting provincial or international values. This paper discusses the overview of the laws and regulations that provide the protections and rights of road cleaners in Tanzania the emphasis is on working conditions, social security, occupational safety and health, employment standards and provide the conclusion and recommendations.

EMPLOYMENT STANDARDS

Employment standards are standards that are provided the employment laws, rules, and regulations and they referred to an established benchmarks which set either the minimum standards below which no employee should fall take example of the minimum wages or the maximum limit beyond which no employee should be subjected including the working hours.ⁱ Again the employment standards provides the basis of negotiations that the parties may enter when signing the employment related contract creating obligations and rights for both parties.ⁱⁱ

In recognition of the foregoing, it does not touch on road work cleaners but creates the foundation for work relationships within the domestic work sector but also again provide on labour force and this study can borrow its wisdom and relate it to the road cleaners sector. The rationality of conditions and terms of employment contracts of road workers depends very much on the laws, rules, policies and regulations which sets the minimum standards and the maximum limits and by virtue of the Employment and Labour Relations Act,ⁱⁱⁱ of Tanzania

which provided on the incorporation of employment standards in all contracts of employment particularly those in respect of wage determination.^{iv}

Thus the Act,^v covers road cleaners in the vicinity of employees which is generally covered by the law but the employment standards are primarily part of the employment contract which can be altered where the contract contains more favorable terms of a contract to the employee or where a contract is altered in accordance with the law and where there is a collective agreement, a written law regulating employment, wage determination or exemption granted under section^{vi} and which alters the employment standard.^{vii}

The employment standards for domestic workers, like for other employees, are well set by the law, irrespective of the fact that alteration of the established standards is allowed by law as because while alteration of the established standards is allowed, such alterations have to be done within the confines of law and must be better terms than the benchmarks set in the law.^{viii} The said employment standards embrace. Employment standards point to foster circumstances where every person can access and engage in meaningful and productive employment, under conditions characterized by freedom, fairness, security, and respect. In the contemporary, interconnected world economy, these principles are critical for guaranteeing that the expansion of the global economy translates into advantages for everyone.

The ILO Standards Relating to Specific Task Employees

Although there are exceptions of ILO standards which are directed to specific occupation or economic sectors, principally ILO Standards^{ix} apply to “all workers”.^x This position is affirmed by the report^{xi} on Decent Work Agenda that, it is untrue ILO standards apply in situations where there is clear employer employee relationships due to the fact that ILO standards greatly, refers to “workers” rather than narrower legal category of “employee”. Proposition is supported by another subsequent expert’s report which further notes that this is the reason why members’ states are encouraged to extend the protection even to the left out groups, for example specific task workers to include road cleaners.^{xii} That being the case, there are some specific ILO Standards which cover even these groups as follows;

Private Employment Agencies Convention, 1997

This Defines Private employment agency^{xiii} to mean any natural or legal person, independent of the public authorities, which provides *Inter Alia*, the following labour market facilities:

“Services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to as a "user enterprise") which assigns their tasks and supervises the execution of these tasks. This Convention applies to all categories of workers and all branches of economic activity except seafarers.

Members who have ratified the agreement must implement the essential measures to guarantee the proper safeguarding of workers hired through private employment agencies concerning, but not limited to, aspects like the freedom of association, collective bargaining rights, minimum wage regulations, legal social security entitlements, access to training, workplace safety and health, maternity protection, and benefits, as well as parental protection and benefits.

Private Employment Agencies Recommendation, 1997^{xiv}

Provides that Workers Employed by PEA, Workers should possess a written employment agreement that clearly outlines their terms and conditions of employment. At the very least, these workers must be provided with information regarding their employment terms before their assignment commences. However, Tanzania has not yet ratified it.

Employment Relationship Recommendation, 2006^{xv}

Member states are advisable to develop and implement a national policy for periodically reviewing and, if needed, clarifying and adjusting the scope of pertinent laws and regulations. This is essential to ensure the effective protection of workers engaged in employment relationships. Also, to among others,

Address the issue of concealed employment relationships, such as cases where different types of contractual agreements are used to obscure the true legal status. Recognize that concealed employment arises when an employer treats an individual as something other than an employee, concealing their actual status as an employee. In such situations, there can be contractual arrangements that effectively deny workers the protection they should receive.

For purposes of the national policy referred to in this Recommendation, Members may consider clearly defining the conditions applied for determining the existence of an employment relationship, for example, *subordination or dependence*.

Part-Time Work Convention, 1994^{xvi}

In the context of this Convention: A "part-time worker" denotes an individual in employment whose regular working hours are fewer than those of full-time workers with comparable characteristics. The regular working hours mentioned can be computed on a weekly basis or averaged over a specific period of employment. The term "comparable full-time worker" refers to a full-time employee who shares a similar employment relationship, is engaged in the same or a related type of work or occupation, and is employed within the same establishment. In cases where there is no comparable full-time worker within that establishment, it refers to a full-time worker in the same enterprise, or if not available there, in the same line of business, as the part-time worker in question.

Ratifying states are required to ensure that part-time workers receive the same protection as that accorded to comparable full-time workers in respect of: *the right to organize, the right to bargain collectively and the right to act as workers' representatives; occupational safety and health; discrimination in employment and occupation.*"

Additionally, steps that are appropriate in light of national law and practice must be taken to guarantee that part-timers do not receive a base pay that is less than that of comparable full-timers based on the same methodology and is determined proportionately on an hourly, performance-related, or piece-rate basis. Statutory social security programs based on occupational activity must be modified to provide part-time employees with benefits comparable to those of comparable full-time employees; benefits may be calculated based on hours worked, contributions made, earnings, or other factors in accordance with national law and custom.

However, once again, steps must be done to guarantee that part-time employees enjoy benefits equal to those of comparable full-time employees in the areas of paid annual leave, paid public holidays, sick leave, and maternity protection.

In Tanzania, the legal employment regulations mainly cover different facets of employment, encompassing factors such as working hours, rules regarding termination of employment or the minimum compensation due upon termination, overtime pay, leave entitlements, public holidays, and maternity leave.

Constitution of United Republic of Tanzania

The employment standards and the working conditions have been stipulated in the Constitution of the United Republic of Tanzania. Article 22^{xvii} and 23^{xviii} provides for the right to work and just remuneration of his work that to set standards for every aspect of the right vested to an employee against the employer. Thus by virtue of this Article, the road cleaners are protected under the constitution and are vested with the same and equal rights as the normal employees and are mandated to be treated as the law requires with the standard and requirements which are set by the labour laws.

The Employment and Labour Relations Act

The Employment and Labour Relations Act,^{xix} is the law which was put into effect with the aim of securing fundamental labour rights, setting fundamental employment regulations, creating a structure for collective bargaining, offering mechanisms for resolving and preventing disputes, and addressing associated issues. This Act was passed as law in the parliament on the 14th April 2004 and assented on the 6th day of June 2004. The law was enacted to make provisions for core labour rights, to establish basic employment standards, to provide a framework for collective bargaining, to provide for the prevention and settlement of disputes, and to provide for related matter.^{xx} The scope of application of the law excludes the Tanzania Peoples defence Forces, the Police Force, the Prisons services or the National services.^{xxi} However sections 5, 6 and 7 which deal with prohibition of child labour, forced labour and discrimination respectively applied to members of forces and services.^{xxii}

The ELRA has dual primary goals: one pertains to the connection between employers and their individual employees or workers, addressing matters such as individual employment rights, including wage and workplace safety. The other aspect deals with the association between employers and groups of employees or workers, encompassing collective employment aspects like trade union regulations, strikes, and other industrial actions.

Wage Boards

Wage boards are bodies or committees established by governments to review and recommend wage rates and other employment conditions in specific industries or sectors. Their primary purpose is to ensure fair wages and working conditions for employees within a particular

industry. These boards typically consist of representatives from employers, employees, and sometimes the government

In Tanzania, Labour-related matters, including wage regulations, may fall under the purview of the Ministry of Labour, Employment, and Youth Development. Wage-setting mechanisms and regulations can vary, and the government may establish different bodies or use various methods to determine wages in different sectors.

These boards are *ad-hoc* boards established by the Minister in respect of a sector and area to investigate remuneration and terms and conditions of employment in any area.^{xxiii} The members of these boards are appointed by the Minister. A board is made up of a Chairperson, a member nominated by the Council who represents the interests of the employees and a member nominated by the Council to represent the interests of the employ The LIA as per section 39^{xxiv} empower the minister in accordance with the recommendations given by the board above to make a salary instruction which determines minimum wage and other conditions of employment for employees in any sectors.

However, to many employees conducting road cleaning this is the major area which is injurious to them because mostly employers pay the said prescribed minimum wage. According to the wage order of 2013 117 of Tanzanian shillings 100,000 shillings per month units corresponding daily payment of 3,846.45 and not more than that. This to most employees interviewed confirmed that the money paid does not suit the current economic situations as there is high inflation in prices of basic needs and the money cannot seem to go parallel with the economic conditions.

OCCUPATIONAL SAFETY AND HEALTH

Occupational safety and health are a significant component in all workplaces with the aim of ensuring that the welfare and interests of workers with respect to health and safety are protected. Under the provision of Article 13 of ILO Convention No. 189 does provide on the rights of domestic worker which applies to all employees to include the right to a safe and healthy working environment.^{xxv} The Convention urges state parties put in place measures and methods which would take into account the precautions and peculiarities of areas of work and ensure occupational safety and health of workers including the road cleaners.

The integrated measures which are incorporated under paragraph 19 of ILO Recommendation No. 201 oblige the state parties to minimize and eliminate risks and work-related hazards with the aim of preventing injuries, deaths, and diseases and promoting workplace protection and well-being in the workplaces including roads whilst collecting data and publishing statistics on accidents and diseases related to road cleaners.^{xxvi} The state must ensure that there are adequate and appropriate system of inspection which provide adequate penalties for the violations of rules, policies and laws on occupational safety and health and they must be place progressively.^{xxvii}

The Occupational Health and Safety Act^{xxviii}

This is the law which protects workers' rights for their health and safety at the workplace. section 3 of the Act, describes an employee as person employed or work for an employer and receive remuneration. the Act has defined the term workplace to denote any place or premise where a person performs works in course of the employment. It also ensures the safeguarding of individuals, not only those actively employed, from health and safety risks linked to the activities of workers and related matters. section 6 of the Act gives power to the inspector to inspect the factories and work places. This may be with notice or without notice to the employer. He may inspect the documents and even interrogate the workers. The Act makes clear that obstruction of any kind to the inspector to perform his duties amounts to penal sanction of fine of two (2) millions and imprisonment of three (3) months jail term or both^{xxix}. section 62 makes an obligation to the employer to supply the protective gears to the employees so as to protect them from the injuries and environmental work-related hazards. if a worker has sustained the injuries or suffer bodily injury at work or even death resulted from the negligence of the employer, the employer is liable to fine A minimum of 10 million or a maximum of two years in prison^{xxx}. in the case of *Centaza Plastic Ltd v. Occupational Safety and health Authority*^{xxxi} the inspector from OSHA inspected the industry which manufactures plastics. he ordered the company to pay fine in tune of Tsh 28,000,000 but at High Court parties agreed the amount to be reduced into 8 million.

The scope of the Act, applies to all establishments in the private and public sector, local government services and public authorities. However, term "establishment" seems not to favor employees who have been assigned to work as specific tasks workers in an establishment other

than their employers' establishment. Thus, many specific tasks employees are employed by Temporary Employment Agencies which has a contract with a user enterprise or a client establishment. This is mainly because the workers are not permanent but again the said establishment does not belong to the Agency therefore it avoids the application of this Act.

Occupational Safety and Health Authority (OSHA)

Occupational safety and health at work, including the proper use and management of hazardous waste, is governed and observed by the Occupational Safety and Health Authority, which was founded under the Occupational Safety and Health Act, 2003^{xxxii} OSHA's mission is to promote occupational health and safe practices to prevent occupational illnesses and accidents and, as a result, increase workplace productivity. This enhances worker and workplace wellness. If the authority cannot easily establish who exactly is the employer between a contractor and a user enterprise especially in a triangular relationship^{xxxiii} it cannot effectively protect these specific task workers. Although this act applied to "all workers" as well as persons other than those at work a disguised employment relationship like this makes them to fail to enforce their rights as they cannot establish who is the boss. A researcher found that many temporary agency workers have been working on precarious environments and therefore some contract occupational diseases, accidents and health problems and nowhere to get protection because there is no clear employer-employee relationship in this triangular situation and still the labour laws are silent to this effect.

OSHA's purpose is to enhance the well-being of both employees and workplaces by advocating for safe occupational health practices and aiming to prevent work-related accidents and illnesses. This, in turn, leads to increased productivity in workplaces.

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SOCIAL SECURITY SCHEMES PROTECTION OF ROAD CLEANERS

It is undisputed that the nature of the work done by road cleaners, subjects them to different risks may at any time befall to them including car accidents and the fact that the accidents may lead to permanent disabilities and being unable to work thus the labour laws and other international labour laws^{xxxv} provides coverage of road cleaning workers by the existing social security institutions as is the case for other employees.^{xxxvi} Just like employees in the formal sector, the road cleaning workers payment in kind must be availed to the road cleaning workers which must include calculating the social security contributions to be made by both the employer and the domestic worker.^{xxxvii}

Social Security Provisions to the Road Cleaners

In the view of the work which is done by the road cleaners and the workplace they do their work is subjected to different risks may at any time befall to them including car accidents and the fact that the accidents may lead to permanent disabilities and being unable to work thus the labour laws and other international labour laws^{xxxviii} provides coverage of road cleaning workers by the existing social security institutions as is the case for other employees.^{xxxix} Just like employees in the formal sector, the road cleaning workers payment in kind must be availed to the road cleaning workers which must include calculating the social security contributions to be made by both the employer and the domestic worker.

The social security law in Tanzania provides for coverage for all employees in both informal and formal sectors which are specifically covered by the legislation to include the Parastatal Pensions Act of 1978 which was repealed by The Tanzania Public Service Social Security Fund Act,^{xl} as it covers employees in all parastatal organizations and public institutions, all private companies in which the government owns shares, private companies that are not covered by any other social security fund, all parastatal organizations that have been restructured through privatization, sale, or liquidation and non-pensionable employees in the parastatal organizations.^{xli}

SSSF creates the Public Service Social Security Scheme (PSSSS), provides for contributions to and payments of social security benefits in respect of the service of employees in public service and repeals the Public Service Retirement Benefit Act, the LAPF Pensions Fund Act,

the GEPF Retirement Benefits Fund Act and the PPF Pensions Fund Act. It also provides for other related matters.^{xlii}

The Act has consolidated various public social security schemes into a single scheme called PSSSS (Public Sector Social Security Scheme). The schemes that have been merged into PSSSS include LAPF, GEPF, Public Service Pension Scheme (PSPF), and PPF. The National Social Security Fund (NSSF) continues to serve specific groups, including employees in the private sector, self-employed individuals, foreign workers in mainland Tanzania, employees in international organizations operating in mainland Tanzania, and any other category of individuals that the Minister responsible for social security matters may designate based on recommendations by the Social Security Regulatory Authority (the Authority).^{xliii}

After its enactment and came into force of the Social Security Regulatory Authority Act^{xliv} there was introduced liberalization of social security schemes and since 2012 employees were at liberty to choose which scheme, they preferred.^{xlv} That was a milestone achievement by SSRA. But now, with the new law, we have only two schemes in place each catering for specified category of employees with no right to choose as the law clearly states where one belongs.

This transition involves the shifting of public service employees from the now-abolished former schemes to the newly established PSSSS. Additionally, all private sector workers, self-employed individuals, and those employed by international organizations are directed to transfer to NSSF. The Act also mandates that all voluntary schemes and their members, which were previously administered by the defunct schemes, are to be transferred to the PSSS Fund. Their respective trust deeds are considered as having been adopted by the Board of Trustees of the PSSS Fund. This legal safeguard ensures that their contributions and pension entitlements are fully preserved, and they will not experience any loss when they retire, whether voluntarily or compulsorily.^{xlvi}

WORKERS COMPENSATION

Workers' compensation refers to a form of insurance providing wage replacement and medical benefits to employees who are injured or become ill during the course of their employment.

This insurance is a crucial aspect of employee protection and typically covers medical expenses, rehabilitation costs, and a portion of lost wages for the affected worker. The purpose of workers' compensation is to provide financial and medical support to employees in the event of work-related injuries or illnesses, while also protecting employers from potential lawsuits related to workplace accidents.

Workers Compensation Act of 2009

The Worker Compensation Act of 2008 is a supplementary Act that provides guidelines for compensating of employees for death and disablement caused by work-related injuries or diseases. The Act is supported by the Employment and Labour Relations Act^{xlvii} and other labour-related laws. Section (2) of the Act states that 'it applies to all employers and employees in main land Tanzania'. Part VIII of the Act outlines the obligation of the employer in regards to content of the Act which includes registration of the business activity with the Director General, making returns and keeping work place incident records. The Act requires the employer to register with the Director General, make returns on the injuries and deaths that would have occurred at the work place and requires them to contribute to the fund established through the Act. The employee and employer are required to report injuries on time.

CONCLUSION

Tanzania has ratified international conventions on labour matters and domesticated the same into local laws. Moreover, various labour institutions have been established to foster and monitoring the protection of road cleaners as an integral part of workers in Tanzania. Road cleaners are fast growing sector in labour market some adjustments must be made into legal regimes and labour institutions to entail their rights are safeguarded.

It is hereby recommended that labour matters be incorporated into the constitution. The constitution of URT has covered only a few matters related to workers' rights. these include Article 22 on the right to work and Article 23 on the right to remuneration. this entails in other senses that labour matters are not fully covered in the Constitution. comparatively, the researcher has visited the constitutions of Kenya and South Africa. In reviewing the two, it clearly shows that they have same provisions in their constitution, the constitution of South

Africa^{xlvi} on Article 23 reads the same as Article 41 of the Constitution of Kenya^{xlix}. the provisions include the right to equitable salaries, the right to realistic working environments, and form in trade unions. Having this in the constitution entails that labour rights are constitutional matters and are guaranteed more.

It has been vividly expounded that scope of application of the Tanzania Occupational Health and Safety Act is so limited. The Act area of coverage being the work places and the factories. It is clear that the Act was designed to cover occupational health and safety of the factories. This is revealed by thorough reading of each section in it. The matters to take into consideration are the factories only and not other working place. The essence of enacting the law was to design the piece of legislation solely covers occupational health and safety in working place and the fact the Contents of the Act covers only factories. The study propose the Act to be amended as to accommodate other sectors.

It is recommended that government through its responsible ministry to allocate labour offices and officer in outskirts districts. The study revealed that he OSHA offices and the labour offices are situated in the centre of the regions and not in the outskirts districts. The follow ups and inspections would not be affected to the workers and the working conditions while the offices and staffs are out of reach. This renders protections of road cleaners ineffective.

The employers must have a reason for the use of employees under specific task contracts; in order to avoid the problem of increasing length of specific task employees or the placing of the short-term employees under the task which is permanent in nature. the employers must justify the use of specific task employee only if is engaged on account of a temporary increase in the volume of work which is not expected to endure beyond twelve months, Is replacing another employee who is temporarily absent from work, Is a student or recent graduate who is employed for the purpose of being trained, Gaining work experience in order to enter a job or profession; Is engaged to perform seasonal work, Has reached the normal or agreed retirement age applicable in the employer's business.

The laws should provide circumstances under which a road cleaning employee shall be confirmed as a permanent employee so as to avoid a certain person working for a long time for one employer under a specific task contract; this in KENYA is called “Conversion of employment”.

The labour laws should prohibit the variance in terms and conditions of employment between the employees of the same employers performing the same or substantially the same task or work of equal value. This will support the principle of “equal pay for work of equal value”.

The law should provide that, specific task employees should not be terminated or dismissed when they have a reasonable expectancy for renewal.

One of the core issues revealed during the study was the issue of education for road cleaners. findings from the study have made it clear that most of the respondents, the workers have inadequate knowledge about labour laws. various government authorities like OSHA, Labour offices, and others responsible for impacting the workers with the knowledge are reluctant to do so. most have concentrated on formal sector employment and let aside the informal ones. Based on the nature of the type of work the cleaners do, they become vulnerable to the violation of their rights, and one of the shields to protect them is education.

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pp 58 – 93, at p. 58.

ⁱⁱ Ibid

ⁱⁱⁱ Cap 366 R.E 2019

^{iv} Ibid,Section 13

^v Ibid,Section 13

^{vi} Ibid,Section 7(5)

^{vii} Ibid,Section 13 (2)

^{viii} Ibid, Section 13 (3)

^{ix} Standards found in the, Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) , Right to Organize and Collective Bargaining Convention, 1949 (No. 98) , Equal Remuneration Convention, 1951 (No. 100) , Discrimination (Employment and Occupation) Convention, 1958 (No. 111) , Minimum Age Convention, 1973 (No. 138)etc

^x The 8 core ILO Conventions *supra* apply to all employees regardless of the categories of contracts

^{xi} The Informal Economy Report VI: June 2002

^{xii} Report for Discussion at the Meeting of Experts on Non-Standard Forms of Employment (Geneva, 16-19 February 2015).

^{xiii} No. 181

^{xiv} No. 188

^{xv} No. 198

^{xvi} No. 175

^{xvii} Ibid, Article 22 (1) and (2)

^{xviii} Ibid, Article 23 (2)

^{xix} Cap 366 R.E 2019

^{xx} Ibid, Preamble of the Act

^{xxi} Section 2 of the Employment and Labour Relations Act, 2004

^{xxii} *ibid*

^{xxiii} GN.196 of 2013,

^{xxiv} Cap 300 R.E 2019

^{xxv} ILO Convention No. 189

^{xxvi} paragraph 19 of ILO Recommendation No. 201

^{xxvii} ILO, (2011) *C189 & R201 at a glance*, International Labour Office, Switzerland, at p.19.

^{xxviii} Act No. 5 in 2003.

^{xxix} *ibid* section 6(c)

^{xxx} *ibid*, section 81

^{xxxi} Civil Appeal Case No. 64 of 2019, At the High Court of Tanzania at Dar es Salaam Registry (Unreported)

^{xxxii} Established under, the Executive Agencies Act No. 30 of 1997.

^{xxxiii} *Ibid*

^{xxxiv} *Ibid*

^{xxxv} ILO Convention Number 189

^{xxxvi} Paragraph 20(1&3) of ILO Recommendation No. 201.

^{xxxvii} *Ibid*

^{xxxviii} ILO Convention 189

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^{xl} The Public Service Social Security Fund Act, (No. 2), 2018 (PSSSF, “the Act”) is now operational. This law was assented by the President of Tanzania on 8th February 2018 and published on 9th February, 2018, vide GN No. 6, Vol. 99 of 2018

^{xli} See section 5 of Act No. 14 of 1978 as amended by section 4 of the Parastatal Pensions (Amendment) Act of 2001, Act No. 25.

^{xlii} *Ibid*, The Preamble of the Act

^{xliiii} *Ibid*, section 4

^{xliv} 2008

^{xlv} *ibid*

^{xlvi} *Ibid*, Section 6.

^{xlvii} Cap 366 R.E 2019.

^{xlviii} Act No 108 of 1996

^{xlx} of 2010