



TANZANIA HUMAN RIGHTS DEFENDERS COALITION

Report On The Situation of Human Rights Defenders in Tanzania 2015

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Table Of Contents

| | |
|---|------------|
| ABBREVIATIONS | iv |
| List of Statutes and International Instruments | v |
| Acknowledgement | vi |
| Preface | vii |
| OUR VISION | vii |
| OUR MISSION | vii |
| OUR VALUES | vii |
| THE OVERAL GOAL OF THE THRDC | vii |
| EXECUTIVE SUMMARY | vii |
| CHAPTER ONE: PROTECTION MECHANISM | 1 |
| 1.0 Who is a Human Rights Defender?..... | 1 |
| 1.1 Protection Mechanisms for Human Rights Defenders | 2 |
| 1.1.1 Legal Protection mechanism at International level..... | 3 |
| 1.1.2 Legal Protection Mechanism at Regional Level..... | 6 |
| 1.1.3 Legal Protection Mechanism at the National Level..... | 7 |
| 1.1.4 Challenges with Both International and Regional Protection Mechanisms for HRDS..... | 8 |
| 1.2 Non Legal Protection mechanism..... | 9 |
| 1.2.1 Non Legal Protection mechanism at International level..... | 9 |
| 1.2.2 Non Legal Protection Mechanism at Regional level | 10 |
| 1.2.3 Protection Mechanism at National Level | 10 |
| CHAPTER TWO: VIOLATIONS COMMITTED AGAINST HRDS | 12 |
| 2.0 Human Rights Violations Committed Against HRDs in 2015 | 12 |
| 2.1 Arbitrary Arrest, Baseless Charges and Criminalization of HRDs | 13 |
| 2.2 Physical violence, Attacks, and Torture..... | 14 |
| 2.3 State of Impunity..... | 16 |
| 2.4 Law Enforcers as Human Rights Defenders | 18 |

| | |
|---|-----------|
| CHAPTER THREE: MEDIA SECURITY AND SAFETY OF JOURNALISTS | 21 |
| 3.0 Overview of the chapter | 21 |
| 3.1 Specific Challenges Facing Journalists | 21 |
| 3.1.1 Physical threats/incidence;..... | 22 |
| 3.1.2 Legal threats/incidences; | 24 |
| 3.1.3 Digital threats/incidence..... | 25 |
| 3.1.4 Psycho- social threats/incidence..... | 25 |
| 3.2 Legal challenges affecting the security of Media and Journalists..... | 26 |
| 3.3 Right to Privacy in Tanzania and the Protection of Whistle Blowers..... | 29 |
| | |
| CHAPTER FOUR: SECURITY MANAGEMENT | 31 |
| 4.0 Level of Security Management and Protection Measures..... | 31 |
| 4.1 Office Security. | 32 |
| 4.2 Security Policy | 33 |
| 4.3 Awareness and Compliance of Staff Security..... | 34 |
| 4.4 Security Management Training | 34 |
| | |
| CHAPTER FIVE: THE CIVIL SOCIETY SPACE IN TANZANIA..... | 35 |
| 5.0 Overview of the Chapter | 35 |
| 5.1 Introduction | 35 |
| 5.2 Historical background of CSOs in Tanzania | 36 |
| 5.3 Why Civic Space | 37 |
| 5.4 The Shrinking Space for CSOs in Tanzania..... | 38 |
| 5.4.1 Legal framework and constraints for CSOs | 38 |
| 5.4.2 The Relationship between Civil Sector and the State..... | 40 |
| 5.6 CSOs Participation in Elections | 41 |
| 5.6.1 The Attack and Assault of TACCEO BVR Observers | 41 |
| 5.7 Way forward towards enhancing Civil Society Space in the Country | 44 |
| | |
| CHAPTER SIX : GENERAL CONCLUSION AND RECOMMENDATIONS | 45 |
| 6.0 Conclusion | 45 |
| 6.1 Way Forward..... | 45 |
| 6.2 Recommendations..... | 45 |
| Annexure One: The List Of Countries With Legal Protection Of HRDs | 47 |
| Annex Two- The List of Oppressive Laws & Proposed Bills | 48 |

Abbreviations

| | |
|--------------------|--|
| AATz | Action Aid Tanzania |
| AU | African Union |
| BRELA | Business Registration Licensing Agency |
| BVR | Biometric Voter Register |
| Cap | Chapter |
| CCM | Chama Cha Mapinduzi |
| CHADEMA | Chama Cha Demokrasia na Maendeleo |
| CIVICUS | World Alliance for Citizen Participation |
| CPJ | Committee for Protection of Journalists |
| CSOs | Civil Society Organizations |
| CUF | Civic United Front |
| CORI | Coalition for the Right to Information |
| DIT | Dar es Salaam Institute of Technology |
| EHARDP | Eastern and Horn of Africa Human Rights Defenders |
| EU | European Union |
| Etc | Et cetera |
| HIV/Aids | Human Immuno-deficiency Virus/ Acquired Immune Deficiency Syndrome |
| HRDs | Human Rights Defenders |
| HRNGOs | Human Rights Non-Government Organizations |
| IACHR-Inter | Inter- American Commission on Human Rights |
| ICCPR | International Covenant for Civil and Political Rights |
| ITV | Independent Television |
| KRAs | Key Result Areas |
| LHRC | Legal and Human Rights Center |
| NGOs | Non-Government Organizations |
| NEC | National Electoral Commission |
| MSB | Media Services Bill |
| OAS | Organization of American States |
| OSIEA | Open Society Initiates for East Africa |
| Pg | Page |
| SAHRINGON | Southern Africa Human Rights NGO-Network |
| RITA | Registration, Insolvency and Trusteeship Agency |
| RBA | Rights Based Approach |
| TACAIDS | Tanzania Commission for Acquired Immune Deficiency Syndrome |
| TAWLA | Tanzania Women Lawyers Association |
| TACCEO | Tanzania Civil Society Consortium on Election Observation |
| TCRA | Tanzania Communication Regulatory Authority |
| TGNP | Tanzania Gender Network Programme |
| THRDC | Tanzania Human Rights Defenders Coalition |
| UPR | Universal Periodic Review |
| UN | United Nations |

List of Statutes and International Instruments

(i) Statutes

The Constitution of the United Republic of Tanzania, 1977
The Constitution of the Revolutionary Government of Zanzibar, 1984
The Second Draft Constitution of the United Republic of Tanzania 2013
The Penal Code [Cap 16 R.E.2002]
The Probate and Administration of Estates Act, 1965, [Cap 352 R.E. 2002]
The Marriage Act of 1971 Cap 29 [RE; 2002]
Probate and Administration of Estates Act, [Cap 445 [R.E 2002]
The Newspaper Act of 1976 [Cap. 229, R.E. 2002]
The Prison Act, 1967, Cap 58 [R.E 2002]
The National Security Act of 1970, [Cap. 47 [R.E 2002]
The Public Leaders Code of Ethics, Cap 398 [R.E 2002]
The National Defense Act, Cap 192 [R.E 2002]
The Prevention and Combating of Corruption, Act No. 11 of 2007
The Area Commissioner Act 1962 & Regions and Regional Commissioners Act 1962
The Civil Service Act 1989
The Film and Stage Act No 4 of 1976
The Newspapers and Books Act (1988)
The Broadcasting Services Cap. 306 of the R. E 2002
The Land Act, 1999 (Act No.4 of 1999)
The Wildlife Conservation Act of 2009 (Cap 5 of 2009)
The Investment Act, 1997 (Act No. 26 of 1997)
The Forest Act, 2002 (Act No. 14 of 2002)
The National Park Act, Cap 282 [R.E 2002]
The Ngorongoro Conservation Act, 1959 Cap 284 [R.E 2002]
The Mining Act, 2010 (Act No. 14 of 2010)
The Basic Rights and Duties Enforcement Act No. 33 of 1994
The Police Force and Auxiliary Services Act, 1939 Cap. 322, [R.E. 2002]
The Non- Governmental Organizations Act 2002. No. 24,

(ii) International Human Rights Instruments

Declaration on the Right of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms on December 9, 1998 (Declaration for Human Rights Defenders).
United Nations Resolution on Protection of Human Rights Defenders March 2013
UN Resolution on Protection of Women Human Rights Defenders November 2013
The International Covenant on Civil and Political Rights 1966
The Convention on the Elimination of All Forms of Discrimination against Women 1979
The European Convention on Human Rights of 1950
The African Charter on Human and Peoples Rights of 1981
The American Convention on Human Rights 1969

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Preface

The Tanzania Human Rights Defenders Coalition (THRDC) is a non-partisan, human rights non-governmental organization registered under the Non-Governmental Act of 2002. The THRDC is comprised of both individual and organizational memberships. Its membership and representation in terms of operation is spread (through designated zone offices of coordination) all over the United Republic of Tanzania (Mainland and Zanzibar).

The main interest of this coalition is to, inter alia, work towards enhanced security and protection of Human Rights Defenders (HRDs) in the United Republic of Tanzania. It also intends to strengthen regional and international interventions towards protection and promotion of rights and responsibilities of HRDs.

The ultimate result of all these as this coalition visualizes is a contribution to a creation of a safer working environment for HRDs. THRDC has been and still intends to work closely with different stakeholders including local, regional and international HRDs' organizations and coalitions; individual HRDs; development partners; United Nations; duty bearers and other relevant stakeholders.

OUR VISION

THRDC-Coalition envisages a free and secured environment for Human Rights Defenders in Tanzania.

OUR MISSION

The THRDCs-Coalition strives to maximize the protection, respect and recognition of HRDs in Tanzania through, advocacy, capacity building, protection and connecting defenders with relevant regional and international bodies.

OUR VALUES

- a) Promote deep respect and empathy for defenders,
- b) Act in a very responsive, rapid, flexible manner,
- c) Result oriented organization with tangible impact ,
- d) Act with independence, creativity, impartiality and integrity ,
- e) Perform with dedication, professionalism, transparency and accountability.

THE OVERALL GOAL OF THE THRDC

The overall goal is to ensure that human rights defenders in our country are able to carry out their essential functions free from harm and repression, in accordance with the 1998 UN Declaration on Human Rights Defenders. Hence the overall goal for this project is to reduce risks that human rights defenders face through promotion and protection of human rights.

To achieve that goal and indicators stated above, the THRDC Coalition adopted the following strategic approaches (outcomes or key result areas – KRAs):

1. The legal and policy frameworks (and practice) addressing the Human Rights Defenders' issues and CSOs networking improved-**ADVOCACY**
2. The media and HRDs capacity to effectively participate in the Human Rights Defenders' protection processes and address the rights of human rights defenders improved-**CAPACITY BUILDING**
3. Protection mechanisms established and accessed by HRDs at risk- **PROTECTION**
4. An improved performance and sustainability of the Tanzania Human Rights Defenders' Coalition-**INSTITUTIONAL BUILDING**

Executive Summary

This situation report is the third by the THRDC after the 2014 and 2013 respectively. The report aimed at assessing the situation of Human Rights Defenders in the country for the year 2015. According to the data collected, HRDs and CSOs in the country work in a challenging environment mainly due to the country's legal framework being unfavourable towards protection of HRDs.

The 2014 report had six chapters. However, the 2015 report has additional sub chapters on the situation of police as human rights defender and a new chapter on the media security and the situation of journalists in Tanzania.

Chapter one introduces the meaning of human rights defenders and the legal protection available in international, regional and national levels. In this report specifically in this chapter countries that have taken up HRDs protection initiatives through legislations have been commended. They are Mexico, Colombia, Guatemala, Brazil, Honduras, DRC (South Kivu), South Sudan, and Indonesia, Philippines and Ivory Coast. The report indicates the lack of legal protection for HRDs in Tanzania. However, THRDC is making efforts to ensure that the country's Legal system protects HRDs and states clearly on their existence.

The report presents various challenges of legal protection for HRDs such as; the existence laws which do not stand for the protection of HRDs and Civil Society space in Tanzania, little knowledge about existence of HRDs as well as protection by international and National organizations to both authorities and HRDs themselves. Lack of knowledge on protection mechanisms for HRDs such as the existence of UN special Rapporteur, the African Rapporteur as well as the Universal Periodic Review (UPR Mechanisms) are also among challenges. And again lack of proper knowledge on declarations to the authority and HRDs. From this chapter, protection mechanism for HRDs existing in international, regional also at the national level as well as initiatives taken by THRDC to ensure that HRDs work safely is explained. At the end of this chapter the coalition reminds HRDs their role as agents of not only development but democratic development especially to the country like Tanzania, still struggling towards full democracy and improved economy.

Chapter two discusses human rights violations committed against HRDs in 2015 contrary to the Declaration of Human Rights Defenders of 1998. The violations are embodied in various forms. However, as the findings of the report in this chapter indicate, the risks that HRDs face in different thematic groups originate from various settings such as political, legal, financial and social cultural challenges. Lack of security consciousness and limited knowledge on information sharing, are setbacks in this line, coupled with restrictions on access to information, and inhibiting media freedom.

Chapter three furthermore spells out that HRDs in Tanzania work in highly difficult and risky environment as they are being harassed, tortured, criminalized, arbitrary arrested, and sometimes charged under some criminal provisions. During the year 2015, the THRDC protection desk recorded cases of baseless charges, criminalization and HRDs security claims including arrest and torture. All the claims were assessed and where necessary technical support was provided. However, in this report we will only elaborate on key HRDs violations that took place in 2015.

Again it is from this chapter that the role of law enforcers as HRDs because they protect people's rights and their properties has been highlighted. Law enforcers are exposed to risk because they are at times ordered to pursue their duties against their code of ethics and hence put their lives under siege. THRDC's records indicate that more than 10 police officers were killed while as over 5 were left injured with several guns and bullets taken away by robbers for the year 2015. It is through the observation above that THRDC trained law enforcers on security management specifically during the general elections to mitigate the situation.

Chapter three assessed the Freedom of expression, access to information and the situation of journalists. Other issues highlighted include the risk that journalists face in the line of their duties as well as the legal setbacks which infringe freedom of expression and access to information. Draconian media pieces which contravene Article 19 of the Universal Declaration of Human Rights such as The Cyber Crime Act of 2015 and other media bills have also been highlighted in this chapter.

The Media industry in Tanzania has been operating under laws which were put in place 40 years back with draconian provisions amidst it all. These laws have been used to ban independent newspapers and prosecute journalists who write articles critical of government actions.

In this chapter THRDC mentions clamps to freedom of expression of HRDs due to the Cyber Crime Act of 2015 with the major one being the case of Jamii media who after few months of enactment of the law, were forced by the police to disclose its user's identity. The Act infringes the right to privacy as provided for under Article 16 of the Constitution of The United Republic of Tanzania of 1977.

Chapter four explains on the Level of security management and protection measures. The coalition's first interest is to ensure that organizations and individual HRDs are protected and can conduct the security assessment for their organizations. The chapter tries to elaborate on how HRDs can enhance their offices and environment security as well as planning for the security through security plans and policies.

Chapter five sheds light on the importance and contribution of Civil Society Organizations for the national development especially democratic development where the issue has been well discussed. NGOs are legally acknowledged in the NGO Act 2002 and amendments of 2005. However, the new Act is considered as a merely state's attempt to control NGOs and not to create an enabling environment where CSOs can evolve independently.

The NGOs Act 2002 has its own constrains including not stating or covering for CSOs such as trade unions, religious organizations or community based organizations. Recently we have witnessed the contradiction between the Company Act and NGOs Act which leads to cases such as the Action Aid Tanzania. The chapter also explains the relationship between CSOs and the state where by CSOs in Tanzania have been regarded as the oppositions and experience censorship from the government and at times threatened and suppressed.

Lastly, **chapter six** is comprised of conclusion and recommendations made from this report.

PROTECTION MECHANISM

1.0 Who is a Human Rights Defender?

Chapter one introduces several aspects including, definition, recognition of a Human Rights Defender (HRD) and available protection mechanisms for human rights defenders at International, Regional and National level.

The expression “Human Rights Defender” is used to refer to anybody who, individually or together with others, works towards promoting and protecting human rights¹. Human Rights Defenders are above all recognized by what they do. They work to promote, protect and implement civil and political rights, as well as economic, social and cultural rights.²

The Declaration of Human Rights Defenders³ does not provide direct definition as to who a human rights defender is. However, the above definition has been widely interpreted by several articles of the Declaration. Needless to say, any of the definitions must exclude individuals or groups who commit acts of violence or who support the use of violent means in order to achieve their objectives.

HRDs play a key role to improve the human rights situation and standards in their countries. HRDs are defined by what they do. They can include individuals, lawyers, journalists, NGO activists, trade unionists, minority activists and demonstrators who act to promote or protect human rights. Needless to say the definition does not include individuals or groups who commit or propagate violence.⁴

HRDs champion basic human rights as diverse as the right to life, food and water, the right to better healthcare which may be prevented, the right to adequate housing or accommodation, to a name and nationality, education, freedom of circulation and non-discrimination.

Human Rights Defenders on occasion, also deal with certain specific categories of people such as women, children, indigenous people, refugees and displaced persons, in addition to national, linguistic and sexual minority groups. HRDs are active throughout the world and strive to promote and protect human rights in all sorts of difficult contexts relating, notably, to HIV and AIDS, development, migration, structural adjustment policies and political transition.⁵

¹ <http://protectionline.org/files/2013/02/UN-Factsheet-29-Human-Rights-Defenders-Protecting-the-Rights-to-Defend-Human-Rights.pdf>

² Protection International (2011) *Legislators and Human Rights defenders* at pg 2.

³ Declaration on the right and Responsibility of Individual, Groups and Organ of Society to Promote and protect Universally Recognized Human Rights and Fundamental Freedom 1998 (UN Declaration on Human Rights Defenders)

⁴ Irish –HRDs Guidelines 2010

⁵ *Ibid.*

HRDs are recognized due to their work, as they protect, and enhance human rights, politically, economically, socially, and culturally. They also champion for human rights and enhance constitutional rights such as education, freedom of expression and development, policy changes, etc.

Human rights defenders are the only hope to ordinary citizen towards humanity. Needless to say, during the execution of their duties, they have found themselves turning into victims of murder, imprisonment, torture, sidelining, and expulsion from their communities.

Activities of human rights defenders include⁶:

- documenting violations of human rights ;
- seeking remedies for victims of such violations through the provision of legal, psychological, medical or other support;
- combating cultures of impunity which serve to cloak systematic and repeated breaches of human rights and fundamental freedoms;
- mainstreaming human rights culture and information on human rights defenders at national, regional and international level
- seeking and dissemination of information

The work of human rights defenders often involves criticism of government policies and actions. However, governments should not perceive this role negatively. The principle of allowing room for independence of mind and free debate on a government's policies and actions is fundamental, and is a tried and tested way of establishing a better level of protection of human rights. Human rights defenders can assist governments in promoting and protecting human rights. As part of consultation processes they can play a key role in helping to draft appropriate legislation, and in helping to draw up national plans and strategies on human rights. This role too should be recognized and supported.⁷

1.1 Protection Mechanisms for Human Rights Defenders

In some countries, International and Regional level, various policies, guidelines, instruments, and, legislation have been enacted to recognize and protect HRDs. However, for the purpose of this report we will separate legal protection mechanism from other protection mechanisms initiated by the UN, International and local NGOs.

Legal protection mechanism covers initiatives by the United Nations, States, Judiciary, Administrative, and other organs in enactment of laws, regulations, policies or making of judicial precedents that recognize the role of HRDs in promoting human rights.

Other protection mechanisms, involve the initiatives by the UN, AU, international NGOs, local NGOs and networks to put in place, special Rapporteur, emergency funds for HRDs at risk, provisional of supports on legal representation, medical support, counseling, evacuation and relocations, etc.

⁶ European Union Guidelines on Human Rights Defenders 2004

⁷ Ibid

1.1.1 Legal Protection mechanism at International level

Legal Protection mechanism at International level The legal recognition and protection of human rights defenders is crucial to ensure that they can work in a safe, supportive environment and free from attacks, reprisals and unreasonable legal restrictions.⁸ The struggle for recognition of HRDs has never been easy, despite the world marking 50 years ever since the Declaration of Human Rights in 1948. In December 1998, HRDs were accorded with recognition and protection after 12 years of negotiations. The UN adopted the;

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms on December 9, 1998 (Declaration of Human Rights Defenders)

1. The adoption of this salient document marked a historic achievement in the struggle towards better protection of those at risk for carrying out legitimate human rights activities. This Declaration was the only UN instrument that openly and comprehensively defined and recognized the work and protection of HRDs.⁸
2. The Declaration is a well defined international instrument that codifies and puts together standards to protect activities of human rights defenders all over the world. It recognizes the legitimacy of human rights activity and the need for this activity and protection for those who execute it . The declaration imposes duty to every State to protect Human Rights Defenders in accordance with the International Law. Civil authorities and law enforcement organs in each country are also primarily responsible to protect HRDs.

3. HRDs rights protected under the Declaration: include:

| | |
|--|--|
| 1. To conduct human rights work individually and in association with others; | 2. To unhindered access to and communication with non-governmental and intergovernmental organizations ; |
| 3. Formation of associations and non-governmental organizations ; | 4. To benefit from an effective remedy; |
| 5. To meet or assemble peacefully; | the lawful exercise of the occupation or profession of human rights defender; |
| 6. To seek, obtain, receive and hold information relating to human rights; | 7. To effective protection under the national laws in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights; |

⁸ THRDC(2013) Protection and security needs for human rights defenders in Tanzania- needs assessment report at pg 4.

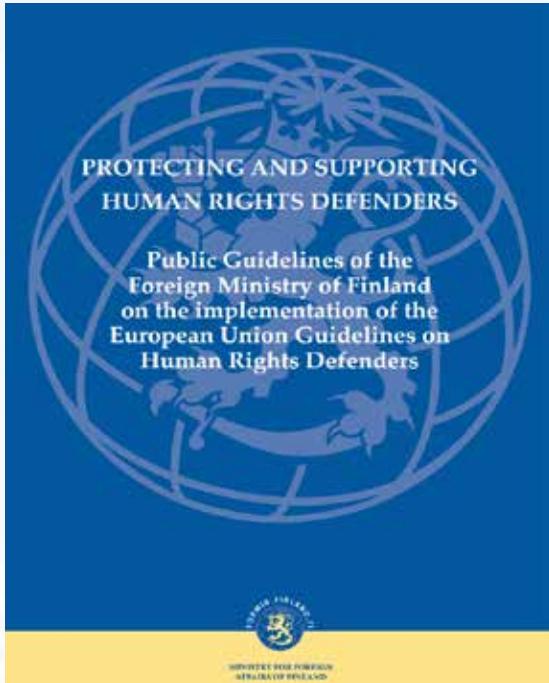
| | |
|---|--|
| 8. To develop and discuss new human rights ideas and principles and to advocate their acceptance; | 9. To solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad); |
| 10. To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals to improve their functioning and to draw attention to any aspect of their work that may impede the realization of human rights; | 11. To attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations; |
| 12. To file complaints about official policies and conducts relating to human rights and to have such complaints reviewed; | 13. unhindered access to and communication with non-governmental and intergovernmental organizations ; |
| 14. To offer and provide professionally legal assistance or advice and assistance in defense of human rights; | 15. To benefit from an effective remedy; |
| 16. To the lawful exercise of the occupation or profession of human rights defender; and | 17. Effective protection under the law in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights. |

States such as Norway, Switzerland, Ireland and the Netherlands are great example for recognition of HRDs as they have adopted the UN declaration. They have also published guidelines directing their diplomats and decision-makers to prioritize the protection of human rights defenders and civil society space abroad. They have been consistently singled out for praise by human rights and democracy activists.⁹

In 2015, the Finland passed land mark guidelines for protection of HRDs as progressive measures towards the recognition of HRDs globally. The Finnish Guidelines recognize the vital role of human rights defenders in preventing conflict, addressing discrimination and inequality, promoting security and the rule of law, and exposing and seeking accountability for violations where they occur. The Guidelines also recognize the significant risks and threats that many defenders face because of this work, particularly women human rights defenders, and those working on SOGI and minority rights.¹⁰

⁹ <http://www.ishr.ch/visited> on 23rd March 2016

¹⁰ *Public Guidelines of the Foreign Ministry of Finland on the implementation of the European Union Guidelines on Human Rights Defenders 2015*



The aforementioned Guidelines outline a range of actions for Finnish diplomats and missions to achieve their objective of ‘promoting an enabling environment and the capacity of human rights defenders’, including¹¹:

- consulting closely with human rights defenders on their support and protection needs;
 - publicly recognizing and promoting the valuable work of human rights defenders and the risks they face, including through regular meetings and events;
 - advocating both publicly and privately, and both bilaterally and through multilateral mechanisms such as the UN, in relation to the situation and safety of defenders;
 - providing financial support and assistance to national and international human rights NGOs;
- appointing a human rights focal point within diplomatic missions;
 - monitoring trials of human rights defenders;
 - promoting the invaluable work of defenders through media and social media;
 - continuously monitoring and regularly reporting on the situation of human rights defenders, including through field trips and investigations; and
 - Where necessary and appropriate, assist to relocate human rights defenders within their own country or to another country to ensure their security.

On 29/11/2013, the UN adopted a landmark resolution on *Protection of Women Human Rights Defenders*¹². ‘The resolution urges States to put in place gender-specific laws and policies for the protection of women human rights defenders and to ensure that defenders themselves are involved in the design and implementation of these measures,’ Ms Bjerler said, the *‘Effective implementation of such measures by States will be key to enabling women human rights defenders to carry out their important and legitimate work.’*¹³

¹¹ See more at: <http://www.ishr.ch/news/finland-new-guidelines-will-strengthen-protection-human-rights-defenders#sthash.7uslEmZi.dpuf>

¹² UN Resolution on Protection of Women Human Rights Defenders See more at: <http://www.ishr.ch/news/un-adopts-landmark-resolution-protecting-women-human-rights-defenders#sthash.NJ12LaQH.dpuf>

¹³ *Ibid.*

1.1.2 Legal Protection Mechanism at Regional Level

There are several initiatives taken by continents to protect HRDs through legal protection. These include special guidelines, policies, resolutions and other judicial and administrative decisions.

| Continent | Legal Mechanism | Brief Explanation |
|----------------|---|---|
| AMERICA | Human Rights Defenders in America, support individuals, groups, and organizations of civil society working to promote and protect human rights in America (AG/RES.16715), ¹ | <p>In its 1998 annual report, the Inter-American Commission on Human Rights (IACHR) highlighted the importance of the work carried out by Human Rights Defenders and recommended to Member States of the Organization of American States (OAS) the adoption of measures necessary for their protection. On this basis, in June 1999 the General Assembly of the OAS adopted a resolution entitled:</p> <p>In the event of imminent danger, the IACHR may issue preventative measures to Human Rights Defenders under threat to avoid any irreparable harm. The IACHR may also request information from States and issue recommendations thereunto. It is also possible to request that the Inter-American Court adopts provisional protection measures.</p> |
| AFRICA | -The Grand Bay Declaration and Plan of Action of 16 April 1999 calls upon African Union Member States to take all appropriate measures to implement the United Nations Declaration on Human Rights Defenders. ² | The African Union (AU) touched on the issue of the protection of Human Rights Defenders in 1999 during its Ministerial Conference on Human Rights in Africa. |
| | <p>- The Kigali Declaration of 8 May 2003</p> <p>- Resolution 273 of the African Commission, which will surely be echoed at the United Nations level, is yet another useful instrument that will help secure a better working environment for HRDs.³</p> | <p>Recognizes the key role played by civil society organizations and Human Rights Defenders, in particular in promoting Human Rights in Africa" and "calls upon Member States and regional institutions to protect them and to foster their participation in the decision-making process."⁴</p> <p>In short, a system of promotion and protection of human rights does exist on a continental level in Africa. It has the potential to respond effectively to the obligation to protect all citizens and particularly HRDs. Coherent public policies for the protection of this target-group, however, remain lacking. It is imperative that States conform to article 2(2) of the UN Declaration on Human Rights Defenders: "Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed". The actions of States should constitute effective contributions to the efforts made by civil society to try and increase the well-being and the safety of the world's population.⁵</p> |

| | | |
|---------------|---|---|
| EUROPE | EU Guidelines on Human Rights Defenders | In Europe, the European Union established EU Guidelines on Human Rights Defenders as the best way to support the implementation of the Declaration on Human Rights Defenders in third countries. ⁶ These guidelines provide practical suggestions to enhance EU action in relation to HRDs. Guidelines can be used in contact with third countries at all levels to support and strengthen ongoing EU efforts to protect the rights of HRDs. This may also provide for interventions by the EU on behalf of human rights defenders at risk, and suggest practical means to support and assist them. |
| | In 2010, the European Parliament adopted a Resolution on the EU policy in favor of Human Rights Defenders (2009/2199(INI)). | It calls on the various EU institutions and its missions to reinforce their action for effective implementation of Guidelines, notably by ensuring regular contact with Human Rights Defenders prior to taking any action on their behalf and to provide them with feedback. These recommendations were reiterated with the adoption, on 16 December 2010. ⁷ Therefore it is only fair to declare EUROPE as a leading continent in laws, guidelines, judicial, administrative and policies that protect HRDs. EU members should play an active role in the enforcement of Guidelines issued as well as a dynamic role to create a successful mechanism to protect human rights defenders in Europe, and thus set precedent for other States in the world. |

1.1.3 Legal Protection Mechanism at the National Level

The UN HRDs reports indicate that very few States have incorporated the International Declaration on Human Rights Defenders into the national law despite 15 years of its adoption. Worse still, governments in all regions are increasingly enacting laws which restrict and even criminalize the work of human rights defenders and NGOs as is the case with the Cybercrime Act 2015 and the Statistic Act 2015 in Tanzania.

One of the key elements of a safe and enabling environment for defenders is the existence of laws and provisions...that protect, support and empower defenders...The adoption of laws that explicitly guarantee the rights contained in the Declaration on Human Rights Defenders is crucial in that it could contribute to building an enabling environment and give these rights legitimacy (former UN Special Rapporteur).¹⁴

¹⁴ <http://www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders#sthash.fcKqckJ.dpuf> visited on 23rd March 2016

In response to these gaps and trends, one of the leading international organizations such as the International Service for Human Rights (ISHR) is working in partnership with key regional, sub-regional and national human rights defender groups from around the world to develop a **model national law on human rights defenders** and to advocate for its adoption at the international level and its enactment locally.¹⁵

The model law will assist States to develop laws, policies and institutions at the national level to support the work of human rights defenders and to protect them from reprisals and attacks. The model law will also serve as a valuable tool for human rights defenders to advocate for stronger legal recognition and protection of their important work.¹⁶

Several countries have set national legal mechanisms to protect HRDs. Such initiatives are generally the result of pressure enforced by HRDs themselves and relayed by the international community. In general, they work towards accessing immediate protection measures. There are national legal protection mechanisms currently in place for Human Rights Defenders in Mexico, Colombia, Guatemala and Brazil. Initiatives in this direction have also been taken in Honduras. In the Democratic Republic of Congo a national law and provincial decree (South Kivu) is under discussion. Other countries active in the area are South Sudan, Indonesia, the Philippines and more recently, Ivory Coast.¹⁷

The Constitution of the United Republic of Tanzania of 1977 and that of Zanzibar of 1984 including the proposed Constitutions of 2014 do not guarantee in any way the rights of HRDs despite the tough work done by THRDC to lobby for its inclusion in the Mother Law. The legal framework at the national level including the Draft Constitution provides for general protection of human rights but remains silent on the rights of human rights promoters/defenders. In short, lack of specific legal protection renders HRDs vulnerable and easy prey for perpetrators of human rights violations. The legal challenges which affect HRDs will be discussed at length in chapter three of this report.

The coalition's five years strategic plan focuses on **Outcome One- Advocacy**, among the outputs being to advocate for the availability of specific legal protection for HRDs in Tanzania and space of CSOs. Tanzania is yet to formulate a policy or draft bill to recognize and protect HRDs as is the case in other countries such as Mexico and Brazil. Thus Tanzania ought to start initiatives to come up with legal, policies, judicial judgments, quasi judicial, administrative decision on human rights defenders, to increase their legal protection.

1.1.4 Challenges with Both International and Regional Protection Mechanisms for HRDS

- The declaration on human rights defenders provides protection and legitimacy to the work of HRDs. But in order for that to happen, the Declaration has to be widely known and respected by authorities, and the population as a whole. It also has to be known and used by HRDs themselves. Findings of the THRDC indicate that as of year 2015, majority of HRDs were yet to be informed about this declaration.

¹⁵ <http://www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders#sthash.fcKqckKj.dpuf> visited on 23rd March 2016

¹⁶ <http://www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders#sthash.fcKqckKj.dpuf> visited on 23rd March 2016

¹⁷ Protection international Op. cit. at pg 9.

- HRDs in Tanzania know nothing about the available mechanism for their protection let alone on how to use the special UN and the Africa rapporteurs on human rights defenders to protect them.
- Again, the EU Guidelines on HRDs are also not widely known by HRDs in Tanzania despite the EU taking some action to defend them. A lot more has to be done to raise HRD awareness about and the usefulness of the guidelines as a form of capacity building to enable them enhance their security.
- The HRDs law and Policy have no model hence making it difficult for national NGOs to lobby for its inclusion of the same to the domestic legislations.

1.2 Non Legal Protection mechanism

Protection mechanisms for HRDs can simply be defined as defense strategies put in place to ensure that HRDs are safe and operate in a safe environment. Through their active commitment, HRDs are frequently target of acts of repression perpetrated by States or by private or Para-State groups acting in complicity with States. They are in many countries targeted for attacks such as murders, forced kidnapping, arbitrary arrests, imprisonment, torture, improper treatment, retaliation against family or friends, death threats, defamation campaigns, adoption of restrictive legislation in terms of the freedom of association, expression and gathering. Thus UN, International NGOs and Local NGOs were forced to chip and establish protection desks/unit to ensure HRDs mitigate these threats and in worst situation provide emergence assistance.

1.2.1 Non Legal Protection mechanism at International level

The mandate on the situation of human rights defenders was established in 2000 by the Commission on Human Rights (as a Special Procedure) to support implementation of the 1998 Declaration on Human Rights Defenders. In 2014, the UN Human Rights Council came up with a resolution number 25/18, in a bid to continue the mandate on human rights defenders for a consecutive period of three years.¹⁸

In June 2014, Mr. Michel Forst (France) was appointed by the President of the Human Rights Council as the UN Special Rapporteur on the situation of human rights defenders. Mr. Forst succeeds Ms. Margaret Sekaggya as Special Rapporteur on the situation of human rights defenders (2008-2014) and Ms. Hina Jilani as Special Representative of the Secretary General on the situation of human rights defenders (2000-2008).¹⁹

In the framework of this mandate, the primary duties of the Special Rapporteur are to:

- Seek, obtain and examine information on the situation of human rights defenders
- Establish cooperation and engage in dialogue with governments and other interested actors by promoting and successfully implementing the Declaration
- Recommend effective strategies to protect human rights defenders better and follow up on these recommendations
- Integrate a gender perspective throughout her work.

In performing his duties, the Rapporteur:

- Submits annual reports to the Human Rights Council and the General Assembly on particular topics or situations of special importance regarding the promotion and protection of the rights of human rights defenders

¹⁸ <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx>

¹⁹ *ibid*

- Undertakes country visits
- Takes up individual cases of concern with Governments

Needless to say, the UN does not provide for other services such as emergence fund and support. Therefore International NGOs such as the Frontline Defenders, Protection International, Freedom House, CIVICUS, Irish Human Rights Institute, Peck Trust, CPJ, ICJ, Article 19 and many others have been playing that role. These NGOs work to compliment the work of the UN Special Rapporteur. They offer security and risk assessment management such as preventive measures, legal support, counseling, evacuation and reallocation of HRDs at risk and advocacy among other activities.

In 2015, THRDC signed the MOU with Civil Rights Defenders to extend protection for Tanzanian HRDs. Civil Rights Defenders is an independent expert organization founded in Stockholm in 1982 with its goal being to defend human rights, in particular people's civil and political rights, while also supporting and empowering human rights defenders at risk.

1.2.2 Non Legal Protection Mechanism at Regional level

Universal and regional protection mechanisms complement each other to improve the protection of Human Rights Defenders. However, for the purpose of this report, Africa will be used as an example.

On 23rd April, 2009, Non-Governmental stakeholders in Africa adopted the Kampala Declaration on Human Rights Defenders, during a Conference on Human Rights Defenders at the Ugandan capital.²⁰ This initiative was facilitated by the Network of Human Rights Defenders in East and Horn of Africa. The latter bolstered the protection of Human Rights Defenders in Africa through networking.

The East and Horn of Africa Human Rights Defenders Project (EHAHRDP) plays a key role to protect HRDs in the region. Others include the Pan Africa Human Rights Defenders Network, West Africa Human Rights Defenders Network, Central Africa Human Rights Defenders Network, South Africa Human Rights Defenders Network, and recently another establishment for a special fund for legal protection by the name of Legal Protection Fund (LPF).

1.2.3 Protection Mechanism at National Level

To most states in Africa and elsewhere, protection of HRDs at national level is still a new agenda. However, gradually, African civil societies continue to form networks and coalition for human rights defenders in their respective countries and regions. Coalitions and Networks in Africa include: Kenya, Eritrea, Djibouti, Uganda, Tanzania and Burundi. The final group in the list is South Sudan, Rwanda, Somali and Senegalese Human Rights Defenders Coalition.

Tanzania is yet to enact any legislation let alone a policy to recognize HRDs. Nevertheless, THRDC has been working to ensure HRDs operate under safe environment by immediately intervening whenever there is a looming risk. The THRDC operates in the framework of accepted international mechanisms established and adopted by other human rights conscious nations including Tanzania, to ensure good governance.

It should be noted however, that the protection of HRDs is quite a new concept in Tanzania and thus most people fail to understand it and when their rights are violated they more often tend to ignore and take it

²⁰ <http://protectionline.org/2009/05/05/kampala-declaration-of-human-rights-defenders/>

for granted. In fact, majority of them (HRDs) do not know that they are human rights defenders who need some level of sensitivity and special protection in the course of performing their day-to-day activities as defenders and promoters of human rights.

The current legal and institutional frameworks governing human rights issues in Tanzania does not specifically recognize the presence and work of HRDs despite the duty imposed on States by the Declaration of Human Rights Defenders; to protect them through the national legislation. The Declaration requires States to adopt legislative, administrative and other steps to ensure that the rights and freedoms referred to are effectively guaranteed.

Progress to note, in 2015 the government enacted the Whistle Blowers and Witness Protection Act 2015, to protect those who expose corruption issues and any other information for public interest. This can be taken as great step when it comes to legislation in favour of human rights defenders, simply because most of the witnesses and whistle blowers are also human rights defenders. However the Act in itself does not provide full protection to all whistle blowers. The framing of section 4 of the Act only recognizes a whistle blower as a person who discloses information of public interest to a competent authority. Section 3 of the Act provides for interpretation but bears a very narrow meaning of competent authority. This makes it difficult for a person who reveals information via social media or other platforms when it comes to being regarded as a whistle blower.

THRDC established self-protection mechanisms such as the Protection Desk as well as security and risk assessment trainings. The move is meant to act as a preventive measure for HRDs and to ensure that human rights defenders at risk receive the necessary support to mitigate it and thus continue with their work.

Major Role of Protection Programme

- Provide emergency assistance and protection for HRDs at risk;
- Encourage and provide an opportunity for HRDs at risk to continue with their work in a safe and secure way;
- Ensure that HRDs get security management and risk assessment trainings as preventive measures for HRDs. This helps them to improve their personal and professional safety;
- THRDC in collaboration with other International protections organs provide support and assistance with the immigration formalities and other legal procedures. The move is meant to regularize HRDs stay in the country where they have sought refuge;
- Seek effective collaboration with other service providers in the protection of HRDs;
- Conduct research and fact finding on HRDs issues in Tanzania

Some of the key activities undertaken under this protection programme include security needs assessment to ascertain prevailing situations; formulation of protection policy to establish protection strategies; mapping and clustering of HRDs as well as to develop security and responsive system. Other duties include creating a link between national HRDs, international, regional and national protection mechanisms; support for reallocation and evacuation, legal representation and medical support. The Desk is further charged to oversee social counseling, emergence housing, emergence social support if necessary and establishment and coordination of a protection referral system at the disposal of HRDs to provide responses and protection support.

Human Rights Defenders work in favor of democratic development to increase participation of citizens in decision making for their existence and consolidation of good governance. Thus, they are agents of development, whom the State ought to create secure environment and protection for their work. The State through the Parliament can contribute towards promotion and declaration of HRDs and ensure that the government implements recommendations issued by several UN mechanism agencies, resolutions, and special Rapporteur' comments.

VIOLATIONS COMMITTED AGAINST HRDS

2.0 Human Rights Violations Committed Against HRDs in 2015

This chapter exposes to the reader the situation of human rights defenders for the year 2015. The chapter only focuses on the situation of individual HRDs from different thematic groups with exception to journalists where their situation is explained in chapter four. Security incidents and threats to human rights organizations in Tanzania and specifically discussed under chapter six of this report.

The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedom gives recognition and protects human rights defenders. The Declaration is an international instrument for the protection of the right to defend human rights. The Declaration reaffirms rights that are instrumental to the defence of human rights, including, inter alia, freedom of association, freedom of peaceful assembly, freedom of opinion and expression, and the right to gain access to information, to provide legal aid and to develop and discuss new ideas in the area of human rights. Implementing the Declaration is a precondition for the creation of an environment that enables human rights defenders to carry out their work.²¹

Tanzania has not been implementing the Declaration and as a result HRDs in Tanzania operate in a very challenging and risky environment. Focal person's reports, questioners filled by HRDs and Protection desk data base in 2015 indicate that HRDs have been continuously harassed, detained, interrogated, imprisoned, and tortured.

The THRDC Protection desk data base received and documented 40 HRDs claims including arrest, malicious prosecutions, torture and decriminalization of expression from different parts of Tanzania. All claims were assessed and where necessary technical support was provided. However for the purpose of this report, we will only elaborate major HRDs violations that took place in 2015.

Violations against HRDs are always structured towards active HRDs, defender's families or organizations as a means to muzzle their work. However, the risks they face differ based on the nature and capacity of the rights they seek to protect. For instance, Women Human Rights Defenders, journalists, pastoralists HRDs at times confront risks that require particular attention.

"In most cases, acts committed against human rights defenders are in violation of both international and national law. In some countries, however, domestic legislation which contravenes international human rights law is used against defenders."²²

²¹ Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

²²<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Challenges.aspx>. Visited - January 2014

The THRDC protection desk data base, questioners filled by HRDs and reports from focal person in 2015 indicated that HRDs in Tanzania face a number of challenges including: political, legal, financial and social challenges. They also have limited security knowledge on information sharing and restrictions on access to information.

2.1 Arbitrary Arrest, Baseless Charges and Criminalization of HRDs

Like other parts of the world, HRDs in Tanzania are at times falsely criminalized. *In criminology, the term refers to the process whereby behaviors and individuals are transformed into crime and criminals.*²³ In this context, criminalization is often used to discredit, sabotage and impede the work through the misuse of the Legal system.

UN commentary to declaration of human rights defenders pointed that, states increasingly resort to legal actions to violate rights of human rights defenders who denounce human rights violations. Defenders are arrested and prosecuted on false charges. Many others are detained without charge, often without access to a lawyer, medical care or a judicial process, and without being informed of the reason for their arrest.²⁴ Some States tend to systematically invoke national security and public safety to restrict the scope of activities of defenders. In many countries, trade unionists, members of NGOs and social movements face repeated arrests and criminal proceedings for charges of forming criminal gangs, obstructing public roads, inciting crime, creating civil disobedience or threatening the State security, public safety or the protection of health or morals.

Moreover, human rights defenders, including defense lawyers, who provide legal assistance to other defenders or victims of human rights violations are threatened, denied access to courthouses and their clients, arrested and charged under various criminal provisions. The multitude of arrests and detentions of defenders also contributes to their stigmatization, since they are depicted and perceived as troublemakers by the population²⁵

HRDs in Tanzania face a similar situation. In 2015, the THRDC's protection desk documented five cases of baseless charges and criminalization of HRDs as follows;

- THRDC represented before the court of law George Mgoba a human rights defender who faced criminalization. Mgoba was a leader of over 27,000 youths nationwide who completed National Service training between 2000 and 2013 but have since remained unemployed. He was abducted and tortured by unknown assailants and later on he and his colleagues were charged with unlawfully assembly. The DPP unnecessarily deposited certificate for denial of bail therein. The case is at hearing stage with the HRDs still in custody.
- A woman HRD Joyce Kiria was on 13th January 2015 arbitrary arrested and thereafter sued for defamation. The case was filed by a Member of Parliament (MP) to prevent her from exposing human rights violations perpetrated by the latter as he had deserted his own disabled child. Joyce with the woman and support from journalists went to the parliament's offices in Dar es Salaam to seek audience with Abdallah Sheria the husband. Contrary to their expectations, they were arbitrary arrested with one of the journalists Beatrice from Mwananchi Newspaper being assaulted by another MP Blandes Gosbert.

²³Peace Brigades International (2010) "Criminalization of Human Rights Defenders" page 2.

²⁴UN commentary to declaration on human rights defenders 2011

²⁵ *ibid*

- On May 2015, THRDC in collaboration with PINGOs Forum organized a joint fact finding mission on the Land grabbing and gross violation of human rights in Loliondo. The mission was comprised of a team of 30 representatives from various NGOs and Media houses. At the end of the mission, the team produced a report which provided reliable and first-hand information in regard to a series of Human Rights violations in Loliondo that have been reported in the media ever since the end of 2014 to early 2015. The report produced captured violations including; Torture to villagers, Illegal prosecution, Humiliation and Harassment of local leaders, Denied right to health, Denied rights to be heard and freedom of expression, as well as Denied free movement of villagers from one village to another, among others. Among the findings in the report were arbitrary arrest, criminalization of HRDs and shrinking space of CSOs in Ngorongoro District²⁶.



Majority of HRDs interviewed during the THRDC security needs assessment in 2013 mentioned baseless charges and case fabrication among the other major threats that undermine their works.

About 70% of all respondents agreed that HRDs always face illegal charges when dealing with issues of public interest.²⁷

2.2 Physical violence, Attacks, and Torture

Despite the adaption of the Declaration on Human Rights, in every region of the world, defenders, including women human rights defenders and often their beloved ones continue to be subjects of intimidation, threats, killings, disappearances, torture and ill-treatment, arbitrary detention, surveillance, administrative and judicial harassment and more generally, stigmatization by State authorities and non-State actors. The mandate on human rights defenders in their 2011 commentaries noted clear that they are extremely concerned about allegations received over acts of intimidation, threats, attacks, arbitrary arrests, ill-treatment, torture and killings of human rights defenders who collaborate with the UN or other international mechanisms.²⁸

The situation is similar for some of the HRDs in Tanzania. HRDs from different thematic groups experienced physical violence, attacks and torture. The most at risk HRDs who received several incidences of attacks, harassment, physical violence and torture in 2015 were journalists. However for the purpose of this report these incidences' are covered under chapter five. In 2015, THRDC documented 3 cases of physical violence, attacks to HRDs and torture.

²⁶ Loliondo joint fact finding Mission available at www.thrdc.or.tz

²⁷ THRDC (2013) Protection and Security Needs for Human Rights Defenders in Tanzania-Needs Assessment Report, page 21.

²⁸ Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms pg 15

- A transgender HRDs from SOGI became a victim of harassment and threats, including death threats and killing after a tabloid had carried out a negative story about him.
- George Mgoba a human rights defender was tortured just because of his work. He was a leader of over 27,000 youths nationwide who at the time remained unemployed after they had completed the National Service training between 2000 and 2013. He was abducted and tortured and later on he and his colleagues were charged with unlawfully assembly. The DPP unnecessarily deposited certificate for denial of bail therein. The case is still on hearing stage and at the time of the compilation of this report, the HRD was still in custody. The situation is similar to what befell Dr. Stephen Ulimboka a leader in the 2012 doctors' strike that was kidnapped and dragged into an indented vehicle by a group of armed men. The duos are reported to have brutally beaten and tortured him before they deserted him in the midst of a heavy forest in Mabwepande. In 2013, Mr. Absalom Kibanda who is the Chairperson of the Tanzania Editors Forum was also attacked and ill treated. Worse still none of the perpetrators have ever been arrested meaning the State has never conducted any serious investigation on any of the above cases.

The situation of repression and retaliation against student activists, and other activists engaged in protests has been particularly harsh. The fact that the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment joined the mandate on defenders in many communications sent on student protests indicates the brutality of violations affecting student defenders. 29



<< George Mgoba lies on a hospital bed after he was found in the forest. He was abducted and tortured by unknown assailants because of his work as a defender.

Vocal HRDs can at times encounter raid in the office or attacks while doing human rights promotion and protection work. THRDC documented the increased level of office raid in Tanzania. For instance 6 offices were raided in 2015 alone. On March 2015, a women's organization office namely Faudhia Sisters was raided by unknown assailants in Bagamoyo. Similarly, on October 2015, armed policemen raided the Legal and Human Rights Centers' election hub and took several computers and mobile phones used to record field reports on the general elections. Its observers were also held by the police for sometimes before they were released. As preventive measures, THRDC in collaboration with its partners the Frontline defenders provided office security to Faudhia Sisters Organization. Among the 6 recorded incidences some were by law enforcers or unknown forces due to HRDs work, while others were not linked to such work.

²⁹ Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

2.3 State of Impunity

According to Margaret Sekaggya, a Special Rapporteur on the situation of human rights defenders, States have the primary responsibility to ensure that defenders work in a safe and enabling environment. Under this call States should end impunity for violations against defenders by ensuring that investigations are promptly and impartially conducted. Perpetrators should be held accountable; while as victims should obtain appropriate remedy³⁰.

There are only few countries which have adopted legislation or taken effective measures to end the numerous and violent attacks against defenders. Impunity continues to prevail and no specific compensation mechanisms for human rights violations committed against human rights defenders have been created.³¹

Addressing the issue of impunity, in line with article 12 of the Declaration is a key step to ensure a safe environment for defenders. The degree of security enjoyed by human rights defenders will determine the capacity to expose human rights violations and to seek redress for victims of such violations.³²

Tanzania as a State has made no significant efforts of legislation let alone take effective measures to end the numerous and violent attacks against defenders. So far it has never investigated and prosecuted cases involving the violations of HRDs rights.

The justice system in Tanzania is comprised of various entities such as the Police and the Judiciary. The Judiciary has a role to dispense justice while as the Police Force maintains peace and ensures the security of people and their properties. The Police have got the mandate to arrest, suppress, investigate and finally prosecute alleged offenders. The criminal justice system in place is too weak to dispense justice when it comes to incidents where perpetrators of the alleged violations are state actors, who essentially are law enforcers such as the police and other security officers. Among other things, the weak criminal justice system remains the main reason behind the growing state of impunity in Tanzania.

As we compile this report, perpetrators in cases that involve HRDs way back year 2012 have not been held accountable for their actions. Such cases include:

- The death of a reporter with a local television station Channel Ten, Daudi Mwangosi who died while executing his duties at a launching ceremony of an office by the opposition party CHADEMA in Nyororo, Iringa. A police officer fired a tear gas canister at a close range leading him to die in one of the most gruesome way. Authorities filed a murder case against Pacifus Cleophase Simon, a police officer who allegedly killed Mwangosi and the case has been prosecuted with delay. Ironically, to-date, none of the eyewitnesses including a journalist who took all the photos have ever been called for questioning by the police involved in the investigation.

Miserably, the State has never filed any charges let alone takes disciplinary measures against the six police officers that were involved into the brutal attack. Shockingly as it may be, the then Iringa Regional Police Commander Michael Kamuhanda was promoted to a Deputy Commissioner of

³⁰ Margaret Sekaggya (2013) Recommendations made in a Report of the Special Rapporteur on the Situation of Human Rights Defenders- December 23 2013 available at www.ohchr.org.

³¹ Commentaries to declaration on human rights defenders July 2011 pd 18

³² *ibid*

police leaving a little to be desired for. If anything, accountability should have begun with him. The killing of Mwangosi was one of the worst in the media fraternity for a country like Tanzania once considered 'heaven of peace.'

- The kidnapping of Dr. Stephen Ulimboka a leader in the 2012 doctors' strike. He was dragged into an unidentified vehicle by a group of armed men who brutally beat and tortured him before they deserted him in the midst of a heavy forest in Mabwepande.

As we compile this report in 2015, no one has been arraigned in court to answer the said charges, save for one 'fake' suspect who at the end of the day was acquitted in July 2013 on account that he had no case to answer. There have been no serious efforts by the State to investigate the case to bring to justice Dr.Ulimbokas' assailants.

Ironically, some media outlets such as *Mwanahalisi* suffered an indefinite ban from the infamous *Newspaper Act* of 1976 due to publishing investigations over his abduction and subsequently publicizing the story in series. One would have expected the government to interrogate those mentioned by *Mwanahalisi*. On a positive note however in 2015, the High Court of Tanzania issued a judgment in favor of *Mwanahalisi* for the reason that they were not given the right to be heard and thus lifting its ban for the paper

- On March 2013, the Chairperson of the Tanzania Editors Forum, Absalom Kibanda, was physically assaulted with his car being vandalized while on his way home. He was taken to Muhimbili Hospital in Dar es Salaam and later on transferred to a hospital in Johannesburg, South Africa for treatment for injuries sustained during the attacks. It is believed that Absalom was attacked because of his journalistic activities. He had previously been accused of sedition following the publication of an article in the Tanzania Daima newspaper in which he criticized the authorities for preventing a protest organized by an opposition political party. Kibanda is also an editor of the Kiswahili daily newspaper *Tanzania Daima*.
- The abduction and torture of a JKT movement leader George Mgoba in 2015 has never been investigated. Worse enough the HRD is still in custody for denial of bail by DPP.

THRDC is concerned with the state of impunity at the high level and recommends investigations with a view to bring perpetrators to justice. Investigation should be conducted to all HRDs cases, journalists killed because of their journalistic activities or human rights activities. THRDC also calls upon the government to provide legitimacy to the work of HRDs, and to create enabling environment for their operation. The State should refrain from stigmatizing the work of human rights defenders.

THRDC expects a bright future to help fight impunity in Tanzania owing to the introduction of criminal Jurisdiction, International crimes against humanity and war crimes to the African Court under Malabo Protocol on statute of the African Court of Justice and Human Rights,

2.4 Law Enforcers as Human Rights Defenders

This is a new sub- chapter in the 2015 situation report, as it provides for the general situation of police officers and the violation of their rights as human rights defenders. The sub chapter indicates that more than 10 police officers were killed with over 5 injured in 2015 where several guns and bullets were taken away by the assailants.

THRDC understands that Police officers are also Human Rights Defenders because they do protect the rights of people and their properties as a major role provided under the Constitution. The expression “Human Rights Defender” is used to refer to anybody who, individually or together with others, works to promote and protect human rights. Human Rights Defenders are above all recognized by what they do. They work to promote, protect and implement civil and political rights, as well as economic, social and cultural rights. Therefore based from the definition above, Police officers by virtue of their daily work are qualified to be HRDs.

However in reality most human rights defenders in the country do not regard law enforcers as colleagues in the trade this is simply because in most cases their rights are violated by the State through its agents such as the police. Nevertheless, THRDC believes that police officers are number one human rights defenders, only if they conduct their duties ethically and with regard to human rights principles.

Law enforcers in Tanzania are obliged to know and to apply International Human Rights Standards during their operations. Generally, they must respect and protect human dignity, maintain and uphold the human rights of all persons. The Tanzania Police Force (TPF) is statutorily mandated by *the Police Force and Auxiliary Services Act 524* to oversee the work of the preservation of peace; maintenance of law and order; prevention and detection of crime; apprehension and guarding of offenders; and protection of property.

Police officers do receive allegations of human rights violation on a daily basis. Just like other HRDS, they fight all sorts of criminal conducts, brutality, and gender based violence as well as restore peace where the security of people is at risk. It is therefore, very clear that police and human rights actors play almost a similar and mutual role in the field of human rights.



The body of a Policeman who was shot to death by bandits at Sitaki Shari Police post in Dar es Salaam in 2015.

THRDC documented some of the security incidences which occurred to police officers for the year 2015 and was shocked with a larger number of attacks and killings by a group of armed robbers, and at times ordinary citizens. The following are some of the incidences of violation which THRDC managed to capture under its protection desk;

- February 4th 2015: the murder of a police officer G. 7168 PC JOSEPH ISACK SWAI. Joseph accompanied by a local authority leader went to a house of Tisi Sirili at Dodoma Chango'mbe after a tip from a Good Samaritan that the later wanted to kill his 8 months old child. Upon arrival, Joseph is reported to have attempted to shield the child but fell down instead. It was then that Sirili turned hostile and killed him. The reports were confirmed by the Dodoma RPC David Misime.
- 21st January 2015: armed robbers attacked Ikwiriri Police station where they killed two police officers and stole two Sub machine guns.
- 27th January 2015: two police officers were attacked by assailants believed to be from al-Qaida. The latter took their two guns (SMG) with 60 bullets. Two other police officers H 507 Constable Mwalimu and G 369 Constable Manur were also injured
- 30th March 2015: armed robbers suspected to be terrorists killed two police officers and fled away with guns (SMG) as well as 30 bullets at a police barrier located near St. Mathew secondary school along Kilwa road. Those who lost their lives were D.2865 SGT Francis and E.177 CPL Michael while as the other officer with a badge number D 5573 D/SGT Ally was injured.
- 29th May 2015, a police officer from Tazara Police station was attacked by armed robbers who took his gun and left him injured.
- July 2015, armed robbers attacked Sitaki Shari Police station and killed four police officers and three civilians.



<< *The Inspector General of Police Ernest Mangu pays his last respect to the body of Joseph Swai, a police officer who died while trying to save a child in Dodoma.*

In 2015, THRDC issued several press releases condemning all the listed incidences. Moreover its National Coordinator Onesmo Olengurumwa compiled an article on police attacks and state insecurity.³³ In the article he made some recommendations to improve the situation listed hereunder:

- Enhance relationship between the police and human rights by looking at how police relate with the community and how they implement their duties without violating the rights of the people.
- The police force should increase the capacity and work with professionalism.
- The Police force should speed up the reform process and operate within a legal framework that guarantees accountability and human rights as expected in a democratic society.
- These reforms should focus on reforming community involvement in policing; infrastructures such as police stations.
- Call for public and community at large to collaborate with the police force to share any usefully information which will lead to the arrest of those involved in the killings of police officers.

³³Police attack and state insecurity https://www.academia.edu/14060369/State_of_Insecurity_in_Tanzania

Chapter 3

MEDIA SECURITY AND SAFETY OF JOURNALISTS

3.0 Overview of the chapter

Chapter three highlights on Journalists as human rights defenders. This chapter present the situation of media security and safety of journalists in 2015. This chapter discusses security challenges encountered such as harassment, criminalization, detention, torture, defamation, and suspension from their employment, denial of freedom of movement and legal challenges.



A journalist Tumaini Msowoya struggles as a secondary school teacher in Dar es Salaam (in white shirt) ruffles him up. The Latter had gone to the school to pursue a story on elections.

3.1 Specific Challenges Facing Journalists

Article 18 of the Constitution of the United Republic of Tanzania provides for the respect of freedom of expression and opinions of Tanzanians. On the other hand, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) states that “everyone shall have the right to freedom of expression”. This right shall include freedom to seek, receive and impact information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice. This right carries certain duties and responsibilities and may be subject to certain restrictions only as provided by the law.

Despite these guarantees, attacks and restrictions on journalists and independent newspapers in Tanzania are still in persistence. Journalists have been physically assaulted and threatened for the work they do while government officials and business-people often sue newspapers for criminal and civil defamation and seek significant amounts in compensation for critical articles .Several independent newspapers have been banned, some indefinitely. Journalists who cover peaceful protests against government policies and actions have also been attacked. Threats to freedom of expression generally emanate from security forces, senior government officials and some non-state actors.³⁴



Combo pics depict a journalist with---- media outlet in Kyela Masoud----- at a hospital bed and a POP following a fracture he suffered from severe beatings from the police officers in Kyela during the 2015 general elections process.

Journalists as Human Rights Defenders often face harassment, detention, torture, defamation, suspension from their employment, denial of freedom of movement and other difficulties in obtaining legal recognition for their associations. In some countries they are killed or simply “disappear”.

In 2015, the THRDC’s protection desk documented over 30 different cases of intimidation and threats for journalists in Tanzania. These incidences varied from physical, legal, digital, and psycho-social threats respectively. The number was higher compared to the 2014 situation report whereby only 20 cases were documented. This may be probably because Tanzania held its general elections in year 2015. The following are some of the attacks leveled against journalists in 2015;

3.1.1 Physical threats/incidence;

- i) On February 2015, Salva Rweymamu who at the time was the State House Director of Communications, denied access to information to a journalist namely Athuman Mtulya of *Mwananchi* newspaper.

³⁴ Joint CIVICUS Tanzania UPR report 2015

- ii) On January 2015, a former medical officer at Nyakabale dispensary in Geita region, Josephat Msafiri issued verbal threats to Jackline Masinde a journalist with Mwananchi newspaper.
- iii) On June, 2015 a Zanzibar freelance journalist, Omar Ali was attacked and severely beaten where he suffered a fracture in his legs. The attack was allegedly done by police officers who then abandoned him at Maisara grounds in Zanzibar.
- iv) On July 2015, Benson Mwakalinga, a journalist with Kyela FM Community Radio station was assaulted by a CCM local officer namely Emmanuel Bongo.
- v) On September 2015, personal guards of Davis Masha (a political aspirant for the Moshi constituency) assaulted Chadema followers as they were chanting and showing their party sign. Among those assaulted by the guards were the two journalists namely Luinda Kidemi and Oscar Uroki of Moshi FM radio. The two were assaulted as they were covering the incident.
- vi) In August, 2015 journalists in Ruvuma region were attacked as they were getting to Ruanda village to cover election related disputes. Those attacked were Kassian Nyandindi of the Business times newspaper, Aden Mbelle and Pastory Mfaume from the Songea based *Jogoo* FM radio. The latter had gone there to provide coverage to an incident where villagers had locked in the Ruanda ward officer to show their discontent with the CCM's nomination procedures.
- vii) On September, 2015 a reporter with the *Uhuru* newspaper Christopher Lissa was assaulted by guards said to belong to a political party Chadema where he went to cover a story of some people who are said to have been protesting against a move by the party's presidential candidate Edward Lowassa's move to ask Lutherans church worshippers to pray for him to become the president. The journalist was in his duty but the said guards are reported to have arrested and assaulted him claiming that he was among those who had organized the demonstration
- viii) On August, 2015 Charles Mseti, a journalist with Tanzania Daima a Kiswahili tabloid in Mwanza region and Simba Kabonga of Barmedas Television were attacked by members of the Registered Trustees Throne of Glory Ministry International church. The said worshippers did not want journalists to record an incident whereby citizens were telling them that the church had been worshipping the devil with a big snake reported to be inside. The said journalists escaped the fracas before they were severely wounded.
- ix) In October 2015, Kyela police officers assaulted a journalist with Kyela FM Community Radio. The assaulted journalist reported to have been at his friend's house when the police raided and started to assault people who were there. Prior to the assault, the journalist had been part of a group of people who were protesting to demand announcement of the 2015 election results. The Police force ordered them to leave, however, the group refused and began to chant asking for tear gas. The journalist left after the first order and the investigation by MCT indicated that Masoud Maulid was the only journalist who was assaulted in the incident.

- x) On December 2015, 15 armed people raided Radio Hits FM situated at Migombani area in Unguja and set ablaze the radio station using gasoline fuel. The reasons for the incident are still a mystery as there were no warnings or any sign of danger that could be associated with it.
- xi) On October 18th, 2015, a journalist with----- Tumaini Msowoya was attacked by a teacher at Kitunda Secondary school where he had gone to pursue a story over students illegally possessing the voter's ID. It was while conducting an interview with the headmaster that he heard some students shout and went to see what was happening only to find two students fight with the teacher beating one of the two. Before he knew it, the teacher turned to him and began to ruffle him up.
- xii) On 24th October 2015, a journalist with Sahara Media in Mwanza George Nteminyanda was attacked in Tarime. According to Mwananchi News paper, the later was attacked by Members of CCM party between 8pm and 10pm. Nteminyanda a resident of Kisesa said that he was called by the Tarime candidate for Member of Parliament Michael Kembaki to attend a party meeting at CGM hotel. Upon arrival, he found several members of the said party who ultimately began to interrogate him. He is reported to have shown them his press card but ironically, the said members ignored it and began to beat him up. Nteminyanda fell down and lost conscious from the beatings and was admitted at the Tarime district Hospital.



A journalist with Sahara Media in Mwanza George Nteminyanda sits at a hospital bed after he was attacked while conducting his duties during the general elections process in 2015. (Photo courtesy of Mwananchi communications Limited)

3.1.2 Legal threats/incidences;

- xiii) On January, 2015 the government banned the East African, a regional newspaper which had been in circulation in Tanzania for 20 years.

- xiv) On August, 2015 the Tanzania Communications Regulatory Authority (TCRA) suspended Kyela FM Community Radio for an indefinite period.
- xv) On October, 2015 the Zanzibar Broadcasting Commission banned Swahiba FM Radio from airing presidential results which were not authorized by the Zanzibar Electoral Commission. Announcing presidential results from other sources than ZEC is against the law. The closure happened on 26 October 2015 after the media outlet announced that Maalim Seif of CUF had won the Zanzibar presidential elections.
- xvi) On 13th January 2015, Joyce Kiria a woman HRDs was arrested by the police where a journalist who had gone with her to cover the incidence from *Mwananchi* Newspaper was beaten by a Member of Parliament.

3.1.3 Digital threats/incidence

Jamii Forums one of the leading social networks and Fikra Pevu were hacked and shut down by unknown hackers during and after the 2015 general elections process.

3.1.4 Psycho- social threats/incidence

- xvii) On June 2015, the Zanzibar based Coconut FM was raided by an estimated 20 people wearing hoods who came searching for a journalist Ali Mohamed Abdurrahman. The latter had prepared a special programme on voters' registration exercise in Zanzibar where it was alleged that groups of vigilantes intimidated people who went for the registration process.
- xviii) In August 2015, journalists from various media outlets in Mwanza region were barred by the police from reporting a murder case which involved Jumanne Mahende a suspect for the murder of two people in July 2015.
- xix) In September 2015, CCM dismissed Peter Elias, a journalist with *Mwananchi* newspaper accusing him of unfavorable coverage. The journalist had been part of the CCM campaigns entourage during the 2015 general elections.
- xx) A popular TV station ITV was giving a live coverage of the handing over ceremonies to the president elect Mr. John Pombe Magufuli when some members from the ruling party began chanting and hissing accusing the station for hypocrisy, nepotism and leaning towards the opposition during the election campaigns. The said members went as far as issuing mockery statements towards its owner Dr. Reginald Mengi as well as its senior anchor Samu Mahela. The Tanzania Editors Forum issued a statement to condemn the act saying it meant to intimidate the freedom of the press.
- xxi) On October, 2015, three journalists namely Felix Mwakyembe reporting for *Raia Mwema*, Brandy Nelson and Ipyana Samson of *Mwananchi* newspaper were denied access to information after the Kyela Officer Commanding District (OCD) Jingi Lissu confiscated their phones and cameras. The OCD barred journalists from recording and taking pictures of the fracas between them and residents in the area who had refused to obey an order to leave a polling station. The OCD returned their working tools after an order from the Mbeya Regional Police Commander who had been contacted by the said journalists.

3.2 Legal challenges affecting the security of Media and Journalists

The Constitution of the United Republic of Tanzania³⁵ provides for freedom of expression. Article 18 of the Constitution provides that every person has the right to enjoy the freedom of opinion and expression of his ideas. It provides further that everyone has the freedom to communicate and enjoy protection from interference in his communication. Article 19 of the Universal Declaration of Human Rights guarantees everyone with the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.

Despite these guarantees, the media environment in Tanzania is restricted by the selective implementation and application of laws with draconian provisions, some dating 40 years back. These laws have been used to ban independent newspapers and prosecute and at times jail journalists who write articles critical of government actions and specific authorities.

In 2015, several restrictive laws were introduced with many assuming it was meant to deal with the general elections. The laws enacted curtailed HRDs rights and specific freedom of expression and access to information. THRDC and CIVICUS compiled a joint UPR report and submitted in Geneva pointing out the following laws for 2015;

i) **The Media Services Bill 2015 and Access to Information Bill 2015**

- On 20 February 2015, the Government gazetted the Media Services Bill (MSD) and Access to Information Bill. The MSD was to make provisions for promotion of professionalism in the media industry, providing institutional framework for regulation of media services, establishing the media service fund and to provide for related matters. If the law were to be passed, the Bill was intended to replace the Newspaper Act (1976) and the Tanzania News Agency Act (1976). However, major sections of the Bill were very restrictive provisions, similar to those in the Newspaper Act targeting independent media. The scope of the bill includes regulation of radio, television, newspapers and related technology. It also includes social media, newsletters, journals and magazines.
- The Media Services Bill establishes a Media Services Council which will have powers to monitor social media content, license newspapers, regulate the activities of media houses, inspect media agencies, and license social media and other news agencies. The Bill provides for the establishment of an Accreditation Board with powers to enforce a journalists' code of ethics, impose fines and cancel the accreditation of journalists if the Board deems they are guilty of professional misconduct.
- Penalties for violating provisions of the Bill are severe. According to the Bill, anyone found guilty of acting with a seditious intention who commits an offence is liable to a fine of not less than 5 million Shillings (approximately US \$ 2263.5 million) or three years in prison or both. For a subsequent offence, the penalty is a fine of not less than 7 million Shillings (approximately US \$ 3156) or imprisonment to a term of not less than five years or both. A court may ban the further publication of newspapers for a period of not less than 12 months. The Tanzanian authorities have however postponed the passing of the Bill to allow the media and other arms of civil society to scrutinize it.

³⁵ Constitution of United Republic of Tanzania 1977 as revised

THRDC in collaboration with other media stakeholders under the umbrella of CORI managed to advocate for the drop down of the Bills until they are amended and improved. The campaign was successful as the MSB and Access to information Bill will be tabled again in 2016 hopeful this time with stakeholders' views incorporated.

ii) The Cybercrimes Act 2015

On April 1st 2015, the Parliament of Tanzania passed the Cybercrimes Act which criminalizes information deemed false, misleading, inaccurate or deceptive. The Act prohibits citizens or agencies from obtaining computer data protected against unauthorized access without permission. It empowers police or law enforcement officers to storm the premises of a news agency and confiscate a computer system or device and computer data if law enforcement officials believe that such information can be used as evidence to prove an offence has been committed. The police are equally given the right to search devices like cell phones, laptops or computers if they believe they contain information that can be used as evidence to prove a crime has been committed.

As of December 2015 THRDC had managed to document 9 cases ever since the Cybercrime Act became operational where section 16 of the Act was used to charge those arrested. Article 19 in their analysis they pointed out that section 16 of the Cyber crime Act which was coined to prevent publication of false information was vague. Article 19 pointed out clear that the provision of section 16 violates international freedom of expression standard, they further state that it make work of journalist covering current development unreasonably dangerous as in situation of breaking news; facts are often difficult to verify, moreover it is often debate as to what the truth of a particular matter is and state should trust citizens to reach own conclusion. Article 19 recommended the section to be struck out entirely.

THRDC documented few incidents whereby section 32 of the Cyber Crime Act has been used to infringe the freedom of expression and privacy rights as provided under Article 18 and 16 of the Constitution of the United Republic of Tanzania. THRDC documented the letter from the police force compelling **Jamii forums** to reveal information and **IP address** for some of their clients, with the police citing section 32 of the Cyber crime Act.

Cybercrimes Act, 2015 Recorded Cases

| No | The Accused –Social Media Users | Facts of the Case |
|----|--|---|
| 1 | Leyla Sinare; Godfrey Soka; Deo Edmund Soka; and Monica Soka | It was alleged that the accused disseminated false information through their whatsapp group known as 'Kundi la Soka.' Details of false information were not immediately found. |
| 2 | Yeriko Nyerere | This blogger was accused for allegedly publishing false information which could provoke violence in the country during the electoral process. |
| 3 | Benedict Ngonyani. | The Dar es salaam Institute of Technology (DIT) student was accused of publishing information on Facebook that the army chief General Davis Mwamunyage was sick due to food poisoning. Charges were preferred against him on 25 th November, 2015. |
| 4 | Case involving; CHADEMA election result management team | The accused were allegedly used by CHADEMA party to interfere with the work of the National Commission on Election (NEC), to collect and announce the results of the presidential elections through M4C Election Results Management System and through social networks such as Facebook and Twitter. They were also charged for issuing false information about the presidential results contrary to section 16 of the Cybercrime Act |
| 5 | Case involving; Israel William | He was charged with two counts of publishing and disseminating false information against the Tanzania Communication Regulatory Authority (TCRA) which he allegedly committed on 10 th September and 5 th October 2015. |
| 6 | TACCEO/LHRC | Computers and electronics devices were confiscated by the Police who accused the LHRC for publishing false information contrary to section 16 of the Cyber Crime Act. |
| 7 | JAMII MEDIA | Over five demand letters were issued to them by the police compelling Jamii forums to reveal the IP address its users at Jamii forums platforms. Police invoked section 32 of the Cybercrime Act. |

i) Statistics Act 2015

The Statistics Act imposes harsh penalties on those found guilty of publishing misleading and inaccurate statistics or statistics not approved by the National Statistics Bureau. Those found guilty of providing false or misleading statistics without authorization from the National Bureau of Statistics are liable for a one year jail term and a fine of 10 million Shillings (approximately US \$ 4500)

3.3 Right to Privacy in Tanzania and the Protection of Whistle Blowers

Privacy is a fundamental human right, enshrined in numerous international human rights instruments.³⁶ It is central to the protection of human dignity and forms the basis of any democratic society. It also supports and reinforces other rights, such as freedom of expression, information and association.

Activities that restrict the right to privacy, such as surveillance and censorship, can only be justified when they are prescribed by law, necessary to achieve a legitimate aim, and proportionate to the aim pursued.³⁷

The Constitution of the United Republic of Tanzania³⁸ guarantees the right to privacy under Article 16:

16. - (1) Every person is entitled to respect and protection of his person, the privacy of his own person, his family and of his matrimonial life, and respect and protection of his residence and private communications.”

(2) For the purpose of preserving the person’s right in accordance with this Article, the state authority shall lay down legal procedures regarding the circumstances, manner and extent to which the right to privacy, security of his person, his property and residence may be encroached upon without prejudice to the provisions of this Article.

Article 18(c) of Constitution further guarantees the freedom to communicate and protection from interference, and reads as follows,

“18. - Every person -

(c) has the freedom to communicate and a freedom with protection from interference from his communication

In year 2015, THRDC documented several incidences/threats and violation of privacy rights against HRDs and this was specific for Jamii Forums. **Jamii Media** is a registered company which owns and runs websites of **JamiiForums** and **Fikra Pevu** with more than 2.4 million users. Jamii Forums as one of the websites provides an access to users to post, engage and follow up posts of various issues and information of various matters regarding the society. The forum among others allows users to post on its websites by using anonymous or other hidden identities, with a guaranteed declaration of the users IDs protection (under the websites Privacy Policy)

In 2011, JamiiForums, an online forum that has been called the “Kiswahili replica of Wiki leaks, was clone by the Tanzanian government to disrupt the conversations of members associated with the opposition. The founders of the forum were also detained and interrogated for 24 hours in 2008.³⁹ On top of that the Managing director was in several occasions summoned to disclose information of whistle blowers who post information which reveal grand corruption and tax evasion issues.

³⁶Universal Declaration of Human Rights Article 12, United Nations Convention on Migrant Workers Article 14, UN Convention of the Protection of the Child Article 16, International Covenant on Civil and Political Rights, International Covenant on Civil and Political Rights Article 17; regional conventions including Article 10 of the African Charter on the Rights and Welfare of the Child, Article 11 of the American Convention on Human Rights, Article 4 of the African Union Principles on Freedom of Expression, Article 5 of the American Declaration of the Rights and Duties of Man, Article 21 of the Arab Charter on Human Rights, and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Johannesburg Principles on National Security, Free Expression and Access to Information, Camden Principles on Freedom of Expression and Equality.

³⁷Universal Declaration of Human Rights Article 29; General Comment No. 27, Adopted by The Human Rights Committee Under Article 40, Paragraph 4, Of The International Covenant On Civil And Political Rights, CCPR/C/21/Rev.1/Add.9, November 2, 1999; see also Martin Scheinin, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,” 2009, A/HRC/17/34.

³⁸The Constitution of the United Republic of Tanzania, 1977. Available at: <http://www.judiciary.go.tz/downloads/constitution.pdf>

³⁹CIPESA, State of Internet Freedoms in Tanzania 2014: An Investigation Into the Policies And Practices Defining Internet Freedom in Tanzania, May 2014. Available at: http://www.cipesa.org/?wpfb_dl=182

Some suggested that the Cybercrime law was specifically enacted for Jamii forums. This may probably be true because few months after the Act came into force some provisions were used by the Police force to arbitrary demand Jamii forums to disclose some information and IP addresses of their client.

The Police cited section 32 of The Cyber Crimes Act to compel Jamii forums to disclose information. THRDC is of the view that the section infringes the right to privacy as provided for under Article 16 of the Constitution of The United Republic of Tanzania of 1977. Furthermore the arbitrary application of the provision of section 32 of the Cyber Crimes Act restricts the right to freedom of expression as provided for under article 18 of the Constitution of the United Republic of Tanzania of 1977 as amended.

Furthermore, section 38 of the Cyber Crimes Act restricts appearance of a person against whom an application is made for self defense before the court of law. THRDC is of the view that the section infringes the right to be heard as provided for under the Constitution of United Republic of Tanzania of 1977 as amended.

In 2015, the government enacted the Whistle Blower Act 2015, yet to come into force. Needless to speak, the law itself does not provide enough protection for whistle blowers especially those using social media platforms to reveal information of public interest. This is simply because the definition of the Act is too narrow to cover the same and limits a person who unveils it for only competent authority something which is almost impossible for the Tanzanian environment.

Section 3 of the Act;

“Whistleblower” means any person who makes disclosure of wrongdoing in accordance with the provisions of this Act;

“Competent Authority” means-

- (a) *in the case of a wrongdoing committed within a public or private institution, a superior person of that institution who has an authority to investigate the wrongdoing reported or, if the matter is beyond his powers, to forward the same to another institution responsible for investigation; and*
- (b) *in the case of a wrongdoing that is committed outside a public or private institution, a superior person who has an authority to investigate the wrongdoing reported;*

The wording of section 4 of the Act covers only a person who discloses information to the competent authority and according to the definition the above competent authority has being defined in a narrow way and does not include a person who discloses information using social media, or media or any other way.

Public Interest disclosure 4.-(1) *any person may make a public interest disclosure Before a Competent Authority if that person is of reasonable belief that-*

THRDC recommends the amendment of this Act and the section to remain; *‘any person who makes a public interest disclosure’*

Chapter 4

SECURITY MANAGEMENT

4.0 Level of Security Management and Protection Measures

Security management never ends due to its pragmatic, partial and selectivity because of its complexity process. ⁴⁰Security management is basically a long term overview to prevent risks, attacks and security incidences likely to happen to an individual HR or to the HRDNGO.

HRDs normally protect others and forget to protect themselves. Security to HRDs is very important because they are valuable human beings and their work is most of the time risky. HRDs working environment differ depending with the case and the environment that a HRD is working in.

The numerous risk and threats attracts HRD work and there is great need to incorporate security in the HRD's activities work plan. Security management and protection measures are dynamic depending with the nature of the environment like political, the group that HRDs is dealing with, as well as risk and threat behaviours that HRDs come across in the cause of executing their duties.

To HRDs and HRDNGOs security does not only mean physical environment but also digital security protection measures which can be planned for an individual HRD or for the HRD organization and both. HRDs need to secure their information from reaching the unintended person by always serving the information at the cloud and making sure all the devices are locked when HRDs are off using them.

Security management is still a challenge for HRDs safety in Tanzania in particular its strategies and implementation. HRNGOs are yet to take security and protection essence into great consideration due to the little security management knowledge capacity coupled with lack of sufficient fund to cater for advanced technological security tools such as CCTV Cameras and Security systems alarms for appropriate security measures.

The concept of security management is to some of HRDs in Tanzania a new concept despite being exposed to risks and threats when doing their HR defending activism. The Coalition surveyed the level of security management among HRDs in Tanzania and discovered that they lack strategies and plan to protect individuals and groups against violations.

The Coalition did not conduct a security needs assessment to ascertain the level of HRDs security management in Tanzania for the year 2015 but the 2013's security needs assessment conducted dwelt on the following;

⁴⁰<http://www.psicosocial.net/grupo-accion-comunitaria/centro-de-documentacion-gac/areas-y-poblaciones-especificas-de-trabajo/desgaste-y-seguridad-para-activistas/680-new-protection-manual-for-human-rights-defenders/file>

- (i) Security policies and plans;
- (i) Provision of security management trainings;
- (i) Staff security awareness compliance and inclusion of security measures in programs;
- (i) Available resources for security, protection and Office security.

The Coalition insists on continuing to empower HRDs with security management tools and trainings specifically to create a more secured working environment for HRDs and ensure they operate in a less risk environment if not secured. The coalition’s security management trainings are designed to cover matters on Protection mechanisms, Security decision making, recognition and response to security incidences, prevention and reaction to aggression, as well as the organization and home security. Generally the training empowers HRDs with the security management tools for their office and individual security improvement.

4.1 Office Security.

In security management measures, security can basically be achieved by making sure one prevents unauthorized access and possible attacks of the office under any cost⁴¹ no matter where the HRDs office’s location is. Office security strategies differ from one HRDs office to another depending on its location.

In rural office location where electricity can sometimes be a challenge, security gears such as electrical fences, security alarms and security camera which are mostly used for security in urban located offices can be almost impossible to use. However, rural located offices can adopt security gears such as trained dogs and human security guards as well as developing good relationship with the community living around and other manual security gears since they have no electricity for electrical security gears.

Findings for the 2013 Needs Assessment indicates that over 95% off all visited and assessed offices are at risk because they lack key security items for office security. Data at the table below indicates that only four out of the 200 visited offices had security gears such as security alarm and CCTV while only 31 offices had professional security guards available for 24 hours and 29 offices (14.5%) had only security guards who work only at night with 130 offices (65%) having none.

| | Poor | Fragile | Basic | Advanced | Professional | Total |
|-----------------------------|-------|---------|-------|----------|--------------|--------|
| Security Fund | 190 | 7 | 3 | 0 | 0 | 200 |
| | 95.0% | 3.5% | 1.5% | 0.0% | 0.0% | 100.0% |
| Security gears such as CCTV | 196 | 3 | 1 | 0 | 0 | 200 |
| | 98.0% | 1.5% | 0.5% | 0.0% | 0.0% | 100.0% |
| Security Guards | 130 | 18 | 29 | 17 | 6 | 200 |
| | 65.0% | 9.0% | 14.5% | 8.5% | 3.0% | 100.0% |

Source: THRDC 2013 Security Needs Assessment Report ⁴²

⁴¹ Our aim in improving security can be summarized in three words: Prevent unauthorized access. This is true whether your office is in an urban or rural area. In rare cases it may also be necessary to protect an office against a possible attack (against bombing, for example)

⁴² THRDC (2013) Protection and Security Needs for Human Rights Defenders in Tanzania-Needs Assessment Report.

HRDs through their focal persons and security management trainings feedbacks mentioned insufficient resources as one of the major factors that affect affordability of buying and adopting professional security guards and technological security gears. Some of the interviewed HRDs mentioned hiring a professional security guard and buying security gears such as CCTV security cameras as a cost they cannot afford. Responding to the status of security funds question, almost 190 (95%) of all HRDs interviewed pointed to have had insufficient funds raised or allocated for security management. The situation from 2013 to 2015 remains almost the same as majority of HRDs from rural areas who attended security management trainings in 2015 still mention lack of insufficient fund as the major challenge for them to afford more technological security gears.

Other organizations can borrow a leaf from THRDC on security and protection measures that has been taken to insure the organizational and secretariat is secured. The coalition's office has good security and protection gears such as electronic security doors and gate alarm as well as security electric fence all together serviced by one private Security Company.

THRDC calls upon fund supporters to explore the possibility for security and protection measures by providing financial support and budget allocation to HRDNGOs. It further calls for HRDs to plan and implement their security plans and strategies in accordance to the surrounding environment of their organizations and work in general.

4.2 Security Policy

A security policy is a document description of organizational mandate in relation to security doubts, HRDNGOs security and protection management as well as the organization working environment. The security policy needs to clearly state on individual, organization and inter-organization security of its HRDNGO. The most advantage an organization has by having security policy is to reduce risks which are likely to face HRDs and also guide in security informed decision making during the security incidences.

An organization needs to have in place a security needs assessment and use security policy as a guideline when making a security plan. So a security plan is security implementation strategies that an organization can make day to day plans or long term plans. Security plan observe reduction of threat, vulnerability and increase the protection capacity of HRDs⁴³.

The Coalition assessed HRDNGOs on security rules and regulation in maintaining security to its staff members and found that, the situation encountered by THRDC in 2015 is more likely to be similar with the situation in 2013 and 2014. For instance, the 2013 Needs Assessment indicated that only four NGOs had security policies at the basic level. Such Organizations were Action Aid Zanzibar, Care International Mwanza, OXFAM –Arusha and DONET in Dodoma. The observation by the Coalition indicates that almost all HRNGOs with international status have security policies and plans for the security of their staff and properties. Security management knowledge and sufficient resources were among reasons given as to why only international HRNGOs have security policies and plans.

⁴³ http://protectioninternational.org/wp-content/uploads/2012/04/1-7_Manual_English_3rdEd.pdf

Despite the THRDC successes in sensitizing security aspect to HRNGOs, little results have been observed whereby in 2014 the only organizations which managed to establish security policies were WLAC, TGNP and ENVIROCARE. The said organizations consulted the coalition during the security making process. As of year 2015, none of the HRDNGOs had managed to draft its security plan. THRDC advises and encourages HRDNGOs to formulate their own security management policies and plans to ensure that they stay safe in pursuit of defense activities.

4.3 Awareness and Compliance of Staff Security

Lack of proper security knowledge among HRDs in Tanzania has been identified as one of the concrete challenges to their security and protection. Security incidences come with prior threats or signs of risk. Most HRDNGOs don't take security aspect seriously and their offices are not in a good security condition. They also lack sensitivity to risks most likely to face them.

HRDNGOs tend to ignore the security principles like insuring the visitors' register books are detailed filled by whoever visits the office. They also tend to ignore reportage of any suspicious action to the security organs, the office management as well as security crew. They also tend to ignore to carry out a security office needs assessment from time to time. With security tools, HRNGOs has to incorporate security strategies in their pursuit towards defense activities plans.

4.4 Security Management Training

One of the major roles of THRDC is to ensure the security of HRDs by empowering them with security management knowledge through trainings. THRDC organizes security management trainings to HRDs across Tanzania to create and expand their knowledge on security management and risk assessment. Security management training topics are designed to cover issues of security and they include work environment risk assessment, threat assessment, reaction to threats and security incidences as well as preparation of security plan and strategies. All these together can result to a secured environment for HRDs.

As of year 2015, there were only 230 HRDs who attended security management training compared to the 400 in year 2014 respectively. The decrease of attendants was due to the Coalition changing its focus to train elections stakeholders such as judges of the high court and registrar ahead of the general elections. It is suffice to say that it is due to the security training that the country experienced little security incidences during the 2015 general elections compared to 2010 and more still to be evaluated from the training.

The Coalition expects wide use of security management knowledge gained from the security management trainings by HRDs on ensuring their security when defending others, and not to withhold the knowledge they acquire but rather share with others in and out of their organizations.

To individual HRDs or HRDs organizations, the necessity of security strategies in the defense work is something not to be ignored. THRDC has the duty to ensure that the security management knowledge is clear among HRDs and that they are able to include security measures in their defense programs.

Chapter 5

THE CIVIL SOCIETY SPACE IN TANZANIA

5.0 Overview of the Chapter

Civil society contributes to the promotion, protection and advancement of human rights in every single day and every part of the world. Civil society organizations or actors as may be called, work for a better future and share common goals of justice, equality, and human dignity. Major tasks of CSOs are to promote awareness of rights, assist communities in articulating concerns, shape strategies, influence policy and laws, and press for accountability. They also collect and channel views of communities so that they can be fully informed of decision-making on public policies.

“If leaders do not listen to their people, they will hear from them – in the streets, the squares, or, as we see far too often, on the battlefield. There is a better way, more participation, more democracy, more engagement and openness. That means maximum space for civil society,” UN Secretary-General Ban Ki-moon’s remarks at the High-level event on supporting Civil Society, 23 September 2013.

This chapter will analyze the meaning of civil society, historical background and general process of registration and legal constraints in Tanzania. It will touch on the working environment that is the civil society-state relationship and an overview of challenges encountered by civil society during the 2015 General elections. It will also highlight on the general challenges to civic space. The final part will analyze way forward providing for conditions which enhance civic society space in the country.

5.1 Introduction

The World Bank has adopted a definition of civil society developed by a number of leading research centres: The term civil society refers to the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil Society Organizations (CSOs) therefore refer to a wide of array of organizations: community groups, non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations⁴⁴

⁴⁴<http://web.worldbank.org/wbsite/external/topics/cso/0,,contentmdk:20101499~menupk:244752~pagepk:220503~pipk:220476> retrieved on 23rd march 2016 11:50am.

Civil society actors include human rights defenders, which also include on-line activists, human rights organizations, specifically non-governmental organizations and associations; coalitions and networks; community-based groups (indigenous peoples, minorities, rural communities); faith-based groups (churches, religious groups); unions (trade unions as well as professional associations and public institutions that carry out activities aimed at promoting human rights to mention a few.⁴⁵

Civil society space is a space where civil society actors occupy within the society; the environment and framework in which they operate; and the relationships among civil society actors, the State, private sector and the general public.⁴⁶

The number of CSOs continues to increase, with about 1,000 new CSOs registered annually under various laws. Many different authorities register CSOs, including the Directorate of NGOs of the Ministry of Community Development, Gender and Children, which registers NGOs; the Ministry of Home Affairs, which registers societies; the Registration Insolvency and Trusteeship Agency (RITA), which registers trusts; and the Ministry of State President's Office, Constitution and Good Governance (Zanzibar) which registers NGOs in Zanzibar. According to data from these authorities, the number of registered CSOs was 19,489 in 2013 but as of today the number of CSOs is approaching 30,000. The number of active CSOs, however, is estimated to be smaller. (The 2013 CSO Sustainability Index for Sub-Saharan Africa)⁴⁷

The key features of Civil Sector include separation from the state and the market; formed by people who have common needs, interests and values like tolerance, inclusion, cooperation and equality; and development through a fundamentally endogenous and autonomous process which cannot easily be controlled from the outside.⁴⁸

5.2 Historical background of CSOs in Tanzania

Civil society in Tanzania has been shaped during distinct historical periods: the pre-colonial era, the colonial period (up to independence in 1964), the Post-Arusha Declaration period (1967-85), and the Liberalization period.

Traditional societies in the form of burial groups, conflict management groups, and traditional cultural groups have existed from the pre-colonial era throughout colonial period. They were highly discouraged and declared illegal by colonialists as they were considered uncivilized. Professional, religious groups and cooperative movements flourished especially during the colonial era and some stronger movements mainly the Tanganyika African National Union (TANU) led to the Tanganyika Independence in 1961.⁴⁹

45 UNOHCHR (2014); *Civil Society space and the United Nations human rights system; A practical guide for Civil society* pp 3-4. Also available on www.ohchr.org

46 *Ibid* Civil Society space and the United Nations human rights system pp 5.

47 Olengurumwa, O (2016). *The Shrinking Space of Civil Society in Tanzania. A Paper Presented During Kepar Annual CSOs Forum on the Space of CSOs in Tanzania.*

48 Dr. Aisha Ghaus-pasha); *Role of civil society organizations in governance; Paper presented at the 6th Global Forum on Reinventing Government Towards Participatory and Transparent Governance 24 – 27 May 2005, Seoul, Republic of Korea.*

49 Ndumbaro L and ; Othman Y(2007) *The third sector in Tanzania : capabilities and challenges of civil society organizations, Aga Khan Development Network : University of Dar es Salaam, Tanzania.*

The second phase is the period between 1965 and 1985. This is remembered for its systematic inhibiting of independent social, political, and economic activities following the introduction of a single party rule in Tanzania in 1965 and of a socialist and self-reliance ideology in 1967. These two institutional developments meant, among other things, that all organizations were either co-opted under the ruling political party or made to adhere to party/government guidelines in their operations. These processes prevented any activism of potential pressure groups such as those organized by or for young people, women, students and workers.

The third phase came between the mid 1980s and early 1990s. The inception of this phase was linked to economic hardships and the consequent International Monetary Fund (IMF) initiated restructuring process which compelled the government to reduce control of the State over public affairs, including service provision. From this period, the proliferation of private service providers indicated a reorganization of activities in response to market demands and the principles of a liberalized economy.

Finally, the fourth phase is associated with the era of political pluralism, beginning in the early 1990s to the present. It is a phase that opened political space in the context of introducing multi-party politics and other forms of political pluralism. As a result of this opening, many locally initiated lobby organizations emerged and, in many ways, could be said to have given confidence to civic-led contestations and struggles for more democratic movements.⁵⁰

5.3 Why Civic Space

In the modern society the main common sectors legally recognized to form part of the main state sectors include **Public Sector**, which is the government and its branches; A **Civil society** or Civil Sector which is comprised of groups or organizations working not for profit, in the interest of the citizens but operating outside of the government; and the **Private sector**, which includes businesses and corporations.⁵¹

Civic space is essential for the healthy functioning and development of any society. It is considered a precondition for accountability in governance and social justice. Civic space is critical to enable all members of the society to contribute to public life. It is also significant in empowering them to exercise their fundamental rights of information, expression, assembly, association and participation.

Before and after independence and mainly in the modern democracies, CSOs have been at the forefront of agitating for reforms and increased involvement of the citizens in the governance structures. Since the re-introduction of multiparty democracy in Tanzania CSOs have played a significant role of transforming Tanzania's politics through various ways including the creation of public social capital.

When civic space is restricted, human and civil rights are denied, government accountability is jeopardized, citizen voices are silenced, civic energy is sapped, confidence in state authorities is eroded and opportunities for dialogue and development are lost.

⁵⁰ *Ibid*

⁵¹ Olungurumwa, O (2016). *The Shrinking Space of Civil Society in Tanzania. A Paper Presented During Kepar Annual CSOs Forum on the Space of CSOs in Tanzania.*

5.3.1 Civic Space at International Level

International, Regional civil society and Sub region coalitions have an important role to play as a complement and a backup to national groups. They are less exposed to risks compared to national CSOs and in many cases they can really contribute, influence and pressurize member states through the regional and continental bodies on regional policy issues. For many International CSOs cooperate with UN without any commotion. UN and EU, AU have taken a number of efforts to protect and expand the Space of CSOs. There are a lot of international and regional instruments and initiatives for creation and protection of Civic Space.

5.3.2 Civic Space at National Level

African countries can only gain from their definitive move towards economic and social development in allowing a genuine participation of all stakeholders, but too many countries on the continent, members of the AU, have adopted and continue to adopt national legislations reducing civic space. It is then important that the AU steps in on this unfortunate trend to seriously question the shrinking of civil society space in a number of its member states and stop it. Agenda 2063 rightly said that the realisation of the agreed aspirations needs the “ownership and mobilization of African People (...) in their various formations”. This must start at national level.

5.4 The Shrinking Space for CSOs in Tanzania

The shrinking space of CSOs refers to failure to carry out its roles due to both internal and external factors. It is now a common trend all over the world but mostly in developing countries to see the closing Civic space. Civil society may be diverse and well-organized but there are still a number of challenges that they face.⁵² There is a growing trend or restricting, controlling and censoring the work of CSOs in the country in terms of marginalization, exclusion, repressive laws and hostile relationship with state officials. In 2014 and 2015 the Coalition's Protection desk received and documented about 20 CSOs claims of suppression or rather ban by state actors. All claims received were assessed and technical support was provided where necessary. 53

Also, CSOs space constrains mainly relate to problems with poor networking and cooperation and solidarity, disunity in criticizing the government and policy formulation, geographical coverage, ownership, funding and lack of capacity and trained personnel in critical issue. Every organization has its own strategic plan. However, there is a need for joint efforts during the implementation of their strategic plans.

5.4.1 Legal framework and constraints for CSOs

CSOs in Tanzania are registered and established under different authorities which are the Business Registration and Licensing Agency (BRELA) in charge of registration of companies that do not have share capital (Companies limited by guarantee) mandated by the Companies Act, Cap. 212; the Ministry of Home Affairs under the Societies Act which has mandate over all associations including faith based and sports clubs, while the Registration Insolvency and Trusteeship Agency (RITA) under the Trustees' Incorporation Act registers and regulates all trustees.

⁵²Olungurumwa, O (2016). *The Shrinking Space of Civil Society in Tanzania. A Paper Presented During Kepear Annual CSOs Forum on the Space of CSOs in Tanzania.*

⁵³Ibid.

NGOs were for the first time legally acknowledged in the NGO Act 2002 and amendments of 2005. Currently, the Directorate of NGOs of the Ministry of Community Development, Gender and Children, is responsible for the registration of NGOs in Tanzania. The National Policy on Non Governmental organizations (NGOs) encourages government partnership with private sector to complement on government's efforts to promote democracy, human rights and rule of law in the country. The new Act is considered a merely state's attempt to control NGOs and not enabling an environment where CSOs can evolve independently.

The provisions of Section 11(3) of the NGOs amendment Act, requires NGOs that are established under any other written Laws in Tanzania, where their status requires registration under the NGOs Act, to apply to the Registrar for Certificate of Compliance.

The Act further guarantees that, the Certificate of Compliance shall be issued upon satisfaction by the NGO, be it local or International, of the terms and conditions for registration under the NGOs Act. The Certificate thereof issued shall have a similar effect as a certificate of registration.

Recently we have witnessed a controversy between the Companies Act and the NGOs Act on establishment and operation of CSOs. Action Aid Tanzania (AATz) is one among the victims of the current controversy and lack of clear interpretation and operation of the NGOs Act in Tanzania. AATz began its operation in the year 1998 with a mission to reduce poverty by empowering the poor. In 2000, it adapted a Human Rights Based Approach to Development (RBA) that coins its understanding to poverty and serves as its overarching development approach. It was registered as a company limited by guarantee with no shares and secured Certificate of Incorporation on February 23, 2011. Since then, it has been submitting reports, informing changes in office bearers and has been complying in paying annual fees to BRELA. Among the AATz activities were to conduct research and publish findings on land grabbing in the country.

On 24th March 2015, AATz presented a research report on Bagamoyo where the government of Tanzania was involved in the 20,000 hectares land investment scandal. The report was presented during the World Bank Conference on Land & Poverty. Ever since that day, AATz began to face threats of deregistration from the Government through the NGO unit. Despite submission of all necessary documents in Compliance, the Registrar orally informed AATz that the office no longer issues certificate of compliance following the Government Notice / Circular of January 9th 2015 and that they were required to apply afresh.

One wonders over why then was Action Aid told to start a fresh registration if at all the law provides that the Certificate of Compliance issued by NGO unit has a similar effect as that of registration. The question is what would then be the status of the previous registration and its reasons. This is a repressive provision which minimizes the operation of CSOs in the country.

The disturbance of the AATz nature continues to face operation of CSOs in the country. NGOs are being deregistered and in some points directors of various NGOs have been arrested because of not fulfilling the compliance requirement.

5.4.2 The Relationship between Civil Sector and the State

State-civil society relations constitute an important component of its operations. The relations range from registration procedures and working environment. In Tanzania, CSOs have been degraded and labeled as opposition parties or simply there to serve donors' interests. This creates an unsafe working environment for them. In 2015 for example the then Minister for Home affairs Mr. Mathias Chikawe threatened to deregister CSOs particularly FBOs that would engage in civic education on the proposed draft constitution and the general elections. In the same year the Coalition's Protection desk received and documented about 20 CSOs claims of suppression or rather banning by state actors.



Former Minister of Home Affairs Mr. Mathias Chikawe was once quoted to have threatened to deregister FBOs that would engage in civic and voters' education.

With regard to state cooperation and support, the general relationship in Tanzania is one where with occasional, but isolated incidents when the government and CSOs have worked together and cooperated. Civil societies have been regularly invited by the government to participate in policy dialogues, including the National Strategy for Growth and Reduction of Poverty, decentralization and local government reforms, privatizations, constitutional and legal reform processes. In 2015, limited space for civil society engagement with government existed. This can be exemplified by limited consultations made to CSOs by the government while preparing its Universal Periodic Review Report (UPR).

The UPR is a unique Human Rights mechanism and an important process for advancing the realization of human rights nationally, regionally and globally. It is universal as each of the 193 UN Member States is peer-reviewed on its entire human rights record every four and a half years. Each State under Review (SuR), is required to submit a report on the status of implementation of the recommendations and voluntary pledges from the previous cycle.

Governments are required to consult with CSOs in the preparation of the report, a requirement which if not adhered to may nullify the whole process. In this case however, sufficient consultations were not done by the government of Tanzania save for one during the validation of the government report.

5.6 CSOs Participation in Elections

Political and democratic roles are some of the key roles played by CSOs in Tanzania. These roles include but not limited to augmenting and influencing change (policy, development, lobbying and advocacy for a particular cause); playing a part in elections (civic/voter education and election observation); nurturing of democratic norms and processes and breeding grounds of democratic leaders.

On 25 October 2015, the United Republic of Tanzania held its fifth multi-party general elections since the abolition of the one-party system in 1992. Tanzanians went to the poll to cast their votes for the president, MP and local councils and the process was held simultaneously for the Union and Zanzibar, which has its own president, parliament and local councils. The 2015 elections were vigorously contested, and saw the ruling Chama Cha Mapinduzi (CCM) face, for the first time, a coalition of the largest parliamentary opposition parties fielding a single Union presidential candidate. In addition to candidates from CCM and the Umoja wa Katiba ya Wananchi (Ukawa) coalition, comprising the Chama Cha Demokrasia ya Maendeleo (CHADEMA), the Civic United Front (CUF), the National Convention for Construction and Reform (NCCR-Mageuzi) and the National League for Democracy (NLD), six other parties competed for the Union presidency, of which the candidate for the Alliance for Change and Transparency (ACT) was the only woman.

About 600 NGOs participated in the electoral process directly or indirectly through coalitions and networks during the 2015 general elections. These statistics indicate that there is less involvement of CSOs in electoral processes both at rural and national level. Another type of CSOs that participated in 2015 election includes academic institutions, professional institutions and faith based organizations (FBOs).

The electoral cycle posed a lot of challenges to CSOs mainly confrontations from state security agents and use of draconian introduced laws mainly the Cybercrime Act, 2015 which to a large extent hindered civil society work during the election period.

TACCEO under the Legal and Human Rights Centre Secretariat was accredited by NEC to be domestic observers in the Voters' Registration Exercise using the new system - BVR technology and thus deployed six (6) observers namely Grace Mwangamila, Amina Uddi, Jackline Simkanga, Humphrey Josiah, Wilson Raphael, and Samuel Stanley. The said observers were deployed on 21st February, 2015 to Makambako Town Council where the registration exercise was expected to be conducted for 28 days that is from February 23rd to March 25th, 2015 in 87 registration centres in 12 Wards.

5.6.1 The Attack and Assault of TACCEO BVR Observers

On March 7, 2015 around 22.45pm, 6 armed police officers stormed into the room of TACCEO BVR observers namely Mr. Humphrey Josia and Wilson Raphael in Makambako Town Council. The latter had been writing their daily/ weekly field report when state organs came in and began to crucify them mercilessly purporting that they were bandits. The state organs said they were searching for 6 laptops which had been stolen at Mafinga in Iringa region. The entire operation posed threat to the life of the aforementioned observers.

It is noted that, the Police squad was acting illegally without following procedures provided by the law for arrest and seizure. Moreover they used unreasonable force for innocent, unarmed people who obeyed and responded to whatever ordered to them. Excessive use of force which has led to assault is unlawfully and unacceptable in the country which purports to adhere to the rule of law and good governance. Section 53 of the Criminal Procedure Act Cap 20 stipulates the rights of the people who are under arrest at the same it imposes the duties to the police officer to do the following when arresting suspects:

- That the police officer has to introduce himself/herself ;
- Explain the reason for arrest or search,
- Give suspects time to introduce him/herself,
- Further section 55 of the same Act provides that a person shall, while under restraint, be treated with humanity and with respect for human dignity.
- And that No person shall, while under restraint, be subjected to cruel, inhuman or degrading treatment.

Ironically, police officers in Makambako ignored all of the above procedures. The TACCEO observation team reported the matter to Makambako Police Station after the incident where the OC-CID exonerated himself as being unaware saying he had not authorized his officers from his station and that perpetrators came from Mafinga, Iringa region to invade and assault the BVR observers in Makambako district, Njombe region. This could be attributed to sheer professional incompetence of the Tanzania police force, corruption or a conspiracy hatched against BVR process observation by TACCEO.

Following the attack, TACCEO Steering Committee and THRDC convened an immediate meeting on 8th and 10th March, 2015 and came up with the following resolutions;

1. Immediate withdraw of all the six observers from Makambako until TACCEO received security assurance from the relevant authorities as the matter needed to be dealt legally and administratively.
2. The Police Force should name before the public all Police Officers who invaded and assaulted TACCEO BVR observers and state on measures taken against them.
3. The government and the police force to ensure maximum security to all election stake holders including domestic and international observers during BVR exercise, referendum and general elections.
4. To convene a meeting with Civil Societies Organizations to strategize on the issue of security during the coming democratic processes(The First Meeting on 16th March)
5. To institute a constitutional case against the Police Force over the violation of human rights against Wilson Raphael and Humphrey Josia.
6. THRDC to convene a meeting with the deputy IGP immediately after obtaining a summary of the incident on 11th March 2015.
7. The meeting agreed also to send official information to NEC and call them to condemn the act.
8. To consult some members of Parliament in order to introduce the agenda in the Parliament.
9. To start deliberating about instituting a legal case against the six police men.

5.6. 2 The Arrest of 36 Election Domestic Observers

On 29th October, 2015 the TACCEO election observation centre was ambushed by armed police officers at its Kawe Beach office in Dar es Salaam. During the incident a total of 36 staff and volunteers were arrested and later on, after a long interrogation, bailed out at the Central Police Station in Dar es Salaam. Ironically, the arrest took place hours before the NEC announced the winner for the presidential seat. All the suspects are due to appear in court should the initial investigation indicate any offenses as per Cybercrimes Act, 2015.



Election observers busy at the TACCEO Election Hub before they faced the wrath of the Cybercrime Act.



<< Officials from TACCEO at the police station finding out the fate of their observers and working tools.

Strangely and shocking enough, days later, a re-known human rights activist who is the Executive Director for the LHRC Dr. Helen Kijo- Bissimba with two of her family members and a driver was involved in a deadly road accident causing her to suffer severe injuries including a fracture that she is still nursing as we report. She was admitted at the Aghakan hospital and then Muhimbili National Hospital before she was referred to India for further treatment. The accident raised some eyebrows among the public owing to the timing although no one has been able to confirm over whether it was human error or foul play. The accident remains a mystery in particular due to the nature of the tension that accompanied the general elections 2015 and specifically the significant role played by LHRC as well as the strong stance by Dr. Helen in the whole process.



<< Left is the car which Dr. hellen Kijo Bisimba got an accident with and on the right is when she was being admitted to the hospital. The accident raised eyebrows among the public over possible foul play.

Other factors towards poor participation of CSOs in elections and other democratic processes;

- Lack of Resources for Election Programs
- Direct Involvement of Donors or agents of donors in implementations of election/democratic/ social-economic program
- Insufficient knowledge on the part of CSOs especially those in rural areas on how they can engage in democratic processes.
- Overconcentration in few areas of intervention making other areas underexploited
- Increasing number of International NGOs with local programs especially during elections.
- Fear among CSOs due to security challenges from the existing regime, for instance Zanzibar CSOs were highly affected by the political landscape.
- Inadequate CSOs coordination especially on joint intervention.

5.7 Way forward towards enhancing Civil Society Space in the Country

The international legal obligations require States to create economic, political, social and cultural, legal environment that actively support the ability and capacity of persons, individually or in association with others to engage in civic activities. Therefore, the following needs to be done by the government, CSOs themselves and development partners at both domestic and international level to enhance civic space in the country;

- The government should create a conducive political and public environment to encourage civic contribution. In practice, institutions and public officials are responsive to civil society actors in their regular interaction. They have a duty to establish a supportive regulatory framework including legislation, administrative rules and practice in line with international standards which safeguard civil society activities.
- The government should ensure there is access to justice for civil society actors, independent and effective national human rights institutions, and access to international human rights mechanisms are all integral to this framework. Sound laws and policies are vital, but will remain ineffectual if not properly implemented.
- Develop a free flow of information - The government should ensure that there is free access to ideas, data, reports, initiatives, and decisions to enable CSOs to become aware and informed about issues, articulate concerns, engage constructively and contribute to solutions.
- Lastly, the government should make sure it creates a shared space for dialogue and collaboration to create a place for civil society decision-making processes.

Chapter 6

GENERAL CONCLUSION AND RECOMMENDATIONS

6.0 Conclusion

The 2015 Tanzania Human rights defenders situation report indicates that HRDs in the country still operate under hostile environment, politically, legally and financially. The report indicates that HRDs are continuously harassed, attacked, and at times incriminated just because of their work as human rights defenders. It also points out over a drastic shrinking space for civil society operations in the country. This is against the principles of human rights and the Declaration for Human Rights Defenders of 1998. THRDC through the report comes with way forward and recommendations for different stakeholders specifically the government to improve the situation and security of human rights defenders as outlined hereunder:

6.1 Way Forward

Based from the findings of this report, THRDC intends to:

- Encourage the law reform to enable HRDs gain legal recognition and thus become part and parcel of the governing structure. This will help in bridging the gap between them with the government functionaries a good of who perceive defenders negatively. Currently, the situation is different as HRDs are branded bad names by even those who should be appreciating their work.
- Engage more lawyers who will be readily available to provide legal aid and protection to HRDs.
- Increase protection and emergency funds in order to avoid delays in the provision of services to afflicted HRDs.
- Conduct thorough media campaigns and change of behavior trainings in areas where HRDs are threatened due to some social cultural issues.
- Utilize the current country's major legal reform to fight for inclusion of HRDs rights and protection in the coming Constitution.

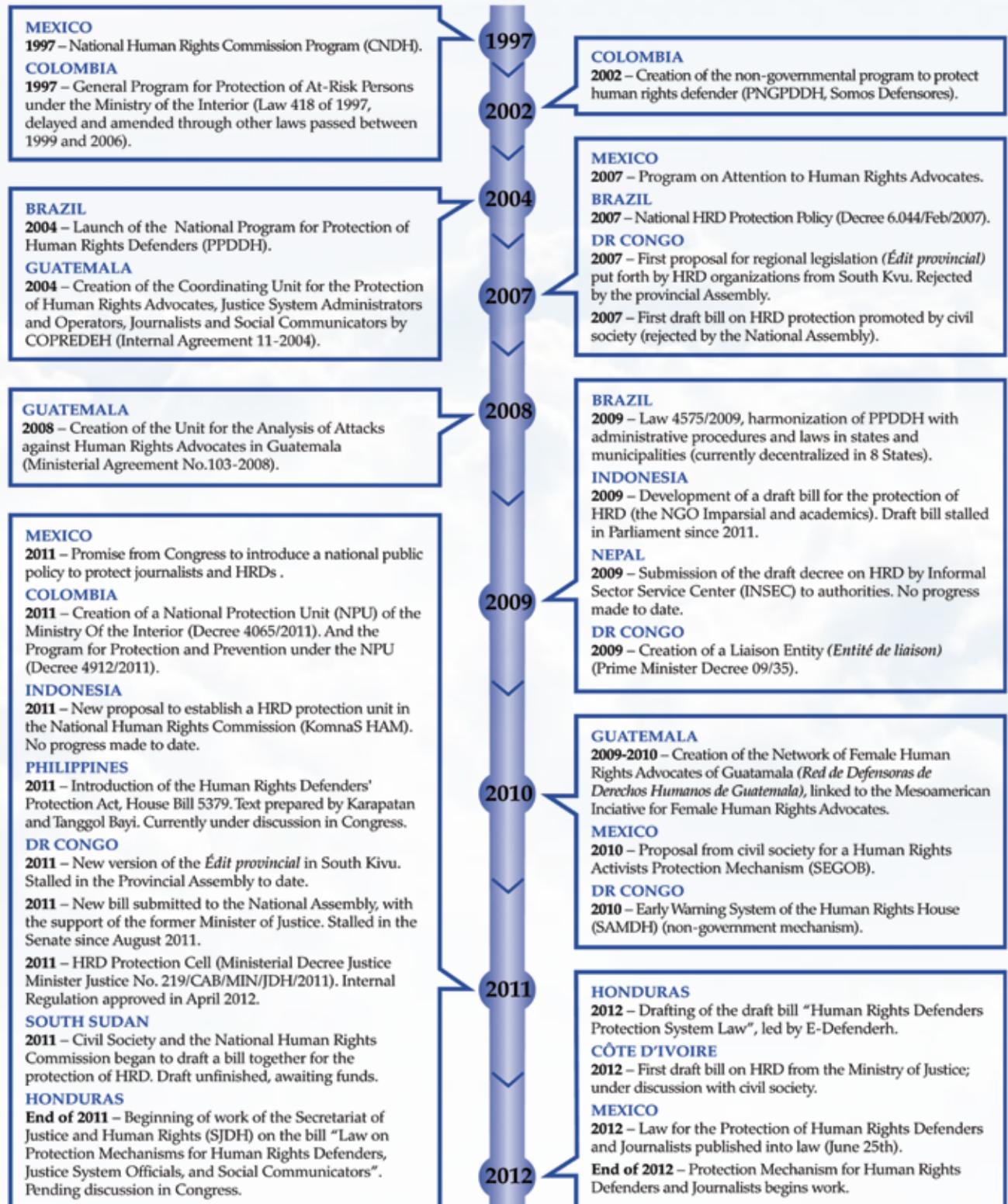
6.2 Recommendations

The following recommendations are proposed to human rights defenders, the government and other stakeholders to promote better working environment for HRDs in the country.

- HRDs need to work honestly and ethical because it has been realized that at times they become subjects of targets due to their unethical conducts.
- The government should be more transparent in its operations because it has always been a source of commotion between CSOs and the central establishment whenever there are discovery of leakage of "secrets" which to a large extent are of public interest.
- Good professional and financial status is vital for the safety and security of journalists. Journalists who work professionally and are financially well facilitated face less risk than those who operate unprofessionally and without ample resources. We therefore, advice media owners to consider this reality and get a solution to it.

- The government should ensure that the police force observes and protects the rights of journalists when undertaking their duties in the country.
- The police force should create a criminal system that provides an independent investigation to investigate all cases involving journalists who were killed or assaulted while on duty.
- The government should create a civic space and conducive environment for civil society and human rights defenders to work freely.
- The government should develop a national policy and law that recognizes and protects human rights NGOs and human rights defenders in Tanzania.
- The government should amend all draconian laws such as the Newspaper Act, 1976 and the recently passed media related laws (Cybercrimes Act and Statistics Act).
- The government should amend the NGO Act 2002 especially all the repressive provisions such as sections 18, 35 and 36 .
- An inclusive environment to the public and other key stakeholders when developing laws regarding media services, access to information and freedom of expression should be provided.
- The government should amend all laws that restrict and affect the work of CSOs and human rights defenders in Tanzania.
- Authorities should fully investigate all cases of intimidation and attacks against civil society activists and human rights defenders to bring perpetrators to justice and deter similar acts.
- A legal framework that does not contradict the existing legal framework that governs CSOs' operations in Tanzania ought to be created particularly enacting one law which governs the establishment and operations of CSOs. CSOs should be involved in each stage of discussions and reforms.
- The government should create an environment for civil society and the media to operate in accordance with the rights enshrined in the Constitution of United Republic of Tanzania, International Covenant on Civil and Political Rights (ICCPR) and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be ensured: freedom of association; freedom of expression; the right to operate free from unwarranted state interference; the right to seek and secure funding; and the State's duty to protect.
- The government and international development partners should support the implementation of the National Human Rights Action Plan by allocating sufficient resources to CHRAGG through an independent funding mechanism directly from the Treasury and not through the Ministry.
- The government should end the culture of impunity for violations against innocent people, journalists and human rights defenders by ensuring that investigations are promptly and impartially conducted, perpetrators are held accountable, and victims obtain appropriate remedies.
- The Registrar of NGOs in collaboration with other registrars as well as representatives / networks of NGOs registered under other laws should convene a meeting to discuss and find a solution to the controversial legal issue much related to the certificate of compliance.
- Government leaders should take CSOs sector as a vital link to the community development especially in terms of job creation, economy, welfare and social services, development, human rights and welfare of the Democratic country. The NGOs sector should be given respect, protection, recognition and cooperation rather than scorn and isolation even in matters relating to coordination with their registration.

Annexure One: The List Of Countries With Legal Protection Of HRDs



Annex Two- The List of Oppressive Laws & Proposed Bills

| No | Thematic Areas Affected | Laws | How |
|----|-------------------------|--|--|
| 1. | Women HRDs | <ol style="list-style-type: none"> 1. <i>Marriage Act of 1971</i> 2. <i>Inheritance Laws such as the Probate and Administration of Estates Act, Cap 445 [R.E 2002]</i> 3. <i>Religious laws</i> 4. <i>Customary laws including inheritance laws</i> | <p>These laws and policies have gaps with its provision contributing to the persistence of gender inequality, discrimination and gender based violence. The conclusion can therefore be derived that the work of WHRDs is not fully supported by these laws but rather the said legislations create hardship and risky environment for their work. For instance, customary laws treat them as minors who have to depend on others to inherit, instead of recognizing widows' right to inherit matrimonial property. With this kind of legal framework; it was observed that WHRDs conducted their activities in a very challenging environment which seems to be supported by the existing laws.</p> |
| 2. | Journalists | <ol style="list-style-type: none"> 5. <i>The Newspaper Act of 1976 Cap. 229, R.E. 2002</i> 6. <i>Section 25.-(1) of the Newspaper Act of 1976 Cap. 229, R.E. 2002: "Where the Minister is of the opinion that it is in the public interest or in the interest of peace and good order so to do, he may, by order in the Gazette, direct that the newspaper named in the order shall cease publication as from the date (hereinafter referred to as "the effective date") specified in the order.</i> | <p>The law allows the minister to ban a newspaper at his/own discretion. This law violates the rule of natural justice such as the right to be heard and the right to appeal. For instance, a ban on <i>Mwanahalisi</i> was disclosed to Saed Kubenea the managing editor of <i>Mwanahalisi</i> without even giving him the right to defend himself. The indefinite ban of Mwananchi and Mtanzania is vivid evidence that the press freedom in Tanzania can be violated at any given time, when few individuals at the government feel displeased by some released information. Press terror is possible because the law permits the Minister responsible for information to act as an 'Editor in Chief' and at the same time act as a complainant, prosecutor and judge.</p> <p>Section 22 of this law also permits any police officer "to seize any newspaper, wherever found, which has been printed or published, or which he reasonably suspects to have been printed or published" in violation of the Law</p> |

| | | | |
|--|--|---|--|
| | | <p>7. <i>Prison Act, 1967, Cap 58 [R.E 2002]</i></p> | <p>This affects the rights of HRDs and journalists when it comes to advocating for the rights of prisoners and prison officials. The law requires anyone including Journalists who want to communicate with any prisoner or take any photo from the prison or outside the prison to write a letter to the Commissioner of Prisons requesting the permission to do so. The process has been so bureaucratic, that it has made the media fail to advocate for the improvement of the prison services in the country as little is known to the outside world.</p> |
| | | <p>8. <i>National Security Act of 1970, Cap. 47 [R.E 2002]</i></p> | <p>This law makes it a punishable offence in any way to investigate, obtain, possess, comment on, pass on or publish any document or information which the government considers to be classified. This includes documents or information relating to any public authority, company, organization or entity which is in any way connected with the government.</p> <p>The reference can be traced to incidents involving active journalists such as Adam Mwaibabile. The police in Songea were instructed by the regional commissioner to charge him with possession of classified documents. The magistrate wrongly convicted Adam on the ground that he had committed offences under this law. The High Court observed this error in law and ruled out that the resident magistrate had misconstrued the provisions of the Act and hence quashed the decision and acquitted Mr. Mwaibabile.⁸</p> |
| | | <p>9. <i>The Public Leaders Code of Ethics Cap 398 [R.E 2002]</i></p> | <p>Restricts the investigative role of media and does not allow it to investigate and report on the property holdings of public leaders</p> |

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| | | <p>10. <i>The National Defense Act, Cap 192 [R.E 2002]</i></p> | <p>This law prohibits journalists or any HRDs to publish any information relating to the National Defense Force. Sometimes members of this force commit offences like other citizens in public places but when journalists report the incident, soldiers follow them and start all sorts of harassments.</p> <p>This law played a role in Mtwara during the gas saga where the public turned against members of the press and attacked them on account that they had failed to report on their grievances little did they know that there was no way they could report any misconduct by defense forces without higher authorities.</p> |
| | | <p>11. <i>The Prevention and Combating of Corruption, Act No. 11 of 2007</i></p> | <p>The law prohibits journalists from making follow ups of any corruption case under the PCCB investigation.</p> |
| | | <p>12. <i>The Area Commissioner Act 1962 & Regions and Regional Commissioners Act 1962</i></p> | <p>These two have been used against journalists who expose malpractice and maladministration in public offices</p> |
| | | <p>13. <i>Civil Service Act 1989</i></p> | <p>The law curtails access to information and prevents any commissioner or civil servant from disclosing information obtained in the course of his/her employment in government without the express consent of the permanent secretary of the relevant ministry or department.</p> |
| | | <p>14. <i>Film and Stage Act No 4 of 1976</i></p> | <p>Curtails the independence and creativity of individuals as it prohibits taking part or assisting in making a film unless the Minister has granted permission and prohibits the making of "home movies" by individuals.⁹</p> |
| | | <p>15. <i>Registration of News Agents,</i> 16. <i>Newspapers and Books Act (1988)</i></p> | <p>This operates in Zanzibar. It also has restrictive provisions. For instance it provides for the licensing of journalists and the establishment of a government-controlled "advisory board" to oversee the private print media.</p> |

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| | | <p>17. <i>Broadcasting Services Cap. 306 of the R. E 2002</i></p> | <p>The Act allows the government to regulate and place restrictions on the use of electronic media. The Act does not guarantee the independence of electronic media and other governing bodies. The editorial policy and decision-making are not free from interference by the government. Like the News Paper Act, this law doesn't give room for one to appeal to the Courts of laws if aggrieved by the decision of the regulatory authorities and the minister.</p> |
| | | <p><i>Cybercrimes Act 2015</i></p> | <p>Cybercrimes Act which criminalizes information deemed false, misleading, inaccurate or deceptive. The Act prohibits citizens or agencies from obtaining computer data protected against unauthorized access without permission. It empowers police or law enforcement officers to storm the premises of a news agency and confiscate a computer system or device and computer data if law enforcement officials believe that such information can be used as evidence to prove an offence has been committed. The police are equally given the right to search devices like cell phones, laptops or computers if they believe they contain information that can be used as evidence to prove a crime has been committed.</p> |
| | | <p><i>Statistics Act 2015</i></p> | <p>The Statistics Act imposes harsh penalties on those found guilty of publishing misleading and inaccurate statistics or statistics not approved by the National Statistics Bureau. Those found guilty of providing false or misleading statistics without authorization from the National Bureau of Statistics are liable for a one year jail term and a fine of 10 million Shillings (approximately US \$ 4500)</p> |

¹ <http://www.oas.org/juridico/english/ga-res99/eres1671.htm>

² Grand Bay Declaration and Plan of Action of 16 April 1999, paragraph 19 <http://www.achpr.org/instruments/grandbay/>

³ *ibid*

⁴ Kigali Declaration of 8 May 2003, paragraph 28 http://www.achpr.org/instruments/kigali/visited_feb_2014.

⁵ Focus -2014 at pg 7

⁶ The European Union (EU) Guidelines on Human Rights Defenders (2004)

⁷ http://europa.eu/legislation_summaries/human_rights/human_rights_in_third_countries/l33601_en.htm

⁸ <http://www.article19.org/data/files/pdfs/publications/tanzania-media-law-and-practice-in-southern-africa.pdf>. Visited on 8/8/2013.

⁹ ARTICLE 19's Submission to the UN Universal Periodic Review For consideration at the twelfth session of the UPR Working Group, October 2011 at <http://www.article19.org/data/files/pdfs/submissions/tanzania-upr-submission.pdf>. Visited on 8/8/2013.