



Situation Report

On Human Rights Defenders &
Civic Space In Tanzania 2020

SITUATION REPORT ON HUMAN RIGHTS DEFENDERS AND CIVIC SPACE IN TANZANIA 2020

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Abbreviations

AU	African Union
BRELA	Business Registration Licensing Agency
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	Etcetera
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
KRA_s	Key Result Areas
LHRC	Legal and Human Rights Centre
NGOs	Non-Government Organizations
NEC	National Electoral Commission
MSA	Media Services Act
OSIEA	Open Society Initiates for East Africa
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
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 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 Media Services Act, 2016
The Cyber Crimes Act, 2015
The Statistics Act, 2015 and its 2019 Amendments
The Prison Act, 1967, Cap 58 [R.E 2002]
The National Security Act of 1970, [Cap. 47 [R.E 2002]
The National Defence 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, and its 2019 amendments
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 Political Parties Amendment Act, 2019
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.
The Written Laws (Miscellaneous Amendment) Act No3 of 2019
The Written Laws (Miscellaneous Amendment) Act No3 of 2020
The Non-Governmental Organizations Act (Amendment) Regulations, 2019
The Electronic and Postal Communications (Online Content) Regulations, 2020

(ii) International and Regional 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



Executive Summary

This is the eighth report detailing the situation of Human Rights Defenders (HRDs) in Tanzania. It has six chapters as well narrated herein. Chapter one basically highlights the concept of a HRDs, legal and non –legal protection mechanisms for HRDs. It also gives an analysis of the laws and policies which provide for the recognition and protection of HRDs at the national, regional and International level.

Chapter two covers strategic cases, cases against HRDs, and various documented incidents on violations committed against HRDs. In 2020, HRDs have worked under extreme hostile environment compared to other years. According to the survey conducted by THRDC’s Protection Desk in 2020, incidents of HRDs’ violations have been increasing, hampered by the working environment of HRDs in the country.

In 2020, THRDC documented twenty (20) strategic cases and a total of eighty-three (83) incidents on violation of HRDs’ rights in Tanzania. Most of the incidents relate to arbitrary arrest, malicious prosecution and conviction, threats, curtailment of freedom of expression etc. Most of the perpetrators in these incidents are the state machineries, private companies and other individuals.

Chapter three provides details of the situation of Journalists as HRDs and the state of media industry. It discusses cases against journalist, security challenges encountered by journalists and the media outlets. These challenges include but not limited to arrests, malicious prosecution and conviction, criminalization, unlawful detention, imposition of hefty fine to media outlets, termination from employment, suspension and banning from operations and other legal and regulatory related challenges.

Chapter four looks into the civic space of CSOs in Tanzania based on the various indicators. It also explains the roles, space and scope of CSOs.

Chapter five contains the recommendations, conclusions and annexures.

Chapter One

GENERAL INTRODUCTION

1.0 Introduction

This chapter analyses the concept of a “Human Rights Defender (HRD)”, legal and non –legal mechanisms under which HRDs are recognized and protected. The meaning of a HRD and examples of the activities conducted by HRDs. In addition to that, the chapter gives an analysis of the laws and policies which provides for the recognition and protection of HRDs at the national, regional and International level.

1.1 Who is a Human Rights Defender?

The Declaration on Human Rights Defenders doesn't directly define a human rights defender. However, a Human Rights Defender can be any one with a profile attributed to human rights promotion and protection. Any person qualifies to be called a HRD so long as s/he is engaged in activities related to human rights promotion and protection. This definition may therefore include professional and non- professional human rights workers, volunteers, journalists, lawyers and whoever is doing human rights work in long term or on occasional basis¹.

The above definition has been widely interpreted by several articles of the Declaration

but invariably excludes 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 and 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.

Human Rights Defenders 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 movement circulation and non-discrimination².

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

¹ <https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx> Accessed on 01.02.2020

² <https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx> Accessed on 01.02.2020

rights in all sorts of difficult contexts relating, notably, to HIV and AIDS, development, migration, structural adjustment policies and political transition.

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 development and policy changes.³

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, side-lining, and expulsion from their communities.

The definition of a HRD is a bit blurred when it is applied to HRDs who serve as politicians at the same time. It has been a challenge sometimes to defend politicians such as Members of Parliament who are defenders of human rights. The definition of a HRD has to be clearly defined to include all individuals who defend human rights despite their professional or political backgrounds or affiliations.

Activities of human rights defenders include:⁴

- Documenting violations of human rights.
- Seeking remedies for victims of such violations through the provision of legal, psychological, medical and other support.

³ <https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx> Accessed on 01.02.2020

⁴ <https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx> Accessed on 01.02.2020

- 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.

Rights of Human Rights Defenders protected under the Declaration are:⁵

- To conduct human rights, work individually and in association with others.
- To get unhindered access to and communication with non-governmental and intergovernmental organizations, to form associations and non-governmental organizations.
- To benefit from an effective remedy.
- To meet or assemble peacefully, the lawful exercise of the occupation or profession of human rights defender.
- To seek, obtain, receive and hold information relating to human rights.
- To develop and discuss new human rights ideas and principles and to advocate their acceptance.
- To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals to improve their functioning.
- To draw attention to any aspect of their

⁵ <https://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders?> Site visited on May 2020



work that may impede the realization of human rights.

- To effectively protect 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 on Human Rights Defenders. These states have recently between the years of 2018-2020 issued and updated various protection guidelines, advocacy programmes, grants, support and protection to Human Rights defenders globally⁶. 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 activists⁷.

1.2 Protection Mechanisms for Human Rights Defenders

HRDs are recognized and protected under international law. In some countries, various policies, guidelines, instruments, and legislations have been enacted to recognize and protect HRDs. Legal protection mechanism for HRDs 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 and protecting human rights.

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⁶ <https://www.amnesty.eu/human-rights-defenders/> site visited in May 2020

⁷ Ibid

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, counselling, evacuation and relocations.

1.2.1 Legal Protection Mechanism at International Level

The United Nations 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, 1998⁸.

This Declaration is also commonly known as the Declaration on Human Rights Defenders. The adoption of this salient document was marked as 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.

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 those who carry it out to be protected.⁹

HRDs work and protection also gains its legitimacy from the following international

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⁸ <https://www.ohchr.org/en/issues/srhrdefenders/pages/srhrdefendersindex.aspx> Accessed on 03.02.2020

⁹ <https://www.google.com/search?q=declaration+of+human+rights+defenders&> Accessed on 03.02.2020



human rights instruments; The Universal Declaration of Human Rights, The International Covenant on Civil and Political Rights, The Convention on the Elimination of All Forms of Discrimination against Women, The European Convention on Human Rights, The African Charter on Human and Peoples' Rights, and The American Convention on Human Rights. All these mentioned international instruments mandate state to recognize and protect the rights of HRDs.¹⁰

The Declaration outlines specific duties of states with regard to rights and protection of HRDs at national levels. Other rights include; the right to develop and discuss new human rights ideas and to advocate for their acceptance, the right to criticize government bodies and agencies and make proposals to improve their functioning, the right to provide legal assistance or advice and assistance in defence of human rights, the right to observe trials, the right to unhindered access to and communication with non-governmental and intergovernmental organizations, the right to access information, the right to access resources for the purpose of protecting human rights, including the receipt of funds from abroad.¹¹

On 30th March 2013 the UN Human Rights Council passed a landmark resolution on Human Rights Defenders to compliment the

Declaration on Human Rights Defenders. Inter alia, the major objective of this resolution is to remind states their duty to respect and protect rights of HRDs through law review and amendment. The move is also meant to ensure that laws in place are consistent with international human rights standards. It is also meant to remind states not to unduly hinder or limit the work of human rights defenders.¹²

The Declaration on Human Rights Defenders specifically provides that states are obliged to implement and respect all provisions of the Declaration. In particular, states have a duty to protect human rights defenders against any violence, retaliation and intimidation as a consequence of their human rights work. Nevertheless, protection is not limited to actions by state bodies and officials but rather extends to actions of non-state actors, including corporations, religious groups and private individuals.¹³

1.2.2 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.

¹⁰ <https://www.google.com/search?q=declaration+of+human+rights+defenders> Accessed on 03.02.2020

¹¹ <https://www.google.com/search?q=declaration+of+human+rights+defenders> Accessed on 03.02.2020

¹² <https://www.google.com/search?q=un+resolution+2013+human+rights+defenders&rlz> Accessed on 05.02.2020

¹³ <https://www.google.com/search?q=declaration+of+human+rights+defenders> Accessed on 05.02.2020



Table 1 Summary of Regional Protection Mechanism

Continent	Legal Mechanism	Year of Adoption	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).	In 1969, the American Convention on Human Rights was adopted. The Convention entered into force in 1978. As of August of 1997, it had been ratified by 25 countries: Argentina, Barbados, Brazil, Bolivia, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela	<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 Members. In June 1999 the General Assembly of the OAS adopted a resolution entitled:</p> <p>The IACHR to issue preventative measures to Human Rights Defenders under threat to avoid any irreparable harm, to request information from States, issue recommendations and request the Inter-American Court adopts provisional protection measures.</p>
AFRICA	The Grand Bay Declaration and Plan of Action of 16 April 1999 ¹⁴	Adopted at Grand Bay, Mauritius on 16 April 1999. Member states are :Benin , Cameroon, Chad , Ghana , Kenya ,Liberia, Malawi, Mauritania, Nigeria, Rwanda , Senegal, Sierra Leone ,South Africa ,Sudan ,Togo, Uganda and Zambia .	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.
	The Kigali Declaration of 8 May 2003	Adopted in 2003 By the following member state, Republic of Zimbabwe, Republic of Zambia, Uganda, Tunisia, Togo, Tanzania, Swaziland, Sudan, South Sudan, South Africa, Somalia, Sierra Leone, Seychelles, Sahrawi Arab Democratic Republic, Rwanda, Nigeria, Republic of Niger, Namibia, Republic of Mozambique, Morocco, Mauritius, Mauritania, Mali, Republic of Malawi, Madagascar, Malawi, State of Libya, Liberia, Lesotho, Kenya.	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.” ²
	Resolution 273 of the African Commission is another useful instrument that will help secure a better working environment for HRDs. ³	The African Commission on Human and Peoples’ Rights (the Commission) at its 55th Ordinary Session in Luanda, Angola, from 28 April to 12 May 2014 recognizes	<p>Its mandate is to promote and protect human and peoples’ rights under the African Charter on Human and Peoples’ Right. African Union member States under the African Charter and under other regional and international human rights instruments for the protection of human rights.</p> <p>The system has the potential to respond effectively to the obligation to protect all citizens and particularly HRDs. States should conform to article 2 (2) of the UN Declaration on Human Rights Defenders⁴.</p>

¹⁴ www.achpr.org/instruments/grandbay/ Grand Bay Declaration and Plan of Action of 16th April 1999, P. 19.



Continent	Legal Mechanism	Year of Adoption	Brief Explanation
	A Resolution on Measures to Protect and Promote the Work of Women Human Rights Defenders ⁵	Resolution Passed by African Commission in 2016. A landmark resolution adopted at the African Commission on Human and Peoples' Rights calls on African States to ensure specific legal recognition and protection of women human rights defenders and end impunity for attacks against them.	Calls on State Parties to: Disseminate and implement the recommendations of the Commission's Report on the Situation of Women Human Rights Defenders in Africa, end impunity by adopting specific laws and relevant measures, Ensure efforts are designed to prevent and address violations and discrimination against women human rights defenders, Train the judiciary and public security and other relevant authorities on the specific risks and protections for human rights defenders and in particular women human rights defenders.
	Marrakech Declaration 2018.	Adopted on 12 th October 2018 by Global Alliance of National Human Rights Institutions.	The declaration has focused on the role of National Human Rights Institutions. The declaration seeks to involve the Commission for Human Rights and good Governance as the only National Human Rights Institution in Tanzania in implementation of this declaration to; Declare responsibility and obligation to protect, Respect and promote the fulfilment of Human Rights and fundamental freedoms of all persons, the Rule of Law, eradication of Human rights violations, to adopt the 2030 Agenda for sustainable development regarding Human Rights development and peace and security. ⁶
EUROPE	EU Guidelines on Human Rights Defenders. ⁷	Adopted in 2004	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 world countries ⁸ 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.
	In 2010, the European Parliament adopted a Resolution on the EU policy in favour of Human Rights Defenders (2009/2199(INI).	Adopted in 2010	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 th December 2010. ⁹
	UNGA74 Global agreement on key elements of an effective defender protection policy.	On 20.11.2019 UN General Assembly's human rights committee in New York – the Third Committee –passed by consensus a resolution focusing on implementation of the Declaration on Human Rights defenders and some key elements of protection policy.	On human rights defender protection policy, the resolution states: the need for comprehensive risk analysis, that protection mechanisms should provide an early warning function to enable human rights defenders immediate access to 'competent and adequately resourced authorities to provide effective protective measures and address causes of attacks against defenders and barriers against the defence of rights ¹⁰ .

1.2.3 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*, 1998 into their national laws despite 22 years of its adoption.¹⁴ Worse still, governments in all regions are increasingly enacting laws which restrict and even criminalize the work of human rights defenders and NGOs example in Tanzania several draconian laws have been enacted such as the Cybercrimes Act of 2015, the Statistic Act of 2015, the Media Services Act of 2016, Access to Information's Act of 2016¹⁵ and the Electronic and Postal Communications (Online Content) Regulations of 2020.¹⁶

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.¹⁷

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

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¹⁴ www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefenders Accessed on 10.02.2020

¹⁵ www.parliament.go.tz Accessed on 10.02.2020

¹⁶ www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefenders Accessed on 10.09.2020

¹⁷ www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders#sthash.fcKqqcKj.dpuf Accessed on 10.02.2020

a valuable tool for human rights defenders to advocate for stronger legal recognition and protection of their important work.¹⁸

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.¹⁹

The Constitution of the United Republic of Tanzania of 1977 and the Constitution of Zanzibar of 1984 including the proposed Constitution of the United Republic of Tanzania 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. In an effort to do so, THRDC prepared a Human Rights Model Policy that will help the government and the legislature to enact national human rights defenders' policy and laws.

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

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¹⁸ www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders#sthash.fcKqqcKj.dpuf Accessed on 10.02.2020

¹⁹ www.ishr.ch/news/asia-isshr-launches-new-report-legislative-protection-human-rights-defenders-seven-countries Accessed on 10.02.2020



defenders. In short, lack of specific legal protection renders HRDs vulnerable and easy prey for perpetrators of human rights violations.

The Commission for Human Rights and Good Governance in Tanzania is the only National Human Rights Institution (NHRI), with full mandate to protect human rights and good governance in general.²⁰

The Tanzania Human Rights Defenders Coalition has made huge efforts to engage and work with the Commission in order to conceptualize and impart knowledge of what defending defenders means and how best human rights defenders can be protected and be considered as a special category of human rights protectors who need support to fulfil their responsibilities under the law.

One of the efforts that THRDC has made in engaging with CHRAGG is in efforts to implement the Marrakech Declaration of 2018. This declaration has focused on the role of National Human Rights Institutions.²¹ The Declaration seeks national human rights institutions to among other things: declare responsibility and obligation to protect, respect and promote the fulfilment of the human rights and fundamental freedoms of all persons, to promote the rule of law, and the eradication of human rights violations and to interact, cooperate and build partnership among civil society organisations, media, business entities, networks, governmental and non-governmental organizations.²²

‘Enacting the rights of human rights defenders in national law would be a significant step towards transforming the international promise of the Declaration on Human Rights Defenders into a national-level reality.’ – Gustavo Gallon, Director of the Colombian Commission of Jurists²³

1.3 Non-Legal Protection mechanism

Protection mechanisms for HRDs can simply be defined as defence strategies put in place to ensure that HRDs are safe and operate in a safe environment. Through their active commitment, HRDs are frequently a target of acts of repression perpetrated by States or by private or Para-State groups acting in complicity with States. In many countries, HRDs are targets for attacks including murders, 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 take measures and establish protection desks/units to ensure HRDs mitigate these threats and in worst situations provide emergency assistance.

²⁰ www.chragg.go.tz Accessed on 10.02.2020

²¹ www.google.com/search?safe=active&rlz=1C-1CHBF_enTZ850TZ850&sxsrf Accessed on 10.02.2020

²² www.google.com/search?safe=active&rlz=1C-1CHBF_enTZ850TZ850&sxsrf Accessed on 10.02.2020

²³ www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders Accessed on 10.02.2020

1.3.1 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.²⁴

In 2000, the UN Secretary General's office under special request from the UN Commission on Human Rights established a mandate on human rights defenders to effectively implement and bring into force the Declaration on Human Rights Defenders. A special rapporteur was appointed to support the implementation of the declaration and the collection of information on the situation of human rights defenders all over the world²⁵.

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 succeeded Ms. Margaret Sekaggya (Ugandan) 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).²⁶

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²⁴ www.ohchr.org/EN/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx Accessed on 20.02.2020

²⁵ www.ohchr.org/en/issues/srhrdefenders/pages/srhrdefendersindex.aspx Accessed on 20.02.2020

²⁶ www.ohchr.org/en/issues/srhrdefenders/pages/srhrdefendersindex.aspx Accessed on 20.02.2020

The following are the major duties assigned to the UN Special Rapporteur on human rights defenders²⁷

- i. Seek, receive, examine and respond to information on the situation of human rights defenders;
- ii. Receives complaints on violations against HRDs and then sends letters of allegation and urgent appeals to governments.
- iii. Establish cooperation and conduct dialogue with governments and other interested actors on the promotion and effective implementation of the Declaration.

In performing their duties, Special Rapporteurs²⁸:

- Submits annual reports to the Human Rights Council and the UN General Assembly on particular topics or situations of special importance regarding the promotion and protection of the rights of human rights defenders
- Undertakes country visits
- Takes up individual cases of concern with Governments

However, the UN does not provide for other services such as an emergency fund and support. Therefore, International NGOs and Associations, such as the Frontline Defenders, American Bar Association, Protection International, Freedom House, CIVICUS, Civil Rights Defenders, Irish Human Rights

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²⁷ www.tandfonline.com/doi/full/10.1080/13642987.2011.537463 Accessed on 20.02.2020

²⁸ www.tandfonline.com/doi/full/10.1080/13642987.2011.537463 Accessed on 20.02.2020



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, counselling, evacuation and reallocation of HRDs at risk and advocacy among other activities.²⁹

1.3.2 Non-Legal Protection Mechanism at Regional level

Universal and Regional protection mechanisms complement each other to improve the protection of Human Rights Defenders.

The Human Rights Defenders Declaration requires states at the regional level to establish regional mechanisms to protect human rights defenders. On 4th June 2004, the African Commission on Human and Peoples' Rights (ACHPR) introduced the post for Special Rapporteur on Human Rights Defenders in Banjul, Gambia. Currently, the position is held by Ms. Reine Alapini-Gansou.³⁰

ACHPR is the first regional human rights body to create a specific special procedure to deal with HRDs. Reasons for the appointment of a Special Rapporteur on human rights defenders in Africa were: security threats facing defenders in Africa and the need to create a specific instance within the Commission to examine reports and act upon information on the situation of defenders on the continent.

The African Commission on Human and Peoples' Rights assigned the special Rapporteur for HRDs in Africa to perform the following duties³¹:

- i. To submit reports at every Ordinary Session of the African Commission on the situation of human rights defenders in Africa;
- ii. To cooperate and engage in dialogue with member states, national human rights Institutions, relevant intergovernmental bodies, international and regional mechanisms of protection of human rights defenders and other stake holders;
- iii. To develop and recommend effective strategies to better protect human rights defenders and to follow up on his/her recommendations;
- iv. To raise awareness and promote the implementation of the UN Declaration on Human Rights Defenders in Africa.
- v. To carry out her mandate, the special rapporteur receives and examines information from a wide range of sources including NGOs, and issues urgent appeals regarding violations against human rights defenders in the region.
- vi. To seek, receive, examine and to act upon information on the situation of human rights defenders in Africa and
- vii. Carrying out country visits to assess the situation of human rights defenders and encourage individuals and NGOs to submit cases concerning human rights defenders to the African Commission.

²⁹ www.academia.edu/12256645/Human_Rights_Defenders_Situation_Report Accessed on 20.02.2020

³⁰ https://en.wikipedia.org/wiki/Reine_Alapini-Gansou Accessed on 25.02.2020

³¹ <https://www.achpr.org/specialmechanisms/detail?id=4> Accessed on 25.02.2020



*Africa is clearly a step ahead regarding the enactment of laws protecting human rights defenders. However, one remaining challenge is the inclusion in those texts of a large definition of defenders, as inclusive as the one adopted by the UN through the UN Declaration on defenders” said Michel Forst, UN Special Rapporteur on the situation of human rights defenders*³².

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.³³This 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.³⁴

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

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³² www.ishr.ch/news/achpr-65-protecting-human-rights-defenders-through-protection-laws-africa Accessed on 25.02.2020

³³ <http://protectionline.org/2009/05/05/kampala-declaration-of-human-rights-defenders/> Accessed on 25.02.2020

³⁴ <https://www.achpr.org/legalinstruments/detail?id=39> Accessed on 25.02.2020

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).³⁵

1.3.3 Non legal Protection Mechanism at National Level

Promoting the Implementation of the Declaration at national level is still a new agenda to many states in Africa and elsewhere.

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: East and Horn of Africa Human Rights Defenders Network and Pan Africa Human Rights Defenders Network. Others on the list are Kenya, Eritrea, Djibouti, Malawi, Uganda, Tanzania, and Burundi Human Rights Defenders Coalition. The final group in the list is South Sudan, Rwanda, Somali and Senegalese Human Rights Defenders Coalition.

Thus, the Coalition is working in the framework of accepted international mechanisms which have been established and adopted by other human rights conscious nations including Tanzania to ensure good governance. It should be noted however, that the issue of protection of HRDs is quite new in Tanzania. Most people do confuse the work of human rights defenders and other ordinary human rights activities. Therefore, at times ignore security incidents and take it for granted. In fact, a majority of HRDs do not even know that they are human rights defenders who need special protection when performing their day-to-day activities as defenders and promoters of human rights.

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³⁵ <https://defenddefenders.org/> Accessed on 25.02.2020



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

Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

The Constitution of the United Republic of Tanzania of 1977 and that of Zanzibar of 1984 including the current Draft Constitution do not guarantee in any way the rights of HRDs. The legal framework at the national level, including the Draft Constitution provide for general protection of human rights and remain silent on the rights of human rights promoters/defenders. In short, lack of specific legal protection makes the HRDs vulnerable and easy prey of perpetrators of human rights violations.

Tanzania lacks a policy and legislation on HRDs in line with the UN Declaration on HRDs of 1998, a fact that pushed for the establishment of THRD-Coalition. To rectify the situation, the Coalition developed a Human Rights Defenders Model Policy which may be used by the government in creating better policies and laws that recognise and govern Human Rights Defenders.

1.3.4 Challenges with both International and Regional Protection Mechanisms for HRDs³⁶

- The mentioned declaration on human rights defenders provides protection and legitimacy to the work of HRDs. But in order to do this, the Declaration has to be known and respected by the authorities, and the population as a whole. It also has to be known and used by HRDs themselves. The findings of this survey indicate that majority of HRDs have never been informed about this declaration. This, therefore, requires some intervention by THRDC to rectify the situation.
- They don't know how to use the special UN and the AU rapporteurs on human rights defenders to protect them.
- 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.
- Again, the EU Guidelines on HRDs are also not widely known by HRDs in Tanzania despite the fact that EU has been 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.

³⁶ www.escr-net.org/news/2018/promoting-protection-human-rights-defenders-global-summit Accessed on 27.02.2020



Chapter Two

VIOLATIONS COMMITTED AGAINST HUMAN RIGHTS DEFENDERS

2.0 Chapter Overview

This Chapter explores cases for and against human rights defenders, various recorded incidents of violations committed against HRDs in 2020, a year which has been seen as marked with extreme hostile environment for HRDs' work compared to other years. According to the survey conducted by THRDC's Protection Desk in 2020, incidents of human rights defenders' violations increased remarkably hence hampering the work of HRDs in the country.

The situation is compounded by impunity, disrespect of the rule of law and rampant undemocratic practices. The state has also liberally used the existing draconian laws to curb HRDs work such as the Electronic and Postal Communications (Online Content) Regulations of 2020, the Media Services Act of 2016, the Statistics Act of 2015 and their amendments, Cybercrimes Act of 2015, the Access to Information Act of 2016, Police Force and Auxiliary Services Act of 1969, the Non-Governmental Organizations (Amendments) Regulations of 2018, the Written Laws (Miscellaneous Amendments) (No. 3) Act of 2019 and the Written Laws (Miscellaneous Amendments) (No.3) Act of 2020.

For the year 2020, THRDC documented twenty (20) strategic cases and a total of

eighty-three (83) incidents on violation of HRDs' rights in Tanzania. Most of the incidents relates to arbitrary arrest, malicious prosecution, threats, attacks, curtailment of freedom of expression etc. Journalists have been well documented under chapter three. The most perpetrators of these incidents are the state machineries, private companies and sometimes individuals.

2.1 Strategic Cases

For the year 2020, THRDC documented twenty strategic cases which were instituted by HRDs in Tanzania. Amongst them, fourteen cases were supported by the Coalition. Most of the cases challenge inconsistency of Sections of statutory laws and Regulations with the mother law, the Constitution of the United Republic of Tanzania and international conventions to which Tanzania is a party. Some challenge administrative decisions and practices of government leaders and law enforcers as follows;

First, the Controller and Auditor General (Prof. Mussa Assad) was removed from office by the President before attaining a mandatory retirement age. Hon. Zitto Kabwe instituted a case challenging such an administrative decision for being unconstitutional.³⁷

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³⁷ Zito Zuberi Kabwe versus The President of the

Secondly, the National Assembly of Tanzania on 10th June 2020 passed the Written Laws (Miscellaneous Amendments) (No. 3) Act³⁸ and assented to by the President on 15th June 2020. On 19th June 2020, the government gazetted the Act.³⁹ The Act amended 13 laws including Section 4 of BRADEA⁴⁰ abolishing public interest litigation in Tanzania by putting a requirement for one to prove how the complained act has affected him personally before the case is admitted by the High Court of Tanzania. As a response to these amendments, THRDC supported three strategic cases challenging such amendments at the High Court and East African Court of Justice.⁴¹

Thirdly, other cases challenged the NGOs Regulations of 2018, the Online Content Regulations of 2020, Sections 16 and 39(2) (a) &(b) of the Cybercrimes Act, Section 36(2) of the Economic and organized Crimes Control Act, Sections 43, 44, 45 and 46 of the Police Force and Auxiliary Services Act and Section 148(5) of the Criminal Procedure Act for being unconstitutional.

Lastly, Article 41(7) of the Constitution which denies citizens' right to access courts if dissatisfied with Presidential election results was successfully challenged for violating the Banjur Charter.⁴²

United Republic of Tanzania, Attorney General, Charles Kichere and Prof. Mussa Juma Assad [Miscellaneous Civil Cause No. 1 of 2020]

³⁸ www.parliament.go.tz Accessed on 10.06.2020

³⁹ To the Gazette of the United Republic of Tanzania No.6. Vol. 101 dated 19th June, 2020 Printed by the Government Printer, Dodoma by Order of Government.

⁴⁰ The Basic Rights and Duties Enforcement Act Cap. 3 R: E 2019

⁴¹ Tanzania Human Rights Defenders Coalition, Pan African Lawyers Union, Tanganyika Law Society, Legal and Human Rights Centre, and Centre for Strategic Litigation versus the Attorney General of the United Republic of Tanzania [Reference No 25 & 27 of 2020]

⁴² App. No. 018/2018 – Jebra Kambole v. The United Republic of Tanzania [African Court on Human and Peoples' Rights at Arusha]

2.2 Cases against HRDs

I. The Honorable Attorney General versus Jebra Kambole and Edson Kilastu (Advocates) [Application No 26 of 2020]

On 8th October 2020, the Attorney General instituted complaints before the Advocates Committee claiming that the post of Advocate Jebra Kambole amounts to a criminal act but also unprofessional and unethical conduct contrary to section 53(1)(b) of the Media Services Act, 2016; Regulations 4, 6, 92(1), 129(1), 132(1)(2)(b)(c), 134 and 139(1) of the Advocates (Professional Conduct and Etiquette) Regulations, 2018 which requires an advocate at all times to observe a standard of conduct that reflects credit on the profession and the administration of justice generally.

Advocate Jebra Kambole is charged before the Committee with professional misconduct and seditious offense as stated herein. That on 10.03.2020, Kisutu Resident Magistrates' Court convicted and sentenced 9 CHADEMA leaders for 12 counts which they were charged with in criminal case no 112 of 2018. CHADEMA leaders were sentenced to pay fine that amounted to Million 350 Tanzanian Shillings in total or serve a jail term up to five months.

In his application, the Attorney General alleged that, Advocate Jebra Kambole posted a comment via his Twitter account " Kisutu Revenue Authority (KRA)"

On the part of Advocate Edson Kilatu, his charge stems from the allegation that on 08.08.2020 he posted via his Facebook account comments which, in facie curiae, malign the confidence of the Court of Appeal of Tanzania, the legal profession and public respect for law and justice. His comments are alleged to be in violation of the Advocates

(Professional Conduct and Etiquette) Regulations, 2018.

Advocate Kilatu's comments came after the Court of Appeal of Tanzania declaring that section 148(5) of the Criminal Procedure Act Cap 20 does not contradict the Constitution of the United Republic of Tanzania, 1977, in an appeal lodged by the Attorney General of Tanzania.

The Attorney General instituted a complaint before the Advocates Committee against the named above two advocates seeking for a declaration that the two advocates committed gross professional misconduct and an order of removal of the advocates name from the Roll of Advocates. The case is still pending before the Advocates Committee.

II. Republic Vs Idris Rashid @Sultan and Innocent Maiga [Criminal Case No 78 of 2020]

On 19th May 2020, Tanzanian comedian and actor Mr. Idris Rashid @Sultan was arrested and detained for a week without being released on Police bail or arraigned before a competent court of law. He was interrogated about cyberbullying charges allegedly for laughing out loudly at an old picture of President John Magufuli. He was accused of contravening the Cybercrimes Act of 2015.

Surprisingly on 27th May 2020, Mr. Idris Rashid @Sultan together with Mr. Innocent Maiga were arraigned at the Resident Magistrates' Court of Dar es Salaam at Kisutu.

Mr. Sultan was charged for failure to register a sim card previously owned by another person contrary to Regulations 4(1)(c), 12(1) and (3), 21(1) of the Electronic and Postal Communications Act [Sim Card Registration] Regulation of 2020 and Section 152 of the

Electronic and Postal Communications Act, 2010 as amended.

Mr. Innocent Maiga was charged for failure to report change of ownership of a sim card contrary to Regulations 4(1)(c), 12(1) and (2), 21(1) of the Electronic and Postal Communications Act [Sim Card Registration] Regulation of 2020 and Section 152 of the Electronic and Postal Communications Act, 2010 as amended. Their case is still on going in court to date.

III. Republic Vs Imma Kasema

On 4th May 2020 a community rights activist, Mr. Imma Kasema was arrested by Police authorities in Katavi Region. He was arrested on the allegation of jumping bail and detained for two days at Kibaoni Police station, Mpanda - Katavi Region.

Mr. Imma Kasema has since 2019, been very instrumental in defending community rights specifically land rights to the indigenous people through advocacy at Mirumba village in Mpanda. He was arrested and charged before Mpanda Resident Magistrates' Court for impersonation. His case went on unheard for the whole year 2019 and didn't have legal representation. He decided not to attend such a continuous court adjournment, as a result he was arrested again on 4th May 2020. THRDC provided legal support and on 13th May 2020, the prosecution side withdrew the case on the grounds that it was not interested to continue with the case.

IV. Republic versus Mdude Nyagali

On 13th May 2020 a human rights activist through different online platforms was arrested and detained for a week on the allegation of cyber offences. Contrary to the primary allegations, on 13th May 2020, he was charged with an economic crime case for allegedly trafficking in narcotic

drugs heroine hydrochloride contrary to the Drug Control and Enforcement Act, No. 5 of 2015 as amended together with Paragraph 23 of the First Schedule to, and Section 57 (1) and 60 (2) both of the Economic and Organized Crime Control Act, [Cap 200 R: E 2002]. He was charged before the Resident Magistrates' Court in Mbeya.

However, on 27th May 2020, the Republic withdrew the case and filed a fresh one, charging the Mr. Mdude with trafficking in narcotic drugs heroine hydrochloride contrary to the Drug Control and Enforcement Act, No. 5 of 2015 as amended. His case is still going on at the court to date while in remand prison as the offence charged with is unbailable.



A photo of Mr. Mdude while in the court room.

V. Republic Vs Ambrose Mallya and Fabian Richard Gombanila [Criminal Case No 128 of 2019]

A human rights defender Mr. Ambrose Mallya together with Fabian Richard Gombanila, on 16th October 2019, were charged before the district court of Mufindi, Iringa Tanzania. Both of them were charged on the allegation of stealing a motor of peeling machine worth

at Tshs 5,600,000/= (Five Million and Six Hundred Thousand Only), the property of one Hong Wei International Company Limited.

Mr. Mallya and Mr. Fabian were employees of Hong Wei International Company Limited (employer) based in Mufindi, Iringa. According to Mr. Mallya, employees were being unfairly treated at work place. Such as harassment and other related issues. They took a frontline step to defend employees' rights and welfare at the working place. The employer became unhappy on surprise both Mr. Mallya and Mr. Fabian were arrested by Police officers and charged before the court on the allegations of theft.

For the entire period of two years, the prosecution failed to bring witnesses to prove their case beyond reasonable doubt, hence as a result, on 8th March 2021, the District Court dismissed the case for want of prosecution. However, Mr. Ambrose was rearrested, detained and later on released.

VI. The Director of Public Prosecutions Vs Abdul Mohamed Omary Nondo Criminal Appeal No. of 2020]

In May 2020, the DPP appealed to the Court of Appeal of Tanzania after being aggrieved by the decision of the High Court of Tanzania, Iringa District Registry that gave a victory to Mr. Abdul Nondo.

Abdul is the former Chairperson of the Tanzania Students' Networking Programme (TSNP). On 6th March 2018 around midnight he disappeared, sent a message to his friend Mr. Paul Kisabo that "am at risk" and was later on found in Mafinga, Iringa Region on 7th March 2018 at 18:00hrs. Nondo reported to Mafinga Police station that he was kidnapped by unknown people at Ubungo in Dar es Salaam and he was taken to the said place.

He was however, detained for 14 days before being arraigned in court on 21st March 2018 and charged for publication of false information (“I am at risk”) contrary to Section 16 of the Cybercrimes Act, 2015 and for giving false information to a person employed in public service contrary to section 122 (a) of the Penal Code Cap 16 R.E 2002.

THRDC engaged advocates Jebra Kambole and Chance Luoga to provide legal representation and Mr. Abdul Nondo won the case at both the Resident Magistrates Court and at the High Court of Tanzania on 23rd December 2019.

The Director of Public Prosecutions being aggrieved by the decision of the High Court, lodged a notice of intention to appeal and finally an appeal before the Court of Appeal of Tanzania at Iringa. The case is pending for hearing to date.

VII. Republic versus Tito Elia Magoti and Theodory Faustine Giyan [Economic Criminal Case No 137 of 2019]

On 20th December 2019 Mr. Tito Elia Magoti (Program Officer: Public Education Department at the Legal and Human Rights Centre and Mr. Theodory Faustine Giyan the ICT Officer, were arrested by five unknown people at Mwenge area in Dar es Salaam. On 22nd December 2019 the Dar es Salaam Special Zone Police Commander, Lazaro Mambosasa confirmed to have arrested Mr. Magoti and Mr. Giyan without stating the charges facilitated the arrest or whereabouts.

On 24th December 2019 both Mr. Magoti and Mr. Giyan were brought before the Resident Magistrates’ Court of Dar es Salaam at Kisutu and charged with three counts “leading an organized crime contrary to Section 4(1)(a) of the First Schedule and Section 57(1) and 60(2) of the Economic and

Organized Crimes Control Act, “possession of a computer program designed for the purpose of committing an offence” contrary to Section 10(1) of the Cybercrimes Act, 2015 and “money laundering” contrary to Section 12(d) and 13(a) of the Anti-Money Laundering Act.

On 5th January 2021 both Mr. Magoti and Giyan pleaded guilty in order for them to be set free and paid a total of Tanzanian Shillings Seventeen Million.

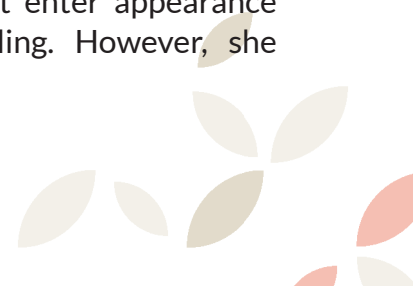


A photo of Mr. Theodory Giyan and Tito Magoti from the right-hand side with their advocates shortly after being released

VIII. The Honourable Attorney General versus Fatma Amani Karume [Application No 29 of 2019]

On 20th September 2019, the High Court Principal Judge Dr. Eliezer Feleshi slapped Ms. Fatma Karume with an indefinite suspension as an Advocate over alleged misconduct. Judge Feleshi was dismissing a case in which Ms. Karume was representing Mr. Ado Shaibu who challenged President John Magufuli’s appointment of Prof Adelardus Kilangi as Attorney General of Tanzania, on the grounds that he is unqualified.

Advocate Fatma did not enter appearance on the day of the ruling. However, she



was accused of impropriety in her written submission without stating what impropriety Ms. Fatma committed. She was suspended pending reference to the Advocates Committee, an order which was contrary to Section 22 of the Advocates Act.⁴³ THRDC issued a statement strongly condemning the disbarment of advocate Fatma Amani Karume.⁴⁴

In 2019, the matter was brought before the attention of the Advocates Committee and on 23rd September 2020 the Committee delivered its decision that the name of Advocate Fatma Karume be removed from the Roll of Advocates. Under the provisions of the Advocates Act, the person vested with powers to keep and remove the names of Advocates from the Roll is the Registrar of the High Court of Tanzania.

Being aggrieved by the decision of the Advocates Committee, Ms. Fatma Karume appealed to the High Court of Tanzania. Her case is before a panel of three judges for consideration. The matter is still pending at the High Court of Tanzania.

IX. Student Rights Defender was arrested, Mr. Mugaya Tungu

On 21st January 2020, Mr. Tungu was arrested while inside a hostel at the University of Dodoma without being informed the reasons for such arrest. He was taken to Chimwaga Police station and on the next day he was moved to Dodoma central Police station.

While under arrest, he was interrogated on publication of false information concerning the photos he took when students were queuing up to fetch water at the university

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⁴³ The Advocates Act, Cap 341 R.E 2019

⁴⁴ <https://thrdc.or.tz/thrdcs-statement-on-the-permanent-disbarment-of-advocate-fatma-karume/>
Accessed on 23.10.2020

compound. He was unconditionally released on 23rd January 2020. His phone was confiscated for a week and later on given to him. THRDC provided legal support in collaboration with student's human rights club at the university.

X. Mr. Dominick Bruno

A pastoralists' human rights defender Mr. Dominick Bruno in Dodoma received a call from a Police officer of Kondoa Police station. The call ordered him to report to Kondoa Police station on 26th March 2020. After entering appearance at the Police station, He was interrogated on the allegations of defending pastoralists' rights in Dodoma city. THRDC provided with him a necessary legal support.

XI. Advocate Edward Heche

On 18th May 2020, a human rights defender Advocate Edward Heche was arrested for allegedly obstructing Police Officers from conducting investigation in Tarime, Mara Region on the order of the Tarime District Commissioner, Mr. Mtemi Msafiri. Advocate Edward Heche was arrested and harassed while inside the court room by the Police Officers while processing bail of his clients. Together with Adv. Heche, the sureties, Mr. Hamis Nyanswi, Mr. Chacha Heche, Mr. Martin Nyakiran'ganyi were also arrested.

In addressing this matter THRDC released a statement condemning the arrest of Advocate Edward and the sureties. The arrest of Advocate Heche amounted to violation of his right to assume his work as an officer of the Court. Also, THRDC engaged an Advocate in Tarime to work urgently on the matter and he was unconditionally released on Police bail together with the sureties.

XII. Mr. Yassin Yuta Mwoga

On 19th May 2020 a human rights defender Mr.

Yassin Yuta Mwoga while at his home, Atwelo village, Ijombe Ward in Mbeya Rural District, was arrested by Police officers for allegedly publishing false information about an infant thrown in the toilet. Also, for allegedly biting the finger of a Police officer who arrested him. THRDC instructed its Advocate Mr. Livino Ngalimitumba to work urgently on the matter and Mr. Yassin was released on Police bail on 19th May 2020. However, THRDC was informed that Mr. Yassin was heavily beaten by Police officers while under detention and after being released, he was taken to hospital for medical treatment.

XIII. Mr. Abdallah Khamis Mohammed

On 29th May 2020, a human rights defender residing at Jundamiti in Pemba Island - Zanzibar, Mr. Abdallah Khamis Mohammed was arrested and detained by Police authorities on seditious offence. Mr. Abdallah was very instrumental in defending human rights in Pemba such as defending the rights of the people to be issued with their residential identification cards. (Residential Zanzibari's Identification Cards)

Such IDs are very important because once a person possesses it s/he could be verified in the permanent voters' register and would be able to vote for government leaders in Zanzibar during the general election of October 2020. Verification of eligible voters was scheduled to start on 30th May 2020 in Pemba Island - Zanzibar. He was later on released unconditionally.

XIV. Advocate Albert Msando

On 29th April 2020, an Advocate of the high court of Tanzania Mr. Albert Msando was arrested because of his statement on the spread and trends of COVID-19 in Arusha. Also, earlier on 28th April, a video went viral through different social media platforms apparently showing him distributing masks to journalists

in order to protect themselves from the highly contagious coronavirus in Arusha, Tanzania. Advocate Msando was quoted emphasizing the right to access and disseminate information at that time when the nation was embroiled in the fight against COVID-19 given the worsening situation in Arusha. On the part of journalists, he insisted that, they have a special role to search for information and inform the general public regarding the spread of the novel coronavirus outbreak. He insisted one key area that needs to be stressed in the fight against COVID-19, as the right to access and disseminate information.

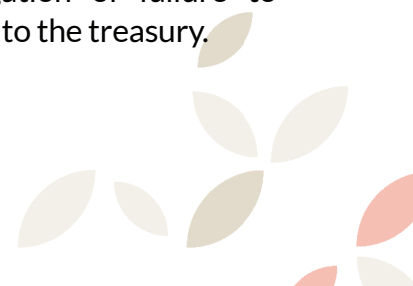
THRDC accorded him legal representation to process his bail. He was released on police bail on 30th April 2020. To date, no formal charges have been filed against him.

XV. Mr. Prince Bagenda

On Friday 24th April 2020 Police authorities in Dar es Salaam arrested a long time and seasoned human rights activist Mr. Bagenda on seditious offence and detained him for four days at Oysterbay Police station. He was arrested at his home in Dar es Salaam for allegedly writing a book draft claimed to criticize the President, his phone and desktop computers were confiscated by state security organs. THRDC accorded him an advocate and he was released on Police bail on 28th April 2020. However, his bank accounts were frozen by the government authorities.

XVI. Freezing of THRDC's Bank Accounts

The Tanzania Human Rights Defenders Coalition (THRDC) bank accounts were frozen on 13th August 2020 by CRDB Bank following the order from government authorities. THRDC secretariat made follow up to the Police (the Financial Crimes Unit) whereby, the National Coordinator recorded a caution statement on the allegation of failure to submit funding contracts to the treasury.



Surprisingly, on 19th August 2020 the Inspector General of Police, Simon Sirro while being interviewed by BBC, admitted that it is indeed true that, the Police ordered CRDB bank to freeze THRDC's bank accounts on allegations that there were several transactions in THRDC's bank accounts amounting to 6 billion whose sources and purposes were unknown. Therefore, Police ordered that the bank accounts be frozen for 14 days pending investigation. Fourteen days lapsed on 28th August 2020.

Thereafter, THRDC received a second letter from the Bank extending the freezing period for six months to provide enough time for the government authorities to complete an investigation. The extension period depends on how the office of the Director of Public Prosecutions handles the case. Six months lapsed without the bank accounts being unfrozen.

This escalated THRDC to rescind all staff employment contracts in January 2021. THRDC staff have been greatly affected, their families, relatives and all their dependents. Worse, such a freeze affected THRDC's operation programs for defending human rights defenders in Tanzania. The rights of THRDC to freely operate in the country were strongly violated. However, THRDC employed various efforts to ensure the matter is settled. However, those efforts also did not immediately yield positive results. The bank accounts were later unfrozen as this report was being issued. However, THRDC continued to defend HRDs in Tanzania under such difficult circumstances. Harmonious and a more engaging working mechanisms with the government is attained and making sure the HRDs organizations are operating in a safe environment.

XVII. Mr. Martin Maranja Masese

On Thursday April 30, 2020, a human rights activist Mr. Martin, an influential human rights activist on social media platforms was arrested and detained in Mara Region. While under detention, he was accused of abusing the President through his social media platforms' posts. However, the Police officers did not disclose the nature of the abuse and claimed that, they received an order from above to arrest him and the charge was claimed to be available in Dar es Salaam.

THRDC provided legal support and he was released at night on the same day and conditioned to report at the Police station on different dates in May 2020. During May, he was taken by Police officers to central Police station in Dar es Salaam. Yet, THRDC accorded him legal representation and he was released. He was ordered to report multiple times at the central Police station. To date, Mr. Martin has not yet been charged at the court of law.

XVIII. Advocate John Malya

On 7th September 2020 Advocate John Malya was arrested and detained at Central Police station in Morogoro. This happened in the course of defending his client Ms. Devota Minja, the erstwhile parliamentary candidate for Morogoro town constituency on the ticket of Chama ch Demokrasia na Maendeleo (CHADEMA). The Returning Officer was hesitant to issue form number 8b to his client and, made a phone call to inform the returning officer that his client is legally entitled to the form intended to be used during the election nomination process. The returning officer reported the incident to Police station and Advocate John Malya was subsequently arrested and detained. He was released unconditionally after one day.



A photo of Advocate John Mallya speaking to the media before he was arrested.

XIX. Hon. Devota Minja (Special Seat Member of Parliament)

Hon. Devota Minja, CHADEMA Special Seat Member of Parliament for Morogoro region was arrested on 26th April 2020 for distributing face masks to the people within Morogoro municipal. She was arrested on the allegations of organising unlawful assembly during the outbreak of COVID-19. She was later on released unconditionally.

2.3 Threats and Attacks to HRDs

I. Killing threats to HRDs and Political activists

On 3rd February 2020, THRDC issued a press statement condemning statements encouraging killings of HRDs and political activists who were openly defending girls' right to education after giving birth. THRDC urged the government and the security forces to take appropriate legal actions against those who issued such inhumane statements, which endanger peace and harmony. THRDC's statement also triggered the Commission for Human Rights and Good Governance in Tanzania and other organs to condemn the same.

II. Two Health Rights Defenders were Threatened

On 6th March 2020, a HRD defending health rights in Tanzania was attacked by unknown people, got beaten and suffered serious injuries. THRDC provided medical and psychosocial support. After recovery, such a HRD continued with his activities. The second HRD defending health rights was also threatened by unknown people. In order to enhance his personal security, the HRD sought another place of residence.

III. Cancellation of THRDC'S Training

THRDC planned to conduct the security management and risk assessment training from 24th to 26th June 2020 at Kisenga LAPF /Milleneum Towers Conference Centre in Dar es Salaam. A total of 30 new HRDs' organizations were invited and actually arrived at the venue on time. The main objective of the training was to build the capacity of THRDC's new members in security management and risk assessment while strengthening their solidarity with fellow members of the Coalition and eventually improve their engagement at national, regional, and international levels.

Earlier on 24th June 2020 in the morning around 8:30am Police officers arrived at the venue and requested to meet with the organizers of the training. Having met, the Programs Manager and the Associate Protection Officer Prevention and Risk Assessment, the Police took them to Oysterbay Police station for interrogation. While under interrogation, they were questioned on why THRDC is conducting training on security management "without seeking permission from the Police force and without the agenda being inspected and approved by them". They were further questioned on whether THRDC has qualified trainers for conducting the training on security management. The police further more requested the curriculum vitae of the



trainers to see if they qualify to offer such a training and the training modules for them to understand the context of the training.

After receiving the requested documents, Police authorities promised to go through them and get back to THRDC on whether or not to approve the training to proceed. However, the Police officers ordered THRDC to cancel the training until further notice. It was never approved and there was no any feedback concerning the training materials and CV submitted at Oysterbay Police station.

IV. An NGO was deregistered in Zanzibar

On 17th June 2020, a Non-Governmental Organization in Zanzibar was deregistered on the allegation of engaging in unlawful activities contrary to the governing NGOs operations in Zanzibar.

2.4 Statistical presentation of cases, threats and violation in 2020



2.5 Physical violence, and Torture

Human rights defenders face various challenges despite the Declaration on Human Rights Defenders, in every region of the world, human rights 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.⁴⁵

The situation is similar for almost all HRDs in Tanzania. HRDs from different thematic groups experienced physical violence, attacks, arbitrary arrest, and malicious prosecutions, being branded bad names, abductions, torture and killings. The most at risk HRDs who received several incidences of attacks, harassment, malicious prosecutions, arbitrary arrests, physical violence and torture in the year 2020 were journalists and HRDs defending digital freedom of expression and those who advocate for human rights generally.

2.6 State of Impunity

Tanzania like many other countries is faced with the problem of state impunity. The situation in Tanzania, however, worsened beginning the year 2015. Within the five years of operation of the fifth-phase government regime we witnessed unprecedented state of impunity where government officials especially Police, head of government

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⁴⁵ 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 P 15

departments, Regional and District Commissioners and Ministers have been using arbitrary powers, unreasonable forces to violate rights of majority of Tanzanians HRDs without any appropriate measures being taken against them.

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 victims should obtain appropriate remedies.⁴⁶

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.⁴⁷

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. 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 many cases involving violation of human rights

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⁴⁶ 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. Accessed on 27.09.2020

⁴⁷ Commentaries to declaration on human rights defenders July 2011 P 18

defenders' rights have not been investigated and perpetrators been held accountable.

The justice system in Tanzania is comprised of three main organs namely the Police, judiciary, and prison. The Judiciary has a role to dispense justice while the Police Force maintains peace and ensures people's security and safety of their properties and the prisons ensure that prisoners are kept in a safe and rehabilitative environment. The Police have got the mandate to arrest, suppress, investigate and finally prosecute alleged offenders.

2.7 Uninvestgated incidents committed against HRDs.

The perpetrator of the following incidents has never been investigated and prosecuted for their deeds;

- I. Abductors of Mr. Allan Kiluvya – Assistant of the Former Foreign Minister and CCM member Mr. Bernard Membe have never been brought to justice and no investigative report has been issued. He was abducted and later on found at Segerea in the suburbs of Dar es Salaam.
- II. Abduction and torture of the artist Ibrahim Musa alias R.O.M.A Mkatoliki and other three artists in May 2017, no investigative report has been issued to date neither has the police issued any statement on the progress of the investigation.
- III. Abductors of Mr. Absalom Kibanda (journalist HRD) have never been arrested and no investigative report has been issued.
- IV. Abductors of Dr. Steven Ulimboka have never been arrested and no any investigative report has been issued.

- V. Abductors of Mr. Raphael Ongangi, a Kenyan National and former Assistant of the ACT- Wazalendo's Opposition party leader Mr. Zitto Zuberi Kabwe (MP) have never been arrested. He was abducted by unknown people at around 9.30 pm on Monday, June 24, 2019 and later on found in Mombasa, Kenya on Wednesday, July 3, 2019.
- VI. Abductors of Mr. Saed Kubenea (journalist HRD and previously MP for Ubungo Constituency) who was abducted and sprayed with a poisonous substance on his face, have never been acted upon and no investigation report has been issued.
- VII. Attackers of a journalist in Geita who were covering the story of students' demonstration have not been arrested and prosecuted by responsible authorities. According to the report, the attackers were police officers who are supposedly entrusted to investigate and thus under normal circumstances the investigation could not be conducted.
- VIII. Attackers of Mdude Mpaluka Nyagali have never been arrested and investigation report has not been issued.
- IX. Attackers of Mr. Sirili John also known as Rasta, businessman, resident of Arusha and previously a CHADEMA candidate at Unga Ltd Council Local Government Elections of 2019, who was allegedly brutally slaughtered on election day by unknown assailants who have never been brought to justice.
- X. Attackers of the office of IMMMA Advocates have never been found neither have there be efforts from the government/police to investigate the matter.
- XI. Attackers who gunned down the Member of Parliament from the opposition CHADEMA party Tundu Antiphas Lissu have never been investigated and no report has ever been issued from the police regarding the incident.
- XII. The Kidnapping incident of student leader Abdul Omari Nondo, who was abducted in March 2018 have never been investigated and no report was ever issued with regard to his case except the decision of the court which shifted the burden of proving whether Nondo kidnapped himself or not.
- XIII. Kidnappers of Azory Gwanda, who is a journalist HRD from Kibiti have never been found and no report has ever been issued officially by police regarding his mysterious disappearance.
- XIV. Killers of Daniel John, CHADEMA ward leader for Kinondoni have never been investigated and no report was ever issued with that regard.
- XV. Killers of Godfrey Luena, the then Namawalla Ward Councilor in Kilosa, Morogoro region have never been apprehended and taken to court to face the charges against them.
- XVI. Measures against the police officer who shot dead Sheikh Mohammed Bin Almas have never been taken. Sheikh Almas was crossing the area going to the ATM while there was a notice preventing people to cross the area as money was being deposited at the ATM machine.
- XVII. The 2017 incident of invasion of the Clouds Media Group by former Dar es Salaam Regional Commissioner Paul Makonda has never been investigated by police to arraign and prosecute the perpetrator despite the video clip which showed clearly the raid. The RC

was still in power and no efforts were being made to ensure he would be held responsible for what he did.

- XVIII. The abduction and torture of a JKT movement leader George Mgoba in 2015 has never been investigated. Worse enough the HRD has continued to receive threats from police despite the fact that his case was ruled in his favour.
- XIX. The attackers of the journalists and other participants during the CUF meeting at Vina Hotel Dar es Salaam have never been arraigned and prosecuted for the horrific crime they committed on 21st April, 2017 seriously beating up journalists and members and leaders of the opposition party - CUF.
- XX. The findings of the Report of the then Minister for Information, Nape Nnauye regarding the invasion of the Clouds Media Group by the RC of Dar es Salaam have never been acted upon. The security officer who threatened Mr Nnauye with a pistol has never been taken to court for excessive use of force.
- XXI. The incident of a police officer who shot live ammunition in the air during an attempt to arrest the former Minister of Finance, Adam Malima. The police were allegedly dispersing people who had gathered to witness the arrest for wrong parking. Unfortunately, the Inspector General of Police (IGP), Simon Sirro justified the act saying the police officer acted within the parameters of the law.
- XXII. The incident involving the Arusha Regional Commissioner, Mrisho Gambo directing police to arrest journalists, some political and religious leaders who went to

handover condolences money to the Lucky Vincent Primary School tragedy victims has never been investigated nor are there any plans to hold RC responsible for his acts.

- XXIII. The kidnappers of Salma Said, a journalist from Zanzibar have never been found and charged for their deeds. She was abducted and tortured by unknown people in 2016 as she landed at the Julius Kambarage International Airport in Dar es Salaam. Critics have argued that, perhaps the government is directly or indirectly behind her abduction and that is why measures are not taken to find the kidnappers.

THRDC is highly disturbed with the state of impunity of the highest order and hereby recommends investigations with the view to bringing perpetrators to justice. Investigation should be conducted to all HRDs' cases who in one way or another found themselves in trouble because their human rights activities were violated. THRDC also calls upon the government to provide legitimacy to the work of HRDs, and to create an enabling environment for their operations. The State should refrain from intimidating human rights defenders in any way because what they are doing is legally recognized and protected under international laws.

The future is still bright in terms of the fight against state impunity in Tanzania owing to the introduction of criminal jurisdiction, international crimes against humanity and war crimes to the African Court under the Malabo Protocol on statute of the African Court of Justice and Human Rights. All is needed is country's commitment to honor the said international and regional legal instruments in good faith. CSOs should also cooperate with the government in ensuring that all sorts of impunity are properly and timely dealt with for the betterment of HRDs and the general public.

Chapter Three

MEDIA SECURITY AND JOURNALISTS' SAFETY

3.0 Chapter Overview

Chapter three details on the situation of journalists as human rights defenders and the state of media industry Tanzania. The Minister responsible for Information in Tanzania while addressing the Public on world press Freedom Day on 3rd May 2021, stated that currently, the government of Tanzania has registered a total of 246 Newspapers, 194 Radio and 53 Television. This chapter discusses security challenges encountered by journalists and the media industry in general. The challenges include but not limited to harassment, suspension, hefty fine, abductions, criminalization, detention, torture, killings, defamation, and suspension from their employment, denial of freedom of movement and other legal and regulatory related challenges.

3.1 Specific Challenges Facing Journalists

Freedom of expression is constitutionally guaranteed under Article 18 of the Constitution of United Republic of Tanzania.⁴⁸ The Constitution 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 Rights⁴⁹ states, “everyone shall have the right to freedom of expression”. This right shall include freedom to seek, receive, and impart 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. These right carries certain duties and responsibilities and may be subject to certain restrictions only as provided by the law.

Despite such guarantees, the applicability of laws raises issues of concern including banning on some the media outlets; prosecution of social media users; and penalization of media houses. Protection of private data is also not guaranteed. There were also reported attacks to journalists including threats, arrests, assaults, confiscation of working equipment.⁵⁰

With the enactment of the Media Service Act of 2016, Cyber Crimes Act of 2015, the Electronic and Postal Communications (Online Content Regulations) of 2020, press freedom has been diminishing over time especially in 2020 where press freedom was absolutely banned. These laws, which the

⁴⁸ The Constitution of United Republic of Tanzania, 1977 [Cap 2 R:2002]

⁴⁹ The International Covenant on Civil and Political Rights, 1966

⁵⁰ Tanzania Civil Society Organizations joint submission to the 39 UPR working group review of the United Republic of Tanzania, March 2021 P 14.

Government claims are aimed at improving the media, are in fact having a devastating effect on the media industry in Tanzania.

3.2 Arbitrary arrests and malicious prosecutions, threat to journalists, hefty fine, suspension and banning of media outlets

In the year 2020, THRDC Protection Desk documented a total of sixty (60) incidents of violation of rights against journalists. Most of these involve arbitrary arrest, malicious prosecution and conviction, suspension, hefty fine, threats, suspension of media outlets, termination of journalists from employment, arrests and malicious prosecutions and ban of media outlets and arbitrary confiscation of journalist's working tools. The following details depict the situation of journalists and media outlets in Tanzania;

3.2.1 Arbitrary arrests and/or Malicious Prosecutions

I. Journalist Dinna Maningu

On 19th February 2020 a journalist HRD, Ms. Dinna Maningu working with Uhuru Media Group in Tarime, Mara region, was arrested and detained by police officers under the order of the District Commissioner. She was arrested after visiting the said Commissioner's office to inquire some information about the investigative story that she was following up. She was unconditionally released on the same day. THRDC issued a press statement condemning such unlawful and arbitrary arrest.

II. Republic versus Erick Kabendera [Economic Case No 75 of 2019]

Erick Kabendera is an investigative journalist working on freelance basis for various local and international news agencies. On 29th

July 2019, he was forcefully removed from his home at Mbweni in Dar es Salaam by unidentified people who claimed to be the Police officers. About five men allegedly invaded his home and prevented onlookers and neighbours from entering in the house. He was for several days held incommunicado in undisclosed location without the knowledge of members of his family and his lawyers. At times he was moved from one police station to another and denied access to his lawyers.

On 30th July 2019, the Dar es Salaam Special Zone Police Commander, Lazaro Mambosasa acknowledged that journalist Kabendera was being held by the Police force for questioning on his citizenship. Mambosasa stated that his release will depend on completion of the interrogation.

Since his arrest on the evening of 29th July 2019, Mr. Kabendera was being held incommunicado without access to his lawyer and members of his family. In the first instance, the police did not disclose the location where Kabendera was being held, thus provoking public outrage and doubts. However, the police later stated that he was being detained at Kilwa Road police station. The Tanzania Human Rights Defenders Coalition (THRDC) engaged Advocates who managed to file a bail application on 30th July 2019 at Kisutu Resident Magistrates' Court. Erick Kabendera Vs Director of Public Prosecutions, Officer Commanding Station (Oysterbay Police Station), Inspector General of Police, Zonal Crimes Officer and Director for Criminal Investigation [Misc. Criminal Application No 14 of 2019]. The bail application was scheduled for hearing on 1st August 2019 before Senior Resident Magistrate Augustine Rwizile.

After lodging the application, Kabendera was hurriedly brought before the Court on 1st August, 2019, at 09:00 a.m. The bail

application was adjourned to 5th August 2019. Meanwhile a group of detectives went to search at Kabendera's home but no incriminating evidence was found. On 5th August 2019 Mr. Kabendera was brought before the court, and surprisingly the prosecutors instituted fresh charges against him. The charges include: money laundering contrary to section 3(u), 12(d) and 13(1)(a) of the Anti-Money Laundering Act No. 12 of 2006, failure to pay tax of Tanzanian shillings 173 million contrary to section 105(a) of the Income Tax Act [332 R.E 2008] and leading organized crime contrary to paragraph 4(1) (c) of the First Schedule to, and section 57(1) and 60(2) of the Economic and Organized Crime Control Act [Cap 200 R.E 2002]. When Kabendera showed up at Kisutu Resident Magistrates' Court on 5th August 2019, he was automatically denied bail because under section 148(5)(d)(v) of the Criminal Procedure Act Cap 20 R.E 2002 the suspects for economic crimes do not qualify for bail. He had since then been remanded at Segerea maximum security prison.

Up to 17th February 2020, the case against Kabendera had repeatedly been mentioned 18th times at the Kisutu Resident Magistrates' Court, under committal proceedings with no trial. The Tanzania Human Rights Defenders Coalition (THRDC) along with other partners provided legal aid, medical support and taking care of members of Kabendera's family from the day he was arrested.

❓ Plea Bargain Negotiations

On 11th October 2019 advocate Jebra Kambole on behalf of Erick Kabendera notified the court about the intention to enter a plea bargain negotiation with the Director of Public Prosecutions (DPP) in lieu of section 194 A (2) of the Criminal Procedure Act Cap 20 R.E 2002.

On 11th February 2020, the Republic informed the Court about its intention to conduct plea bargain negotiations in the presence of Mr. Erick Kabendera. On the same day, Erick together with his lawyers met with the DPP for plea bargain negotiations.

On 24th February 2020 Mr. Erick Kabendera "pleaded guilty" of two counts of failure to pay tax and money laundering after concluding a plea-bargaining agreement with the Director of Public Prosecutions (DPP). Mr Erick and the DPP concluded a plea agreement in accordance to sections 194 A, 194 B and 194 C of the Criminal Procedure Act, Cap 20 R.E 2002 under the conditions that, the DPP consented to drop the charge of leading an organized crime and upholding two charges of failure to pay tax of One Hundred Seventy-Three Million Two Hundred Forty-Seven Thousand Forty Seven and Two Cents (Tsh. 173 247 047.02) contrary to section 105 (a) of the Income Tax Act, [Cap 200 R.E 2008] and money laundering of One Hundred Seventy Three Million Two Hundred Forty Seven Thousand Forty Seven and Two Cents (Tsh. 173 247 047.02) contrary to sections 3(u), 12(d) and 13(1)(a) of the Anti-Money Laundering Act No. 12 of 2006 read together with Paragraph 22 of the First Schedule to, and sections 57(1) and 60(2) of the Economic and Organized Crimes Control Act, [Ca p 200 R.E 2002] as amended.

As part of enforcing the plea bargaining agreement, on 24th February 2020 the Kisutu Resident Magistrates' Court convicted and sentenced Mr. Erick Kabendera for both two counts as aforementioned. On the first count the court held that Erick has to pay Tanzania shillings Two Hundred and Fifty Thousand together with a fine of One Hundred Seventy-Two Million Two Hundred Forty-Seven Thousand Forty Seven and Two Cents (Tsh. 172 247 047.02 - equivalent to \$ 74, 910) or three months of imprisonment and on the second count the court held that Erick has to pay Tanzanian shillings One Hundred Million (equivalent to \$ 43, 400)

For Mr. Erick to be released, he had to deposit a total of 100,000,000 Tsh Milion (equivalent to \$ 43, 400) and the remaining balance has to be cleared within six (6) months from the day he was released. Failure to pay, the DPP reserves the right to reframe the charges against him. The plea agreement was submitted in court for registration in accordance to section 194 D (1) of the CPA and the court pronounced its decision basing on the plea agreement. Mr. Erick Kabendera opted for the fine and he has been set free subject to the terms and conditions of the plea agreement. Due to the fact that Mr. Erick pleaded guilty, he has no right to appeal against his plea except to the extent or legality of sentence according to section 194 E (b)(ii) of the Criminal Procedure Act, [Cap 20 R.E 2002].



Mr. Erick Kabendera speaking to the media immediately after being freed at Kisutu Resident Magistrates' Court

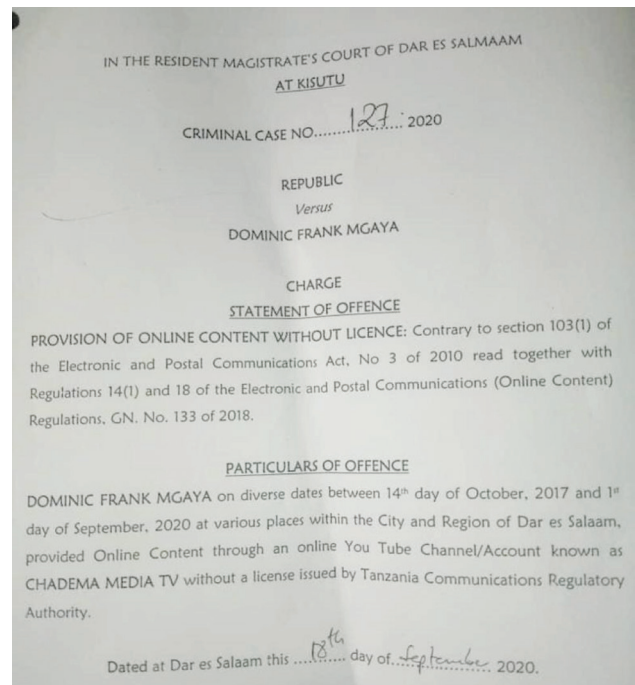
Apart from providing legal support, on 25th February 2020, THRDC also issued a trial observation report⁵¹ regarding the case of journalist Erick Kabendera. Some of the report recommendations suggested, investigation has to be done first before an accused person is arrested, committal proceedings have to be removed from the statute book because they deny the right to be heard and fair trial of the accused persons.

⁵¹ <https://thrdc.or.tz/wp-content/uploads/2020/02/TRIAL-OBSERVATION-REPORT-ON-ERICK-KABENDERAs-CASES.pdf> Accessed on 25.07.2020

After almost one month, that is on 24th March 2020, the High Court Principal Judge ordered the Magistrates and Resident Magistrates of the District and Resident Magistrates' Courts not to receive cases whose investigations are incomplete.⁵² As part of ensuring committal proceedings are removed in the criminal justice system, THRDC further advised the Parliament to enact a law to that effect and amend all laws affecting the criminal justice system.

III. Journalist Frank Mgaya,

On 18th September 2020 journalist Frank Mgaya was arrested and arraigned before the Kisutur resident magistrate court on allegation of publishing online content without having a licence from Tanzania Communication Regulatory Authority. Mr. Mgaya is among journalists running the opposition media platform in Tanzania (CHADEMA Media Online Tv). He was released on court bail and his case is still on going at the court.



Chargesheet for Journalist Mgaya

⁵² <https://www.jamiiforums.com/threads/mahakama-sasa-kutopokea-kesi-zisizokamilisha-up-elelezi.1706659/> Accessed on 27.05. 2020



A photo of Mr. Frank Mgaya while in court waiting for the charges to be read before him on 18th September 2020.

IV Journalist Aroida Peter, Dahlia Majid, Dotto Rangimoto

On 25th September 2020, Police officers arbitrarily arrested and briefly detained journalist Aroida Peter who is also the information officer for Alliance for Change and Transparency (ACTWazalendo) party, Ms. Dahlia Majid, the campaign manager was accused for obstruction of Police investigation and Mr. Dotto Rangimoto was accused of committing cybercrimes offences. Journalist Aroida and Ms. Dahlia were detained for three days and released on 28th September 2020 and conditioned to report at Oysterbay Police station at different days while Mr. Dotto Rangimoto stayed for more than three days in detention under Police station.

V. Journalist John Marwa

On 9th June 2020, a journalist Mr. John Marwa was arrested and detained at Oysterbay Police station for two days. He was arrested on the allegation of defaming Deputy Minister Hon Mwita Waitara. After a two days' detention, he was unconditionally released.

VI. Journalist Salma Said

A seasoned journalist and human right defender Ms. Salma Said was arrested on

29th December 2020 on the allegation of publishing information containing government secrets through online platforms such as WhatsApp. She was interrogated for the whole day and her phone was confiscated by the Police officers to date. She was released and conditioned to report every Monday at the Police station. THRDC has been providing legal advice and support. She is still reporting to the Police station and Police authorities have not yet completed their investigation.

VII. Journalist Sebastian Emmanuel Atilio [Criminal Case No. 208 of 2019]

On 7th September 2019. A freelance journalist, Sebastian Emmanuel Atilio was arrested by Police in Mufindi District, Iringa Region, for allegedly falsifying information and working without being registered by the Accreditation Board. Sebastian was reporting a land dispute between Ifupilo village and the Unilever Tea Tanzania Ltd and Mufindi Tea Tanzania Ltd or Rift Valley Holding Ltd.

He was then arraigned before Mufindi District Magistrate's Court in Mafinga, Iringa and charged with publishing false news and working without registering with the Board contrary to sections 54(1) and 50(2) (b) of the Media Services Act, 2016, he denied the charges.

Unexpectedly, the public prosecutor filed a Criminal Application No. 11 of 2019 moving the court to deny bail against the accused person using section 148 (5) of the Criminal Procedure Act, Cap 20 RE 2002. Following that the court granted the Respondent/ Accused an opportunity to file a Counter-Affidavit by September 16, 2019, and schedule for hearing of the Application on September 18, 2019. Atilio was then released on bail. On 5th March 2020, the republic withdrew the case for having no intention to continue with the case.

VIII. Republic versus George Marato [Criminal Case No of 2018]

George Marato is a journalist working with Independent Television (ITV). He was arrested and charged with corrupt transactions contrary to section 15(1)(a) and (2) of the prevention and combating of corruption Act no. 11 of 2017. The reasons for his arrest are well connected with his journalistic work. THRDC provided legal support and in April 2021, he won the case after the failure of the prosecution to prove the case beyond reasonable doubt.

IX Republic versus Charles Kombo [Criminal Case No 131 of 2019]

Charles Kombo is a blogger who was arrested and detained at Mabatini police post for nearly two weeks. The reason for his arrest was running online Blog without registration. His case is still pending at the Kisutu Resident Magistrate Court.

X. Journalist Ramadhan Mvungi and two Others

On Monday, March 23rd, 2020 Journalist Ramadhan Mvungi working for Azam TV, Journalist Novatus Makunga and photographer Mohammed Mkindo all based in Arusha, Tanzania were arrested by police officers for entering a prohibited area. That area, was a hotel which was prohibited from entering because, the first Tanzanian who tested positive for coronavirus was residing there before the diagnosis had been confirmed. The Journalists and the photographer were taken to the Regional Police Commander for interrogations and later on released unconditionally. THRDC issued a statement with a thorough advice for journalists and HRDs to observe government instructions in the midst of Covid-19 pandemic in Tanzania.

XI. Republic versus Maxence Mello [Criminal Case No 456 of 2016]

On 8th April 2020, the Resident Magistrates' Court of Dar es Salaam at Kisutu convicted Mr. Maxence Mello on charge of "obstruction of a police investigation" (under Section 22(1) of the Cybercrimes Act, 2015). The Court convicted him to one year in prison or a fine of 3,000,000 Tshs. The judgement in this case had been postponed five times since November 26, 2019. Mr. Mello paid the fine and filed a notice of intention to appeal the court's decision before the High Court of Tanzania.

The charges stemmed from Mr. Maxence Mello's alleged refusal to disclose the identities of whistle-blowers on his JamiiForums platform. This case, which was delayed many times, is one of the three "obstruction" allegations against him, dating from 2016, when authorities arrested Mr. Mello and raided JamiiForums offices. In June 2018, Mr. Mello was acquitted of the charge of "not complying with an order of disclosure of data"

Background information

On 13th December 2016, Mr. Maxence Mello was arrested by the Tanzania police force and further detained on allegations of complaints from people claiming to be affected by some posts and discussions held on JamiiForums. The Tanzania police force then asked Mr. Mello to provide them with data of online users who had engaged in so-called "controversial debates" over several alleged "corruption deals" on the JamiiForums website between May 10, 2015 and December 13, 2016 (basis for court case No. 456) and between April 1, 2016 and December 13, 2016 (basis for court case No. 457). Mr. Mello refused to provide such information, arguing that it would run counter digital privacy and confidentiality laws, and in particular Article 18 of the Constitution of Tanzania, guaranteeing the right to privacy.⁵³

53 <https://www.fidh.org/en/issues/human-rights-de->



On 15th December 2016, the police searched both premises of the organisation and Mr. Maxence Melo's home without any warrant. Furthermore, the police interrogated some staff members at their office premises in Mikocheni, Dar es Salaam, and later at the Central Police Station.

The police kept Mr. Melo in custody for more than 48 hours without interrogation and in absence of charges against him, in violation of Tanzanian legislation which sets a four-hour limit for police interrogation without charges.

On 16th December 2016, the Resident Magistrate Court of Dar-es-Salaam at Kisutu indicted Mr. Maxence Melo under three sets of charges: "obstruction of a police investigation" under the 2015 Cybercrimes Act; "not complying with an order of disclosure of data" (cases No. 456 and 457); as well as "managing a domain not registered in Tanzania" in contravention of Section 79(c) of the Electronics and Postal Communications (2010) Act (case No. 458). Mr. Maxence Melo was eventually granted bail on 19th December 2016 pending trial.

On 13th December 2016, another shareholder of JamiiForums Mr. Mike William was joined to the case, on February 9, 2017, under accusations of "intentionally and unlawfully refusing to provide information required for a criminal investigation". On 1st June 2018, the Resident Magistrates' Court of Dar es Salaam at Kisutu acquitted Mr. Maxence Melo and Mr. Mike William of the charge of "not complying with an order of disclosure of data" under case No. 457 of 2016.

XII. Journalist Mary Victor

On 19th May 2020, a Journalist working with Raia Mwema Newspaper in Dar es Salaam, Ms. Mary Victor was arrested and detained at Central Police Station. She was

arrested at Kinyerezi in Dar es Salaam, on the allegation of publishing false information (a video clip allegedly depicting people suffering from COVID-19 running away from Amana hospital in Dar es Salaam) in the office WhatsApp group contrary to the Cybercrimes Act, 2015.

While under detention, Ms. Mary was interrogated for publishing information allegedly to be false and from unverified sources. Other two Journalists working with Raia Mwema Newspaper were also interrogated alongside the same incident that led Mary to be arrested. THRDC issued a statement and provided legal support until when she was released.

XIII. Republic Vs Emmanuel Kibiki [Criminal Case No 90 of 2018]

A journalist human rights defender, Mr. Emmanuel John Kibiki was arrested by police in Makambako allegedly because of his human rights work. He was arraigned to court and charged with publishing false information to the public officer contrary to section 122(b) of the Penal Code Cap 16 [R.E 2002].

Under THRDC's legal support, on 6th August 2020, journalist Kibiki was set free by the court after the failure of the prosecution to prove the case beyond reasonable doubt.



A group photo of lawyers handling the case with Mr. Kibiki, the second from the right-hand side

fenders/tanzania-conviction-of-mr-maxence-me-
lo-from-jamiiforums Accessed on 20.12.2020

XIV. Republic Vs Muthathia Shadrack Kareria and Clifton Isindu [Criminal Case No 116 of 2020]

Two Kenyan journalists, Mr. Muthathia Shadrack Kareria and Mr. Clifton Isindu were on 19th May 2020 convicted and sentenced by the Resident Magistrates' Court in Arusha to pay fine amounting to Two Million Tanzanian Shillings or three years of imprisonment. The conviction based on the count of entering and working in Tanzania with no valid documents such as the entry and work permits. They subsequently paid the fine and were repatriated back to Kenya, through the Namanga border.

The two journalists work with Elimu TV, an educational digital television station in Kenya, which has a sub office at the Namanga border of Kenya and Tanzania. They were arrested in the “no-man’s land” at Namanga, and subsequently detained at Longido Police Station, Arusha Region, allegedly for interviewing people about the status of COVID-19 in Tanzania.

THRDC provided legal support in collaboration with Pan African Lawyers Union, Elimu TV, Committee to Protect Journalists (CPJ), Article 19 Eastern Africa, Media Council of Kenya (MCK) and Human Rights Defenders in general.

XV. Republic versus Friday Simbaya [Criminal Case No of 2018]

In 2018 a journalist human rights defender Mr. Friday Simbaya was arrested for publishing Online Content without license from TCRA contrary to section 103(1) of the Electronic and Postal Communications Act [Cap 306 R.E 2017] read together with Regulation 14(1) and 18 of the Electronic and Postal Communications (Online Content) Regulations, 2018. THRDC provided legal support, to date the case is pending before the court.

XVI. Republic Vs Ibrahim Godfrey Mlele [Criminal Case No. 41 of 2020]

A Journalist human rights defender Mr. Ibrahim Godfrey Mlele was arrested on 29th February 2020, interrogated in absence of his advocate and detained at Njombe town police station for four days.

On 4th March 2020, he was charged before the Njombe Resident Magistrates' Court for publishing of online content without a license in his online YouTube account/channel known as MLELE TV contrary to section 103(1) of the Electronic and Postal Communications Act [Cap 306 R.E 2017] read together with Regulation 14(1) and 18 of the Electronic and Postal Communications (Online Content) Regulations, 2018. THRDC provided legal support and on 4th March 2021, the case was dismissed on the request of the prosecution.

XVII. Republic Vs Benedict Brown Kisawa [Criminal Case No. 43 of 2020]

A human rights defender Mr. Benedict Brown Kisawa was arrested on 29th February 2020, interrogated in absence of his advocate and detained at Njombe town police station for four days.

On 4th March 2020, he was charged before the Njombe Resident Magistrates' Court for provision of online content without a license in his online YouTube account/channel known as NJOMBE YETU TV contrary to section 103(1) of the Electronic and Postal Communications Act [Cap 306 R.E 2017] read together with Regulation 14(1) and 18 of the Electronic and Postal Communications (Online Content) Regulations, 2018. The case is still on going in court under THRDC's legal support.



XVIII. Republic Vs Prosper Daudi Mfugale [Criminal Case No. 44 of 2020]

A Journalist human rights defender Mr. Prosper Daudi Mfugale was arrested on 29th February 2020, interrogated in absence of his advocate and detained at Njombe town police station for four days.

On 4th March 2020, he was charged for providing of online content without a license in his online YouTube account/channel known as NJOMBE TV contrary to section 103(1) of the Electronic and Postal Communications Act [Cap 306 R.E 2017] read together with Regulation 14(1) and 18 of the Electronic and Postal Communications (Online Content) Regulations, 2018.

On 24th June 2020, the Resident Magistrates' Court of Njombe convicted and sentenced journalist Mfugale to pay fine of Tanzanian Shillings Five Million or serving a one year imprisonment, after he pleaded guilty for provision of online content without a license in his online YouTube account. "I have decided to plead guilty because of my freedom, I want to be free and also pressure from my family influenced me to reach this decision," said Mr. Mfugale. Journalist Mfugale opted to pay for the fine and he was set free by the court.



A photo of journalist Mfugale

XIX. Republic Vs. Albert George Sengo [Criminal Case No. 101 of 2020]

A journalist human rights defender, Mr. Albert George Sengo on 23rd April 2020, was arraigned before the Resident Magistrates' Court of Mwanza, for publishing online content without having a valid license contrary to Regulation 14 (1 & 2) and 18 of the Electronic and Postal Communications (Online Content) Regulations of 2018. THRDC provided legal support.

On 13th July 2020, the Resident Magistrates' Court of Mwanza convicted and sentenced Mr. Sengo to pay a hefty fine of Tanzania Shillings Five Million or serving a 12 months of imprisonment. Journalist Sengo paid the fine and was set free by the court.

XX. Republic versus Idris Sultan and two Others [Criminal Case No of 2020]

On Friday 20th March 2020, a famous comedian in Tanzania Mr. Idris Sultan and two others (Doctor Ulimwengu and Isihaka Mwinyinvua) were charged before the Kisutu Resident Magistrates' Court for providing online contents through their YouTube channel known as Loko Motion without a license from the Tanzania Communications Regulatory Authority (TCRA).⁵⁴

XXI. Republic versus Shaffih Dauda and Benedict Kadege [Criminal Case No of 2020]

On 17th March 2020, a sport journalist HRD Mr. Shaffih Dauda and Benedict Kadege (the ICT Officer) were convicted and sentenced to pay a fine of five million shillings or serving twelve months of imprisonment each by the Resident Magistrates' Court of Dar es Salaam at Kisutu. Both of them were charged

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⁵⁴ <https://www.standardmedia.co.ke/entertainment/african-news/2001372018/police-arrest-tanzania-comedian-idris-sultan> Accessed on 29.09.2020

for owning and publishing information on Shaffih Dauda Online TV without having a license from the Tanzania Communications Regulatory Authority.



A photo of journalist Shafih Dauda

XXII. Journalists in Moshi Kilimanjaro, Tanzania

On 5th April 2020, two journalists and one owner of a YouTube account were arrested and detained at Moshi Central Police Station in Kilimanjaro region. The journalists are: Tumsifu Harry Kombe (owner of NEWS 8 Online TV) and Jabir Johnson Mking'imle (owner of JAIZMELALEO Blog), and Mr. Julius Yesaya who owns a YouTube account known as PHIJEMA TV. While under arrest they were interrogated in absence of their advocate for owning blogs and YouTube account without a license issued by the Tanzania Communications Regulatory Authority (TCRA).

THRDC provided legal support and they were released on the evening of 6th April 2020 on the condition that they would be reporting to Moshi Central police station at different dates. They did so for seven months and on 18th November 2020, Mr. Tumsifu and Mr. Julius were arraigned before the Resident Magistrate Court of Kilimanjaro at Moshi and charged for owning a Blog and YouTube account without a license from TCRA.

However, their working tools including a mobile phone, laptop computers were confiscated by the police until now.

XXIII. Republic Vs Dickson Kanyika [Criminal Case No. 42 Of 2020]

A journalist human rights defender Mr. Dickson Kanyika was arrested on 29th February 2020, interrogated in absence of his advocate and detained at Njombe town police station for four days.

On 4th March 2020, he was charged before the Njombe Resident Magistrates' Court for providing online content without a license in his online YouTube account/ channel known as HABARI DIGITAL contrary to section 103(1) of the Electronic and Postal Communications Act [Cap 306 R.E 2017] read together with Regulation 14(1) and 18 of the Electronic and Postal Communications (Online Content) Regulations, 2018. The case is still on going before the court under THRDC's legal support.

3.2.2 Threats to Journalists

XXVI. Journalist Talib Ussi Hamad

On Monday, 20th April, 2020 the Director of Information Department of Zanzibar Dr. Juma Mohammed Salum issued a press release suspending journalist Talib Ussi Hamad from doing any journalistic work for the period of six months. The position was later reinforced by the Minister of Information, Honorable Mohammed Thabit Kombo. The Director of Information suspended Mr. Ussi by virtue of sections 41, 42(2) (a) and (b) of the Registration of News Agents, Newspapers and Books Act No 5 of 1998. The Director through his letter, stated two reasons behind this suspension:

- Violating journalism ethics and
- Publishing information of a person suffering from coronavirus (COVID - 19) without seeking his consent contrary to the law, rules and medical procedures.



THRDC provided legal support by challenging such a decision at the High Court of Zanzibar, however the government cancelled the suspension of Mr. Ussi and requested him to withdraw the case. On 30th November 2020, Mr. Ussi withdrew the case from the High Court of Zanzibar.

XXVII. Salma Said

A journalist HRD reporting for Deutsche Welle (DW) based in Zanzibar Ms. Salma Said on 26th March 2020 received threatening messages from unknown people for reporting news about the outbreak of the pandemic disease (COVID-19) in Zanzibar. On the same day she received a letter from the Director of Information Department of the Government of Zanzibar warning her regarding her journalist activities and conduct.

XXVIII. Journalist Patrick Alfred

On 14th April 2020, a journalist in Morogoro Mr. Patrick Alfred Misungwi was arrested, interrogated, released and continued to face threats. For his personal security, he decided to find another secured place for his peaceful residence.

3.2.3 Hefty Fine, Suspension and Banning from Operation

XXIX. Hefty fine to Star Media Tanzania Limited, Multichoice Tanzania Limited and Azam Digital Broadcast Limited

The Tanzania Communications Regulatory Authority (TCRA) ordered three local media outlets (Star Media Tanzania Limited, Multichoice Tanzania Limited and Azam Digital Broadcast Limited) to make a public apology as well as to pay a fine of five million within 30 days after being alleged to have breached the license conditions and the law. According to TCRA the media channels were fined for transmitting via their respective

platforms, a television broadcast of “false and misleading information about Tanzania’s stance of Covid-19”.

XXX. Hefty fine to Six electronic media outlets

On 1st July 2020, the Tanzania Communications Regulatory Authority (TCRA) Content Committee imposed a total of 30 Million Tanzanian Shillings fine to all six electronic media for violating broadcasting rules and regulations as stipulated in the Electronic and Postal Communications (Radio and Television) Regulations, 2018. The Six radio and TV stations include; Cloud Entertainment FM Radio, Duma TV, East Africa Radio, Global TV, SibukaTv and Star TV. The detailed penalties issued are as highlighted below:

Clouds Entertainment FM Radio was given a warning together with a fine of Tanzanian Shillings five million for broadcasting content alleged to promote sexual activities and the use of ‘octopus soup’ for enhancing sexual arousal. The TCRA Content Committee alleged that the program was aired at a time when the large audience could be children. The TCRA Content Committee claimed such contents were against Regulation 11(c), 12(1) (a), (d) and 14(a), (b) and (c) of the Electronic and Postal Communications (Radio and Television) Regulations, 2018.

Duma TV was given a strong warning, banned to post any content on its Instagram account for a period of one month together with a fine of Tanzanian Shillings Seven Million for publishing content alleged to be defamatory through its Instagram account that “most of the Muslims love women with big shapes”. Such content was claimed by the TCRA Content Committee to have violated Regulation 7(1)(a), (b) and 12(k), (i), (ii) of the Electronic and Postal Communications (Online Content) Regulations, 2018.

East Africa Radio was issued with a strong warning together with a fine of Tanzanian Shillings three million for airing contents purported to have insulted the government as well as that the current Controller and Auditor General cannot take actions effectively in the performance of his duties. Such content was claimed by the TCRA Content Committee to be against Regulation 17(1), 24(a), (b), (c) and 29(b) of the Electronic and Postal Communications (Radio and Television) Regulations, 2018.

Global Online TV was given a strong warning together with a fine of Tanzanian Shillings seven million for posting still pictures and content in its YouTube account alleged to encourage same sex marriage contrary to Regulation 5(1)(a), (b) and 12(b) of the Electronic and Postal Communications (Online Content) Regulations, 2018.

Sibuka Television was given a warning together with a fine of Tanzanian Shillings three million for broadcasting content alleged to encourage killings. Such content could cause psychological torture and inflict fear to the people in the country. Such content was claimed by the TCRA Content Committee to be against Regulation 5(f), (g), 11(2)(c), 12(1)(a), (b), (d), 13(a), (b), (i), (ii), (iv), (ix), 14(a), (b) and 38 (1), (2), (3) (c), (d), 38 (4) (a), (b) of the Electronic and Postal Communications (Radio and Television) Regulations, 2018.

Star Television was given a strong warning, ordered to issue a public apology for three days consecutively together with a fine of Tanzanian Shillings five million for airing a program, containing materials that insulted the Kisarawe District Commissioner, Ms. Jokate Mwegelo and Minister of State in the President's Office Mr. Selemani Jafo.

XXXI. Neville Meena and Khalifa Said

On 23rd March 2020, two journalists HRDs who were working with Mwananchi

Communications Ltd were terminated from employment on the grounds that their conducts could jeopardize Mwananchi Communication's Ltd image by putting the company to disrepute.

XXXII. Kwanza Online TV

On 2nd July 2020, the TCRA Content Committee issued a summons to Kwanza Online TV to present its defense on 3rd July before the committee for publishing content issued by the Embassy of the United States in Tanzania about COVID-19 without verification. Kwanza Online TV published such content through its Instagram account. The Committee alleged such a publication to be against Regulation 7(1) (a), (b) and 12(1) of the Electronic and Postal Communications (Online Content) Regulations, 2018 and Regulation 11(1)(a), 15(2)(b), (c) of the Electronic and Postal Communications (Radio and Television) Regulations, 2018.

Kwanza Online TV presented its written defense and on 6th July 2020, the TCRA Content Committee reached a decision of banning Kwanza Online TV from operating for eleven (11) months for contravening the aforementioned Regulations. It was also, banned from operating by the same committee for a period of six months in September 2019 together with a fine.

XXXIII. Radio Free Africa, Radio One Stereo, Abood FM Radio and CG FM stations

In 2020, Ministry responsible for information amended the Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations, 2018 by introducing a requirement compelling licensed local broadcaster "to seek the TCRA's permission before airing either national or international content, which they generate in collaboration with another online content provider outside the country".



On 10th August 2020 TCRA Content Committee summoned the management of Radio Free Africa (RFA) for an interrogation, accusing the local radio station of airing an interview dialogue (through “Amka na BBC”) with the vice chairman of the main opposition political party, CHADEMA, Mr Tundu Lissu, in which he claimed that he was denied by the government to pay his last respect to the late former President Benjamin Mkapa. The interview was conducted on 29th July 2020, TCRA found the local radio station guilty of violating the Regulations by airing Mr. Lissu’s claims without seeking clarification from the government spokesperson.

Further, Radio Free Africa, Radio One Stereo, Abood FM Radio and CG FM stations were served with stern warning and put under observation for broadcasting unbalanced information. He said the content had no voice of the government’s spokesperson and that no efforts were made to ensure the content was balanced despite knowing that laws, regulations and ethics demanded for balancing.⁵⁵

XXXIV. Suspension of Clouds TV and FM Radio

On 27th August 2020, the Tanzania Communications Regulatory Authority banned Clouds TV and FM Radio for seven days. Furthermore, it was also ordered to offer a public apology for allegedly violating the Political Party’s Elections Broadcasting Code of Conduct of 2015. The TCRA decision came after the two sister stations (Clouds TV and FM Radio) in their morning “360” and “power breakfast” programs announced the outcomes of the nomination processes in some constituencies without the approval of the National Electoral Commission (NEC).

In fact, they announced that in some

.....
⁵⁵ <https://www.thecitizen.co.tz/tanzania/news/tanzania-communication-regulator-cracks-the-whip->

constituencies, some members of Parliament aspirants had sailed through unopposed after other contestants failed to meet nomination criteria in certain constituencies. As part of the punishment, the stations were required to air an apology for the rest of remaining hours of Thursday, August 27 before they start serving the ban effectively from 28th August 2020.



XXXV. Raha Limited, an internet service provider in Tanzania

On 28th August 2020, the Tanzania Communications Regulatory Authority (TCRA) imposed a fine to Raha Limited amounting to Tanzanian shillings 11.89 Billion⁵⁶ for violating several laws as well as Communications regulations including failure to provide internet services, failure to submit an annual strategic plan for human resource development, failure to submit financial statement as well as failure to re-apply for license on time. The company was also accused of using radio communication frequencies in the range of 1452-1482 MHZ since 24th March 2020 without possessing a valid license. The company was ordered to pay the said fine within 90 days or further action would be taken against it.

on-radio-stations--2714506 Accessed on 17.10.2020

⁵⁶ <https://www.thecitizen.co.tz/tanzania/news/tanzania-communications-regulatory-fines-raha-sh11-8-billion-2715308> Accessed on 29.12.2020

XXXVI. Suspension of Wasafi FM Radio

On 11th September 2020 Wasafi FM's operations were suspended for seven days by the Tanzanian Communication Regulatory Authority (TCRA) allegedly for airing a program using abusive and defamatory language hence offending fat women contrary to the Electronic and Postal Communications (Radio and Television) Regulations, 2018.

Speaking at a press conference, the TCRA Director-General James Kilaba said the station allegedly committed the infringement on 1st August and 4th August on two radio programs namely; 'The Switch' and 'Mashamsham'. According to Mr. Kilaba, the presenters aired content using abusive language, contrary to licensing Regulations. "From the moment I make this announcement, the station is required to stop regular programming and air an apology for the remaining hours of Friday, before starting serving the suspension on September 12," said Mr Kilaba.⁵⁷

XXXVII. Suspension of RVS Online TV's License

On 21st October 2020, the Executive Secretary of the Zanzibar Broadcasting Commission suspended the license of RVS Online TV for two months up to 21st December 2020 on the allegation of publishing information contrary to the Broadcasting Guidelines During Election of 2020. It was alleged that RVS had been publishing information which does not balance or do not contain coverage of information from all political parties. The issued letter for suspension did not state such alleged information, rather it merely explains allegations without any proof stated.

⁵⁷ <https://www.thecitizen.co.tz/tanzania/news/wasafi-fm-hit-with-ban-over-rule-violation-2716122>
Accessed on 13.09.2020

XXXVIII. Suspension of Tifu TV

On 18th February 2021, the Broadcasting Commission in Zanzibar suspended Tifu TV for seven days on the allegation of contravening the government guidelines during the mourning of the late Maalif Seif Sharif Hamad. However, the Broadcasting Commission did not explain such a contravention to the public in detail.

XXXIX. Banning of Best FM Radio (Njombe)

In 2020, the government banned best FM Radio in Njombe Tanzania on the allegation of operating without having a license from the Tanzania Communications Regulatory Authority.

XL. Suspension of Mwananchi Online Newspaper

On 16th April 2020, the Tanzania Communications Regulatory Authority (TCRA) through its Content Monitoring Committee suspended the Mwananchi Newspaper online content delivery license for six months, and in addition to pay a fine of five million shillings.⁵⁸ The suspension came after Mwananchi Newspaper violated the Electronic and Postal (Online Content) Regulations of 2018. The decision was reached after it was alleged that on 13th April 2020, through the Mwananchi Newspaper' Online social networking pages published misleading information that caused confusion in the community. However, such misleading information was not explained to the public by the authority.

⁵⁸ <https://www.thecitizen.co.tz/tanzania/news/tcra-suspends-mwananchi-s-online-license-for-six-months-2707858>
Accessed on 25.05.2020

XLI. Cancellation of Tanzania Daima's license

On 23rd June 2020, the government cancelled Tanzania Daima's licence for six months for allegedly breaching different laws of the country and for violating journalism ethics. However, the laws that are alleged to have been breached as well as the said ethics were not disclosed in the letter. The cancellation was made pursuant to section 6 (b) of the Media Services Act of 2016. The section gives discretionary powers to the Director of Information to cancel the license where the licensee fails to comply with the terms and condition prescribed in the license. This is the second time, initially Tanzania Daima Newspaper was banned for three months in the year 2017.

and legal representation for those were arraigned to court.

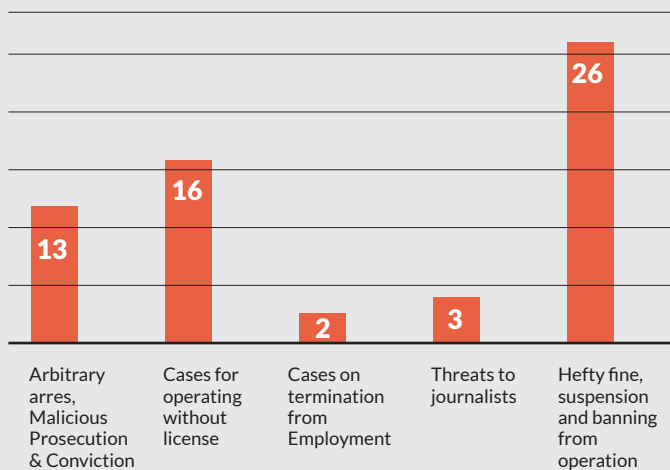
3.3 Digital threats/incidents

The enactment of Cybercrime Act 2015, Media Services Act, 2016 and the Access to Information Act, 2016 and its enforcement remained to be the most threats to people who are using social media to express their own views. Users of blogs and online TVs were also faced with some threats from the government especially the Tanzania Communication Regulatory Authority (TCRA) where some online TV, bloggers and other media platforms were threatened to be fined and their owners arrested if they do not register them with TCRA in accordance with the new Online Content Regulations, 2020.

3.4 Legal challenges affecting the security of Media and Journalists

The Constitution of the United Republic of Tanzania⁵⁹ 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, 1948 and the International Covenant on Civil and Political Rights, 1966 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.

Trend of Journalists and Media Incidents in 2020



It is interesting to note that, most of the reported incidents of violations of rights against journalists were promptly attended to by the Tanzania Human Rights Defenders Coalition by either assisting in bail processing

⁵⁹ Constitution of United Republic of Tanzania 1977 as revised

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.

i) The Access to Information Act 2016

This Act was passed by the National Assembly on the 7th day of September 2016 and assented by the President on 23rd day of September 2016. According to section 2(1), this Act applies only to Mainland Tanzania. This is an Act to provide for access to information, define the scope of the information which the public can access, promote transparency and accountability of the information holders and to provide for other matters pertinent thereto.⁶⁰

Most of the provisions of this Act are generally fair and conform to the acceptable standards. However, there are some provisions which do not meet the prescribed standards and therefore they are restricting the right to access information as provided under the Constitution of the United Republic of Tanzania and other human rights instruments to which Tanzania is a signatory party. These provisions must be amended in order to ensure unhindered access to information.⁶¹

Moreover, the Act fails to carry out to the maximum the spirit of the Information and Broadcasting Policy of 2003 of ensuring unhindered access to information. This is because; the Act contains a provision, which restricts the right to access information only to citizens, broad exceptions, and access fees, which are nothing but barriers. Nevertheless,

60 MCT Analysis of the Access to Information's Act 2016

61 Ibid

the Act conforms to the objectives set out in the Open Government Action Plan of Tanzania for 2014-2016. There are very few provisions, which do not reflect the objectives as it can be seen in the analysis below.⁶²

ii) The Media Services Act, 2016

On 5th of November 2016, the Parliament of United Republic of Tanzania enacted the Media Services Act and the same has been assented to by the President on 16th day of November 2016. This Act provides for promotion of professionalism in the media industry, establishment of the Journalists Accreditation Board, Independent Media Council, and framework for regulation of the media services and for other related matters.⁶³ It is worth noting at this juncture that in the process of making this Act, the stakeholders were not involved and therefore couldn't present their proposals on the draft bill.⁶⁴

Structurally, this Act has eight parts, 67 sections, and one schedule. Application of the Act is confined only to mainland Tanzania. It is worth noting that, the current Media Services Act, 2016 introduced new provisions which were not featured in the Media Service Bill of 2015, for instance section 7 which provides for rights and obligations of the media houses and journalists, sections 22 which establish Media training fund, section 58 which provides for power of the Minister to prohibit importations of publications and section 59 which provides for powers of the Minister to prohibit or sanction publication of any content which in his opinion jeopardizes national security or public safety.⁶⁵ Section 59 of the MSA, 2016 has been used as a backup provision in almost every ban of the

62 Ibid

63 See preamble to the Act.

64 MCT report on the Media Services Act Analysis

65 Ibid.



newspapers. Some of these newspapers includes Mawio, Tanzania Daima and RaiaMwema. They were all banned under section 59 of the Media Services Act, 2016.

Again, the Act contains a number of weaknesses such as the retention of accreditation of the journalists, licensing of the printing media, criminalization of the defamation, seditious offences, establishments of non-independent regulatory bodies and replication of some of the draconian provisions from the Newspaper Act, 1976, for instance section 58 and 59 which gives power to Minister to prohibit importation or sanctioning of any publication in his absolute discretion if in his own opinion such publication is against public interest or jeopardizes national security.⁶⁶ During the year 2017, the Minister of Information Sports, Youth and Culture used the Media Services Act, 2016 to ban newspapers such as Mawio, Raia Mwema, Tanzania Daima and MwanaHalisi.

iii) The 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 Bureau of Statistics. Those found guilty of providing false or misleading statistics without authorization from the National Bureau of Statistics are liable to a one-year jail term and a fine of 10 million Shillings (approximately US \$ 4500). The new amendments to the Statistics Act, also criminalizes any person who questions/criticizes official statistics given by the government. The Statistics Act, do not recognize any other statistics other than the official statistics. Any person wishing to produce official statistics should seek approval from the National Bureau of Statistics.

66 Ibid.

iv) The Electronic and Postal Communications (Online Content) Regulations, 2020

On 17th July 2020, the Tanzanian Minister for Information, Culture, Arts and Sports published the Electronic and Postal Communications (Online Content) Regulations, 2020 (2020 Online Content Regulations) which replace the Electronic and Postal Communications (Online Content) Regulations published on 16 March 2018 (2018 Online Content Regulations).

The 2020 Online Content Regulations came into force immediately upon publication. They are, for the most part, similar to the 2018 Online Content Regulations, with certain key exceptions as follows below.

> Definition of content

Regulation 14 of the 2018 Online Content Regulations required any person who wishes to provide online content services to fill in the prescribed application and pay the relevant fees in order to be issued with an online content service licence. Regulation 3 broadly defined 'content' in this regard as 'sound, data, text or images whether still or moving'. The definition of 'content' under the 2020 Online Content Regulations has been qualified to exclude content transmitted in private communications. This change effectively carves out private communication from the ambit of the licensing requirements under regulations.

> Categories of licences

The 2018 Online Content Regulations did not provide for different categories of online content licences, but set out services fees payable in respect of an online content services licence, a simulcasting television licence (streaming content on the internet) and a simulcasting radio licence (streaming content on the internet).

The 2020 Online Content Regulations have now specifically introduced four categories of online content licences. This provides additional certainty in respect of the licence required for each regulated activity.

> The four categories of licences are as follows below:

- o Licence for the provision of predominant news and current affairs issued to an online content service provider whose content covers news, events and current affairs.
- o Licence for the provision of predominant entertainment content issued to an online content service provider whose content covers music, movies, series, plays, drama, comedy, sports and any other related entertainment content.
- o Licence for the provision of predominant educational and religious content issued to an online content service provider whose content covers religious information and content that aims at educating.
- o Simulcasting licence issued to mainstream broadcasting licensees with national coverage rights (this licence cannot be issued to mainstream content service providers with district or regional licences).

‘Predominant’ has been defined as content not below 85% of the licensed category measured on a weekly basis.

> Supporting documents required for licence applications

While the 2018 Online Content Regulations required an applicant for an online content service licence to submit the prescribed application form, attach the supporting documents identified in the form and

pay the prescribed fee, the 2020 Online Content Regulations include a specific list of supporting documents and information to be submitted by an applicant.

In this regard, the prescribed application form and fees for the relevant category of licence must be accompanied by certified copies of the following documents:

- o certificate of incorporation or certificate of registration;
- o tax identification number certificate;
- o tax clearance certificate for companies or non-governmental organizations;
- o national identity card for individual applicants;
- o list of owners and management team members;
- o curriculum vitae of the staff;
- o editorial policy guidelines (for a news and current affairs licence);
- o technical description of the facilities used; and
- o any other documents as the Tanzania Communications Regulatory Authority (Authority) may require.

> Prohibited content

The 2018 Regulations identified prohibited content under Regulation 12. An expanded and more detailed list of prohibited content has been introduced in the Third Schedule to the 2020 Online Content Regulations. It covers, among other things, content that motivates or promotes phone tapping, espionage, data theft, tracking, recording or intercepting communications or conversation without right.



> Rights and obligations of application service licensees

The rights and obligations of an application service licensee have also been altered under the 2020 Online Content Regulations.

An application services licence is issued by the Authority pursuant to the Electronic and Postal Communications Act, 2010 and the Electronic and Postal Communications (Licensing) Regulations, 2018. It entitles the holder to provide one or more application services, which are essentially services provided by means of one or more network services but do not include services provided solely on the customer side of the network boundary. Mobile network operators are some of the entities that procure application services licences.

Under the 2018 Online Content Regulations, an application service licensee had 12 hours, from the time of notification by the Authority or by a person affected by the existence of prohibited content, to inform its subscriber to remove the prohibited content. The time in which this must be done has been reduced to two hours under the 2020 Online Content Regulations. The time in which the application services licence holder is required to suspend or terminate the subscribers' account (the sanction for failure to comply with a take-down notice) has also been reduced to two hours

v) 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.

3.5 The Right to Privacy in Tanzania and the Protection of Whistle Blowers

Privacy is a fundamental human right, enshrined in numerous international human rights instruments.⁶⁷ 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 law, necessary to achieve a legitimate aim, prescribes them and proportionate to the aim pursued.⁶⁸

⁶⁷ Universal 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.

⁶⁸ Universal 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 fun-



The Constitution of the United Republic of Tanzania⁶⁹ guarantees the right to privacy under Article 16 which provides that “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.”

Article 18(c) of the Constitution further guarantees the freedom to communicate and protection from interference, and reads that “everyone has the freedom to communicate and a freedom with protection from interference from his communication.”

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 defines a “Whistleblower” to mean any person who makes disclosure of wrongdoing in accordance with the provisions of this Act;

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.

damental freedoms while countering terrorism,” 2009, A/HRC/17/34.

⁶⁹ The Constitution of the United Republic of Tanzania, 1977.

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”

3.6 Internet as a human right

Generally speaking, in Tanzania the government seems to control the access and use of ICT by enacting laws, which limits the freedom of expression via the internet. Laws such as the Cybercrimes Act, 2015, the Statistics Act, 2015, the Electronic and Postal Communication Act, 2010 and the Media Services Act, 2016 seems to erode the freedom of expression in internet. Again, there are some incidents in which the government has been alleged of conducting online surveillance and intercept communications. These seem to erode the basis of freedom of expression through the Internet.⁷⁰

3.7 Internet shutdown

On the eve of the elections and during the Election Day itself hampered communication and access to information. On 27th October 2020, the internet was shut down and Twitter reported that it has been shut down on the same day, people were not able to access the social media platforms including WhatsApp, Instagram, Twitter and Facebook. Meanwhile, the enactment of the Cybercrimes Act and government cases against critics as stated above has had a chilling effect on freedom of expression online with numerous respondents citing widespread self-censorship amongst citizens and journalists alike.

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⁷⁰ CIPESA (2015) Report on Internet freedom in Tanzania.



Chapter Four

THE SITUATION OF CIVIC SPACE IN TANZANIA

4.0 Introduction

Civil Society Organisations (CSOs), have been doing an extraordinary work in the development of our communities. In order to ensure that the civil society sector continues to enormously contribute to the development of any nation, there must be an enabling working environment. This chapter analyses the situation of civic space for year 2020 in Tanzania and its impact to the work of civil society groups.

4.1. The Role and Significance of Civil Society

Civil society contributes a lot to the promotion, protection and advancement of human rights in every single day and every part of the world. Civil society organizations work for a better future and share common goals of justice, equality, and human dignity as their major tasks 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.

Civil society enables members of society to contribute to public life by empowering them to exercise their fundamental rights of information, expression, assembly,

association and participation. Civil society contributes to societal and citizen well-being in a myriad way – by educating the public, protecting the environment, defending the interests of vulnerable groups, meeting basic needs, conducting social research and analysis.

4.2 The Space of Civil Society

Civic space can be defined as the political, legislative, social and economic environment which enables citizens to come together, share their interests and concerns and act individually and collectively to influence and shape the policy-making.⁷¹

It is worth noting that, 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.

⁷¹ <https://civicspacewatch.eu/what-is-civic-space/>

Figure 1: Three Common Sectors in a Modern Society

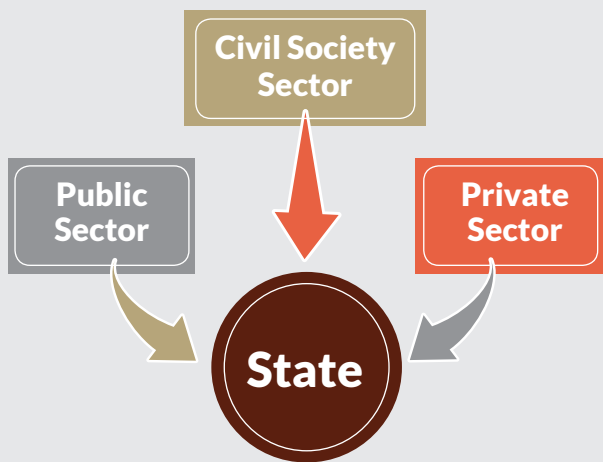
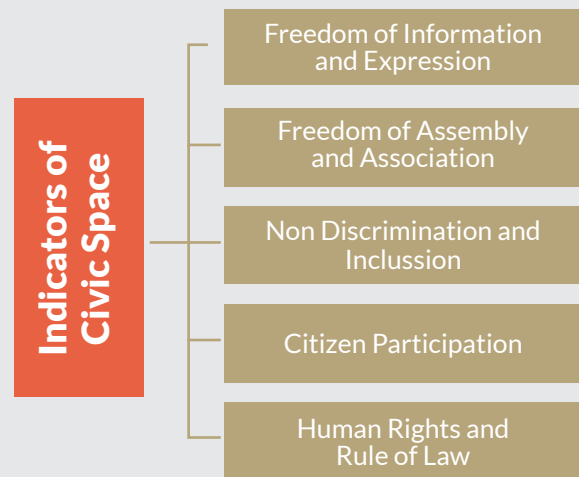


Figure 2. An illustration of indicators for Civil Society space



4.3 Indicators of the Space of Civil Society

In measuring the space of Civil Society various indicators are used to see whether the space is improving or shrinking⁷². These indicators are as follows;

- i. Freedoms of information and expression (access to information; freedom of expression; media freedoms; and, internet freedoms);
- ii. Rights of assembly and association (right of assembly; right of association; CSO autonomy and rights; and, CSO funding);
- iii. Citizen participation (free and fair elections, citizen participation, and citizen advocacy);
- iv. Non-discrimination/ inclusion (women's rights; minority rights; and, the rights of marginalized groups); and,
- v. Human rights/rule of law (human rights; rule of law).

4.4 The Space of Civil Society Organizations at Regional and International Level

International, Regional civil society and Sub regional 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, EU and 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 Civil Society Space. At these levels Civil Society Organizations are given space to present their issues of concerns and they are taken into consideration in the deliberations made. At this level there are also avenues which CSOs space can be protected.

⁷² Malena C(2015); Improving the Measurement of Civic Space; Transparency & Accountability Initiative London pp26-32



4.4.1 Civil society space at International (UN) Level

International human rights law provides a unique international platform, to which CSOs can turn for support and guidance. This platform includes the Office of the United Nations High Commissioner for Human Rights (OHCHR), human rights treaty bodies, and the Human Rights Council and its mechanisms.

The first venue by which non-governmental organizations took a role in formal UN deliberations was through the Economic and Social Council (ECOSOC). In 1945, 41 NGOs were granted consultative status by the council; by 1992 more than 700 NGOs had attained consultative status and the number has been steadily increasing ever since with more than 4,000 organizations today.

Article 71 of the UN Charter opened the door by providing suitable arrangements for consultations with non-governmental organizations. The consultative relationship with ECOSOC is governed by ECOSOC resolution 1996/31, which outlines the eligibility requirements for consultative status, rights and obligations of NGOs in consultative status, procedures for withdrawal or suspension of consultative status, the role and functions of the ECOSOC Committee on NGOs, and the responsibilities of the United Nations Secretariat in supporting the consultative relationship.

Consultative status provides NGOs with access to not only ECOSOC, but also to its many subsidiary bodies, to the various human rights mechanisms of the United Nations, ad-hoc processes on small arms, as well as special events organized by the President of the General Assembly.

In addition to the ECOSOC, there are avenues which the UN human rights mechanisms can protect civil society space, that is documentation about obstacles, threats to civil society space, and good practices. Documentation about human rights situations forms the basis for interventions by UN human rights mechanisms. Well-documented and verified information by CSOs makes a strong case for action, is more credible and persuasive, difficult to refute, and an effective way to promote and protect human rights. Through this avenue CSOs are invited to share documentation that is accurate, factual information, careful analyses, and concrete recommendations about obstacles, and threats they face.

In Participation of CSOs in the Universal Periodic Review. A midterm report was received and dully uploaded in the website of the UN Office of the High Commissioner.

In addition to that, CSOs under the coordination of the Tanzania Human Rights Defenders Coalition (THRDC), Save the Children and Legal and Human Rights Centre, started the process of developing a Report on the Review of the Implementation of the 2006 UPR recommendations. The report was prepared for submission to the United Nations Commission on Human Rights in March 2021. In the process of developing the report a number of consultative meetings were conducted including a CSOs and Government UPR Refresher workshop that was attended by more than 80 NGO representatives, Commission for Human Rights and Good Governance (CHRAGG) and Government Officials in July 2020. Among key challenges in the process of developing the report include the existence of COVID 19 pandemic. Some of meetings were cancelled while other had to be conducted through zoom application.



4.4.2 Civil Society space at the Regional level

According to articles 75 and 76 of the African Commission on Human and Peoples rights rules (Commission's rules of procedure), non-governmental organizations (NGOs) are granted observer status with the Commission. This status authorizes them, to participate in the public sessions of the Commission and its subsidiary bodies. Furthermore, the Commission may consult such NGOs on various issues.

NGOs with observer status are also given an opportunity to prepare "shadow" reports on the human rights situation in their countries. These "shadow" reports enable the Commission to have a constructive dialogue with a state representative when that country's periodic report is being considered.

Moreover, during the annual Ordinary Sessions of the African Commission on Human and Peoples' Rights, NGOs participates in the 'NGOs Forum', an advocacy



A group photo of the Guest of Honor Hon. Amon Mpanju – Deputy Permanent Secretary of the Ministry of Constitution and Legal Affairs (seated in the middle) together with special guests and participants of the CSOs' Refresher Workshop on the Implementation of UPR recommendations at Flomi Hotel on 29th to 30th July 2020

platform coordinated by the African Centre for Democracy and Human Rights Studies (African Centre) aiming at promoting advocacy, lobbying and networking among Human Rights NGOs, for the promotion and protection of human rights in the continent.

The NGOs Forum shares updates on the human rights situation in Africa by the African and international NGOs community with a view of identifying responses as well as adopting strategies towards improving the human rights situation on the continent. A

series of panel discussions on general human rights related issues are organized within the main agenda of the NGOs Forum as well as at side events.

Following the spread of the Covid 19 Pandemic, most of meetings at the regional and international level were either cancelled or postponed. However, in some cases Participation of CSOs in the regional human rights mechanisms was mainly through online platforms such as Zoom.



4.5 A critical analysis of the Civic Space in Tanzania

This part provides an analysis of the situation of civic space in Tanzania for the year 2020 based on its indicators. As stated above, there are mainly five indicators of civic space. These indicators include, freedom of assembly and association; freedom of information and expression; human rights and rule of law, women participation, and Non-Discrimination.

The situation of civic space in 2020 was mainly affected by two major trends. These are; the presence of the Covid 19 Pandemic and General Election of the United Republic of Tanzania.

a) Worsening of Civic Space due to Covid-19 Pandemic

Since March 2020 the World has been passing through a very difficult time as the national and international communities were struggling to stop the spread of the Novel Coronavirus (COVID 19). On 11th March 2020, the World Health Organization (WHO) declared the disease a pandemic. Since then, strong measures have been taken by states to stop the pandemic. Some of immediate measures taken by states include travel ban, prohibition of public gatherings and social distancing.

In addition to that, states have been using existing laws to prevent the spread of fake news and information through online and traditional media. These and many other good measures taken to control the spread of the pandemic have a number of negative impacts to civic freedoms.

Just like what happened in most countries around the world, CSOs in Tanzania have also faced a number of challenges due to the

COVID 19 pandemic. Most of Human Rights Defenders (HRDs) including journalists faced challenges as they continued to implement their daily tasks. For example, journalists are not well informed and equipped to collect news in an environment where social distancing is highly encouraged. In addition to the challenges posed directly by the pandemic to the communities, HRDs have been facing a lot more other challenges that affected their civic rights and freedoms.

According to CIVICUS⁷³, there are four major alarming civic space trends in relation to the measures taken against COVID – 19 pandemic. These major negative trends include: Unjustified restrictions on access to information and censorship; Detentions of activists for disseminating critical information; Crackdowns on human rights defenders and media outlets; and, Violations of the right to privacy.

b) Tightening of Civic Freedoms as a result of 2020 General Election

The United Republic of Tanzania held its general election in October 2020. As the country was heading to the polls, there was great tension among government leaders, law enforcers and the general public. Electoral laws give powers to different Government departments and law enforcers to coordinate and oversee the whole electoral process. In the course of using powers granted to them by the laws, such departments have greatly been contributing to the narrowing of the civic space. The challenges during the elections include among other, arrests of human rights defenders, suspension of media outlets, intervention of meetings organised by CSOs, and prohibition of some gatherings

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⁷³ CIVICUS, Civic Freedoms and the Covid 19 Pandemic a Snapshot of Restrictions and Attacks, April 2020.



of civic groups.

A critical analysis of the situation of civic space during the existence of the Covid -19 Pandemic and the pre- and post-election period in 2020 is provided below:

4.5.1 Freedoms of Information and Expression

As it has been stated above, freedom of expression worsened due to Covid 19 while availability of information about COVID 19 was very limited.

Some of the most notable civic space issues include, that, with the spread of COVID 19 there was an increase of violations against Human Rights Defenders (HRDs)/ Journalists. For the period of four months from the date the first Covid-19 case was reported in Tanzania in mid-March 2020, THRDC recorded 25 human rights violations against HRDs including 18 incidences against journalists. In addition to that there were many other challenges including difficulties in adapting to working in isolation as opposed to working in the field with communities, also the clear limitation of access to funds from partners and donors amid this crisis. Many CSOs lost fund from their supporters and development partners.

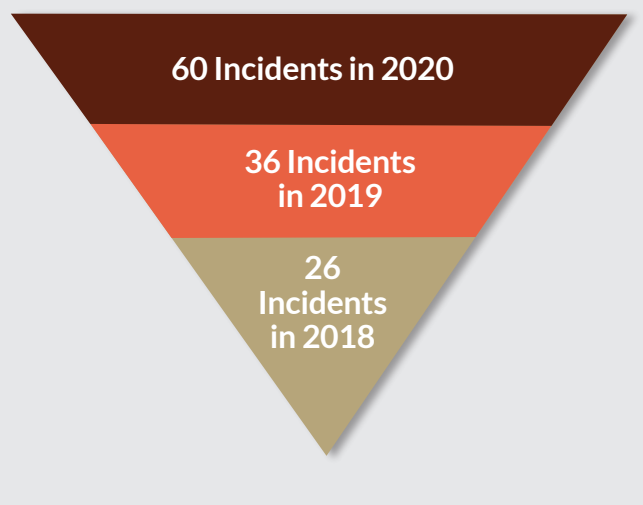
On May 2020 a group of CSOs were denied to attend a TV program at ITV despite the fact that ITV had already entered into agreement with THRDC to air the program titled “KIPIMA JOTO”. However, despite of the challenges, CSOs coordinated some successful media programs through TVs, radio stations and other online media for the purpose of highlighting among other things, the situation of civic space in Tanzania, democracy and the situation of Covid 19 pandemic.



A photo of CSOs Executive Directors attending one of the TV Programs at ITV. From the left to the right is Mr. Onesmo Olungurumwa from the Tanzania Human Rights Defenders Coalition, Ms. Martina Kabisama and Deus Kibamba from Jukwaa la Katiba.

Generally, human rights violations against journalists increased in 2020 compared to 2019 and 2018. In its 2019 Situation of Human Rights Defenders Report (2019) the Tanzania Human Rights Defenders Coalition (THRDC) recorded 36 incidents of violations against journalists. The report highlights an increase of 10 security incidents from 26 recorded in 2018. In 2020 a total of 60 incidents of violations against journalists were recorded.

Figure 3: Comparison of the Incidents of Violations against Journalists in three years 2018-2020



4.5.2 Rights of assembly and association

Freedom of assembly and association are the corner stone for the existence of a Civil Society Organisation. It is through these rights, CSOs may exist as a group of people and jointly pursue their goals. In the year 2020, CSOs faced a number of challenges affecting their rights to associate and freely assemble. Some of the notable issues include the following:

4.5.2.1 Adoption of the NGOs Coordination Guideline

It is with no doubt that with the amendment of the NGO Act (2002) in 2018 and its Regulations in 2018 and 2019, NGOs in Tanzania have been enormously affected by a number of issues including over regulation of the NGO sector.

Despite of complaints from CSOs about the 2018 and 2019 of the NGO law and its Regulations, the government developed a guideline that continues to emphasize the enforcement of the same legal provisions. On 17th of April 2020, Hon. Umyy Mwalimu, the then Minister of Health Community Development, Gender, Elderly and Children, issued a guideline for coordination of Non-Governmental Organizations in Tanzania.

According to the guidelines, its main purpose is to establish strong basis for collaboration and identify specific roles of the Ministry responsible, non-governmental organizations (NGOs), Ministries, Regional Secretariats, Local Government Authorities, Private Sector and NGOs in managing and coordinating numerous works performed by NGOs in the country. These Guidelines are also aimed at establishing effective coordination of the civil society organizations by explaining the manner in which various ministries will cooperate with the department responsible for the

Registration of NGO and to tackle various challenges such as eliminating conflict of interest in implementing and coordinating various duties.

Despite the fact that the Guideline has some positive advantages in the coordination of NGOs, it has also many challenges. For example, with its very narrow definition of NGO (contrary to the NGO Act), by ignoring NGOs working on advocacy and lobbying, the guidelines undermine the objectives of NGOs and purposes of their existence in Tanzania by compelling them all to render social services to the community such as water, schools, health and others. In addition to that the guideline is a replica of the challenging legal provisions on reporting and submission of funding contracts to the Registrar and National Treasury.

4.5.3 CSOs Engagement and Participatory rights

4.5.3.1 CSOs Participation in the 2020 General Election

THRDC findings indicated that about 600 NGOs participated in 2015 election activities. NGOs participated in electoral process directly or indirectly through networks, while only 444 CSOs were granted accreditation for election observation and for provision of voters' education in 2015⁷⁴.

In 2020, the number of CSOs that took part in the General Election was relatively lower compared to the number of CSOs which participated in 2015 election. On 29nd June, 2020, the National Electoral Commission (NEC) announced that, a total of 245 CSO's were accredited to provide voter education whereas a total of 97 CSOs were accredited to observe the election in Tanzania Mainland

⁷⁴ Report on the role of Tanzania civil societies Organization in 2015 election by THRDC

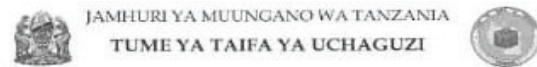


while 7 CSOs were accredited in Zanzibar. 17 International Organisations were accredited to observe the general elections.

The total number of all CSOs that applied for accreditation was not declared to the public by NEC. Regarding the reasons for the denial of accreditation to some CSOs, NEC indicated that there were a number of reasons which include inter alia; The status of registration of some of CSOs (Some were not registered by recognised bodies) while some failed to submit relevant documents and other required information.

Another challenge was the lack of financial resources among CSOs. According to report, one of the key constraints that inhibit the sustainability of election projects among CSOs is lack of resources. Most CSOs in Tanzania are externally funded, with little or no local funding. No funds other than from external donors that go to CSOs. No any CSO that receives funds from the government or local business companies for election programs. That is to say, CSOs depend 100% from donors. It is, therefore, THRDC's assumption that if donors withdraw their financial support on democratization, CSOs activities will probably cease their operations on election processes. This matter is pertinent and need to be discussed by CSOs and donors in the future⁷⁵.

⁷⁵THRDC, Civil Society Election Barometer, Monitoring the Space of Civil Society in Democratization Processes in Tanzania, Pg 16



TAARIFA KWA UMMA KUHUSU ASASI ZILIZOPEWA VIBALI VYA KUTOA ELIMU YA MPIGA KURA KATIKA UCHAGUZI MKUU WA MWAKA 2020 KWA TANZANIA ZANZIBAR

Zanzibar, 07 Julai, 2020

Tume ya Taifa ya Uchaguzi (inawafahamisha wananchi wote kuwa imekamilisha uchambuzi wa maombi ya asasi zilizozomba kupewa vibali vya kushiriki katika utoaji wa Elimu ya Mpira Kura kuhusu Uchaguzi Mkuu wa mwaka 2020 kwa upande wa Tanzania Zanzibar.

Kwa mujibu wa kifungu cha 4C cha Sheria ya Taifa ya Uchaguzi, Sura ya 343, Tume ya Taifa ya Uchaguzi ina jukumu la kutoa Elimu ya Mpira Kura, kuratibu na kusimamia wadau wanaotaka kutoa Elimu ya Mpira Kura Nchi nzima. Sheria hii pia inairuhusu kukaasimu zoezi la utoaji wa Elimu ya Mpira Kura kwa Taasisi na Asasi zenye nia ya kutoa elimu hiyo. Kwa kuzingatia kifungu tajwa hapo juu, Tume huzialika Asasi zinazokusudia kutoa Elimu ya Mpira Kura kuhusu michakato mbalimbali ya Uchaguzi, kuwasilisha maombi ya kupathwa vibali vya kutoa elimu hiyo.

Hivyo, baada ya Tume kuzialika Asasi kuwasilisha maombi ya vibali kwa tangozo lililotolewa mwezi Novemba 2019, ilipokea maombi kutoka kwa Asasi mbalimbali za Kiraia zilizopo Tanzania Zanzibar. Katika uchambuzi wa maombi hayo, Tume ilibaini kanoro kadhaa kama vile baadhi ya asasi kukosa usajili kwa mujibu wa Sheria na taratibu.

Baada ya uchambuzi wa maombi hayo, Tume imeridhia kutoa vibali kwa Asasi 7 zilizolidhi vigezo vilivyowekwa kwa ajili ya kutoa Elimu ya Mpira Kura.

Tume inazitaka Asasi zote zilizopewa vibali kuzingatia taratibu na kanuni zinazongoza zoezi hilo ikiwemo mwongozo wa utoaji wa Elimu ya Mpira Kura. Kwa muhtadha huo, Asasi zote zilizopewa vibali kwa ajili ya kutoa Elimu ya Mpira Kura, zinazalimika kushiriki katika semina maamam ya kupitia mwongozo huo.

Vilevile, Tume inazitaka Asasi zilizopewa vibali kuwasilisha orodha kamili ya wataendaji watakaohiriki zoezi la utoaji Elimu ya Mpira Kura, kuonesha maeneo hadisi watakatotoa elimu hiyo na kuainisha vyanzo vya fedha.

Orodha kamili ya Asasi zilizopewa vibali itatangazwa kupitia vyombo vya habari na itapatikana pia kwenye tovuti ya Tume (www.nec-za.zn).

Imetolewa na:

Dkt. Wilson Mahera Charles

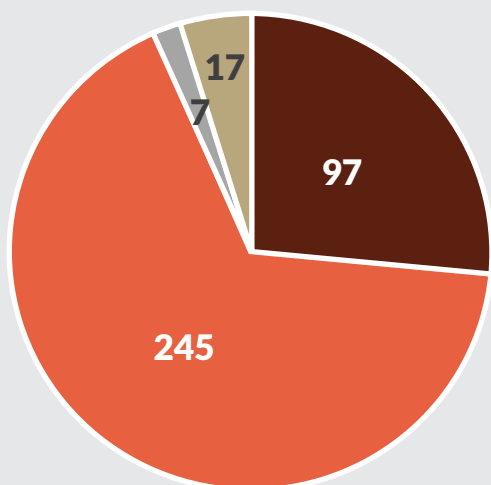
MKURUGENZI WA UCHAGUZI

A Public Statement from the National Electoral Commission on the Number of NGOs that had been accredited to provide voters education

Figure 4. Accreditation of CSOs for Election Observation and Provision of Voters Education

One of the positive results of CSOs engagement in election is that, Political Parties considered most issues raised by CSOs through their 2019/2020 Election Manifesto. CCM appointed a member of parliament as a special seat who specifically represents CSOs/NGOs in the Parliament.

CSOs Accreditation for Electoral Observation and Provision of Voters Education



- Election Observation
- Provision of Voters Education
- Accreditation for Zanzibar Organisations
- Accreditation for International Organisations

4.5.3.2 Enactment of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2020

The enactment of the Written Laws (Miscellaneous Amendments) (NO.3) ACT, 2020, have imposed some restrictions to strategic litigation in Tanzania. CSOs have been hugely affected by this law due to the fact that they will not be allowed to file strategic cases unless they show the extent to which they have been affected by the matter in contest.

4.5.3.3 Failure to Commemorate Tanzania Human Rights Defenders Day

Human Rights Defenders Day, an even commemorated on 28th April annually, was not celebrated in 2020 due to Covid-19 Pandemic and later closure of THRDC Bank accounts. Many other activities were not conducted while few other were conducted through online forums such as Zoom.

4.5.4 Human rights and Rule of Law

It is with no doubt that, rule of law is one of a key ingredients for development of any democratic society. With rule of law civil society groups are given inter alia, all needed freedoms in accordance with the Constitution and laws of the country.

Some of key incidents of violations against the rule of law include arrests by orders of Regional and District Commissioners. On 19th February 2020, Dina Maningu, a journalist working with Uhuru Media Group in Tarime, Mara Region was arrested after visiting the District Commissioner’s office to inquire some information about the investigative story she was following up. After inquiring some information from the District Commissioner, she was arrested and taken into custody.

4.6 Improving Civil Society Space in Tanzania

From the above critical analysis of the civil society space in Tanzania, it is obvious that there is still a lot that needs to be done. Both internal and external challenges affecting the civic space should be worked on in order to widen the shrinking space. The following are key recommendations for widening of the CSOs space:

- i. Building awareness and resilience among different community groups to ensure participation of all groups in the protection of civic space. One of the major challenges that has been observed in recent years is that the struggle for civic space has been mainly done by only few individuals and CSOs. Groups such as the youth, women and the general Tanzanian community do not take an active role in the protection of civic freedoms.

- ii. Revitalisation of the Constitutional Making Process: Most of challenges to civic freedoms and democracy in our country are due to weak democratic systems. There is a need to adopt a strong Constitution that will establish independent structures for the betterment of our growing democracy.
- iii. Use of Online space
- iv. CSOs should continue to engage the executive arm of the government, Parliament, Judiciary and other sub departments in order to influence amendment of the draconian laws. In 2019 there were some notable achievements that resulted from these engagements. For instance, the Amendment of the Statistics Act (2015) was highly contributed by the influence of CSOs and other human rights stakeholders mostly international organisations.
- v. Improved solidarity among CSOs/HRDs from across the country, partners and other Human Rights Defenders at national, regional and international level in the protection of civic space and human rights in general.
- vi. More strategic cases should be filed in the courts of law in different parts of the country as one of the mechanisms of influencing change. This follows some other achievements in the last year where among other things CSOs including the THRDC successfully won case at the East African Court of Justice that multiple provisions of the Media Services Act violate press freedoms.
- vii. Increase engagement of the CSOs at the Regional and international Human Rights arena. Through its programs on building solidarity among CSOs, the THRDC has contributed to the increase of CSOs participation in the African Commission on Human and Peoples Rights. For the first time the Coalition has been able to coordinate CSOs Forum in the African Commission Ordinary Sessions which have been attended by more than 30 NGOs in 2018 and 2019.
- viii. Increase campaigns which are aimed at building awareness about the concept of HRDs and civic space. In the year 2019 the THRDC has witnessed increased movement and discussions about the rights of HRDs and civic space. It must be remembered that according to HRDs Needs Assessment conducted by the THRDC in 2013, very few people had knowledge about the concept and rights of HRDs. Currently more CSOs are being engaged in the struggle for civic space. For example, there has been an increase of working groups on civic space, including groups such as the CSOs Working Group on Civic Space under the DDA program and CSOs Working Group on Democratic Rights (Ushiriki Tanzania). CSOs have increasingly been conducting dialogues and meetings on civic space issues.

4.7 Conclusion;

The general assessment of CSOs space indicates that a lot has to be done in order to reclaim Civic Space in Tanzania. The civic space continues to be limited especially through legislations and administrative pronouncements. THRDC advises the government of the United Republic of Tanzania to embrace the Media, HRDs and the Civil Society in general as key and internal actors of development and nation building rather than seeing them as antagonists. In addition to that, CSOs are advised to re-strategize and reorganize in order to push for reform of the oppressive and out-dated legislation affecting CSOs. They are also urged to remove internal CSOs challenges which are in fact more dangerous than the external challenges.



Chapter Five

GENERAL CONCLUSION AND RECOMMENDATIONS

5.0 Conclusion

The 2020 Tanzania Human Rights Defenders situation report indicates that HRDs in the country still operate under unsafe environment and therefore making their work even more difficult. The report indicates that HRDs are continuously detained, maliciously prosecuted and convicted, harassed because of their work as human rights defenders. It further shows a drastic shrinking space for civil society operations, non-respect of the rule of law, non-independence of the judiciary, lack of democracy and the growing tendency of state impunity.

On issues of civic space, a general trend has shown that the enabling environment for civil society operation keeps changing. Governments in many countries are attempting to crack down the space of civil society organisations. There are variations between one regime and another, but successive governments in our country have always tried to exert pressure on CSOs.

However, the Coalition and other SCO's have engaged with this state apparatus in various trainings, meetings, planning with a common goal of protecting Human Rights Defenders at different levels and themes.

Therefore, in order to have assurance of protection of human rights and human rights

defenders in future such engagements must be strengthened. It is not easy to attain the highest level of protection without working in unison and trust amongst CSO's, the government and other stakeholders.

The Coalition through this report comes with way forward and recommendations for different stakeholders specifically the government, CSOs themselves, regional and international partners to work towards improving the situation and security of human rights defenders as outlined below:

5.1 Way Forward

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

- Repeal section 7 of the Written Laws (Miscellaneous Amendments) Act No 03 of 2020 so to allow public interest litigation in Tanzania
- Encourage the law reform to enable HRDs gain legal recognition such as the Human Rights Defenders Policy /law 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.
- Strengthen the Human rights lawyers working group by building more capacity

through training on human rights and strategic litigation, so as 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.
- Continue to advocate for the amendment of the draconian laws as evaluated in chapters 3 and 4 of this report that have been identified as a stumbling block towards the work of HRDs in Tanzania.
- Conduct thorough media campaigns and change of behaviour 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.
- Increase engagement with the National Human Rights Institution (CHRAGG)

5.2 Recommendations

The following are the recommendations which are proposed to human rights defenders, the government and other stakeholders to take keen consideration on promoting favourable working environment for HRDs in the country.

5.2.1 Recommendations to Human Rights Defenders:

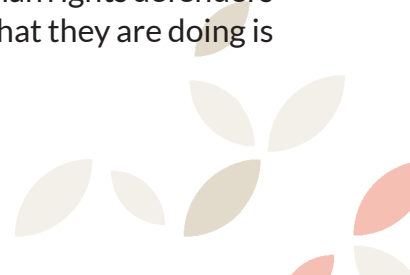
- HRDs need to work sincerely and morally so as to avoid unethical conducts due to them being targeted by both state and non-state actors.
- Good professional and financial status is vital for the safety and security of journalists. Journalists who work professionally and are financially well

facilitated face less risk than those who operate unprofessionally and without sufficient resources.

- HRD's to increase campaigns which are aimed at building awareness about the concept of HRDs and civic space.
- CSOs should re-strategize and reorganize in order to push for reform of the oppressive and out-dated legislation affecting CSOs, also should remove internal CSOs challenges which are in fact more dangerous than the external challenges.
- CSOs should continue to engage the executive arm of the government, Parliament, Judiciary and other sub departments in order to influence amendment of the draconian laws.
- Improved solidarity among CSOs/HRDs from across the country, partners and other Human Rights Defenders at national, regional and international level in the protection of civic space and human rights in general.
- More strategic cases should be filed in the courts of law in different parts of the country as one of the mechanisms of influencing change.
- Increase engagement of the CSOs at the Regional and international Human Rights arena. Through its programs on building solidarity among CSO's.

5.2.2 Recommendations to the government:

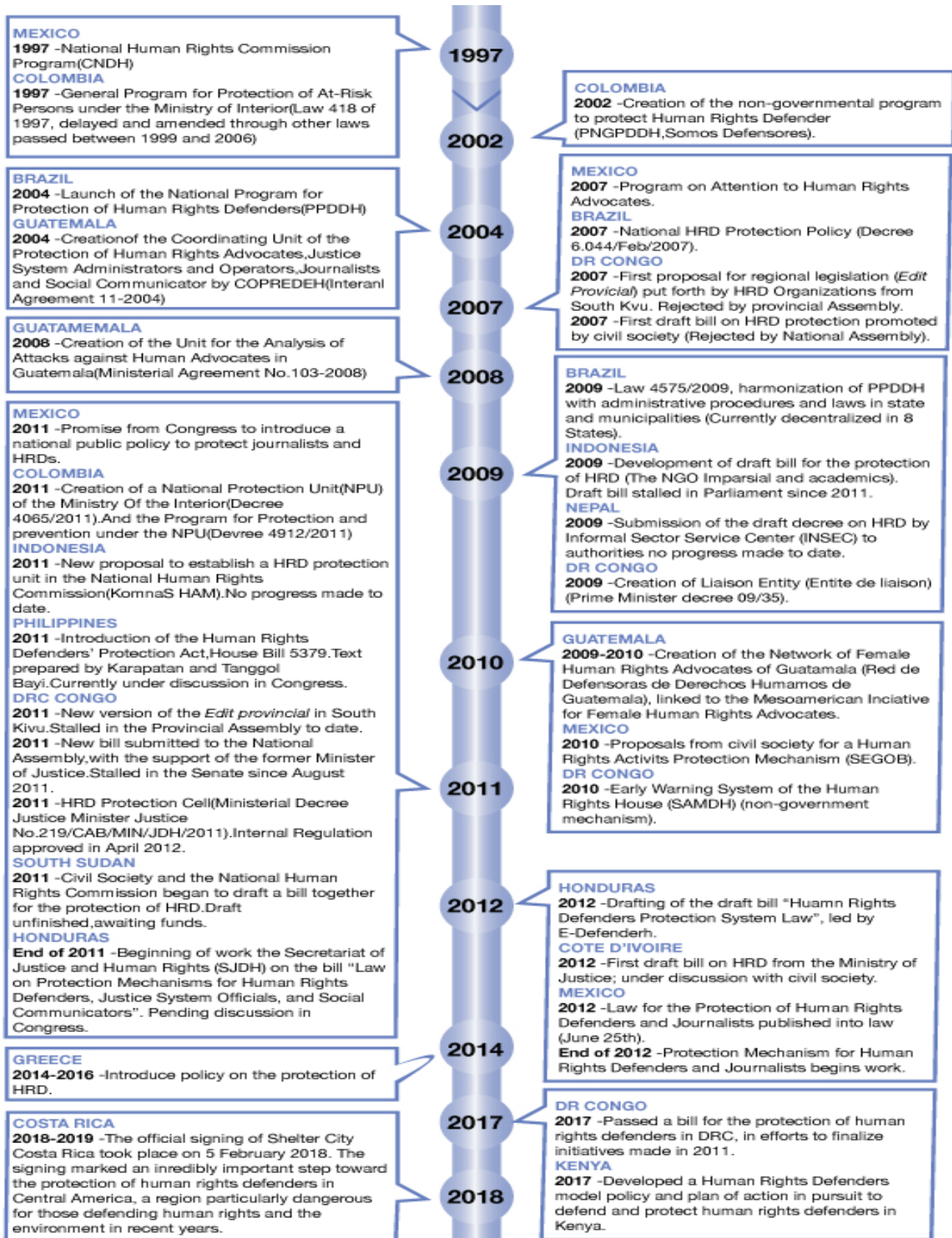
- THRDC also calls upon the government to provide legitimacy to the work of HRDs, and to create enabling environment for their operation. The State should refrain from intimidating human rights defenders in any way because what they are doing is



legally recognized under our laws.

- The government should ensure that the police force observes, respects and protects the rights of journalists when undertaking their daily duties in the country.
 - 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 police force should create a criminal system that provides an independent body to investigate all cases involving journalists who were killed or assaulted while on duty.
 - 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.
 - 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 a 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.
 - THRDC recommends the government to conduct investigations with the view to bringing perpetrators to justice.
- Investigation should be conducted to all HRDs cases who in one way or another found themselves in trouble because of their activities or human rights activities.
- The government should amend all laws that restrict and affect the work of CSOs and human rights defenders in Tanzania.
 - 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 should amend all draconian laws such as (Cybercrimes Act, Media Services Act, 2016), Media Services Rules, 2018, The Online Content Regulations in order to expand civic space in the country.
 - 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 create a civic space and conducive environment for civil society and human rights defenders to work freely.
 - 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.

Annexure One: The List of Countries with Legal Protection of HRDs

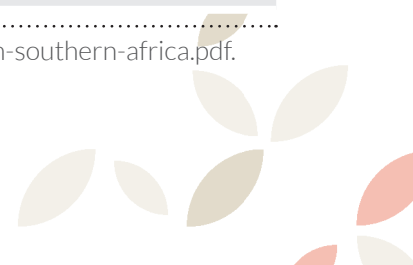


No	Thematic Areas Affected	Laws	How
1.	Women HRDs		
		1. Inheritance Laws such as the Probate and Administration of Estates Act, Cap 445 [R.E 2002]	<p>These laws and policies have gaps with its provision contributing to the persistence of gender inequality, discrimination and gender based violence. The 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. Religious laws	
		3. Customary laws including inheritance laws	
		4. The Prisons Act, 1967, Cap 58 [R.E 2002]	<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>5. National Security Act of 1970, Cap. 47 [R.E 2002]</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.⁷⁶</p>
		<p>6. The Public Leaders Code of Ethics Cap 398 [R.E 2002]</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>
		<p>7. The National Defence Act, Cap 192 [R.E 2002]</p>	<p>This law prohibits journalists or any HRDs to publish any information relating to the National Defence 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 defence forces without higher authorities.</p>

⁷⁶ <http://www.article19.org/data/files/pdfs/publications/tanzania-media-law-and-practice-in-southern-africa.pdf>. Visited on 8/8/2013.



		8. The Prevention and Combating of Corruption, Act No. 11 of 2007	The law prohibits journalists from making follow ups of any corruption case under the PCCB investigation.
		9. The Area Commissioner Act 1962 & Regions and Regional Commissioners Act 1962	These two have been used against journalists who expose malpractice and maladministration in public offices
		10. Civil Service Act 1989	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.
		11. Film and Stage Act No 4 of 1976	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. ⁷⁷
		12. Registration of News Agents, 13. Newspapers and Books Act (1988)	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.

⁷⁷ 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.

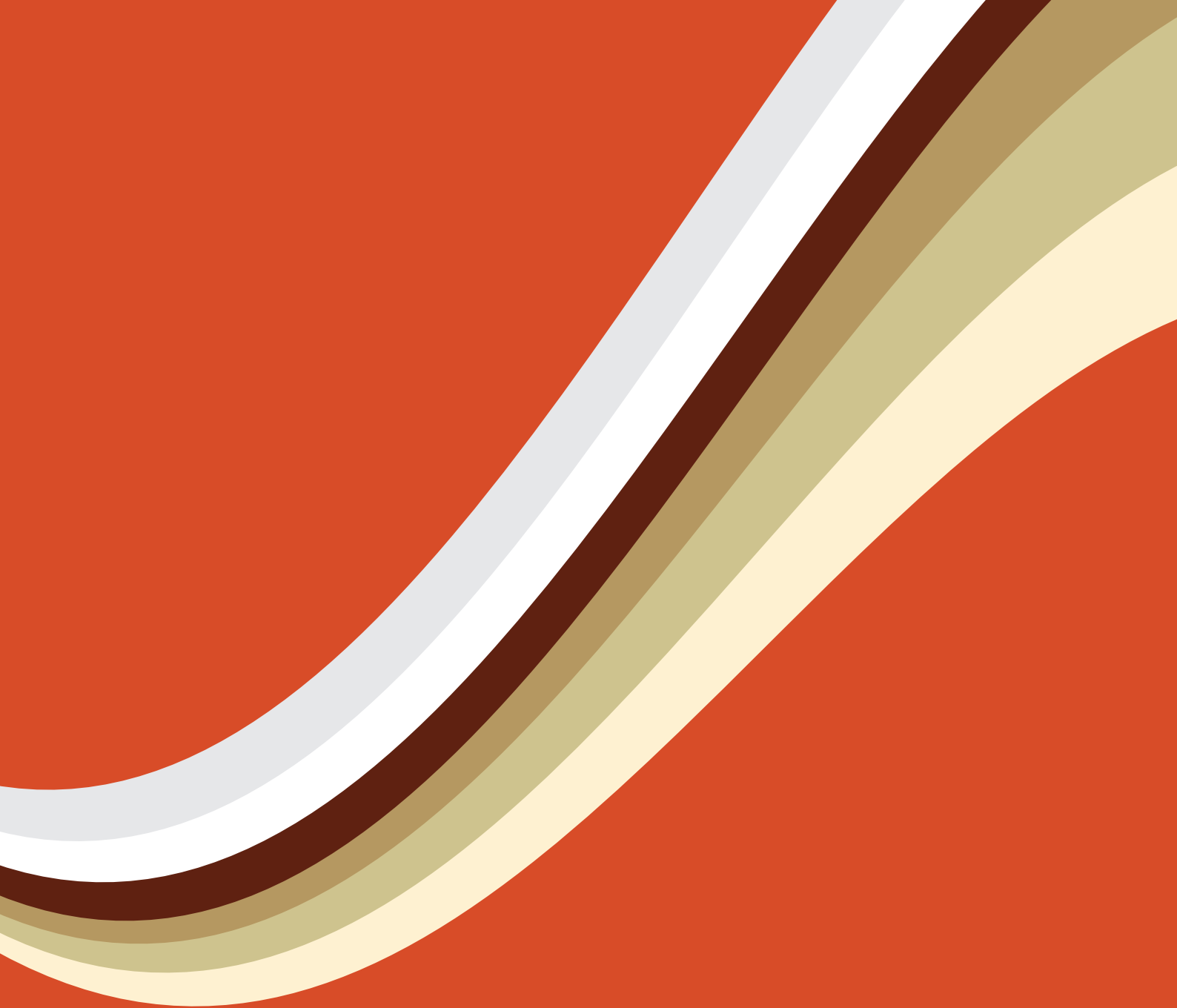


		14. Broadcasting Services Act Cap. 306 of the R. E 2002	The Act allows the government to regulate and place restrictions on the use of electronic media. The Act does not guarantee the independence of electronic media and other governing bodies. The editorial policy and decision-making are not free from 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.
		15. Cybercrimes Act, 2015	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.
		16. 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)



		17. Media Services Act, 2016	Various provisions of the Media Services Act, 2016 contravene Article 18 of the Constitution of the United Republic of Tanzania. These sections are sections 7 (2) (B) (III), (IV), (V), 7 (3) (A), (B), (C), (F), (G), (H), (I), (J), 8, 9(B), 10(2), 11(4), 13, 14, 19, 20, 21, 24, 25, 26, 35, 36, 37, 38, 39, 40, 50, 52, 53, 54 58 and 59 of the Media Services Act No 12 of 2016. It is therefore proposed that these provisions be amended to allow freedom of expression as provided for in the Constitution.
		18. Access to Information Act, 2016	This Act has several provisions which infringe the freedom of expression in Tanzania. It restricts free flow of information. It therefore contravenes the Constitution of the United Republic of Tanzania specifically on the right to information guaranteed under Article 18 of the Constitution, 1977.
		19. Online Content Regulations, 2020	These Regulations needs to be wholly amended for the Minister acted in excess of her powers while promulgating the same. The Regulations imposes unnecessary restrictions and burden to online users which in essence curtail their freedom of expression.
		20. Media Services Regulations, 2017	The Regulations need to be amended for they are against the right to information enshrined in our Constitution under Article 18.
		21. Miscellaneous amendment No 3 of 2018 amending the NGOs Act.	These amendments are burdensome to the CSOs example is Excessive and unrestricted powers to the minister such as to investigate, de registration, re registration after 10 years which has financial and administrative effect, no more companies limited by guarantee, submission of annual report and audit to the registrar and make their contracts public etc





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