

SPREADING FEAR, ASSERTING CONTROL

Tanzania's assault on civic space



DEFENDDEFENDERS

East and Horn of Africa Human Rights Defenders Project

Spreading Fear, Asserting Control Tanzania's assault on civic space

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"In Africa, once we get a sorcerer at the top of the heap, everyone becomes an apprentice. Everyone wants to be the chief. This is because of weak institutions and weak rule of law. Whoever you put at the top will percolate to the grassroots – whatever he says becomes law..."

- Tanzanian journalist, May 2018

"When [Magufuli] came to power everything changed. It became a state where citizens are afraid. Afraid of the system, national security, those in power, government in general, afraid of the President."

- Tanzanian defender, May 2018

"They can get you through official means, through your family, through taxation, by attacking your businesses, any way they want."

- Tanzanian defender, May 2018

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Acronyms

CCM	Chama Cha Mapinduzi
CHADEMA	Chama Cha Demokrasia na Maendeleo
CHESA	Community Health Education Services and Advocacy
CSO	Civil Society Organisation
DC	District Commissioner
EACJ	East African Court of Justice
EPOCA	Electronic and Postal Communications Act
HRD	Human Rights Defender
ISLA	Initiative for Strategic Litigation in Africa
JAB	Journalists Accreditation Board
KP	Key Population
LGBT+	Lesbian, Gay, Bisexual, Trans, and other sexual minorities
LHRC	Legal and Human Rights Centre
MCT	Media Council of Tanzania
MP	Member of Parliament
MSA	Media Services Act
MSC	Media Services Council
NBS	National Bureau of Statistics
NGO	Non-Governmental Organisation
RC	Regional Commissioner
SOGI	Sexual Orientation and Gender Identity
TCRA	Tanzania Communications Regulatory Authority
THRDC	Tanzania Human Rights Defenders Coalition
UN	United Nations



Foreword

For decades, Tanzania was a model for peaceful development in a sub-region plagued by repressive regimes and non-state actors who abuse human rights with widespread impunity. Tanzanian society was largely spared the political fallout of ethnic and religious divisions that trouble neighbouring countries, while steady democratic and social progress contributed positively to development. Civil society organisations (CSOs) flourished, free expression was tolerated, and justice was accessible through strong institutions and with the help of fierce human rights defenders (HRDs).

Despite these achievements, latent corruption and slow economic development, as in many parts of the world, left Tanzanian society prey to a wave of populism propelled by hollow nationalism and panacea promises. In pursuit of quick fixes to complex problems, HRDs have been increasingly harassed, and human rights have been curtailed by a government attempting to exert more control over the fundamental rights of its citizens. What we are witnessing today in Tanzania is nothing short of an outright assault on civic space by a regime bent on eradicating decades of long-term gains to satisfy short-term political goals.

These developments have gone largely unnoticed by the international community. In an unfortunate way, Tanzania's great stability led to its relative neglect, compared to countries like South Sudan and Somalia, where conflicts and human rights crises demanded more immediate attention. We at DefendDefenders are equally guilty of this oversight. Tanzania's slump has been steady but hushed, yet we cannot let success set the stage for decline.

We speak often of our duty to prevent human rights violations and abuses, to help create open civic spaces where HRDs can continue working in a safe and enabling environment. And yet, we are rarely presented with the chance to do so before it is too late – Tanzania is one such opportunity that can no longer be ignored. It is our intention that this report serve as a wake-up call to relevant stakeholders and international actors. Decisive action now can avoid emergency measures later – in this case, an ounce of prevention is worth a pound of cure.

Tanzania's once open society has been hijacked by those who believe that human rights threaten their grip on power and must be traded for economic development. Yet, they misunderstand that human rights, development, and political stability are not antagonistic, but inextricably linked – one cannot exist without the others. It is imperative for Tanzanian HRDs, regional organisations, and international partners to come together and show that when we are united, we are unbreakable.

Hassan Shire



**Executive Director of DefendDefenders
Chairperson of the Pan-African Human Rights Defenders Network**



About DefendDefenders

Established in 2005, DefendDefenders (the East and Horn of Africa Human Rights Defenders Project) seeks to strengthen the work of HRDs throughout the sub-region by reducing their vulnerability to the risk of persecution by enhancing their capacity to effectively defend human rights. DefendDefenders focuses its work on Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia (together with Somaliland), South Sudan, Sudan, Tanzania, and Uganda.

DefendDefenders serves as the secretariat of the East and Horn of Africa Human Rights Defenders Network, which represents more than 78 members (both individual HRDs and their human rights organisations) and envisions a sub-region in which the human rights of every citizen as stipulated in the Universal Declaration of Human Rights are respected and upheld.

DefendDefenders also serves as the secretariat of the Pan-African Human Rights Defenders Network (PAHRDN). The network was formed as a result of deliberations at the All African Human Rights Defenders Conference (Johannesburg +10) hosted in April 2009 in Kampala, Uganda. The five sub-regional networks forming the PAHRDN are: the North Africa Human Rights Defenders Network (hosted by the Cairo Institute for Human Rights Studies in Tunis), the West African Human Rights Defenders Network (Lomé, Togo), the Southern Africa Human Rights Defenders Network (hosted by the International Commission of Jurists in Johannesburg, South Africa), the Central Africa Human Rights Defenders Network (Douala, Cameroon), and the East and Horn of Africa Human Rights Defenders Network (hosted by DefendDefenders in Kampala, Uganda). PAHRDN aims to coordinate activities in the areas of protection, capacity building, and advocacy across the African continent.

Executive Summary

Despite decades of peaceful development and a relatively open civic space, endemic corruption and slow economic progress led to a wave of populism which saw the election of President John Magufuli in December 2015. While some restrictive trends predate the current administration, Tanzania has since witnessed a dramatic shrinking of civic space and a brutal crackdown on HRDs, CSOs, and independent media. Nearly all sources interviewed for this report, as well as other indicators, signal that authorities restrict critical voices, and that harassment of HRDs has increased under President Magufuli.

Whereas previously, pastoralists, organisations working on sexual orientation and gender identity (SOGI) issues, and CSOs working on civil and political rights were most at risk of being targeted, threats now increasingly extend to organisations working on economic, social, and cultural rights. HRDs and CSOs describe an administration that treats civil society as incompatible with its agenda of economic development and increased control over public morality. This harassment has taken both legal and extra-legal forms. Several strategies have been employed by the government to directly target, intimidate, and harass HRDs working on a broad range of issues.

Tanzania has adopted a number of laws that provide authorities with overly broad powers to restrict citizens' legitimate exercise of fundamental freedoms, as well as to charge HRDs, journalists, bloggers, and other independent voices with vaguely-worded offences. Several laws have been rushed through Parliament and adopted in the absence of meaningful consultations with civil society, such as the Media Services Act (2016), Cybercrimes Act (2016), and Electronic and Postal Communications Act (Online Content) Regulations (2018).

These laws and regulations grant broad powers to government ministries and regional politicians, with little judicial oversight and inadequate human rights safeguards.

While the Tanzanian Constitution guarantees the freedom of peaceful assembly, elements of the state security apparatus have increasingly monitored, restricted, and sometimes shut down civil society events. Organisations are now required to seek prior authorisation for their activities, yet no existing legislation explicitly requires this permission, changing what is legally a notification regime into an authorisation regime.

All elements of political opposition have also come under attack since the 2015 elections, with new restrictions significantly hampering their ability to function effectively and promote their platform. Several high-profile opposition members have been attacked and murdered by unknown assailants, and many sources doubt whether police investigations will lead to thorough, impartial, and conclusive results.

A number of newspapers and broadcasters have been banned or shuttered since 2015, with every media professional interviewed for this report describing an environment where freedom of opinion and expression is severely curtailed, whether through state-sanctioned censorship, or self-censorship practiced among journalists. Prosecution is a major tool employed to harass the media industry, either through the application of draconian legislation, or drawn-out court cases and expensive legal proceedings intended to bankrupt outlets. Editors have since been reluctant to cover civil society events or press releases, further leading to a culture of repression and silence.



With the President Magufuli government taking on an increasingly moralistic tone, the situation of lesbian, gay, bisexual, trans people and other sexual minorities (LGBT+) and HRDs working on SOGI issues has become increasingly hostile, with harassment, stigmatisation, arrests, and the deregistration of organisations. Many have been accused of “promoting homosexuality,” which is not an offence under Tanzanian law.

The semi-autonomous status of Zanzibar creates a different dynamic for civil society activities in the archipelago. While many Zanzibari HRDs identified different challenges to their work, for example in relation to women’s rights, some of the trends like the persecution of the LGBT+ community have spilled over from the mainland.

There is little to indicate that these negative trends will be reversed, or even slowed, in the coming years, and civil society has so far failed to present a unified front to counter these attacks. Presidential elections scheduled for 2020 are likely to be a watershed moment for the country, potentially exacerbating this crackdown on human rights.

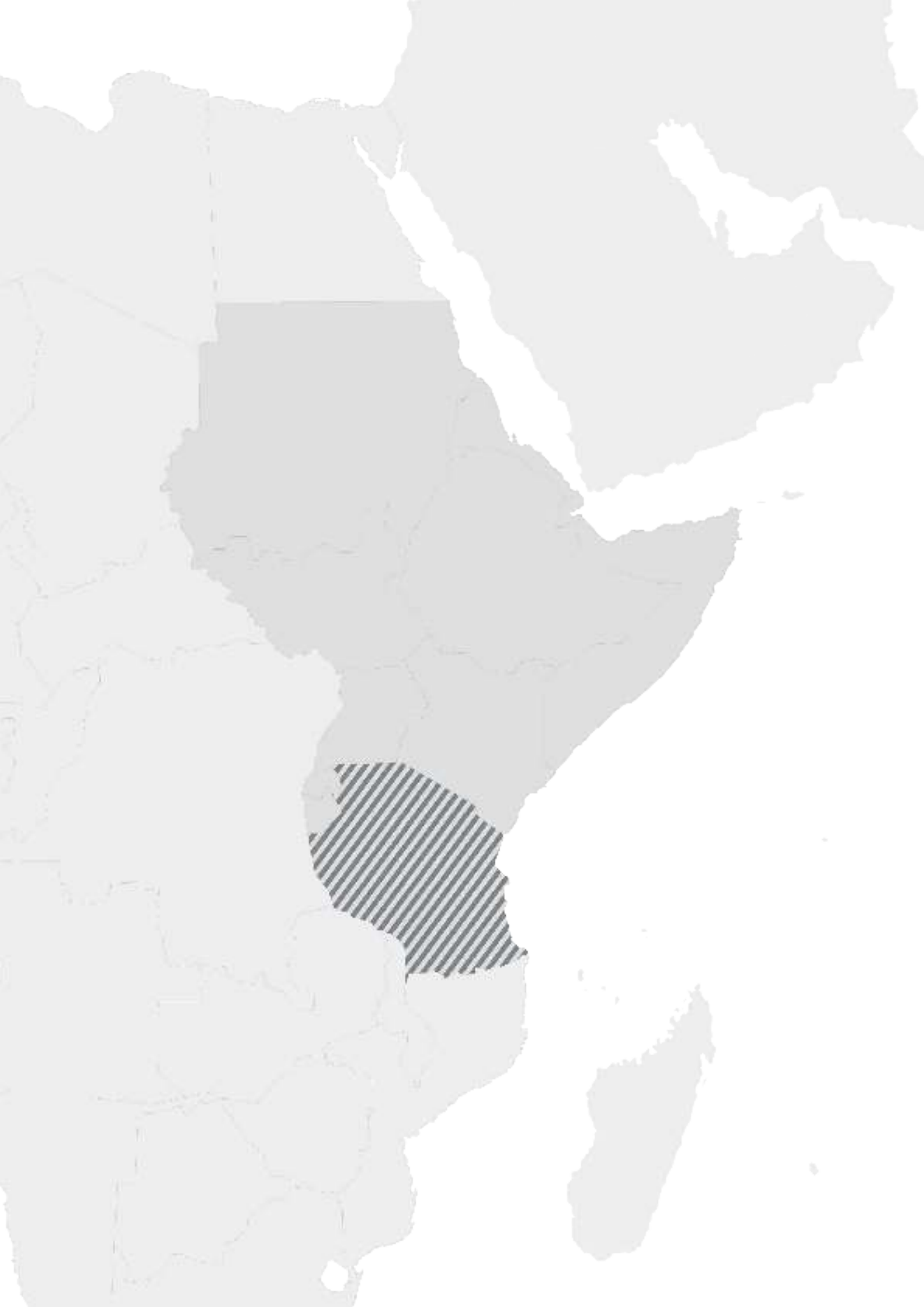


Methodology

This report is a combination of desk research and interviews with more than 30 stakeholders, including HRDs, journalists, and representatives of diplomatic missions. All interviews were conducted in Tanzania between August 2017 and May 2018, in Dar es Salaam and Zanzibar. Claims not otherwise sourced are credited to the interviews conducted by DefendDefenders, making every effort to confirm this information with multiple individual, and independent sources.

The names and identifying markers of all sources have been deliberately omitted in order to ensure their safety, independence, and protect them from reprisals in the form of legal and extra-legal harassment. We would like to express our heartfelt thanks to all the individuals who contributed their testimonies, insights, and analyses for this report.





Background

Tanzania was largely spared the civil conflicts, ethno-political tensions, and authoritarian dictatorships that have plagued most of the East and Horn of Africa sub-region. Under the decades-long leadership of former President Julius Nyerere, the country undertook a rapid period of decolonisation through the construction of a unified national identity, Pan-Africanism, and Nyerere's own brand of African socialism based in rural collectivisation, known as *Ujamaa*.¹ Tanzania largely escaped the throes of the Cold War by remaining non-aligned, focusing instead on developing the education sector, the implementation of Swahili as a standard country-wide *lingua franca*, and the repression of political tribal identities to achieve these goals.

Tanzania has remained politically stable since Tanganyika and Zanzibar merged into a unified single republic in 1964. Nyerere's *Chama Cha Mapinduzi* (CCM), a merger of the two previously dominant mainland and Zanzibari parties, has ruled since 1977, making it the longest-ruling political party in Africa. Despite a 1992 constitutional amendment which introduced a multiparty system, CCM has maintained its popularity and a sizable majority since the first multiparty elections in 1995. Since then, space for civil society in Tanzania has opened up to a larger extent than most of its neighbours. Freedom House has rated Tanzania as "partly free" since it started tracking the situation for its Freedom in the World Index in 1999.²

The October 2015 elections proved the first real test for the ruling party's hold on power, with CCM only winning by 58.46 percent

1 The Arusha Declaration and TANU's Policy on Socialism and Self-Reliance, 1967, <https://www.marxists.org/subject/africa/nyerere/1967/arusha-declaration.htm>.

2 Freedom House, "Freedom in the World Index," 1999-2018, <https://freedomhouse.org/report/freedom-world/2016/tanzania>.

against an opposition alliance, its lowest margin to date. After the vote, the opposition unsuccessfully demanded a recount claiming "voter irregularities." "Gross violations" reported by the Electoral Commission in semi-autonomous Zanzibar resulted in a controversial rerun vote on the archipelago that was boycotted by the opposition.³

Although restrictive trends predate the current administration, space for HRDs, CSOs, and independent journalism has shrunk since President Magufuli took office. Diplomatic missions, HRDs, and journalists interviewed for this report, as well as other indicators such as Reporters Without Borders' World Press Freedom Index⁴ and the CIVICUS Civic Space Monitor,⁵ all signal that authorities increasingly crack down on critical voices of any kind and have become less susceptible to pressure from the international community.

The "Bulldozer"

With a reputation as a CCM outsider, Magufuli's nomination as presidential candidate came as a surprise to many observers.⁶ Magufuli went from Minister of Works to leading the country's dominant political party and running against a former Prime Minister who defected from the CCM in protest after Magufuli's nomination. During the campaign, Magufuli rode a populist wave promising to tackle widespread corruption and curb government inefficiencies,

3 Reuters, "Tanzania opposition calls for vote recount, Zanzibar poll nullified," 28 October 2015, <https://www.reuters.com/article/us-tanzania-election/tanzania-opposition-calls-for-vote-recount-zanzibar-poll-nullified-idUSKCN0SM17320151028>.

4 Reporters Without Borders, "2018 World Press Freedom Index," April 2018, <https://rsf.org/en/ranking/2018>.

5 CIVICUS, "Civic Space Monitor: Tanzania," <https://monitor.civicus.org/country/tanzania/>.

6 The East African, "Surprise winner Magufuli vows to unite Chama cha Mapinduzi," 18 July 2015, <http://www.theeastafrican.co.ke/news/ea/Surprise-winner-Magufuli-vows-to-unite-Chama-cha-Mapinduzi/4552908-2797618-7fuqs7/index.html>.



appealing especially to rural voters.

On his first day in office, President Magufuli made a surprise visit to the Ministry of Finance, where he berated public servants who were absent from their desks.⁷ A month later, he fired the director of the national hospital after finding patients sleeping on the floor, with his chief secretary commenting that “it’s not business as usual.”⁸ The President made further headlines by cancelling Independence Day celebrations to cut back on spending, removing over 10,000 “ghost workers” from government payrolls,⁹ and suspending the Tanzania Revenue Authority Commissioner pending an investigation into a US\$ 40 million tax discrepancy in the Dar es Salaam port.¹⁰

President Magufuli’s approach initially earned him both domestic and international praise, and even sparked a “#WhatWouldMagufuliDo”¹¹ trend on social media. However, under his leadership the Tanzanian government has also grown increasingly intolerant of critical voices, be it from opposition parties, non-governmental organisations (NGOs), faith-based organisations, or the media. Several critical newspapers and media outlets have been shuttered under new regulations.¹² After warnings against “immoral behaviours” by the President, the LGBT+ community and

HRDs working on SOGI issues have also been persecuted, with activists being publicly threatened, stigmatised, and arbitrarily detained.¹³

7 The Citizen, “JPM storms finance ministry,” 7 November 2016, <http://www.thecitizen.co.tz/News/JPM-storms-finance-ministry/-/1840340/2945972/-/13p2d0n/-/index.html>.

8 Reuters, “Tanzania’s new president sacks hospital chief after surprise inspection,” 10 November 2015, <https://www.reuters.com/article/us-tanzania-politics/tanzanias-new-president-sacks-hospital-chief-after-surprise-inspection-idUSKCN05Z17T20151110>.

9 Reuters, “Tanzania says over 10,000 ‘ghost workers’ purged from government payroll,” 16 May 2016, <https://www.reuters.com/article/us-tanzania-corruption/tanzania-says-over-10000-ghost-workers-purged-from-government-payroll-idUSKCN0Y70RW>.

10 Coast Week, “Tanzanian President suspends revenue chief over loss of taxes,” 6 June 2018, <http://www.coastweek.com/3848-Tanzanian-President-suspends-revenue-chief-over-loss-of-taxes.htm>.

11 Twitter, “#WhatWouldMagufuliDo” <https://twitter.com/hashtag/WhatWouldMagufuliDo?src=hash>

12 Reuters, “Tanzania suspends fourth newspaper since June in media crackdown,” 24 October 2017, <https://www.reuters.com/article/us-tanzania-media/tanzania-suspends-fourth-newspaper-since-june-in-media-crackdown-idUSKBN1CT2JT>.

13 Reuters, “Tanzania threatens crackdown on LGBT advocates,” 26 June 2017, <https://www.reuters.com/article/tanzania-lgbt/tanzania-threatens-crackdown-on-lgbt-advocates-idUSL8N1JN373>.



Legal Framework

Tanzania has adopted a number of laws that provide the executive branch with overly broad discretionary powers to restrict citizens' legitimate exercise of their human rights and fundamental freedoms, as well as to charge HRDs, journalists, bloggers, and critics with vaguely-worded offences. This trend has accelerated in the last three years as a number of laws have been rushed through Parliament and adopted in the absence of meaningful consultations with civil society and other relevant stakeholders. These laws and regulations grant broad powers to authorities with little judicial oversight and inadequate human rights safeguards. This section provides an overview of the most relevant laws negatively impacting the work of HRDs.

The Regional Administration Act (1997)¹⁴



This Act allows Regional Commissioners (RCs) and District Commissioners (DCs) to detain any person for 48 hours without charge, after which the arrested person must be brought before a magistrate. Under Section 7, a RC can order a police officer, verbally or in writing, to arrest any person who is deemed likely to breach the peace or disturb public tranquillity if that breach cannot be prevented in any other way. While the Act sets out some procedural safeguards, the powers conferred to RCs and DCs and the grounds for arresting individuals are overly broad and have been used against HRDs, infringing on the rights to liberty, security of person, and freedom of movement.

¹⁴ "The Regional Administration Act," 12 June 1997, <http://parliament.go.tz/polis/uploads/bills/acts/1461161038-ActNo-19-1997.pdf>.

The Electronic and Postal Communications Act (2010)¹⁵ and (Online Content) Regulations (2018)¹⁶



The Electronic and Postal Communications (Online Content) Regulations (2018), or EPOCA Regulations, came into effect in April 2018. They stem from the EPOCA Act and enable the government to arbitrarily regulate and ban online content produced by bloggers, citizen journalists, forum administrators, social media users, as well as websites, television and radio stations. The Regulations apply to any resident in Tanzania and to any Tanzanian citizen living abroad. The Tanzania Communications Regulatory Authority (TCRA) regulates online content and has sweeping powers to remove it. It is also tasked with keeping a register of bloggers, online forums, online radio and television, and can impose hefty fines for violations.

While the EPOCA Regulations pursue a number of legitimate aims, such as the protection of children from pornography and the fight against online hate speech, other provisions violate international standards on freedom of opinion and expression, and the right to privacy. Firstly, the Regulations require registration of all online blogs and forums with the TCRA, and registration and licensing is mandatory for any blogging and citizen journalism activity. The initial annual fee of TSh 2,000,000 for such licensing is prohibitive as it amounts to roughly one third of the average annual *per capita* income.¹⁷

¹⁵ Electronic and Postal Communications Act, 20 March 2010, <https://tcra.go.tz/images/documents/policies/epoca.pdf>.

¹⁶ The Electronic and Postal Communications (Online Content) Regulations, 16 March 2018, https://www.tcra.go.tz/images/documents/regulations/SUPP_GN_NO_133_16_03_2018_EPOCA_ONLINE_CONTENT_REGULATIONS_2018.pdf.

¹⁷ United Nations Development Programme, "Tanzania (United Republic of) Human Development Indicators," 2011, <http://hdr.undp.org/en/countries/profiles/TZA>.



Secondly, blog and forum administrators are required to review any user content before it is posted, which is extremely difficult in practice and has a chilling effect on both administrators and contributors. Similarly, Internet café owners and business centres are required to filter access to prohibited content and to monitor, record, and archive user activity, including by installing surveillance cameras and archiving footage for 12 months. All online content providers are also required to block anonymous users and to “cooperate with law enforcement officers” in pursuing their functions under the Regulations, including potentially identifying users, contributors, and online content producers. The Regulations also give the TCRA the authority to suspend or shut down blogs and forums at their discretion.

The EPOCA Regulations are ambiguous and vaguely-worded, paving the way for arbitrary government interpretation of undefined terms. This can in turn lead to power abuses in the form of attacks against freedom of opinion and expression – especially where opposition or dissenting views are involved. For instance, Section 12 prohibits service providers from publishing online “content that causes annoyance, threatens harm or evil, encourages or incites crime, or leads to public disorder” including vulgar language, sexual references, or false content. An analysis by ARTICLE 19 concluded that the Regulations are “so flawed that they should be withdrawn entirely.”¹⁸ One journalist interviewed for this report told DefendDefenders that the EPOCA Regulations were “completely squeezing people.”¹⁹

“Now, even uttering grievances and stating facts that are true but go against the government's views can put you in trouble.”²⁰

The Statistics Act (2015)²¹



This Act makes it illegal to publish or communicate statistical information that has not been approved or authorised by the National Bureau of Statistics (NBS). It also makes it illegal to publish or communicate information which may result in the “distortion of facts” – an extremely vague provision that opens the door to abusive interpretations that may seek to target independent reporting on public interest matters, especially by journalists or HRDs.

In essence, the Statistics Act criminalises information that the government deems false, misleading, or inaccurate. It grants law enforcement officials powers to confiscate private electronic devices without a court order or a search warrant, if they believe that information contained therein can be used as evidence in a criminal case. A lawyer and HRD informed DefendDefenders that their NGO no longer publishes its own data due to the Act, as any contradiction of official NBS data could expose them to legal action. This restriction on data and public information is a serious impediment to independent investigation and advocacy work.

Under the Act, anyone involved can be charged, such as NGOs presenting alternative statistics in press conferences or interviews, and journalists that discuss or simply report on them. This has resulted in significant self-censorship amongst a media industry that is increasingly deterred from discussing information and analysis provided by civil society or other independent sources.

18 Article 19, “Tanzania: Electronic and Postal Communications (Online Content) Regulations 2018,” 16 May 2018, www.article19.org/resources/tanzania-electronic-and-postal-communications-online-content-regulations-2018/.

19 DefendDefenders interview, May 2018.

20 DefendDefenders interview, May 2018.

21 “The Statistics Act,” 25 April 2015, <http://parliament.go.tz/polis/uploads/bills/acts/1452062087-ActNo-9-2015-Book-1-10.pdf>.

The Cybercrimes Act (2015)²²



Section 16 of the Act criminalises a number of online activities, including the publication of false, deceptive, misleading, or inaccurate information. The Act also gives broad powers to law enforcement officials to search and seize digital equipment, and does not require investigating officers to obtain a warrant before carrying out activities of surveillance or interception of communications - under Section 31 “reasonable grounds” are sufficient.

Procedural safeguards and due process guarantees are to a large extent left out of the text, and key terms, including offences, are not clearly defined. The Act also sets out a “sedition offence”, which attracts severe penalties. More generally, it provides for minimum criminal sanctions that are grossly disproportionate, and only recognises a small number of available defences. Section 16 has been used to target the independent online activities of bloggers, journalists, and citizens, and has had a chilling effect on freedom of expression.

The Media Services Act (2016)²³



This Act replaces the Newspapers Act and the Tanzania News Agency Act of 1976. It contains vague, undefined terminology such as “false statements,” “rumours,” and “disturbing the public peace.” Among its most problematic provisions is Section 58, which grants the Minister of Information, Youth, Culture and Sports “absolute discretion” to prohibit the importation of a foreign publication. Section 59 also grants the Minister discretionary powers to prohibit or otherwise sanction the publication of any content that jeopardises national security or public safety. This section has been used to ban or suspend independent media

²² “The Cybercrimes Act,” 25 April 2015, <http://parliament.go.tz/polis/uploads/bills/acts/1452061463-ActNo-14-2015-Book-11-20.pdf>.

²³ “The Media Services Act,” 26 August 2016, <http://www.parliament.go.tz/polis/uploads/bills/1474021216-A%20BILL%20-%20%20%20THE%20MEDIA%20SERVICES%20ACT,%202016.pdf>.

outlets (see “Silencing the Messenger” below).

Under the Media Services Act (MSA), it is an offence to practice journalism without accreditation, and journalists must hold a university degree in a relevant field to enter the profession. The MSA provides for accreditation under the Journalists Accreditation Board (JAB) and a system of licensing for print media. These two provisions are tantamount to imposing *de facto* control by the government over the practice of journalism and the daily operations of media outlets. Regulatory bodies established by the MSA provide no guarantee of independence. For example, the JAB’s seven members are appointed by the Minister of Information, Youth, Culture and Sports. The JAB has powers, *inter alia*, to suspend or expunge journalists from the roll of accredited journalists. The Media Services Council (MSC), which the MSA has instituted to replace the current self-regulatory body, the Media Council of Tanzania (MCT), enjoys sweeping oversight and enforcement powers over media outlets. Decisions to de-register print media outlets are final, which means that they cannot be appealed before a court of law.

The MSA’s vague provisions grant the government broad powers to punish media outlets and journalists that present or defend different views. In any case, imprisonment for such offences is wholly disproportionate. Additionally, it should be stressed that attempting to regulate “fake news” means embarking on a dangerous path where government officials assert the right to define what is true and what is not. Lastly, Section 41 outlines automatic criminal liability for all directors if their outlet commits a criminal offence under the Act. This provision sends a chilling message to the profession as a whole.²⁴

The MSA violates both Tanzania’s constitutional and international obligations. This fatally

²⁴ Article 19, “Tanzania: Media Services Bill, 2015,” May 2015, www.article19.org/data/files/medialibrary/38078/ARTICLE-19-Tanzania-Analysis-Media-Services-Bill.pdf



flawed piece of legislation has been a key tool in the crackdown on civic space, often used in conjunction with other new laws.

The Access to Information Act (2016)²⁵



Although meant to create greater transparency and support the right of access to information as provided for by Article 18 of the Tanzanian Constitution,²⁶ the Access to Information Act imposes severe penalties for wrongly releasing information. Authorities may withhold information (“exempt information”) if its disclosure is deemed likely to, *inter alia*, undermine Tanzania’s international relations, hinder or cause substantial harm to the government’s management of the economy, or distort records of court proceedings before the conclusion of a case. The scope of “information relating to national security” in Section 6 is extremely broad, and any person who discloses exempt information is liable to three to five years imprisonment.

Effect on civil society

In the last two years, a number of HRDs have been charged under these laws, which place a significant financial burden on HRDs and wastes time that could otherwise be used for human rights activities. There was also a sense by some of the interviewees that, while the practice of detaining opposition members and HRDs predates the current administration, people are detained for longer periods, even for bailable offences, and with fewer implementations of legal safeguards.

Interviewees stressed that while these laws and regulations were in themselves problematic and solidified Tanzania’s authoritarian turn, the executive and law enforcement officials had widened their scope to target pillars of civic space such as freedom of opinion and

expression. One interviewee noted that “the overall effect on civil society and civic space comes from all these laws combined.” The legal framework, as well as policies and practices documented in this report contribute to the overall erosion of the rule of law in Tanzania. The effect on civic space has been deleterious.

“Laws aren’t used for everyone – they’re used against certain people when the government feels like it.”²⁷

²⁵ “The Access to Information Act,” 2016, <https://www.twaweza.org/uploads/files/THE%20ACCESS%20TO%20INFORMATION%20ACT.pdf>.

²⁶ “The Constitution of the United Republic of Tanzania,” 1977, <http://www.wipo.int/edocs/lexdocs/laws/en/tz/tz030en.pdf>.

²⁷ DefendDefenders interview, May 2018.

The Crackdown

Tanzania has undergone a dramatic shrinking of civic space unseen in the sub-region outside the context of a conflict or political crisis. What makes Tanzania's case disconcerting is the speed and efficiency of this decay, propelled by several new repressive laws, government discourse increasingly hostile towards civil society, and a state security apparatus emboldened in their targeting of HRDs. These developments have gone largely unnoticed by the international community.

HRDs and CSOs interviewed for this report describe a government that regards civil society as inherently antagonistic to its agenda of economic development and social cohesion, based on what it describes as 'traditional values.' The result has been the curtailment of civil society activities, increased harassment of HRDs working with vulnerable populations, severe restrictions on political opposition groups, and the suppression of free expression and independent media. Whereas previously pastoralists, SOGI organisations, and CSOs working on civil and political rights were most at risk of being targeted, threats now also increasingly extend to organisations working on economic, social, and cultural rights.

This harassment has taken both legal and extra-legal forms. Several strategies have been employed by the government to directly target, intimidate, and harass HRDs working on a broad range of issues. Sources interviewed for this report unanimously said that harassment of CSOs has increased since Magufuli assumed the presidency in 2015.²⁸

A mandatory verification of all NGOs was conducted between 21 August and 4 September 2017, requiring organisations to

re-submit details such as proof of registration payments and the location of their offices – all non-compliant NGOs were to be deregistered.²⁹ Between the start of the process until 30 November 2017, the government suspended the registration of new organisations while the existing ones were being verified.³⁰ Some sources interviewed for this report said that, if conducted properly, this exercise would benefit civil society as a whole by trimming organisations that have since gone defunct. Others worried that the government would use this updated information to more efficiently target vulnerable organisations, especially those working on SOGI issues. No statistics regarding deregistration or suspension of registered organisations have been released by the government.

"People say that democracy holds back development. This is ridiculous. Development is not at the expense of democracy; people have the right to express themselves in their own country. You can't suffocate peoples' rights to fight corruption."³¹

Some HRDs critical of the government have been arbitrarily labelled as opposition agents or sympathisers, and individuals seen supporting or funding them have at times been painted with the same brush. Donor organisations have felt this squeeze by extension: fearing that their partners' activities might lose them access

29 Ernst & Young, "Tanzania requires NGOs to verify their registration status," 16 August 2017, <http://www.ey.com/gl/en/services/tax/international-tax/alert--tanzania-requires-ngos-to-verify-their-registration-status>.

30 Business Daily, "Tanzania suspends NGOs registration," 22 August 2017, <https://www.businessdailyafrica.com/news/Tanzania-suspends-NGOs-registration/539546-4066666-1ly1cfz/index.html>.

31 DefendDefenders interview, May 2018.

28 DefendDefenders interviews, August 2017- May 2018.



to the country, some have allegedly advised national organisations to not engage too vocally in advocacy or criticise the government too overtly.³²

Questions over Tanzanian citizenship have also been a tool used by the government to harass HRDs, who are sometimes falsely accused of being foreign nationals. These accusations serve two objectives. First, they feed into nationalistic government narratives of ‘outside actors’ interfering in Tanzanian society and the reformist agenda. Second, they waste HRDs’ time and finite resources by attempting to delegitimise them.

"In this country, if you are a human rights defender, you are not a Tanzanian. They question your national identity if you dare to speak out."³³

Civil society in Tanzania remains fragmented, a ‘divide and rule’ strategy the government has used to their advantage. HRDs describe a context in which CSOs are reluctant to speak out for one another, largely out of fear of attracting attention to themselves and becoming future targets. This self-described lack of unity was highlighted as a major factor enabling the overall shrinking of civic space across all elements of civil society.

Peaceful Assembly: From Notification to Permission



The right to freedom of peaceful assembly has been one of the more overt casualties of the Magufuli government. Article 20(1) of the Tanzanian Constitution guarantees this freedom, stating specifically that “every person has a freedom, to freely and peacefully assemble, associate and cooperate with other persons.”³⁴ The state security apparatus has

increasingly monitored, restricted, and sometimes outright shut down civil society events and activities. While under previous administrations CSOs were free to conduct their operations with minimal oversight, they are now *de facto* required to provide details of their public events and seek prior authorisation. While no existing legislation explicitly requires CSOs to obtain this permission, HRDs reported that police and security forces increasingly interpret vaguely-worded laws to exert more direct control, and turn what is legally a notification regime into an authorisation regime in violation of international human rights standards.³⁵ One HRD noted how “where once we gave notice to authorities, now we ask for permission.”³⁶

Even previously mundane events, including those held on private premises like workshops or small gatherings, are now subject to raids resulting in the arrests of HRDs. For example, on 6 March 2017, the National Coordinator of the Tanzania Human Rights Defenders Coalition (THRDC), Onesmo Olengurumwa, and the Coordinator of the Tanzania Students Networking Programme, Baraka John, were arrested, detained, and charged with criminal trespass.³⁷ The two were attempting to attend the launch of a book in a hotel on the topic of HRDs in universities, written by a student leader.³⁸

35 United Nations, “Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies,” 4 February 2016, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session31/Documents/A.HRC.31.66_E.docx

36 DefendDefenders interview, May 2018.

37 FIDH, “Tanzania: Attempts to hinder book launch event and arbitrary arrest of Messrs. Onesmo and Baraka,” 9 June 2017, <https://www.fidh.org/en/issues/human-rights-defenders/tanzania-attempts-to-hinder-book-launch-event-and-arbitrary-arrest-of>.

38 Tanzania Human Rights Defenders Coalition, “Press statement on the arrest of the National Coordinator of the Tanzania Human Rights Defenders Coalition (THRDC) Mr. Onesmo Olengurumwa and Mr. Baraka John the Coordinator Tanzania Students Networking Programme (TSNP) while conducting legal advocacy activities,” 3 June 2017, <https://www.facebook.com/THRDCOALITION/posts/797792710375802>.

32 DefendDefenders interview, May 2018.

33 DefendDefenders interview, May 2018.

34 The Constitution of the United Republic of Tanzania, 1977, <https://web.archive.org/web/20091222050849/http://www.policeforce.go.tz/pdf/REPUBLIC.pdf>.

Organisations are now also expected to request permission from authorities to conduct workshops, meetings, or other activities in areas where they do not have an office. These restrictions on freedom of peaceful assembly and movement have hampered larger urban-based organisations from reaching rural areas. Some HRDs described activities being granted permission on the condition that government or law-enforcement representatives be allowed to attend or participate. While this opens the possibility for active dialogue with the government, it also strips civil society of its independence and has the potential to intimidate and silence HRDs working with vulnerable populations like the LGBT+ community or indigenous minorities.

"We want development, we want a better economy, but not at the expense of human rights violations."³⁹

In June 2016, after security forces used tear gas to disperse a crowd of opposition protesters in Kahama District, all opposition demonstrations and rallies were quickly banned by Tanzanian police.⁴⁰ This sweeping ban, which is wholly disproportionate considering its adverse effect on freedoms of expression, peaceful assembly, and association, has no basis in Tanzanian or international law. In February 2018, a high school student was killed by a stray bullet when police fired live ammunition to disperse a group of opposition protesters marching towards the Electoral Commission office, and several party members were arrested. The young girl was sitting on a bus and was not involved in the demonstration.⁴¹

39 DefendDefenders interview, May 2018.

40 Reuters, "Tanzania police uses teargas at opposition rally, bans protests," 7 June 2016, <https://www.reuters.com/article/us-tanzania-politics/tanzania-police-uses-teargas-at-opposition-rally-bans-protests-idUSKCN0YT2G7>.

41 The East African, "Tanzania's opposition accuse police of killing student," 17 February 2018, <http://www.theeastafrican.co.ke/news/University-student-shot-dead-in-Dar-poll-protest/2558-4309054-xahfdm/index.html>.

Hobbling the Opposition



The 2015 national elections marked the first time the ruling CCM party faced serious contest in the polls since independence, despite winning by a comfortable 58.46 percent margin. During these elections, the opposition alliance performed significantly better in large urban areas like Dar es Salaam, Arusha, and Mwanza, marking a divide in opinion between rural and urban voters.⁴² The ensuing crackdown on opposition parties of all stripes has been swift, with several restrictions significantly hampering their ability to function effectively.

As noted, opposition parties are no longer able to hold public rallies outside official campaign periods – CCM rallies are allegedly not subject to the same sweeping restrictions. Additionally, in April 2016, the government announced that it would no longer allow live broadcasts of parliamentary proceedings.⁴³ These actions have significantly affected the opposition's ability to reach citizens across the country, share their platform, and organise supporters.

In February 2018, two opposition *Chama Cha Demokrasia na Maendeleo* (CHADEMA) party members were brutally murdered in separate incidents. On 13 February, party campaigner Daniel John was abducted, and his body was later found dumped at a beach covered in machete wounds.⁴⁴ On 22 February, Godfrey Luena, a land rights defender, left his home to investigate a power cut and was murdered by unknown assailants armed with machetes.⁴⁵

42 Tanzanian Affairs, "2015 Elections & Results," 1 January 2016, <https://www.tzaffairs.org/2016/01/2015-elections-results/>.

43 Committee to protect Journalists, "Tanzania cuts live parliamentary coverage, ending vital news source for citizens," 13 May 2016, <https://cpj.org/blog/2016/05/tanzania-cuts-live-parliamentary-coverage-ending-v.php>.

44 Reuters, "Tanzania police probe death of opposition campaigner," 14 February 2018, <https://www.reuters.com/article/us-tanzania-politics/tanzania-police-probe-death-of-opposition-campaigner-idUSKCN1FY2SX>.

45 The East African, "Second opposition politician killed in Tanzania," 23 February 2018, <http://www.theeastafrican.co.ke/news/Second-opposition-politician-killed-in-Tanzania/2558-4317234-fa46olz/index.html>.



In what is likely the most high-profile attack against an opposition member, in September 2017 firebrand CHADEMA opposition leader and President of the Tanganyika Law Society, Tundu Lissu, suffered multiple gunshot wounds by unknown assailants outside his residence in Dodoma.⁴⁶ He survived the attack, but chose to receive treatment abroad in Kenya and Belgium. Lissu had been one of Magufuli's fiercest public critics, and was arrested in July 2017 after calling the President a "dictator." After the arrest, a government spokesperson noted that "the government will not accept that someone, or a group of people, abuse the freedom of expression."⁴⁷

It is unclear at this time who orchestrated these attacks against opposition members, and whether they were related to their political activities. However, many sources for this report expressed doubts over whether police investigations would be thorough, impartial, transparent, and lead to conclusive results.

"If someone like Tundu Lissu can be attacked on the street, what about me? What can they do to me?"⁴⁸

Silencing the Messenger



Journalists and the media industry have borne the brunt of the Magufuli government's crackdown on dissenting and critical voices. As previously noted, several laws introduced since his government took power have been used to silence journalists and outright shutter media outlets deemed too critical. Since 2015, several newspapers and radio stations have been shuttered,⁴⁹ and even artists and musicians

have been censored to protect 'cultural norms.'⁵⁰ Since 2016, Tanzania has dropped 22 places in Reporters Without Borders' annual World Press Freedom Index, falling from 71st in 2016, to 83rd in 2017, and 93rd in 2018.⁵¹ Every media professional interviewed for this report described an environment in which freedom of opinion and expression was being severely curtailed. This repression has taken the form of overt state-sanctioned censorship and self-censorship by media professionals.

Censorship

While the MSA was meant to update several draconian provisions in previous legislation, one HRD noted that "when they passed along a draft of the Media Services Act, we realised that parts of it were even worse than the Newspaper Act. We said, 'you can't be serious?'" Several newspapers have been shut down for various periods of time under this Act.

On 15 June 2017, the weekly newspaper *Mawio* was suspended for two years after it published photos of two former Tanzanian Presidents in connection to an article about corruption in the mining industry – neither President was directly implicated in the publication.⁵² On 20 September 2017, the *MwanaHalisi* weekly newspaper was banned for a period of 24 months after publishing an article entitled "Tumuombee nani, Magufuli au Tundu Lissu?" (Whom should we pray for, Magufuli or Tundu Lissu?).⁵³ On 29 September 2017, the government banned local weekly tabloid *Raia*

Africa," October 2017, <https://www.defenddefenders.org/wp-content/uploads/2017/11/DontShootTheMessenger.pdf>.

50 RFI, "Tanzania music ban - protecting cultural norms or limiting freedom of expression," 1 March 2018, <http://en.rfi.fr/africa/20180301-tanzania-music-ban-protecting-cultural-norms-or-limiting-freedom-expression>.

51 Reporters Without Borders, "World Press Freedom Index," 2016, 2017, 2018, <https://rsf.org/en/ranking/>.

52 Committee to Protect Journalists, "Tanzania imposes two-year publishing ban on newspaper," 16 June 2017, <https://cpj.org/2017/06/tanzania-imposes-two-year-publishing-ban-on-newspa.php>.

53 Reuters, "Tanzania shuts down another 'days numbered' newspaper," 20 September 2017, <https://www.reuters.com/article/us-tanzania-media/tanzania-shuts-down-another-days-numbered-newspaper-idUSKCN1BV14Y>.

46 Al Jazeera, "Tanzania: Opposition MP Tundu Lissu wounded by gunmen," 7 September 2017, <https://www.aljazeera.com/news/2017/09/tanzania-opposition-mp-tundu-lissu-wounded-gunmen-170907131959935.html>.

47 Daily Nation, "Tanzanian opposition figure held for denouncing president," 21 July 2017, <https://www.nation.co.ke/news/africa/Tanzanian-opposition-figure-arrested/1066-4025420-dawwa2z/index.html>.

48 DefendDefenders interview, May 2018.

49 DefendDefenders, "Don't Shoot the Messenger! Journalists as human rights defenders in the East and Horn of

Mwema for 90 days for publishing an article entitled “*Uraisi Utamshinda John Magufuli*” (John Magufuli presidency doomed to fail).⁵⁴ On 24 October 2017, the government also suspended the *Tanzania Daima* newspaper for a period of 90 days, alleging that it had published false news.⁵⁵

While the Statistics Act is not directly aimed at curtailing the press, as noted above, it contains several provisions that significantly hamper the efforts of investigative journalists. Notably, it outlines how any contradiction of official government statistics cannot be presented as fact, regardless of the methodology involved in exposing irregularities. Therefore, for example, if independent tallying of polling station results by journalists or HRDs contradict official tallies, media houses may be held liable for spreading false information, regardless of accuracy. Regarding the Statistics Act, one journalist noted that “numbers normally don’t lie, but we’re just afraid. We censor ourselves now.”⁵⁶

“The Statistics Act allows information to be carefully doctored. What comes out has the blessing of the government; only they can give proper statistics and figures, no one else.”⁵⁷

Of all the legislation enacted to stifle media, perhaps none has been as contentious as the Cybercrimes Act, which gives the government broad-ranging powers to constrict and monitor online communications at all levels. As previously noted, Section 16 criminalises the publication or dissemination of “false, deceptive, misleading or inaccurate” information. This legislation has not only

been used to target popular citizen blogging platforms like JamiiForums, but also individual HRDs for comments made online. For example, on 15 November 2017, a court in Dar es Salaam sentenced Bob Chacha Wangwe to one and a half years in prison or a fine of TSh 5,000,000 (US\$ 2,190) on charges of “publication of false information,” allegedly stemming from comments he made on Facebook regarding procedural issues during the 2015 elections in Zanzibar.⁵⁸

While officially unrelated, the new online regulations enacted under EPOCA in April 2018 are largely seen as a means to fill legislative gaps in the Cybercrimes Act. Among other provisions, bloggers are now required to provide details including share capital, tax certificates, estimated investments, and other information to secure accreditation, as well as pay a hefty registration fee before they can even begin publishing material. The regulations also prohibit “content that causes annoyance [...] or leads to public disorder.”⁵⁹ Rather than banning online content outright, the government has sought to render the practice prohibitively expensive and bureaucratic. In June 2018, the Regulations forced popular citizen blogging platform JamiiForums to shut down pending a court challenge after being banned from posting new content.⁶⁰

Co-founder Maxence Melo noted that complying with the Regulations would mean betraying the guarantee of anonymity that whistleblowers on the platform expected⁶¹ –

58 Frontline Defenders, “Judicial harassment of human rights defender Bob Chaha Wangwe,” <https://www.frontlinedefenders.org/en/case/judicial-harassment-human-rights-defender-bob-chacha-wangwe>.

59 CNN, “Tanzanian govt demands \$930 fee from bloggers in internet clampdown,” 13 April 2018, <https://edition.cnn.com/2018/04/12/africa/tanzania-blogging-internet-freedoms-africa/index.html>.

60 Reporters Without Borders, “Tanzania’s most popular site banned from posting new content,” 12 June 2018, <https://rsf.org/en/news/tanzanias-most-popular-site-banned-posting-new-content>.

61 Committee to Protect Journalists, “Tanzania forces forums, blogs, and streaming websites to comply with draconian regulations,” 12 June 2018, <https://cpj.org/2018/06/tanzania-forces-forums-blogs-and-streaming-website.php>.

54 The East African, “Dissenting voices silenced in Magufuli regime,” 30 September 2017, <http://www.theeastafrican.co.ke/news/Dissenting-voices-silenced-in-Magufuli-regime/2558-4118490-smdcusz/index.html>.

55 The Citizen, “Govt bans Tanzania Daima newspaper for 90 days,” 24 October 2017, <http://www.thecitizen.co.tz/News/Govt-bans-Tanzania-Daima-newspaper-for-90-days/1840340-4154086-liiI03/index.html>.

56 DefendDefenders interview, May 2018.

57 DefendDefenders interview, May 2018.



he had also previously complained of police harassment, arbitrary arrest, and was subject to a travel ban.⁶²

Litigation has been a major tool employed by the government to harass the media industry across a range of platforms. In cases where the use of Tanzania's repressive laws was ineffective to silence media houses, drawn-out court cases and expensive legal proceedings were enough to bankrupt outlets or at the very least force them to reduce activities or lay off staff. Legal harassment has been used as a strategy to waste resources if a conviction seems unlikely, ultimately achieving the same ends. One journalist whose media organisation was shut down said "I have no work now. No one will hire me. People tell me to try something else, but I am a journalist, what am I supposed to do, sell tomatoes? I am a redundant citizen now."⁶³

"[The Cybercrimes Act] is the government's way of clinging to power in an era where there are lots of changes, in a time where people want to try new things."⁶⁴

Self-censorship

In response to the government's efforts, an increasing number of editors and media owners have simply refrained from publishing content that could be deemed controversial, have them arbitrarily branded as 'anti-government,' or trigger legal proceedings under the new laws and regulations. Most editors interviewed for this report described this tactic as a function of self-preservation, rather than directly bowing to government pressure. The most staggering example of this censorship by extension was the case of *Nipashe Jumapili*, a Sunday edition newspaper that was abruptly shuttered by its own management after publishing a story about relations between Tanzania and Rwanda, and President Paul Kagame's bid to amend

62 DefendDefenders interview, August 2017.

63 DefendDefenders interview, May 2018.

64 DefendDefenders interview, May 2018.

the Constitution to extend his term in office. Management quickly issued an apology stating that the article fell below its standards and ceased operations.⁶⁵

"I'm afraid as we go to 2020, things may be worsening. The situation of our media in Tanzania at the moment is pathetic."⁶⁶

Several CSOs also noted that media coverage of their activities had noticeably decreased in the last years, with editors reluctant to publish stories relating to human rights in general – this worry is not without merit. For example, in January 2018, the TCRA fined five television stations for broadcasting "offensive and unethical" content after they aired a press statement⁶⁷ issued by the Legal and Human Rights Centre (LHRC) alleging human rights violations during local elections in November 2017, including arbitrary detentions, intimidation, and physical abuse.⁶⁸ Sources noted that CSO press conferences or statements rarely received the same coverage they once did, and several editors interviewed for this report confirmed that this was not a coincidence.⁶⁹

This change in coverage has been most apparent for the LGBT+ community, which has been the target of strongly-worded editorials and misleading coverage more in line with the government's moralistic narrative (see "A Moral Crusade" below). This reluctance to criticise and act as a counterbalance to government

65 Mtega, "Another Tanzanian newspaper is suspended. This time, by its own management," 16 January 2018, <http://mtega.com/2018/01/another-tanzanian-newspaper-is-suspended-this-time-by-its-own-management/>.

66 DefendDefenders interview, May 2018.

67 Legal Human Rights Centre, "Continuing suppression of freedom of opinion and expression in Tanzania," 5 January 2018, <http://www.humanrights.or.tz/posts/b/News/continuing-suppression-of-freedom-of-opinion-and-expression-in-tanzania>.

68 Africa News, "Tanzania fines TV stations for airing human rights report," 3 January 2017, <http://www.africanews.com/2018/01/03/tanzania-fines-tv-stations-for-airing-human-rights-report/>.

69 DefendDefenders interview, May 2018.



overstep has undermined the media's crucial role in exposing human rights abuses and eliciting public debate on necessary reforms.

Attacks against journalists

Several journalists interviewed for this report have received threats via text message or phone calls since 2015, while others reported being followed or having their families harassed.

On 21 November 2017, *Mwananchi* Communications Limited journalist Azory Gwanda disappeared near his workplace in Kibiti. Prior to his enforced disappearance, Gwanda wrote several articles regarding local administrative officials and police officers murdered by unknown assailants.⁷⁰ It remains unclear whether his disappearance is connected to his work.

Fear of being targeted led one prominent journalist, Ansbert Ngurumo, to seek asylum in Finland, escaping in the night after an alleged assassination attempt.⁷¹ He now publishes a political blog from exile, *Sauti Kubwa*, which is decidedly critical of the government.⁷² One journalist interviewed for this report raised the prospect that online media based in exile may attract more Tanzanian journalists and offer a platform for critical voices as the crackdown continues – however, these outlets face their own unique set of challenges and limitations.⁷³

At its core, the government's clampdown on freedom of expression indicates desire for media to exclusively promote development and support government agendas. For example, on 17 March 2017, the RC for Dar es Salaam, Paul Makonda, accompanied by police

70 Committee to Protect Journalists, "Azory Gwanda – Missing" 21 November 2017, <https://cpj.org/data/people/azory-gwanda/index.php>.

71 African Arguments, "I had to flee my home Tanzania for doing journalism. I was lucky.," 15 March 2018, <http://africanarguments.org/2018/03/15/i-had-to-flee-my-home-tanzania-for-doing-journalism-i-was-lucky/>.

72 <http://sautikubwa.org/>

73 DefendDefenders, "Don't Shoot the Messenger! Journalists as human rights defenders in the East and Horn of Africa," October 2017, <https://www.defenddefenders.org/wp-content/uploads/2017/11/DontShootTheMessenger.pdf>.

officers, invaded Clouds Media Group and demanded that staff members broadcast pre-recorded material.⁷⁴ The sacking of Minister of Information, Youth, Culture and Sports Nape Nnauye, after he launched an investigation into the incident, sent a clear signal that such occurrences can happen with impunity. Rather than trying to ban all media coverage, the government expects journalists to cover only positive stories and refrain from publishing content that questions official decisions or portrays them in a negative light, effectively reducing the media to the role of government mouthpieces and private-sector propagandists.

"If freedom of expression is not enjoyed, other rights will also not be protected. Without space to criticise, the violation of other rights will remain underground and undiscovered."⁷⁵

Of Laws and Lawyers



What best characterises this overall pattern of repression in Tanzania is the use of the judicial system to intimidate, target, harass, and imprison HRDs. Whereas previous governments used threats or extra-legal harassment to target HRDs, Tanzania's legal system is now employed as a weapon to obstruct opponents. This strategy not only ties up HRDs in lengthy and costly legal battles, it also co-opts magistrates, whose role it is to enforce laws whether or not they agree with them. One HRD described the legal harassment as one of the reasons why Tanzania's civic space decline has largely flown under the radar outside of the country. The harassment is in accordance with the law – it is the laws that need to be altered or altogether repealed.

While laws and regulations can be contested in court, they remain in force until a final

74 The Citizen, "Makonda in hot water over night Clouds raid," 20 March 2017, <http://www.thecitizen.co.tz/News/Makonda-in-hot-water-over-night-Clouds-raid-/1840340-3856500-gakd6sz/index.html>.

75 DefendDefenders interview, May 2018



decision has been made. Several laws, including the Cybercrimes Act and EPOCA Regulations were 'fast tracked' through Parliament without adequate consultations, or with deliberately minimal input from civil society or other relevant stakeholders. These tactics pigeonhole meaningful discussions on legislation to courtrooms rather than more accessible open forums, which is even more detrimental given the media's unwillingness to criticise government policy or give a platform to those who do. Several lawyers interviewed for this report noted that some judges were more sympathetic to human rights issues, and acted as "activists" themselves, but they were increasingly rare.

Interviewees noted that police attitudes toward HRDs shifted shortly after a presidential speech or statement critical of civil society. Others said that the President's fiery rhetoric has emboldened RCs, local politicians, and individual law enforcement agents to more strictly interpret existing legal codes. These cascading degrees create wiggle room that, without a strong judiciary, can be exploited to infringe upon civic space with little accountability. It is unclear to what degree local politicians act on their own initiative, or are directly instructed by the President's office or overzealous Ministers and other high-level officials to rein in civil society.

"When the President speaks, suddenly it becomes law. It is like we are living with decrees all of a sudden."⁷⁶

Lawyers themselves have been threatened and attacked in the course of their work. In February 2017, the government threatened to ban and deregister the Tanganyika Law Society over their alleged involvement in political affairs.⁷⁷ In August 2017, the Dar es Salaam offices of IMMMA, a prominent Tanzanian law firm, were

hit by a large explosion – it is unclear who perpetrated the attack.⁷⁸ Amid these events, President Magufuli has maintained his populist, anti-corruption agenda by publicly decrying judges who allegedly spent large sums of money on personal vacations in Europe, further intimidating the judiciary.⁷⁹

Despite significant difficulties for lawyers and the judiciary at large, most sources interviewed for this report expressed confidence that litigation remains the best method to combat and potentially strike down repressive legislation. However, these proceedings can be costly and time-consuming, especially if they reach the High Court. They could also not be successful, as in the case of the Cybercrimes Act.⁸⁰

International legal bodies provide significant opportunities for adjudicating national disputes in an independent setting. For example, on 13 March 2018, the MCT, LHRC, and THRDC, jointly filed a complaint with the East Africa Court of Justice (EACJ) alleging that the MSA violates international conventions ratified by the East African Community regional bloc.⁸¹ While the implementation of rulings is ultimately dependent on the government's compliance with its treaty obligations, they can at the very least draw greater attention to Tanzania's human rights situation from the international community.

78 The Citizen, "Tanzania: Law firm hit by an explosion," 26 August 2016, <http://www.thecitizen.co.tz/News/Tanzania-Law-firm-hit-by-suspected-bomb-blast-/1840340-4071592-3oqkfx/index.html>.

79 The East African, "Tanzania's holidaying judges in trouble," 3 February 2018, <http://www.theeastafrican.co.ke/news/Tanzania-judges-holidays/2558-4290214-vgcxrn/index.html>.

80 Article 19, "Tanzania: Cybercrimes Act upheld in further blow to free expression," 15 March 2017, <https://www.article19.org/resources/tanzania-cybercrimes-act-upheld-in-further-blow-to-free-expression/>.

81 The East African, "Tanzania civil society in East African court, say press law a 'violation'," 17 March 2018, <http://www.theeastafrican.co.ke/news/Tanzania-civil-society-in-East-African-court-media-law/2558-4345970-1bdibnz/index.html>.

76 DefendDefenders interview, May 2018.

77 The East African, "Tanzania threatens to ban law society over 'politicking'," 20 February 2017, <http://www.theeastafrican.co.ke/news/2558-3820956-9rvli9z/index.html>.

A Moral Crusade



As President Magufuli's rule has taken on a more moralistic tone, the situation of LGBT+ persons and HRDs working on SOGI issues has become increasingly precarious.⁸² One interviewee noted that while none of the previous Tanzanian administrations were publically "pro-LGBT," the current administration has engaged in a full-fledged crackdown against the community. This crackdown has included harassment, stigmatisation, arrests, and the deregistration of at least one organisation working on SOGI issues.

Tanzanian SOGI activists work under the framework of Key Populations (KPs), an internationally recognised term that includes sex workers, people who use intravenous drugs, gay men and other men who have sex with men, transgender people, and prisoners. These groups are at increased risk of contracting HIV/AIDS and other sexually transmitted diseases. This nondescript heading has allowed organisations addressing SOGI issues to formally register and advocate under the broader umbrella of providing care and support to KPs. However, this broad grouping has also led to negative associations in public consciousness, as well as to a one-size-fits-all approach to advocacy that does not always take into account the respective needs and challenges of these different groups.

Interviewees reported that the turning point came on 28 June 2016 when a local television station featured a trans woman who was invited to discuss her life as a sex worker. Although HRDs interviewed for this report defended the right of any person to speak out about their experiences, they generally agreed that the interview was poorly planned and failed to present the LGBT+ community in a positive light. The program triggered angry reactions

82 Vox, "Tanzania's president is cracking down on LGBTQ rights. He says cows would approve." 28 June 2017, <https://www.vox.com/world/2017/6/28/15885748/tanzania-president-homophobic-cows-lgbtq-crackdown>.

from members of the public.⁸³ In one segment, the television guest said that NGOs provided her and other sex workers with condoms and lubricant – which, as she highlighted, is a life-or-death matter given the high prevalence of HIV/AIDS in Tanzania.⁸⁴ The government was quick to capitalise on the incident. Authorities slammed the TV station's decision to interview a transgender person and one Member of Parliament (MP) said that claiming to change one's sex amounted to "glorify[ing] gayism [*sic*]." The TCRA forced the station to air an apology for five consecutive days.⁸⁵

In July 2016, the government launched a broader campaign against the "promotion of homosexuality," which is not forbidden by any existing Tanzanian legislation. Magufuli's administration banned NGOs from distributing lubricants (which it claimed encouraged gay sex), outlawed imports of such products, and targeted clinics providing services to KPs.⁸⁶ NGOs working with SOGI populations and KPs were stigmatised and threatened with suspension or closure, with Tanzania's Home Affairs Minister Mwigulu Nchemba publicly announcing that "those who want to campaign for gay rights should find another country that allows those things."⁸⁷

On 17 October 2017, a legal consultation organised by the Community Health Education Services and Advocacy (CHESA), a Tanzanian KP-focused organisation, and the South Africa-based Initiative for Strategic Litigation

83 Erasing 76 Crimes, "Inside Tanzania's AIDS-enhancing anti-LGBT crackdown," 10 April 2017, 76crimes.com/2017/04/10/inside-tanzanias-aids-enhancing-anti-lgbt-crackdown/.

84 UNAIDS, "Data 2017," 20 July 2017, http://www.unaids.org/sites/default/files/media_asset/20170720_Data_book_2017_en.pdf. Note: p.44.

85 United States Department of State, Bureau of Democracy, Human Rights and Labor, "Tanzania 2016 Human Rights Report," 2016, <https://www.state.gov/documents/organization/265522.pdf>.

86 The Independent, "Tanzania bans lubricant in bid to 'curb homosexuality'," 23 July 2016, <https://www.independent.co.uk/news/tanzania-lubricant-ban-to-curb-homosexuality-lgbt-rights-east-africa-a7152656.html>.

87 Reuters, "Tanzania threatens crackdown on LGBT advocates," 26 June 2017, <https://www.reuters.com/article/tanzania-lgbt/tanzania-threatens-crackdown-on-lgbt-advocates-idUSL8N1JN373>.



in Africa (ISLA) was raided by police in Dar es Salaam. Plainclothes officers asked participants if the event's objective was to "promote homosexuality" and arrested 12 of them, as well as the hotel manager, releasing them later that evening. Over the course of several days participants were arbitrarily detained and repeatedly harassed at the station.⁸⁸ All participants were finally released on bail. Two South African nationals and one Ugandan participant were deported, and ISLA's Executive Director was banned from re-entering Tanzania.⁸⁹ Some of the arrested persons allege that officers threatened to subject them to a forced anal examination, a pseudoscientific practice that is humiliating, inhumane, and devoid of any evidentiary value.⁹⁰

As of June 2018, CHESA members have not been notified of any decision regarding the case, although none have been re-arrested. CHESA, which is a registered association, was suspended on the day of the raid. The status of the investigation, the legal status of the case, and CHESA's registration status remain unclear. Sources interviewed for this report worried that this strategy of uncertainty was being used to perpetually intimidate CHESA members, CSOs, and HRDs working on SOGI issues.

From a legal perspective, there is no basis for the case against CHESA and ISLA members, and for the suspension of CHESA, notably because "promotion of homosexuality" is not an offence under Tanzanian law. Section 154 of Tanzania's Penal Code ("Unnatural Offences") only prohibits sexual acts ("carnal knowledge"). Although there are no legal grounds to charge those who participated in the October 2017

consultation, police say they are investigating the case. However, some HRDs interviewed for this report expressed worries that the government might try to legislatively ban the "promotion of homosexuality," further cracking down on the community by enacting more targeted legislation.

As previously noted, President Magufuli has pushed a populist agenda through public proclamations and strict application of heavy-handed reforms, especially targeting moral and social issues.⁹¹ He has publicly slammed homosexuality.⁹² Several HRDs agreed that President Magufuli's public pronouncements systematically trickled down to MPs, RCs, DCs, and civil servants working to implement these ad-hoc reforms regardless of any real legal basis. One interviewee noted that: "Magufuli's subordinates are overzealous; they always praise him because they know that he can sack people easily [...] Police think they can do anything."⁹³

These developments point to the overall erosion of the rule of law and authoritarian turn in Tanzania under President Magufuli's leadership, highlighted by nearly all sources interviewed for this report. In this context, HRDs recognised that if the remaining CSOs failed to unite, the situation would continue to deteriorate for the LGBT+ community. As one HRD said "our existence bothers some people. If we don't defend ourselves, no one will defend us."⁹⁴

88 Initiative for Strategic Litigation in Africa, "Press Statement," 20 October 2017, <http://www.the-isl.org/press-statement-october-20-2017/>.

89 The Guardian, "Tanzania illegally detains human rights lawyers for 'promoting homosexuality'," 26 October 2017, <https://www.theguardian.com/global-development/2017/oct/26/tanzania-illegally-detains-human-rights-lawyers-for-promoting-homosexuality>.

90 Human Rights Watch, "Global Medical Body Condemns Forced Anal Exams," 17 October 2017, <https://www.hrw.org/news/2017/10/17/global-medical-body-condemns-forced-anal-exams>.

91 The Citizen, "Magufuli calls for action against media promoting moral erosion," 12 December 2017, <http://www.thecitizen.co.tz/News/Magufuli-calls-for-action-against-media-promoting-moral-erosion/1840340-4225244-7vql4w/index.html>.

92 "Tanzania's president is cracking down on LGBTQ rights. He says cows would approve." 28 June 2017, <https://www.vox.com/world/2017/6/28/15885748/tanzania-president-homophobic-cows-lgbtq-crackdown>.

93 DefendDefenders interview, May 2018.

94 DefendDefenders interview, May 2018.



One Country, Two Systems: Zanzibar



The semi-autonomous status of Zanzibar creates a different dynamic for civil society in the archipelago. Although the President of Tanzania is Zanzibar's Head of State and the islands are represented in the National Assembly, they have enjoyed a great degree of autonomy since unification in 1964, maintaining their own government, President, court system, and legislature.

Zanzibar experienced political upheaval in October 2015 when the chair of the Zanzibar Electoral Commission unilaterally nullified the elections for the archipelagos' President and legislature while the votes were still being counted. Although considered free and fair by observers, initial results pointed to a possible win for the opposition Civic United Front.⁹⁵ A re-run election in March 2016 was boycotted by the opposition and resulted in a 91.4 percent win for CCM. The U.S. Bureau of Democracy, Human Rights and Labor described the election as "neither inclusive nor representative."⁹⁶

Whereas the relationship between civil society and the government in mainland Tanzania is increasingly antagonistic, in Zanzibar many HRDs also hold government positions, which affects their ability to deal with sensitive issues. HRDs interviewed for this report also said that, in this rigidly divided political context, CSOs encounter the problem that many of their activities are politicised and can ultimately be perceived by the community as supporting one party or another.

Although HRDs on Zanzibar identified different challenges to their work – most notably in relation to women's rights – some of the trends have spilled over from the mainland. In September 2016, twenty people were arrested during a workshop on HIV/AIDS for "alleged homosexuality."⁹⁷ Media freedom in Zanzibar has traditionally been more restricted than elsewhere in Tanzania, with fewer media outlets and only one state-owned television station. In 2016, Freedom House reported allegations that national radio and television broadcasts received by the island may be aired on a delay to permit censorship by the authorities.⁹⁸

"Now, you don't know who your enemy is and who your friend is. His reign has created fear among citizens. And because of this fear, people who work around him work to please him."⁹⁹

95 The Washington Post, "In Zanzibar democracy peace and unity are at stake after annulled elections," 1 November 2015, https://www.washingtonpost.com/news/monkey-cage/wp/2015/11/01/in-zanzibar-democracy-peace-and-unity-are-at-stake-after-annulled-elections/?utm_term=.7d42504823ac.

96 United States Department of State, Bureau of Democracy, Human Rights and Labor, "Tanzania 2016 Human Rights Report," 2016, <https://www.state.gov/documents/organization/265522.pdf>.

97 Africa News, "Tanzania: 20 arrested in Zanzibar for 'homosexuality'," 16 September 2017, <http://www.africanews.com/2017/09/16/tanzania-20-arrested-in-zanzibar-for-homosexuality/>.

98 Freedom House, "Tanzania Freedom of the Press 2016, 2016," <https://freedomhouse.org/report/freedom-press/2016/tanzania>.

99 DefendDefenders interview, May 2018.



Conclusion: Vision 2020

Civic space has come under increasing attack since President Magufuli assumed office in 2015, with several new draconian laws being employed to harass, stifle, and silence HRDs. CSOs, journalists, opposition members, and the LGBT+ community have felt the worst of this crackdown, which has targeted freedoms of association, expression, and peaceful assembly. While some of this harassment has taken on extra-legal forms, challenging existing legislation in court remains an option, but this is dependent on a strong and independent judiciary.

There is little to indicate that the negative trends affecting Tanzanian civic space will be reversed in the coming years, or even slowed, without support for, and unity amongst, civil society both within and outside the country. There was consensus among sources interviewed for this report that civil society has so far failed to present a unified front to counter these attacks. In addition to standard competition for funding, there is also a general fear that speaking out against the government, or on behalf of other HRDs, may result in one's own organisation being targeted. The government has decidedly used this lack of solidarity to their advantage by further spreading fear and asserting control over Tanzania's civic space.

This squeezing of civic space means that local communities or interest groups will not have a platform to voice their grievances, inevitably risking destabilising the peace and tranquility of society – we are concerned that if this climate of fear and intimidation persists, it will give rise to large demonstrations and civil unrest. With future harassment and arrests of HRDs likely, protection mechanisms and strategies may not be sustainable at the current funding level. Legal support for HRDs should be a particular

area of concern, especially considering the high costs of addressing these matters in court.

Presidential elections are scheduled for 2020, leading to the prospect that these negative trends could be exacerbated, as has often been the case in the sub-region.¹⁰⁰ Given the current crackdown on civil society, independent media and journalists, and opposition groups, there is little doubt that the 2020 elections will prove a watershed moment for the future of Tanzania. While the current Constitution limits presidency to two terms, many sources interviewed for this report expressed worries that President Magufuli might be tempted to follow the lead of other regional Heads of State like Paul Kagame of Rwanda and Yoweri Museveni of Uganda in amending the Constitution to allow himself additional terms – however, at the moment, these worries are purely speculative.

¹⁰⁰ DefendDefenders, "Caught Up in Bitter Contests: Human Rights Defenders working in the Context of Elections in Sudan, Ethiopia, Burundi and Uganda," September 2015, <https://www.defenddefenders.org/wp-content/uploads/2017/08/Caught-in-bitter-contests.pdf>.

Recommendations

To the Government of Tanzania

- Immediately cease the intimidation, harassment, and attacks against human rights defenders, journalists, bloggers, and opposition members and their supporters;
- Ensure swift, impartial, transparent, and thorough investigations into all reported attacks against human rights defenders, journalists, and members of the opposition in accordance with international legal standards;
- Respect and protect all individuals regardless of their sexual orientation and gender identity;
- Amend all restrictive laws and regulations to bring them in line with constitutional obligations and international human rights standards, especially the Regional Administration Act (1997), Electronic and Postal Communications Act (2010) and (Online Content) Regulations (2018), Statistics Act (2015), Cybercrimes Act (2015), Media Services Act (2016), and Access to Information Act (2016);
- Lift the bans on suspended media houses and create an environment that enables and safeguards freedom of the press;
- Engage with the UN Human Rights Council and its mechanisms to fully implement its resolutions pertaining to the promotion and protection of civic space and the recommendations made within the framework of the Universal Periodic Review;
- Implement the African Commission on Human and Peoples' Rights' Guidelines on Freedom of Association and Assembly in Africa and the Declaration of Principles on Freedom of Expression in Africa;
- If so requested, allow the UN Office of the High Commissioner on Human Rights to fully carry out its mandate by investigating human rights violations, monitoring the human rights situation, and publicly reporting on its findings;
- Extend a standing invitation to all UN special procedure mandate holders and respond promptly and positively to requests for visits by special procedures;
- Promptly accept requests for country visits by African Commission on Human and Peoples' Rights special mechanisms;
- Submit all overdue reports to treaty monitoring bodies, including Tanzania's fifth periodic report to the UN Human Rights Committee, which has been overdue since 2013, and the state report to the African Commission on Human and Peoples' Rights, which has been overdue since 2007;
- Ratify international human rights standards including the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol (OP-CAT), the Convention for the Protection of All Persons from Enforced Disappearance (CED), and the Second Optional Protocol to the International Covenant on Civil and Political Rights;
- Fully implement 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 (Declaration on Human Rights Defenders); and
- Comply with the 21 June 2018 ruling by the East African Court of Justice to reverse the ban on *Mseto* newspaper.



To Tanzanian Civil Society

- Formulate and commit to a unified strategy to combat shrinking civic space; and
- Use international arbitrators including the African Court on Human and Peoples' Rights and the East African Court of Justice to challenge restrictive legislation.

To the UN Human Rights Council

- Consistent with the prevention mandate conferred to it by paragraph 5(f) of UN General Assembly resolution 60/251, the UN Human Rights Council should take action if the human rights situation in Tanzania further deteriorates;
- Follow up on pending visit requests by special procedure mandate holders; and
- The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the UN Special Rapporteur the situation of human rights defenders, as well as the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, should urgently request country visits to Tanzania.

To the Office of the UN High Commissioner for Human Rights

- Extend technical assistance and capacity-building to Tanzania, including through the review of domestic laws and regulations to ensure their conformity with international human rights standards;
- Raise concern over Tanzania's human rights situation, including during the High Commissioner's updates to the UN Human Rights Council, and urge the government to reverse its course of action and to bring its legal framework, policies, and practices in line with its international obligations; and
- Using the universal mandate of his Office, the High Commissioner should consider investigating the deteriorating human rights situation in Tanzania and present a public report on the matter.

To the African Commission on Human and Peoples' Rights

- Undertake a fact-finding mission to Tanzania in order to investigate and document human rights violations; and
- Urge the Government of Tanzania to respect its obligations under the African Charter on Human and Peoples' Rights.

To the International Community and Development Partners

- Systematically raise concern about human rights violations and abuses, as well as legislation, policy, and other practical developments that negatively affect civic space and the situation of human rights defenders;
- Prioritise respect for human rights and civic space in all relations with Tanzanian authorities, including high-level political dialogue;
- Urge the Tanzanian government to adhere to and comply with the relevant international and regional standards, including standards pertaining to the promotion and protection of civic space, human rights defenders, freedom of opinion and expression, including online, and freedoms of peaceful assembly and association;
- Consult with human rights defenders about actions to be taken in response to Tanzania's shrinking civic space;
- Increase funding available for Tanzanian human rights organisations, including for emergency protection, investigations, monitoring, advocacy, and strategic litigation; and
- The European Union, Canada, Switzerland, Finland, Norway, and other states that have adopted guidelines or policies on human rights defenders should consistently apply them with regard to Tanzania.



DefendDefenders (the East and Horn of Africa Human Rights Defenders Project) seeks to strengthen the work of human rights defenders throughout the sub-region by reducing their vulnerability to risks of persecution and by enhancing their capacity to effectively defend human rights.

DefendDefenders is the secretariat of EHAHRD-Net, a network of 78 human rights organisations in the eleven countries of the East and Horn of Africa sub-region: Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia (together with Somaliland), South Sudan, Sudan, Tanzania, and Uganda.

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