

**REPORT ON THE  
SITUATION OF HUMAN  
RIGHTS DEFENDERS IN  
TANZANIA 2016**

# **Tanzania Human Rights Defenders Coalition [THRDC]**

## **REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN TANZANIA 2016**

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# PREFACE

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

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

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

## OUR VISION

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

## OUR MISSION

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

## OUR VALUES

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

## THE OVERAL GOAL OF THE THRDC

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

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

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

# EXECUTIVE SUMMARY

This situation report is the fourth by the THRDC after the 2015, 2014, and 2013 respectively. This report assessed the situation of Human Rights Defenders in the country for the year 2016. According to the data collected, HRDs and CSOs in the country worked in a difficult environment mainly because the country's legal framework is hostile towards protection of HRDs.

Chapter one introduces the meaning and importance of human rights defenders and the legal protection available in international, regional and national levels. In this report specifically in this chapter countries that have taken up HRDs protection initiatives through legislations have been highly appreciated. The report indicates the lack of legal protection for HRDs in Tanzania. However, THRDC is making efforts to ensure that the country's Legal system protects HRDs and states clearly on their existence, respect and value their great work on protecting and promoting Human Rights.

The report presents various challenges of legal protection for HRDs such as; the existence laws which do not stand for the protection of HRDs and Civil Society space in Tanzania, slight knowledge about existence of HRDs as well as protection by international and National organizations to both authorities and HRDs themselves. Also lack of knowledge on protection mechanisms for HRDs such as the existence of UN special Rapporteur, the African Rapporteur as well as the Universal Periodic Review (UPR Mechanisms) are also among challenges. Moreover from this chapter, protection mechanism for HRDs existing in international, regional also at the national level as well as initiatives taken by THRDC to ensure that HRDs work safely is elaborated accordingly. The Coalition still strive to make sure the work of HRDs is well respected and recognized in the country.

Chapter two discusses human rights violations committed against HRDs in 2016 contrary to the Declaration of Human Rights Defenders of 1998. The violations are embodied in various forms. Nevertheless, findings of the report in this chapter point out, the risks that HRDs face in different thematic groups derived from various settings such as political, legal, financial and social cultural challenges. Lack of security awareness and inadequate knowledge on information sharing, are setbacks in this line, joined with restrictions on access to information, and inhibiting media freedom.

Chapter three furthermore spells out that HRDs in Tanzania work in highly difficult and risky environment as they are being harassed, tortured, criminalized, arbitrarily arrested, and sometimes charged under some criminal provisions. During the year 2016, the THRDC protection desk recorded cases of baseless charges, criminalization, and HRDs security claims including arrest and torture. All the claims were assessed and where necessary technical support was provided. On the other hand, in this report we will only elaborate on key HRDs violations that took place in 2016. The law enforcers are exposed to risk due to sometimes being directed to pursue their duties against their code of ethics and hence put their lives in danger.

Chapter three assesses the Freedom of expression, access to information and the situation of journalists. Other issues highlighted include the risk that journalists face in the course of their duties as well as the legal setbacks which breach freedom of expression and access to information. Draconian media pieces which contravene Article 19 of the Universal Declaration of Human Rights such as The Cyber Crime Act of 2015 and other media bills have also been noted as set back in the work of HRDs. The Media industry in Tanzania has been operating under laws which were put in place 40 years back with draconian provisions amidst it all. These laws have been used to ban independent newspapers and prosecute journalists who write articles critical of government actions.

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

Chapter five presents the situation of civil society space in Tanzania for the year 2016. It addresses the space of the CSOs based on the indicators to be discussed. It also sheds light on the importance and contribution of Civil Society Organizations for the national development especially democratic development where the issue has been well discussed. NGOs are legally acknowledged in the NGO Act 2002 and amendments of 2005.

Lastly, chapter six is comprised of conclusion and recommendations made from this report. The suggested conclusion and recommendations once taken into high consideration with the appropriate institutions it will support the recognition and respect of the works of HRDs in Tanzania.

# TABLE OF CONTENTS

ACKNOWLEDGEMENT .....	iii
PREFACE .....	iv
OUR VISION .....	iv
OUR MISSION .....	iv
OUR VALUES .....	iv
THE OVERAL GOAL OF THE THRDC .....	v
EXECUTIVE SUMMARY .....	vi
TABLE OF CONTENTS .....	viii
ABBREVIATIONS .....	xi
LIST OF STATUTES AND INTERNATIONAL INSTRUMENTS .....	xii
LIST OF PICTURES .....	xiv
LIST OF TABLES .....	xiv

## **CHAPTER ONE: PROTECTION MECHANISM ..... 1**

1.0	Who is a Human Rights Defender? .....	1
1.1	Protection Mechanisms for Human Rights Defenders .....	2
1.1.1	Legal Protection Mechanism at International Level .....	3
1.1.2	Legal Protection Mechanism at Regional Level .....	5
1.1.3	Legal Protection Mechanism at the National Level .....	8
1.1.4	Challenges with Both International and Regional Protection Mechanisms for HRDS .....	9
1.2	Non Legal Protection mechanism .....	9
1.2.1	Non Legal Protection mechanism at International level .....	10
1.2.2	Non Legal Protection Mechanism at Regional level .....	11
1.2.3	Protection Mechanism at National Level .....	12

## **CHAPTER TWO: VIOLATIONS COMMITTED AGAINST HRDS..... 14**

2.0	Human Rights Violations Committed Against HRDs in 2016.....	14
2.1	Arbitrary Arrest, Baseless Charges and Criminalization of HRDs.....	15
2.2	Physical violence, Attacks, and Torture .....	18
2.3	State of Impunity.....	18
2.4	Law Enforcers as Human Rights Defenders .....	20

## **CHAPTER THREE: MEDIA SECURITY AND SAFETY OF JOURNALISTS ..... 22**

3.0	Overview of the chapter .....	22
3.1	Specific Challenges Facing Journalists.....	22
3.1.1	Excessive Usage of Power by District Commissioners .....	23
3.1.2	Physical threats/incidence;.....	23
3.1.2	Legal threats, Malicious Arrest and Prosecution .....	24
3.1.3	Digital threats/incidents.....	27
3.2	Legal challenges affecting the security of Media and Journalists .....	27
3.3	Right to Privacy in Tanzania and the Protection of Whistle Blowers .....	33
3.4	Internet as human right .....	35

## **CHAPTER FOUR: SECURITY MANAGEMENT AND RISK ASSESSMENT ..... 36**

4.0	Level of Security Management and Protection Measures .....	36
4.1	Digital security .....	37
4.2	Office and Home Security .....	38
4.3	Security Policy .....	39
4.4	Awareness and Compliance of Staff Security .....	40
4.5	Security Management Training .....	42
4.6	Follow up on the effectiveness of Security Management Trainings.....	42

## **CHAPTER FIVE: THE CIVIL SOCIETY SPACE IN TANZANIA ..... 44**

5.0	Introduction .....	44
5.1	Historical background of CSOs in Tanzania.....	45
5.4	Legal framework and constraints for CSOs.....	46
5.2	The Space of Civil Society.....	46
5.2.1	Indicators of the Space of Civil Society .....	47
5.2.2	The Space of Civil Society Organizations at Regional and International Level .....	47
5.2.3	The Space of Civil Society Organization at National Level.....	47
5.3	Measuring the Space of Civil Societies in Tanzania.....	48
5.3.1	Old and Emerging Laws.....	48
5.3.2	The Relationship between Civil Societies and the State.....	49
5.3.3	Funding CSOs .....	50
5.3.4	Human rights violations, threats, deregistration, branding CSOs .....	51
5.4.5	Women Rights and Discriminations Issues .....	53
5.7	Improving Civil Society Space in Tanzania .....	53
5.7.1	Addressing external challenges;.....	53
5.7.2	Addressing internal challenges.....	53

## **CHAPTER SIX: GENERAL CONCLUSION AND RECOMMENDATIONS..... 54**

6.0	Conclusion.....	54
6.1	Way Forward .....	54
6.2	Recommendations.....	54
	Annexure One: The List of Countries with Legal Protection Of HRDs .....	57

# ABBREVIATIONS

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

# LIST OF STATUTES AND INTERNATIONAL INSTRUMENTS

## **(i) Statutes**

The Constitution of the United Republic of Tanzania, 1977

The Constitution of the Revolutionary Government of Zanzibar, 1984

The Second Draft Constitution of the United Republic of Tanzania 2013

The Penal Code [Cap 16 R.E.2002]

The Probate and Administration of Estates Act, 1965, [Cap 352 R.E. 2002]

The Marriage Act of 1971 Cap 29 [RE; 2002]

Probate and Administration of Estates Act, [Cap 445 [R.E 2002]

The Newspaper Act of 1976 [Cap. 229, R.E. 2002]

The Prison Act, 1967, Cap 58 [R.E 2002]

The National Security Act of 1970, [Cap. 47 [R.E 2002]

The Public Leaders Code of Ethics, Cap 398 [R.E 2002]

The National Defense Act, Cap 192 [R.E 2002]

The Prevention and Combating of Corruption, Act No. 11 of 2007

The Area Commissioner Act 1962 & Regions and Regional Commissioners Act 1962

The Civil Service Act 1989

The Film and Stage Act No 4 of 1976

The Newspapers and Books Act (1988)

The Broadcasting Services Cap. 306 of the R. E 2002

The Land Act, 1999 (Act No.4 of 1999)

The Wildlife Conservation Act of 2009 (Cap 5 of 2009)

The Investment Act, 1997 (Act No. 26 of 1997)

The Forests Act, 2002 (Act No. 14 of 2002)

The National Park Act, Cap 282 [R.E 2002]

The Ngorongoro Conservation Act, 1959 Cap 284 [R.E 2002]

The Mining Act, 2010 (Act No. 14 of 2010)

The Basic Rights and Duties Enforcement Act No. 33 of 1994

The Police Force and Auxiliary Services Act, 1939 Cap. 322, [R.E. 2002]

The Non- Governmental Organizations Act 2002. No. 24,

## **(ii) International Human Rights Instruments**

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

United Nations Resolution on Protection of Human Rights Defenders March 2013

UN Resolution on Protection of Women Human Rights Defenders November 2013

The International Covenant on Civil and Political Rights 1966

The Convention on the Elimination of All Forms of Discrimination against Women 1979

The European Convention on Human Rights of 1950

The African Charter on Human and Peoples Rights of 1981

The American Convention on Human Rights 1969

# LIST OF PICTURES

Picture 1	Natives of Loliondo blocking the expedition of the Minister for Natural Resources and Tourism, Prof Jumanne Maghembe	16
Picture 2	Advocates based in Arusha boycotting to have their fellow advocate illegally arrested released	17
Picture 3	Minister of Home Affairs visiting the scene of the incident.	21
Picture 4	Former Minister Stephen Wasira about to beat a journalist who attempted to take pictures in Mwanza	23
Picture 5	Warning from Police in Mwanza to Journalists	25
Picture 6	Yericko Nyerere, a blogger faces criminal charges at Kisutu Resident Magistrate Court	32
Picture 7	Coalition's Coordinator receiving an award	37
Picture 8	Image showing an email/Facebook account hijacked	37
Picture 9	Cover Page of the TAWLA Security Policy	40
Picture 10	Security Management and Risk Assessment Training	41
Picture 11	Security Management and Risk Assessment Training	42
Picture 12	Security Management and Risk Assessment Training	42
Picture 13	Security Management and Risk Assessment Training	43
Picture 14	UPR Meeting with CSOs	50
Picture 15	Minister for Constitutional and Legal Affairs, Dr. Harrison Mwakyembe addressing journalists	52
Picture 16	Minister for Natural Resources and Tourism, Prof. Jumanne Maghembe addressing Journalists	53

## LIST OF TABLES

Table 1	HRDs rights protected under the Declaration: include:	3
Table 2	Summary of Regional Mechanism	5
Table 3	Below shows Court Cases related to internet use	29
Table 4	2013 THRDC Needs Assessment Findings	38

# CHAPTER ONE

# PROTECTION MECHANISM

## 1.0 Who is a Human Rights Defender?

Chapter one introduces several aspects including, definition, recognition of a Human Rights Defender (HRD) and available protection mechanisms for human rights defenders at International, Regional and National level. The expression “Human Rights Defender” is used to refer to anybody who, individually or together with others, works towards promoting and protecting human rights<sup>1</sup>. Human Rights Defenders are above all recognized by what they do. They work to promote, protect and implement civil and political rights, as well as economic, social and cultural rights.<sup>2</sup>

The Declaration of Human Rights Defenders<sup>3</sup> does not provide direct definition as to who a human rights defender is. However, the above definition has been widely interpreted by several articles of the Declaration. Needless to say, any of the definitions must exclude individuals or groups who commit acts of violence or who support the use of violent means in order to achieve their objectives.

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

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

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

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

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

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

4 Irish –HRDs Guidelines 2010

5 Ibid.

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

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

### **Activities of human rights defenders include<sup>6</sup>:**

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

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

## **1.1 Protection Mechanisms for Human Rights Defenders**

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

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

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

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6 European Union Guidelines on Human Rights Defenders 2004

7 Ibid

### 1.1.1 Legal Protection Mechanism at International Level

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

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

The adoption of this salient document marked a historic achievement in the struggle towards better protection of those at risk for carrying out legitimate human rights activities. This Declaration was the only UN instrument that openly and comprehensively defined and recognized the work and protection of HRDs.<sup>9</sup>

The Declaration is a well defined international instrument that codifies and puts together standards to protect activities of human rights defenders all over the world. It recognizes the legitimacy of human rights activity and the need for this activity and protection for those who execute it . The declaration imposes duty to every State to protect Human Rights Defenders in accordance with the International Law. Civil authorities and law enforcement organs in each country are also primarily responsible to protect HRDs.

**Table 1: HRDs rights protected under the Declaration include:**

1. To conduct human rights work individually and in association with others;	2. To unhinder access to and communication with non-governmental and intergovernmental organizations ;
3. Formation of associations and non-governmental organizations ;	4. To benefit from an effective remedy;
5. To meet or assemble peacefully;	the lawful exercise of the occupation or profession of human rights defender;
6. To seek, obtain, receive and hold information relating to human rights;	7. To effective protection under the national laws in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights;
8. To develop and discuss new human rights ideas and principles and to advocate their acceptance;	9. To solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad);

8 See more at: <http://www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders#st-hash.fcKqqcKj.dpuf> (Accessed when)

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

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

States such as Norway, Switzerland, Ireland and the Netherlands are great example for recognition of HRDs as they have adopted the UN declaration. They have also published guidelines directing their diplomats and decision-makers to prioritize the protection of human rights defenders and civil society space abroad. They have been consistently singled out for praise by human rights and democracy activists.<sup>10</sup>

In 2015, the Finland passed land mark guidelines for protection of HRDs as progressive measures towards the recognition of HRDs globally. The Finnish Guidelines recognize the vital role of human rights defenders in preventing conflict, addressing discrimination and inequality, promoting security and the rule of law, and exposing and seeking accountability for violations where they occur. The Guidelines also recognize the significant risks and threats that many defenders face because of this work, particularly women human rights defenders, and those working on SOGI and minority rights.<sup>11</sup>

The aforementioned Guidelines outline a range of actions for Finnish diplomats and missions to achieve their objective of ‘promoting an enabling environment and the capacity of human rights defenders’, including<sup>12</sup>:

- consulting closely with human rights defenders on their support and protection needs;
- publicly recognizing and promoting the valuable work of human rights defenders and the risks they face, including through regular meetings and events;

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

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

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

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

On 29/11/2013, the UN adopted a landmark resolution on Protection of Women Human Rights Defenders<sup>13</sup>. 'The resolution urges States to put in place gender-specific laws and policies for the protection of women human rights defenders and to ensure that defenders themselves are involved in the design and implementation of these measures,' Ms Bjerler said, the 'Effective implementation of such measures by States will be key to enabling women human rights defenders to carry out their important and legitimate work.'<sup>14</sup>

### **1.1.2 Legal Protection Mechanism at Regional Level**

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

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

14 Ibid.

**Table 2: Summary of Regional Mechanism**

Continent	Legal Mechanism	Brief Explanation
<b>AMERICA</b>	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), <sup>1</sup>	<p>In its 1998 annual report, the Inter-American Commission on Human Rights (IACHR) highlighted the importance of the work carried out by Human Rights Defenders and recommended to Member States of the Organization of American States (OAS) the adoption of measures necessary for their protection. On this basis, in June 1999 the General Assembly of the OAS adopted a resolution entitled:</p> <p>In the event of imminent danger, the IACHR may issue preventative measures to Human Rights Defenders under threat to avoid any irreparable harm. The IACHR may also request information from States and issue recommendations thereunto. It is also possible to request that the Inter-American Court adopts provisional protection measures.</p>
<b>AFRICA</b>	-The Grand Bay Declaration and Plan of Action of 16 April 1999 calls upon African Union Member States to take all appropriate measures to implement the United Nations Declaration on Human Rights Defenders. <sup>2</sup>	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	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.”
	- Resolution 273 of the African Commission, which will surely be echoed at the United Nations level, is yet another useful instrument that will help secure a better working environment for HRDs. <sup>4</sup>	In short, a system of promotion and protection of human rights does exist on a continental level in Africa. It has the potential to respond effectively to the obligation to protect all citizens and particularly HRDs. Coherent public policies for the protection of this target-group, however, remain lacking. It is imperative that States conform to article2(2) of the UN Declaration on Human Rights Defenders: “Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed”. The actions of States should constitute effective contributions to the efforts made by civil society to try and increase the well-being and the safety of the world’s population. <sup>5</sup>

	<p>2016 African Commission passed the following Resolution on Measures to Protect and Promote the Work of Women Human Rights Defenders<sup>6</sup></p>	<p><b>Calls on State Parties to:</b></p> <ul style="list-style-type: none"> <li>disseminate and implement the recommendations of the Commission's Report on the Situation of Women Human Rights Defenders in Africa, in consultation with relevant stakeholders, and in particular women human rights defenders;</li> <li>end impunity by adopting specific laws and relevant measures to promote and protect the work of human rights defenders, which should include provisions that recognize and address the specific protection needs of women human rights defenders;</li> <li>ensure that efforts designed to prevent and address violations and discrimination against women human rights defenders are developed and monitored in consultation with human rights defenders and other relevant stakeholders;</li> <li>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;</li> <li>report on the progress made in the promotion and protection of the work of women human rights defenders during presentation of periodic reports to the Commission in accordance with Article 62 of the African Charter and Article 26 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).</li> </ul>
<p><b>EUROPE</b></p>	<p>EU Guidelines on Human Rights Defenders</p> <p>In 2010, the European Parliament adopted a Resolution on the EU policy in favor of Human Rights Defenders (2009/2199(INI)).</p>	<p>In Europe, the European Union established EU Guidelines on Human Rights Defenders as the best way to support the implementation of the Declaration on Human Rights Defenders in third countries.<sup>7</sup> These guidelines provide practical suggestions to enhance EU action in relation to HRDs. Guidelines can be used in contact with third countries at all levels to support and strengthen ongoing EU efforts to protect the rights of HRDs. This may also provide for interventions by the EU on behalf of human rights defenders at risk, and suggest practical means to support and assist them.</p> <p>It calls on the various EU institutions and its missions to reinforce their action for effective implementation of Guidelines, notably by ensuring regular contact with Human Rights Defenders prior to taking any action on their behalf and to provide them with feedback. These recommendations were reiterated with the adoption, on 16 December 2010.<sup>8</sup></p> <p>Therefore it is only fair to declare EUROPE as a leading continent in laws, guidelines, judicial, administrative and policies that protect HRDs. EU members should play an active role in the enforcement of Guidelines issued as well as a dynamic role to create a successful mechanism to protect human rights defenders in Europe, and thus set precedent for other States in the world.</p>

### 1.1.3 Legal Protection Mechanism at the National Level

The UN HRDs reports indicate that very few States have incorporated the International Declaration on Human Rights Defenders, 1998 into the national law despite 15 years of its adoption. Worse still, governments in all regions are increasingly enacting laws which restrict and even criminalize the work of human rights defenders and NGOs as is the case with the Cybercrime Act 2015 and the Statistic Act 2015 in Tanzania, Media Services Act 2016 and Access to Information's Act 2016.

One of the key elements of a safe and enabling environment for defenders is the existence of laws and provisions...that protect, support and empower defenders...The adoption of laws that explicitly guarantee the rights contained in the Declaration on Human Rights Defenders is crucial in that it could contribute to building an enabling environment and give these rights legitimacy (former UN Special Rapporteur).<sup>15</sup>

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.<sup>16</sup>

The model law will assist States to develop laws, policies and institutions at the national level to support the work of human rights defenders and to protect them from reprisals and attacks. The model law will also serve as a valuable tool for human rights defenders to advocate for stronger legal recognition and protection of their important work.<sup>17</sup>

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.<sup>18</sup>

The Constitution of the United Republic of Tanzania of 1977 and that of Zanzibar of 1984 including the proposed Constitution of 2014 do not guarantee in any way the rights of HRDs despite the tough work done by THRDC to lobby for its inclusion in the Mother Law. The legal framework at the national level including the Draft Constitution provides for general protection of human rights but remains silent on

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

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

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

18 Protection international Op. cit. at pg 9.

the rights of human rights promoters/defenders. In short, lack of specific legal protection renders HRDs vulnerable and easy prey for perpetrators of human rights violations. The legal challenges which affect HRDs will be discussed at length in chapter three of this report.

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

### **1.1.4 Challenges with Both International and Regional Protection Mechanisms for HRDS**

- The declaration on human rights defenders provides protection and legitimacy to the work of HRDs. But in order for that to happen, the Declaration has to be widely known and respected by authorities, and the population as a whole. It also has to be known and used by HRDs themselves. Findings of the THRDC indicate that as of year 2016, majority of HRDs were yet to be informed about this declaration.
- HRDs in Tanzania know nothing about the available mechanism for their protection let alone on how to use the special UN and the Africa Rapporteurs on human rights defenders to protect them.
- Again, the EU Guidelines on HRDs are also not widely known by HRDs in Tanzania despite the EU taking some action to defend them. A lot more has to be done to raise HRD awareness about and the usefulness of the guidelines as a form of capacity building to enable them enhance their security.
- The HRDs law and Policy have no model hence making it difficult for national NGOs to lobby for its inclusion of the same to the domestic legislations.
- Despite the fact that Tanzania doesn't have specific law for HR, during the 59th Ordinary session of African commission countries came up with model law on protection of human rights defenders.

## **1.2 Non Legal Protection mechanism**

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

## 1.2.1 Non Legal Protection mechanism at International level

The mandate on the situation of human rights defenders was established in 2000 by the Commission on Human Rights (as a Special Procedure) to support implementation of the 1998 Declaration on Human Rights Defenders. In 2014, the UN Human Rights Council came up with a resolution number 25/18, in a bid to continue the mandate on human rights defenders for a consecutive period of three years.<sup>19</sup>

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 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).<sup>20</sup>

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

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

### In performing his duties, the Rapporteur:

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

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

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

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

20 *ibid*

## **1.2.2 Non Legal Protection Mechanism at Regional level**

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

On 23<sup>rd</sup> 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.<sup>21</sup> This initiative was facilitated by the Network of Human Rights Defenders in East and Horn of Africa. The latter bolstered the protection of Human Rights Defenders in Africa through networking.

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

## **1.2.3 Protection Mechanism at National Level**

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

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

It should be noted however, that the protection of HRDs is quite a new concept in Tanzania and thus most people fail to understand it and when their rights are violated they more often tend to ignore and take it for granted. In fact, majority of them (HRDs) do not know that they are human rights defenders who need some level of sensitivity and special protection in the course of performing their day-to-day activities as defenders and promoters of human rights.

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

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

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

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

## **Major Role of Protection Programme**

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

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

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

## CHAPTER TWO

# VIOLATIONS COMMITTED AGAINST HRDs

### 2.0 Human Rights Violations Committed Against HRDs in 2016

This chapter exposes to the reader the situation of human rights defenders for the year 2016. The chapter only focuses on the situation of HRDs from different thematic groups with exception to journalists where their situation is explained in Chapter four. Security incidents and threats to human rights organizations in Tanzania are specifically discussed under Chapter six of this report.

The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedom gives recognition and protects human rights defenders. The Declaration is an international instrument for the protection of the right to defend human rights. The Declaration reaffirms rights that are instrumental to the defence of human rights, including, inter alia, freedom of association, freedom of peaceful assembly, freedom of opinion and expression, and the right to gain access to information, to provide legal aid and to develop and discuss new ideas in the area of human rights. Implementing the Declaration is a precondition for the creation of an environment that enables human rights defenders to carry out their work.<sup>22</sup>

Tanzania has not been implementing the Declaration and as a result HRDs in Tanzania operate in a very challenging and risky environment. Focal person's reports, questioners filled by HRDs and Protection desk data base in 2016 indicate that HRDs have been continuously harassed, detained, interrogated, imprisoned, and tortured.

The THRDC Protection desk data base received and documented 40 HRDs claims including arrest, malicious prosecutions, torture and decriminalization of expression from different parts of Tanzania. All claims were assessed and where necessary technical support was provided. However for the purpose of this report, we will only elaborate major HRDs violations that took place in 2016.

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

*"In most cases, acts committed against human rights defenders are in violation of both international and national law. In some countries, however, domestic legislation which contravenes international human rights law is used against defenders."*<sup>23</sup>

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22 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

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

The THRDC protection desk data base, questioners filled by HRDs and reports from focal person in 2016 indicated that HRDs in Tanzania face a number of challenges including: political, legal, financial and social challenges. They also have limited security knowledge on information sharing and restrictions on access to information.

## **2.1 Arbitrary Arrest, Baseless Charges and Criminalization of HRDs**

Like other parts of the world, HRDs in Tanzania are at times falsely criminalized. In criminology, the term refers to the process whereby behaviors and individuals are transformed into crime and criminals.<sup>24</sup> In this context, criminalization is often used to discredit, sabotage and impede the work through the misuse of the Legal system.

UN commentary to declaration of human rights defenders pointed that, states increasingly resort to legal actions to violate rights of human rights defenders who denounce human rights violations. Defenders are arrested and prosecuted on false charges. Many others are detained without charge, often without access to a lawyer, medical care or a judicial process, and without being informed of the reason for their arrest.<sup>25</sup> Some States tend to systematically invoke national security and public safety to restrict the scope of activities of defenders. In many countries, trade unionists, members of NGOs and social movements face repeated arrests and criminal proceedings for charges of forming criminal gangs, obstructing public roads, inciting crime, creating civil disobedience or threatening the State security, public safety or the protection of health or morals.

Moreover, human rights defenders, including defense lawyers, who provide legal assistance to other defenders or victims of human rights violations are threatened, denied access to courthouses and their clients, arrested and charged under various criminal provisions. The multitude of arrests and detentions of defenders also contributes to their stigmatization, since they are depicted and perceived as troublemakers by the population<sup>26</sup>

Like other part of the world HRDs in Tanzania face similar situation, for instance in 2016, the THRDC's protection desk documented massive violations of human rights in Loliondo especially violations committed against human rights defenders who are recognized as the front runners against land grabbing in Loliondo. On 20<sup>th</sup> July 2016, the Coalition received reports of about seven(7) people arrest, detention and bail denials. The detainees include former Member of a parliament(MP)Mr. Methew Oletiman along with two councilors, Hon. Yanick Ndoinyo and Hon. Ndiman Timan, Chairman of Mundorus village, Mr Joshua Mako and Director of Ngorongoro Network of Non-government organizations Mr Samweli Nangiria. All these have been held under custody for the allegedly participating in espionage in collaboration with Swedish blogger, Ms Susana Nurduland who has been on the frontline reporting and sharing various articles of pastoralist defenders voices on the Loliondo land grab via her blog.

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

25 UN commentary to declaration on human rights defenders 2011

26 ibid

The detainees were interrogated by the special police unit from Dar es Salaam Police headquarters, referring from the Arusha Region Police Commander (RPC). Apart from these seven detainees, some other two human rights defenders namely Mr. Supuk Olemao and Clinton Kairung have also been put under custody for the same allegations.

**Picture 1 Natives of Loliondo blocking the expedition of the Minister for Natural Resources and Tourism, Prof Jumanne Maghembe**



*Citizens of Loliondo blocking the Minister for Natural Resources and Tourism to have him listen their concerns about land conflict in Loliondo.*

On 21st July 2016, the Coalition engaged an Advocate from Legal Human Rights Center (LHRC) Mr. Shilinde Ngalula and journalists to monitor the prevailing violations and to offer legal representation to HRDs held under custody for about 9 days since the day they were detained. Surprisingly on the day of detainees' interrogation by the police officers, that is 22nd July 2016; the advocate was denied the right to work and was ordered to move from the interrogation room. The police officers threatened the advocate telling him that he is not supposed to be there during the interrogation. The Police was questioning who sent him to represent the detainees and added that; the detainees will remain under custody for some days without even being taken to the court in accordance with the legal procedure.

On the evening of 22nd July 2016 advocate Shilinde was also arrested for the same allegations as his clients. The police officers told him that he was one of the most wanted people on the list and he deserve to be arrested for the same matter. He was however bailed out later the same day instructed to report at the police station on Monday of 25th July 2016 for further interrogations. Unfairly, up to date, four defenders and activists are still being held and denied bail while other accused persons, holding various political positions in the government have been bailed out.

**Picture 2 Advocates based in Arusha boycotting to have their fellow advocate illegally arrested released**



*Advocates based in Arusha, protest to have their fellow advocate Shilinde released after he was illegally arrested while performing his duties in Loliondo.*

The pastoralists Human Rights Defenders, Mr. Samweli Nangiria who is the director of NGONET, Mr. Supuk Olemaoi, Clinton Kairung and Yohana Mako have been denied bail, right to communicate with their advocate and in addition, their working equipment are being seized under police custody.

Current Malicious Prosecution against HRDs in Loliondo and elsewhere;

- i) Sepuk Daniel Maoi a community human right defender charged with two offences, Espionage and Sabotage contrary to section 3 of the National Security Act, and possession of unauthorized public documents contrary to section 6(2) of the National Security Act.
- ii) Clinton Mshao Kairung @En'gawesi a community human rights defender charged with Espionage and Sabotage contrary to section 3 of the National Security Act and second count use of abusive language contrary to section 89(1) of Penal Code.
- iii) Samwel Nan'giria a director of NGONET charged with one offence, Espionage and Sabotage contrary to section 3 of the National Security Act.
- iv) Maanda Ngoitiko, who was arrested few days after, was also charged with Espionage and Sabotage contrary to section 3 of the National Security Act different charge sheet. After Advocate Jebra appearance of 2<sup>nd</sup> September all charges were combined into one charge sheet. The next hearing of this case is on 17<sup>th</sup> October 2016.

- v) Vitalist Maembe a musician human rights defender was charged for criminal trespass under section 299 of Penal Code at Bagamoyo TASUBA campus and also charged with Brawls contrary to section 89(1) of Penal Code alleged that he created disturbance by beating drums and assemble student who were in examination

Majority of HRDs interviewed during the THRDC security needs assessment in 2013 mentioned baseless charges and case fabrication among the other major threats that undermine their works. About 70% of all respondents agreed that HRDs always face illegal charges when dealing with issues of public interest.<sup>27</sup>

## 2.2 Physical violence, Attacks, and Torture

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

The situation is similar for some of the HRDs in Tanzania. HRDs from different thematic groups experienced physical violence, attacks and torture. The most at risk HRDs who received several incidences of attacks, harassment, physical violence and torture in 2016 were journalists and Pastoralist HRDs. However for the purpose of this report these incidents are covered under chapter five. In 2016, The situation of repression and retaliation against student activists, and other activists engaged in protests has been particularly harsh. The fact that the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment joined the mandate on defenders in many communications sent on student protests indicates the brutality of violations affecting student defenders.<sup>29</sup>

## 2.3 State of Impunity

According to Margaret Sekaggya, a Special Rapporteur on the situation of human rights defenders, States have the primary responsibility to ensure that defenders work in a safe and enabling environment. Under this call States should end impunity for violations against defenders by ensuring that investigations are promptly and impartially conducted. Perpetrators should be held accountable; while as victims should obtain appropriate remedy<sup>30</sup>.

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

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

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

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

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.<sup>31</sup>

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.<sup>32</sup>

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

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

### **The perpetrator of the following cases have never been found nor prosecuted;**

- The kidnapping of Dr. Stephen Ulimboka a leader in the 2012 doctors' strike. He was dragged into an unidentified vehicle by a group of armed men who brutally beat and tortured him before they deserted him in the midst of a heavy forest in Mabwepande.
- On March 2013, the Chairperson of the Tanzania Editors Forum, Absalom Kibanda, was physically assaulted with his car being vandalized while on his way home. He was taken to Muhimbili Hospital in Dar es Salaam and later on transferred to a hospital in Johannesburg, South Africa for treatment of injuries sustained during the attacks. It is believed that Absalom was attacked because of his journalistic activities. An opposition political party had previously accused him of sedition following the publication of an article in the Tanzania Daima newspaper in which he criticized the authorities for preventing a protest organized. Kibanda is also an editor of the Kiswahili daily newspaper Tanzania Daima
- The abduction and torture of a JKT movement leader George Mgoba in 2015 has never been investigated. Worse enough the HRD is still in custody due to denial of bail by the DPP.
- The fact that in Daudi Mwangosi's trial prosecution failed to bring star witnesses or prosecute other Police who were involved in the killing THRDC treat it as impunity. As Court stated as follows

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

32 ibid

*"I may at this point remark in passing that I find it completely inexplicable why the prosecution did not deem it fit and their duty to call their star witnesses in particular the lead investigator or even the RCO, PC TUMAINI who is alleged to have been sent by the then RPC SACP MICHAEL KAMUHANDA (to the scene where the explosion later occurred) to give evidence at the trial. This is because the lead investigator and/or the RCO, appears to be the prime movers of the events that resulted in the arrest and prosecution of the accused. It is my view that a number of matters arising in this case which are left to the imagination would have been clarified if key witnesses who investigated this matter had been called to give evidence. This has caused me some anxiety and considerably exercised my mind". Mwangosi's judgment at page 39.*

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

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

## **2.4 Law Enforcers as Human Rights Defenders**

This sub- chapter provides for the general situation of police officers and the violation of their rights as human rights defenders. The sub chapter indicates that more than five police officers were killed 2016 and two injured. Compared to 2015 whereby more than 10 police officers were killed and more than 5 left injured with several guns and the assailants took bullets away.

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

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

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

THRDC documented some of the security incidents, which occurred to police officers for the year 2016. The following are some of the incidences of violation, which THRDC managed to capture under its protection desk;

- On 28TH August 2016 4 police officers were killed at Mbande Mbagala by armed robbers who attempted to rob CRBD bank. The incidence left two police injures who are Ally Chiponda and Aziz Yahaya while those who were killed are ES 761 CPL Yahaya, F4660 CPL Hatibu, G9524 PC Tito and G 9996 PC Gaston.
- One police ASP Thomas Njuki was killed on 29th August while special task of police following up the armed robbers who robbed the bank on 28th August.

**Picture 3: Minister of Home Affairs visiting the scene of the incident.**



*Minister of Home Affairs, Mwigulu Nchemba visiting the site where the four police officers were killed.*

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

## CHAPTER THREE

# MEDIA SECURITY AND SAFETY OF JOURNALISTS

### 3.0 Overview of the chapter

Chapter three highlights on Journalists as human rights defenders. This chapter presents media security situation and safety of journalists in 2016. This chapter discusses security challenges encountered such as harassment, criminalization, detention, torture, defamation, and suspension from their employment, denial of freedom of movement and legal challenges.

### 3.1 Specific Challenges Facing Journalists

Article 18 of the Constitution of the United Republic of Tanzania provides for the respect of freedom of expression and opinions of Tanzanians. On the other hand, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) states, “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. This right carries certain duties and responsibilities and may be subject to certain restrictions only as provided by the law.

Despite these guarantees, attacks and restrictions on journalists and independent newspapers in Tanzania are still in persistence. Journalists have been physically assaulted and threatened for the work they do while government officials and business-people often sue newspapers for criminal and civil defamation and seek significant amounts in compensation for critical articles. Several independent newspapers have been banned, some indefinitely. Journalists who cover peaceful protests against government policies and actions have also been attacked. Threats to freedom of expression generally emanate from security forces, senior government officials, and some non-state actors.<sup>33</sup>

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

*In 2016, the THRDC’s protection desk documented over 20 different cases of intimidation and threats for journalists in Tanzania compared to 2015 whereby THRDC documented over 30 incidences probably because of the general elections. These incidences varied from physical, legal, digital, and psychosocial threats respectively.*

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33 Joint CIVICUS Tanzania UPR report 2015

### 3.1.1 Excessive Usage of Power by District Commissioners

Most surprise for 2016 only one year after the new government under President Magufuli, THRDC witnessed excessive use of power from the District Commissioner (DC) to detain journalists and bar them from reporting, for 2016 THRDC document over 10 cases whereby journalists were detained by the orders of DC, all cases are indicated in table below.

### 3.1.2 Physical threats/incidence;

- i) On 24<sup>th</sup> February, former Minister, Stephen Wassira attempted to assault Michael Jamson, a photojournalist from Mwananchi communication limited (MCL) and tried to stop him from fulfilling his duty. The court later condemned the incident.

### Picture 4 Former Minister Stephen Wassira moves to assault a journalist who attempted to photograph him in Mwanza



*Former Minister Mr Steven Wassira (right) chases Mwananchi communication photo journalist Michael Jamsom with the intention of beating him outside Hight Court in Mwanza. (Photo from Mwananchi newspaper)*

- ii) On the 18<sup>th</sup> March 2016, shortly after departing Zanzibar it was informed allover that Mss. Salma Said a reporter of Mwananchi Communications Ltd and a reporter to the German International Broadcasting (Deutsche Welle) was arrested by the police. In ascertaining we had to closely follow up on the issue to the security forces in Zanzibar only to be informed that even the police force in Zanzibar and the mainland did not have such kind of information. Ms. Salma later informed THRDC that, unknown people took her to unknown place immediately after getting out of the Mwalimu Julius Nyerere International Airport attacked her.

### 3.1.2 Legal threats, Malicious Arrest and Prosecution

- i) Newspaper Act 1976 used to infringe and violate freedom of expression and access to information in Tanzania. As happened to Mwanahalisi newspaper in July 30<sup>th</sup> 2012 and temporary suspension of Mwananchi and Mtanzania newspapers in 2013. In another incident, the government under President John Magufuli permanently banned a Kiswahili weekly tabloid, 'Mawio', through the Government Announcement (GN) number 55, issued on January 15, 2016.
- ii) July 2<sup>nd</sup> 2016, editors at Mawio, Jabir Idrissa and Simon Mkina, were questioned by the police about the newspaper's coverage on Zanzibar. They were set free on bail the next day after the Tanzania Editors Forum pressed for their release. The editors have been ordered to report daily to a local police station until further notice. No formal charges have been filed against them.
- iii) July 14<sup>th</sup> two journalists, Editor of Mwananchi Frank Sanga and a journalist Elias Msuya were summoned by police officer to make statement with regard to the article published in the newspaper with about the way police officer conduct their duty title " Police fears rulers to step out of the power "
- iv) July 12, Director of Jamii Media, owner of JamiiForums was summoned under section 10 (2) charged for obstruction of police investigation under section 10 (2) A of the Criminal Procedure Code. Jamii Media has been issued with over 10 demand letters from police under the Cybercrime Act demanding them to disclose information's of their clients as service providers.
- v) June 20<sup>th</sup> two journalists Mussa Robinson Mkama, and Prince Newton were arrested by police and later on charged under section 36(1) of the Newspaper Act by publishing news that was likely to cause fear and alarm to the public or to disturb peace : "KIFARU CHA KIVITA CHA JWTZ CHAIBWA"
- vi) April 1<sup>st</sup> DC of Iringa Richard Kasesela ordered two journalists to be arrested from Ebony Fm radio station, for the reasons that they imitate him in the April fool. The journalists are Neema Msafiri and Edwin Dugange. They were later released.
- vii) April 9<sup>th</sup> Chato Police arrested Mwananchi newspaper journalist Baraka Rwesiga with order from Ntarambe DC for the reasons that he entered in the hospital without permission.
- viii) April 24<sup>th</sup> a journalist with Channel Ten Willbroad Sumia was arrested? as he was taking the picture of a human rights violation in Malangali Rukwa, Police officers arrived and asked him who had permitted him to cover that story, they demanded to take his camera and when he refused, they took it by force while restraining him in Police Car. After he was taken to police they didn't lock him in cell but RCO apologized for the rest of journalists claiming that probably police confused because journalists did not carry their Identity Cards, nevertheless Willbroad was carrying his ID.

- ix) August 11<sup>th</sup> Minister of Information, culture and sport Nape Nnauye suspended for 36 months. Mseto Newspaper for publishing fake documents, which alleged that deputy minister of ministry of construction and transportation Edwin Ngonyani, was bribed during 2015 election. This was invoked in accordance of section 25(1) of the newspaper Act which also banned online publication in accordance with EPOCA law.
- x) August 27<sup>th</sup> temporary suspension of two Radio stations, Magic Fm of Dar es Salaam and Radio Five from Arusha, on the basis that some contents of the programmes aired would have caused violence and breach of peace. The minister suspension was temporary awaiting special committee on content to advise him on proper penalty.
- xi) September 1<sup>st</sup> Temporary restriction of seven journalists by police in Shinyanga include THRDC member Stephen Wanganyi. They were restricted to carry out their duties.
- xii) Jumbe Ismail a Channel Ten Journalist was arrested and remanded for his report about demonstration
- xiii) On October 8<sup>th</sup> a journalist Cosmas Makongo of ITV was arrested by the order of DC of Kyerwa Kagera region because he reported news about hunger in that District. He was remanded for two days.
- xiv) 6<sup>th</sup> April 2016 a journalist from Radio Free Africa and Mwananchi newspaper Baraka Tiluzilamsomi was arrested and remanded for 7 hours by Chato DC for entering the hospital without permission
- xv) 29<sup>th</sup> of November 2016, a journalist Msafiri Sajito was arrested by the order of Kibaha DC Assumpta Mshama. She further instructed the journalist to apologize for the news he had published?
- xvi) 4<sup>th</sup> of November 2016 Handeni District Commissioner who was once a journalist with ITV, on that date he instructed police to arrest and remand journalists who were covering small miners who were evicted in Mazigamba area Nyasa village. The journalist arrested were Saleh Masoud Clouds FM and Mackdonald Mollel of Star Tv who were remanded for four hours.
- xvii) 3<sup>th</sup> of December 2016 a journalist Anotory Tumaini in Karagwe was arrested and harassed by police, because he took picture depicting a police officer apprehending one prisoner. They took him to the jail and fabricated case that he was taking picture of the prison contrary to the law.

## Picture 5 Warning from Police in Mwanza to Journalists

**JAMHURI YA MUUNGANO WA TANZANIA  
WIZARA YA MAMBO YA NDANI YA NCHI  
JESHI LA POLISI TANZAN**

TELEGRAMS: POLISI,  
TELEPHONE: 2500712  
Fax: 2502310  
E-mail: [mwapol@yahoo.com](mailto:mwapol@yahoo.com)  
[rpc.mwanza@tpf.go.tz](mailto:rpc.mwanza@tpf.go.tz)



OFISI YA  
KAMANDA WA POLISI,  
MKOA WA MWANZA,  
S.L.P. 120,  
MWANZA

### TANGAZO

KUMETOKEA KURIPOTIWA MATUKIO YA UHALIFU MKOANI MWANZA YALIYOTOKEA TAREHE 16 NA 17/11/2016 YALIYORIPOTIWA KATIKA MITANDAO YA KIJAMII YA JAMII FORUM NA MUUNGWANA BLOG NA MOJA YA GAZETI LA KILA SIKU HAPA NCHINI.

TAARIFA HIZO ZIMEWATAJA WATENDAJI WA JESHI LA POLISI KAMA NDIO WASEMAJI WAKUU WA JESHI LA POLISI KWA MKOA WA MWANZA. KITENDO HIKI NI KINYUME NA UTARATIBU WA JESHI LA POLISI UNAVYOSEMA. AIDHA MFAHAMU KUWA MSEMAJI WA JESHI LA POLISI MKOA KWA MATUKIO YA AINA YEYOTE ILE NI KAMANDA WA POLISI MKOA, HIVYO TAARIFA HIZO ZIMETOLEWA KIMAKOSA KWA KUWATAJA WATENDAJI WASIOHUSIKA KAMA WASEMAJI WAKUU WA JESHI KWA MKOA.

ONYO, NIMARUFUKU KWA MWANDISHI YEYOTE KUTOA TAARIFA AIDHA YA MATUKIO YA UHALIFU AU YA AINA YEYOTE ILE KWENYE VYOMBO VYA HABARI AMBAYO HAYAJATHIBITISHWA NA KAMANDA WA POLISI MKOA. HATUA ZA KISHERIA ZITACHUKULIWA DHIDI YA MWANDISHI WA HABARI AMBAYE ATATO TAARIFA KINYUME NA UTARATIBU WA JESHI LA POLISI.

### MWISHO

*A warning letter from Police Force Mwanza to journalists not to report any news before Regional Police Commander approves them*

With regard to Mawio ban, the minister did not only invoked provision of the Newspaper Act but he went further and ceased the electronic circulation and any other electronic communication such as online means or website as per Electronic and Postal Communication Act (EPOCA). This action of the Minister for Information and Culture, Art and Sports invoking provision of the Postal Communication Act (EPOCA) has also raised confusion among lawyers, lawyers and other academicians claiming that how the minister of Information invoked the law which is under the mandate of other Minister (Ministry of Communication, Science and Technology).

THRDC had a chance to ask about this confusion and the lawyer from the Minister of Information, Culture and Sports narrated that under section 3 of the Electronic and Postal Communication Act (EPOCA) the definition states “Minister” means the Minister responsible for communications except in relation to content and broadcasting services; this means that when it comes to matter of content the Minister of Information is responsible.

THRDC conducted research on the same law, and established that despite the fact that the minister of Information, Culture and Sports has mandate to regulate issues of content under the Electronic and Postal Communication Act 2010, the law does not give him the power to suspend or cease operation of any license or any circulation. Section 114 of the Act vests such powers to the TCRA only.

The government admitted that the newspaper was banned before Mawio replied the letter given to them after they had issued the last publication. THRDC interpreted this as the rights to be heard and rule of law was not taken into consideration. The same approach was used to during the prohibition of Mwanahalisi newspaper in 2012 and the same was criticized by the High Court in its recent decision whereby the court ordered the release of Mwanahalisi Newspaper because at the time of deregistration the government did not follow procedures and rights to be heard was no taken into consideration.

### **3.1.3 Digital threats/incidents**

The enactment of Cybercrime Act 2015 and its enforcement remained to be the most threats to people who are using social media to express their own views. Nevertheless THRDC for 2016 didn't manage to document digital attack to website, blogs and social media.

## **3.2 Legal challenges affecting the security of Media and Journalists**

The Constitution of the United Republic of Tanzania<sup>34</sup> provides for freedom of expression. Article 18 of the Constitution provides that every person has the right to enjoy the freedom of opinion and expression of his ideas. It provides further that everyone has the freedom to communicate and enjoy protection from interference in his communication. Article 19 of the Universal Declaration of Human Rights guarantees everyone with the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.

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34 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.

In 2016, several restrictive bills were passed into law, and some like the cybercrime Act continued to operate.

i) Access to Information Act 2016

This Act was passed by the National Assembly on the 7<sup>th</sup> day of September 2016 and assented by the President on 23<sup>rd</sup> 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.<sup>35</sup>

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 encroaching 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.<sup>36</sup>

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 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.<sup>37</sup>

i) Media Service Act 2016

On 5<sup>th</sup> of November 2016, the Parliament of United Republic of Tanzania enacted the Media Services Act and the same has been assented by the President on 16<sup>th</sup> 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.<sup>38</sup> 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.<sup>39</sup>

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

36 Ibid

37 Ibid

38 See preamble to the Act.

39 MCT report on the Media Services Act Analysis

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, MSA 2016 has 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.<sup>40</sup>

Also, there are some improvements made under this new Act, compared to the MSA Bill of 2015. Some of the recommendations from stakeholders have been taken into considerations. For instance, the requirement of imposing limitations in provisions, which provide for sentencing and fines, has been taken on board. However, most of the recommendations from stakeholders from CORI were not taken.<sup>41</sup>

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.<sup>42</sup>

THRDC annual general meeting resolved that the Act should be challenged before the High court and the East African Court of Justice.

## **ii) 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 for a one-year jail term and a fine of 10 million Shillings (approximately US \$ 4500)

## **iii) The Cybercrimes Act 2015**

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

As of December 2016 THRDC had managed to document more than 20 cases ever since the Cybercrime Act became operational where section 16 of the Act was used to charge those arrested. Article 19 in their analysis they pointed out that section 16 of the Cyber Crime Act which was coined to prevent publication of false information was vague.

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<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

Article 19 pointed out clear that the provision of section 16 violates international freedom of expression standard, they further state that it make work of journalist covering current development unreasonably dangerous as in situation of breaking news; facts are often difficult to verify, moreover it is often debate as to what the truth of a particular matter is and state should trust citizens to reach own conclusion. Article 19 recommended the section to be struck out entirely.

**Table 3 Below shows Court Cases related to Internet use<sup>43</sup>**

Case	Offences Charged	Law cited	Status/Outcome
Republic v. Isaac Habakuk Emily	Charged with referring to President John Pombe Magufuli as an imbecile via his Facebook account	Section 16 of the cybercrime Act 2015.	Convicted and sentenced to a fine of 7 million shillings (USD 3,200) or imprisonment for a term of three years. He paid fine and was released.
Republic v. Naila Aminel	Use of abusive language against one Martha Sebarua.	Section 23 (1) and (3) of the Cybercrimes Act, 2015	Convicted and sentenced to 3 years imprisonment or a fine of 5 million shillings (USD 2,200).
Republic v. Bob Chacha Wangwe	Publishing false information on his Facebook account - a statement to the effect that Zanzibar was a colony of Tanganyika	Section 16 of the Cyber Crimes Act, 2015	The case is pending in court
Republic v. Leonard Kyaruzi	The accused was arrested and reprimanded following his post on a WhatsApp group criticizing the manner in which President Magufuli was running the country. He stated that the either lacked good advisors or was mentally retarded.	Section 118(a) of the Electronic and Postal Communications Act, 2010.	Unknown
Republic v Leyla Sinare& Others	It was alleged that the accused persons disseminated false information through a Whatsapp group known as 'sport group.' However, the details of false information could not immediately be found.	Section 16 of Cyber Crime Act	Unknown
Republic v. Yericko Nyerere	This blogger was accused of allegedly publishing false information which could provoke violence in the country during the electoral process	Section 16 of the Cyber crime Act	Prosecution proving their case before court (This case is officially dismissed)

43 Based on a data base from Protection desk at THRDC

Republic v Benedicto Ngonyani	A student of Dar es Salaam Institute of Technology (DIT), he was accused of publishing information on Facebook that the Chief of Defence Forces was suffering from food poisoning.	Section 16 of the Cybercrime Act	Filed Constitution Petition challenging section 16
Republic v Israel William	Charged with two counts of publishing and disseminating false information against the Tanzania Communication Regulatory Authority (TCRA) which he allegedly committed on September 10 and October 5, 2015.	Electronic and Postal Communication Act (EPOCA)	Unknown
Cyber crime case	A lecturer at Mkwawa University college of Education was arrested in September 2016 for allegedly insulting President Pombe Magufuli in a Whatsapp message. While confirming the detention of the lecturer, police declined to reveal the content of the message he was accused of sending	Cyber Crime Act	Unknown
Cyber crime allegations	26 <sup>th</sup> October 2015 Computers and electronics devices were confiscated by the Police who accused the LHRC for publishing false information contrary to section 16 of the Cyber Crime Act.	Section 16 of Cyber Crime Act	Police returned all electronics to LHRC in July 2016, and failed to charge them with section 16 of the Cybercrime Act as they first promised to do so in their press release
Cyber crime allegations	During the tallying process, media houses aired various reports by the opposition party (CHADEMA) accusing the ruling party Chama Cha Mapinduzi (CCM) of election malpractice and interception of results during online transmission from constituencies to the Electoral Commission. Ruling party officials denied the allegations and instead accused CHADEMA of the same. The ICT team of CHADEMA was later arrested by the police and charged with an offence of publishing the presidential election results contrary to the Elections Act, 1985, the status of the case up to date is unknown	Section 16 of the Cyber Crime Act	Unknown

Cybercrime allegations	Maxence Mello, Director of Jamii Media was summoned by police and alleged to obstruct police from conducting investigation	Section 32 and 22 of the Cyber crime Act	Investigation under process
Republic V. Shilinde	Advocate Shilinde was arrested on 22 <sup>nd</sup> of July 2016 in Loliondo and charged by section 16 of the Cybercrime Act, for the fact that he was providing false information using internet.	Section 16 of the Cybercrime Act	Case in progress
Republic V Maxence Melo and Mike Mushi	Maxence Melo and Mike Mushi being Directors of Jamii Media they were both charged under section 22 of the Cybercrime Act for obstructing Police Investigation	Section 22 of the Cybercrime Act	Case in progress
Republic V Maxence Mello and Mike Mushi	Maxence and Mike Mushi being director of Jamii media they were charged under Electronic and Postal Communication Act for managing website not registered in Tanzania	Section of the 79 ( c) EPOCA	Case in progress

**Picture 6: Yericko Nyerere, a blogger faces criminal charges at Kisutu Resident Magistrate Court**



*Yericko Nyerere in blue t-shirt at Kisutu Resident Magistrate Court, where he was facing a criminal charge against internet use. He was charged under Section 16 of the Cyber Crimes Act, 2015.*

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

Privacy is a fundamental human right, enshrined in numerous international human rights instruments.<sup>44</sup> 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.<sup>45</sup>

The Constitution of the United Republic of Tanzania<sup>46</sup> guarantees the right to privacy under Article 16:

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

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

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

**18. “ Every person - (c) has the freedom to communicate and a freedom with protection from interference from his communication”.**

In year 2016, THRDC documented several incidences/threats and violation of privacy rights against HRDs and this was specific for Jamii Forums. Jamii Media is a registered company which owns and runs websites of Jamii Forums and Fikra Pevu with more than 2.4 million users. Jamii Forums as one of the websites provides an access to users to post, engage and follow up posts of various issues and information of various matters regarding the society. The forum among others allows users to post on its websites by using anonymous or other hidden identities, with a guaranteed declaration of the users IDs protection (under the websites Privacy Policy)

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44 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*.

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

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

In 2011, Jamii Forums, an online forum that has been called the “Kiswahili replica of Wiki leaks, was interrupted by the Tanzanian government to disrupt the conversations of members associated with the opposition. The founders of the forum were also detained and interrogated for 24 hours in 2008.<sup>47</sup> On top of that the Managing director was in several occasions summoned to disclose information of whistle blowers who post information, which reveal grand corruption and tax evasion issues.

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

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

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

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

### **Section 3 of the Act;**

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

“Competent Authority” means-

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

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<sup>47</sup> CIPESA, State of Internet Freedoms in Tanzania 2014: An Investigation Into the Policies And Practices Defining Internet Freedom in Tanzania, May 2014. Available at: [http://www.cipesa.org/?wpfb\\_dl=182](http://www.cipesa.org/?wpfb_dl=182)

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

Public Interest disclosure 4.- (1) any person may make a public interest disclosure

Before a Competent Authority if that person is of reasonable belief that-

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

### **3.4 Internet as 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 newly enacted 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.<sup>48</sup>

CIPESA report also indicates the number of cases whereby police force in Tanzania has been used to curtail online freedom by issuing several arbitrary letters to Jamii Media demanding the disclosure of IP address of the user who has posted on the website. The report also point out the level of chill effect caused by the Cybercrime Act presence in Tanzania.

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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.

Currently in Tanzania majority of people afraid to post or comment on Facebook or other social apps like Twitter, Instagram, WhatsApp etc. Only those who are pro-government can be said to be free. It is generally fair to say that the behaviour of the citizens have drastically changed after the enactment of the Cybercrimes Act. Needless to say this seems to affect the internet freedom because people can no longer express themselves freely via the internet as it used to be before.<sup>49</sup>

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

49 Ibid.

## CHAPTER FOUR

# SECURITY MANAGEMENT AND RISK ASSESMENT

### 4.0 Level of Security Management and Protection Measures

To human rights defenders, the concept of security means freedom from risk or harm resulting from violence or other intentional acts.<sup>50</sup> Protection measures refer to various measures taken by HRDs or other actors to enhance security.<sup>51</sup> Security management is basically a long term overview to prevent risks, attacks and security incidents likely to happen to an individual HRD or to the HRDNGO.

Because of the focus on the defence of others' rights, HRDs are normally take for granted their own security and protection. The concept of security management therefore to HRDs grasses root organizations in Tanzania a new concept despite being exposed to risks and threats when doing their HR defending activism.

The Coalition surveyed the level of security management among HRDs in Tanzania and discovered that they lack strategies and plan to protect individuals and groups against violations. The Coalition's 2013 security needs assessment conducted dwelt the following;

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

As a result, the Coalition therefore through its Five years strategic plan 2013-2017 started Capacity building program aiming at enhancing the abilities of HRDs in the security and protection processes. The Coalition actualizes this program through trainings, training of the trainers, round table discussions, dialogues and seminars on various aspects of security management, human rights and their enforcement mechanisms.

Since its establishment and after conducting the 2013 baseline survey, the Coalition has done a tremendous work striving to maximize the protection of HRDs in the country through capacity building. The Coalition has managed to train 1000 HRDs across the country, which includes Individuals HRDs, HRNGOs and journalists. This fantastic work led to the recognition of the Coalition's National Coordinator Mr. Onesmo Olungurumwa by the East and Horn of Africa Human Rights Defenders Network (EHAHRD-Net) as the East African Defender of the year 2015.

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50 *Frontline Defenders 2011; Workbook on security practical steps for human rights defenders at risk; Frontline Publishers, Dublin.*

51 *Ibid.*

**Picture 7: Coalition's Coordinator receiving an award**



*The Coalition's national Coordinator Mr. Olungurumwa Onesmo being awarded by the The East and Horn of Africa Human Rights Defenders Network (EHAHRD-Net) as the East African Human Right Defender of the year 2015.*

## **4.1 Digital security**

While computers, mobile phones and other Internet digital devices can be extremely powerful tools for HRDs' advocacy work, they also expose groups to new security risks. As more advocates have begun to rely on digital technology to achieve their outreach, data-collection, information design, communication and mobilization objectives, these risks have become greater.

Therefore, to individual HRDs and HRDNGOs security does not only end with physical environment but also digital protection measure need be utilised. For example, HRDs need to secure their information from reaching the unintended person by saving sensitive information at the cloud and making sure all the devices are locked when HRDs are off using them.



My email or Facebook & Co.  
accounts were hijacked

### **Picture 8: Image showing an email/ Facebook account hijacked**

*Email, Facebook and website accounts of HRDs can be hijacked if not conversant with Digital security*

Many HRDs in Tanzania are still lagging behind in digital security. During the training conducted in March 2016 involving defenders working in extractive industry, the concept was very new to participants hence needed of more time for clear understanding.

This was to one side contributed by the low number of participants whom were found to be using emails, facebook and WhatsApp messengers as information facilities in course of their defending work. For example out of 32 participants present in the workshop, only 28 were found to be using emails, 17 facebook, 2 Skype and 2 tweeter. Lack of sufficient fund to cater for advanced technological security tools such as CCTV Cameras and Security systems alarms for appropriate security measures is also attributed to not utilising digital security measures.

## **4.2 Office and Home Security**

Security at the organization's offices and in staff members' homes is of fundamental importance to human rights defenders' work. In security management measures, security can basically be achieved by making sure one prevents unauthorized access and possible attacks of the office or home for any cost no matter where the HRDs office's location is. Office security strategies differ from one HRDs office to another depending on its location.

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

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

**Table 4: 2013 THRDC Needs Assessment Findings**

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

Source: *THRDC 2013 Security Needs Assessment Report* <sup>52</sup>

HRDs through their focal persons and security management trainings feedbacks mentioned insufficient resources as one of the major factors that affect affordability of buying and adopting professional security guards and technological security gears. Some of the interviewed HRDs mentioned hiring a professional security guard and buying security gears such as CCTV security cameras as a cost they cannot afford. Responding to the status of security funds question, almost 190 (95%) of all HRDs interviewed pointed to have had insufficient funds raised or allocated for security management. The situation from 2013 to 2016 remains almost the same as majority of HRDs from rural areas who attended security management trainings in 2016 still mention lack of insufficient fund as the major challenge for them to afford more technological security gears.

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

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

### 4.3 Security Policy

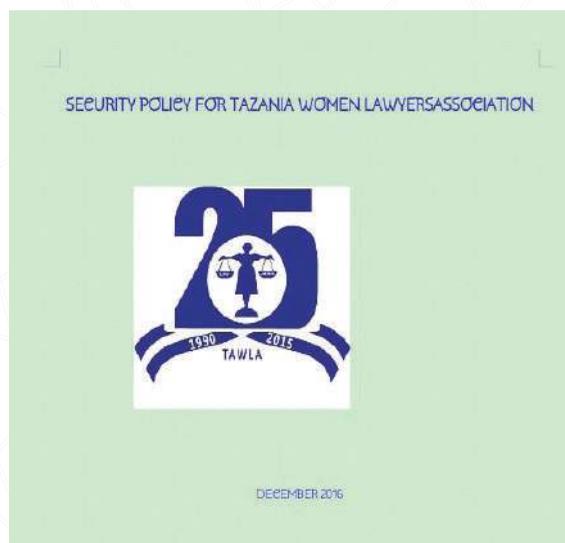
A security policy is a document description of organizational mandate in relation to security doubts, HRDNGOs security and protection management as well as the organization working environment. The security policy needs to clearly state on individual, organization and inter-organization security of its HRDNGO. The most advantage an organization has by having security policy is to reduce risks which are likely to face HRDs and also guide in security informed decision making during the security incidences. Security plan observe reduction of threat, vulnerability and increase the protection capacity of HRDs<sup>53</sup>.

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

53 [http://protectioninternational.org/wp-content/uploads/2012/04/1-7\\_Manual\\_English\\_3rdEd.pdf](http://protectioninternational.org/wp-content/uploads/2012/04/1-7_Manual_English_3rdEd.pdf)

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

Despite the THRDC successes in sensitizing security aspect to HRDNGOs, little results have been observed whereby in 2014 the only organizations, which managed to establish security policies, were WLAC, TGNP and ENVIROCARE. As of year 2016, the THRDC coordinator assisted the Tanzania Women Lawyers Association (TAWLA) to draft and establish the organization’s security policy. THRDC advises and encourages HRDNGOs to formulate their own security management policies and plans to ensure that they stay safe in pursuit of defence activities.



### **Picture 9: Cover Page of the TAWLA Security Policy**

Cover page of the draft TAWLA’s Security Policy

### **4.4 Awareness and Compliance of Staff Security**

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

HRDNGOs tend to ignore the security principles like insuring the visitors’ register books are detailed filled by whoever visiting the office. They also tend to ignore reporting of any suspicious action to the security organs, the office management as well as security crew. They also tend to ignore carrying out a security office needs assessment from time to time. With security tools, HRDNGOs have incorporated security strategies in their pursuit towards defence activities plans.

### **4.5 Security Management Training**

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

As for the year 2016, More than 300 HRDs and journalists benefited from the physical, digital security trainings organized by THRDC. This number marks the increase of about 70 HRDs trained HRDs compared to 2015 whereby only 230 HRDs attended security management trainings throughout the year. Participants acquired knowledge which is vital for their work as defenders.

**Picture 10: Security Management and Risk Assessment Training**



**HRDs following attentively some of the Coalition’s security management trainings.**

For the year 2016, the Coalition implemented thematic security management and risk assessment trainings. To start with, the coalition trained HRDs working in extractive industry and pastoralist’s rights defenders respectively. The need to conduct thematic trainings especially of the two thematic groups came after having realized that Human rights defenders in the field are at a great risk and are highly threatened because they work and report on issues that might negatively affect the interests of the government and big investors.

## Picture 11: Security Management and Risk Assessment Training



*The Group photo of Participants of security management and risk assessment training for pastoralist rights defenders*

### 4.6 Follow up on the effectiveness of Security Management Trainings

Monitoring the effectiveness of security and risk assessment trainings, in 2016 the coalition conducted follow-up sessions to trained HRDs. To start with, the Coalition conducted the follow up session to the Security Management training and effectiveness of journalists security jackets offered to Zanzibar Journalists during the 2015 electoral cycle.

## Picture 12: Security Management and Risk Assessment Training



Participants listening to important instructions from THRDCs Capacity building officer Mr. Deogratias Bwire during the session.

During the follow-up session, journalists were able to give out their testimonials based on the General Election 2015 security incidents. Participants acknowledge the trainings offered by the Coalition and testified that they were able to avoid security incidents due to the training they received.

The training was so relevant to our actual work as journalists and hence gave us the ability to analyze our working environment and protecting ourselves during the entire election period.<sup>54</sup>

**Picture 13: Security Management and Risk Assessment Training**



*THRDC Information Officer, Mr.Hussein Melele documenting the journalist testimonies during the follow-up session*

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

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

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54 Mwinyimvua Abdi from Zanzibar Press Club. Please click this link to see the video testimonials <https://www.youtube.com/watch?v=ZfSaaVY-UAg&feature=youtu.be>

## CHAPTER FIVE

# THE CIVIL SOCIETY SPACE IN TANZANIA

### 5.0 Introduction

This chapter presents the situation of civil society space in Tanzania for the year 2016. It addresses the space of the CSOs based on the various indicators. Civil society refers to groups or community groups with collective actions and shared interests of purposes. Civil Societies are sometimes referred as civil sector distinct from the state, and private sector. Civil society commonly embraces a diversity of spaces, actors, and institutional forms, varying their degree of formality, autonomy and power.

Civil societies often differ depending on their roles. These include; Political roles, Democratic roles, Economic and developmental roles, Educational and informational roles, Socio-cultural roles, Sports and recreational roles, Service Delivery, Professional regulation and Member welfare. Those who are at risk most of the time are the ones dealing with advocacy, democracy, rights based, accountability and governance. The chapter will base on CSOs working in this most risk.

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

*"In an age where community involvement and partnerships with civil society are increasingly being recognized as indispensable, there is clearly a growing potential for cooperative development and renewal worldwide"-Kofi Anan*

The number of CSOs continues to increase, with about 1,000 new CSOs registered annually under various laws. Many different authorities register CSOs, including the Directorate of NGOs of the Ministry of Community Development, Gender and Children, which registers NGOs; the Ministry of Home Affairs, which registers societies; the Registration Insolvency and Trusteeship Agency (RITA), which registers trusts; and the Ministry of State President's Office, Constitution and Good Governance (Zanzibar) which registers NGOs in Zanzibar. According to data from these authorities, the number of registered CSOs was 19,489 in 2013 but as of today the number of CSOs is approaching 30,000. The number of active CSOs, however, is estimated to be smaller. (The 2013 CSO Sustainability Index for Sub-Saharan Africa)<sup>55</sup>

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

The key features of Civil Sector include separation from the state and the market; formed by people who have common needs, interests and values like tolerance, inclusion, cooperation and equality; and development through a fundamentally endogenous and autonomous process which cannot easily be controlled from the outside.<sup>56</sup>

## 5.1 Historical background of CSOs in Tanzania

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

Traditional societies in the form of burial groups, conflict management groups, and traditional cultural groups have existed from the pre-colonial era throughout colonial period. They were highly discouraged and declared illegal by colonialists as they were considered uncivilized. Professional, religious groups and cooperative movements flourished especially during the colonial era and some stronger movements mainly the Tanganyika African National Union (TANU) led to the Tanganyika Independence in 1961.<sup>57</sup>

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

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

Finally, the fourth phase is associated with the era of political pluralism, beginning in the early 1990s to the present. It is a phase that opened political space in the context of introducing multi-party politics and other forms of political pluralism. As a result of this opening, many locally initiated lobby organizations emerged and, in many ways, could be said to have given confidence to civic-led contestations and struggles for more democratic movements.<sup>58</sup>

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

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

58 Ibid

## 5.2 Legal framework and Constraints for CSOs

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

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

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

The Act further guarantees that, the Certificate of Compliance shall be issued upon satisfaction by the NGO, be it local or International, of the terms and conditions for registration under the NGOs Act. The Certificate thereof issued shall have a similar effect as a certificate of registration. The requirement compliance has been used by the government as a shield to give threats to CSOs which do not comply with the requirement. Government is now exploring loopholes available under the law to de-register CSOs. More than 110 NGOs were de-registered in March 2016 allegedly for not complying with the law.

## 5.3 The Space of Civil Society

Civil society space is a space where civil society actors occupy within the society; the environment and framework in which they operate; and the relationships among civil society actors, the state, private sector and the general public.<sup>59</sup>

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.<sup>60</sup>

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

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

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

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

## **5.2.1 Indicators of the Space of Civil Society**

In measuring the space of Civil Societies various indicators are used to see whether the space is improving or shrinking. 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).

## **5.2.2 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 and EU, AU have taken a number of efforts to protect and expand the Space of CSOs. There are a lot of international and regional instruments and initiatives for creation and protection of 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.

## **5.2.3 The Space of Civil Society Organization at National Level**

At national level, the space of civil societies is limited. The government is ought to involve CSOs in decision-making and give them space to complement its responsibilities. However, this is different in Tanzania as our government views the work of CSOs as a threat to government's initiatives. CSOs in Tanzania play an essential role in people's day to day lives. They are service delivery organizations, as well as advocates for people's rights and needs. CSOs represent citizens and give them a stronger voice. They are not only watchdog organizations, but equal partners in policy-making and shaking. Strong partnerships between political decision-makers and CSOs, transparent and accountable democratic political parties together with active political oppositions, manifest what pluralistic democratic societies are about: the fight for arguments and political solutions to pertinent challenges to the society.

A critical look at how the CSOs are operating in Tanzania reveals that, the enabling environment for civil society is rapidly changing. The general trend is that government is attempting to crack down on civil society organizations and creating environments that are not conducive to their work. There are variations between one regime and another, but successive governments in our country have always tried to exert pressure against CSOs.

Political leaders in some of these regimes have gone on record as arguing that civil society interferes with the functioning of government. It is these organizations which we can call, “change-seeking CSOs,” that are the most affected, because they highlight human rights violations, corruption, and other aspects of the societies (such as irregularities in elections) that many would prefer not to expose. For example, independent civil society organisations are being openly shunned and placed under scrutiny by government officials. Civil society members are increasingly being accused of being agents of the political opposition or foreign powers (as puppets of donors and special interests). These brandings and scrutiny have to a greater extent led to failure and/or delays in the execution of CSO’s activities.

### **5.3 Measuring the Space of Civil Societies in Tanzania**

The space of CSOs is affected by both internal and external factors. The internal factors involve CSOs themselves not having cooperation with others, poor management, poor and/or lack of sustainability strategies to mention but a few. External factors are those beyond the control of the CSOs. These factors have to a greater extent led to the shrinking of civil society space. The main perpetrator of these factors at all levels is said to be the state.

#### **5.3.1 Old and Emerging Laws**

The shrinking of the Civil Society Space in Tanzania has in recent years been crackdown by among other things, the enactment of laws which limit and sometimes restricts the enjoyment of the rights of Civil Society Organizations as well as individuals. However, Tanzania has had draconian laws since time immemorial. These draconian laws which had and still are having negative impacts on the work of CSOs includes, the Newspaper Act (Act No. 3/1976),( this is repealed) National Security Act etc. Of recent, many other draconian laws have been enacted and these include the Cyber Crimes Act (Act No. 14/2015), The Statistics Act, 2015 The Media Service Act,2016, Access to Information Act, 2016 to mention but a few.

The Cyber Crimes Act contains so many questionable restrictions, which have raised concerns over their likely impact on limiting the CSOs space and interfering with freedoms of expression and independence of media. The Statistics Act, 2015 has also received critics from stakeholders that it represents a measure intending to close down democratic space in Tanzania. It goes against freedom of the media and contradicts the government’s stated commitment to open government. The Media Service Act requires journalists to be licensed or accredited; it establishes statutory Media Services Council to replace the self-regulatory body, currently the Media Council of Tanzania; it introduces severe sanctions for a number of media-specific offences and allowing for the banning of newspapers. In effect, it is intended to restrict both the space of civil societies as well as individual’s access to information.

### **5.3.2 The Relationship between Civil Societies and the State**

Governments are only credible partners as long as they represent their countries' interests. Restricting the space of CSOs, including freedom of speech, assembly, and association, and thus eliminating the voices of people, brings into question the legitimacy of a government and should lead to a diplomatic consequence. Under Open Government Partnership, states are required to ensure transparency, accountability, and cooperation. Involvement of CSOs in issues of government interests is very limited and sometimes restricted.

State-civil society relations constitute an important component of its operations. The relations range from registration procedures to working environment. In Tanzania, CSOs have been degraded and labeled as opposition parties or simply existing to serve donors' interests.

In 2016 THRDC coordinated various CSOs in UPR process whereby several thematic areas were discussed and recommended for implementation by the government. In this process THRDC needed a lot of support from Government Ministry, Department and Agencies, Commission for Human Rights and Good Governance (CHRAGG) to participate in a CSO strategy workshop in June 2016 in Dar es Salaam but some were reluctant in giving cooperation. They viewed the work of CSOs in the process as interfering with their work, which is totally not correct. CSOs supplements what the government ought to have done.

The attitude by the government to perceive CSOs work in a negative way does not only discourage the work of CSOs but also creates doubts as to whether the government is really committed to implementing the accepted UPR recommendations. Government should always be there to support and pioneer the work of CSOs because they contribute a lot to what in one way or another government fails/neglect to do for the betterment of its citizens. Creating fear by threats, intimidations, arbitrary arrest, and malicious prosecution of CSOs/individuals working for the community is nothing but the sign of sidelining CSOs by the government that does not care about the role of CSOs.

State cooperation and support, reveals that the general relationship in Tanzania is occasional and isolated in incidents where the government and CSOs have worked together and cooperated. Civil societies have been regularly invited by the government to participate in policy dialogues, including the National Strategy for Growth and Reduction of Poverty, decentralization and local government reforms, privatizations, constitutional and legal reform processes.

In 2016, limited space for civil society engagement with government existed. This can be exemplified by limited consultations made to CSOs by the government while preparing its Universal Periodic Review Report (UPR), process of enacting laws such as the Media Services Act, 2016, The Access to Information Act as well as policies and other decision making processes that have direct impacts to the society. The failure of government to consult CSOs in the above mentioned processes have led into enactment of bad laws which have, and are still shrinking the space of CSOs.

## Picture 14: UPR Meeting with CSOs



Participants from various CSOs listening to one of the presenters during the 2<sup>nd</sup> UPR Cycle Recommendations

### 5.3.3 Funding CSOs

Much as CSOs have a great role of making sure that they secure resources for implementation of their activities, it is also the primary role to making sure that it sets funds enough for implementing activities which touches the life of its citizens. Services such as education, health, water and sanitation, access to justice, safe and clean environment are a primary responsibility of the government.

In 2016, the government tabled to the parliament a Legal Aid Bill which is expected to regulate legal aid provision in Tanzania. While we give credit to the government for coming up with such a law, we are at the same time concerned about the funding of the legal aid activities which most of them are done by CSO (LAPs). Legal Aid Providers mainly depends on donor funding to be able to carry out their activities. In other countries like South Africa, Malawi where Legal Aid Acts are prevalence, they have special funds for helping in the implementation of legal aid provision to the poor and needy unlike in Tanzania where this obligation seems to be left out to Legal Aid Providers who are mainly CSOs.

The government has not showed any support of funding to CSOs in implementation of various activities. CSOs normally depend on donor funding to carry out their activities. This situation shows how the cooperation of the government and CSOs in all spheres including funding is a problem.

### **5.3.4 Human rights violations, threats, deregistration, banning CSOs**

Threats and intimidation to de-register CSOs in Tanzania is still a problem. The government has continued to give threats to CSOs for what it is alleged to be going contrary to the laws (compliance) and public morals. In 2016, THRDC protection desk recorded various incidences of CSOs being subjected to intimidation, frivolous cases and arbitrary arrest of CSO leaders by the government. THRDC documentation indicates that Human Rights NGOs /CSOs have never been free from tough administrative measures that affect their freedom of operation. It has been noted that some of the local and central government officials use their administrative powers to infringe the rights of CSOs.

Since June 2016, CHESA reported to have witnessed a growing clampdown on groups and individuals working with Key Populations, including increased restrictions on civil society working with key populations, a worrying ban on the distribution of lubricants and hateful, homophobic rhetoric from government officials. CHESA has been receiving several threats from the government owing to the kind of human rights activities they are doing.

On July 19, 2016, Tanzania's Ministry of Health announced prohibition on the distribution of lubricant and called for all lubricants to be collected and burned. Tanzania's health minister ordered organizations to remove lubricants from their projects, and threatened those who keep lubricants with de-registration. The government is currently arranging with international partners to send lubricants to countries where they are permitted.

In October 2016, Tanzania turned its anti-homosexual fury in a new direction - targeting HIV/AIDS programs that have helped to overcome a disease that once ravaged the region. The minister of health announced that Tanzania would ban HIV/AIDS outreach projects aimed at key population, pending a review. That forced the closure, at least temporarily, of U.S.-funded programs that provide testing, condoms, and medical care to key population<sup>61</sup>.

In August 2016, the Ministry for Constitution and Legal Affairs ordered registering authorities such as RITA, BRELA and Ministry of Home Affairs (MoHA) to see to it that all organizations are compliance with the law and other laid down procedures. It is in this process whereby the Minister for Constitution and Legal Affairs threatened to ban some of the CSOs on the pretext that they do not comply with the laid down procedures.

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<sup>61</sup> <http://www.chicagotribune.com/news/nationworld/ct-tanzania-crackdown-on-gays-20161123-story.html>

**Picture 15** Minister for Constitutional and Legal Affairs, Dr. Harrison Mwakymbe addressing journalists



*Minister of Constitutional and Legal Affairs, Dr. Harrison Mwakymbe addressing journalists while giving instructions and threats to de-register CSOs which do not comply with the law*

Branding of CSOs by government officials is yet another challenge which shrink the space of CSOs. For a long time and repeatedly, various leaders of the government have been quoted as dubbing CSOs bad names. Government leaders views CSOs as source of conflicts rather than solutions to conflicts, puppets of donors and oppositions rather than partners in development.

For instance, Minister for Tourism and Natural Resources, Prof. Jumanne Maghembe was quoted to have said “many of the disputes that occur in Loliondo are instigated by NGOs working in the area”



**Picture 16:** Minister for Tourism and Natural Resources, Prof. Jumanne Maghembe addressing Journalists

*Minister of Tourism and Natural Resources addressing journalists while condemning CSOs for allegedly perpetrating disputes in Loliondo.*

### **5.3.5 Women Rights and Discriminations Issues**

Resolution No 336 of the African Charter on Human and Peoples Rights calls upon the members states to ensure that efforts designed to prevent and address violations and discrimination against women human rights defenders are developed and monitored in consultation with human rights defenders and other relevant stakeholders. The resolution also requires state parties to disseminate and implement the recommendations of the Commission's Report on the Situation of Women Human Rights Defenders in Africa, in consultation with relevant stakeholders, and in particular women human rights defenders.

The situation in Tanzania is however different. We have witnessed several incidences of women human rights defenders such as Maanda of NGONET being subjected to arbitrary arrest and malicious prosecutions. This situation makes it impossible for human rights defenders like this to continue with their human rights work. The government has not showed cooperation and strategies of implementing the commission's recommendations and where these strategies are in place, they are not adequately implemented. Discrimination based on gender and status has been continuing in the year 2016. There are still laws, which spearhead discrimination issues. The list of laws and the proposal for amendment is found in the last page of this report.

From the above indicators it is evident that the space of civil society in Tanzania is shrinking and therefore, measures needs to be taken to improve the shrinking space.

## **5.4 Improving Civil Society Space in Tanzania**

To improve the space of Civil Society Organizations, internal and external challenges need to be addressed;

### **5.4.1 Addressing external challenges;**

- i. Increase more engagement with public sector.
- ii. Fight for law reforms.
- iii. Utilize more available opportunity for policy influence and international advocacy.
- iv. Use available Regional and International protection mechanism for Civil Society Space

### **5.7.2 Addressing internal challenges**

- i. Build strong and well coordinated CSOs networks and coalitions on issues of public interest
- ii. Improve internal CSOs management and leadership
- iii. Improve CSOs capacity and competence to engage on various issues
- iv. Improve CSOs capacity to influence policy and international advocacy
- v. Create good alliance with the public

## CHAPTER SIX

# GENERAL CONCLUSION AND RECOMMENDATIONS

### 6.0 Conclusion

The 2016 Tanzania Human rights defenders situation report indicates that HRDs in the country still operate under hostile environment, politically, legally and financially. The report indicates that HRDs are continuously harassed, attacked, and at times incriminated just because of their work as human rights defenders. It further shows a drastic shrinking space for civil society operations in the country. This is not in favour of the principles of human rights and the Declaration for Human Rights Defenders of 1998. The Coalition through this report comes with way forward and recommendations for different stakeholders purposely the government to improve the situation and security of human rights defenders as outlined below:

### 6.1 Way Forward

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

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

### 6.2 Recommendations

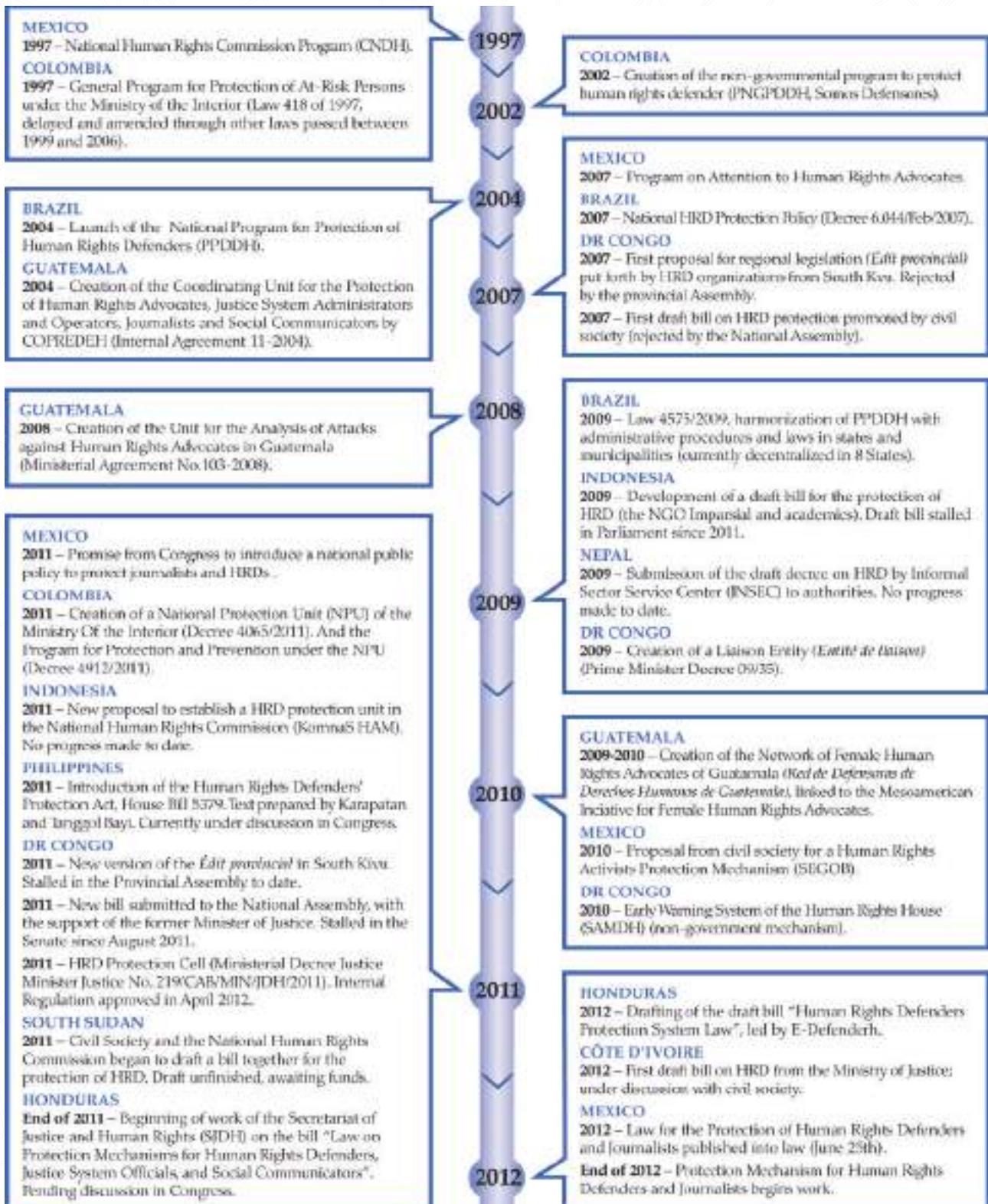
The following are the recommendations, which are proposed to human rights defenders, the government, and other stakeholders to take keen consideration on promoting favorable working environment for HRDs in the country.

- HRDs need to work sincerely and morally so as to avoid unethical conducts since both state and non-state actors target them.

- The government should be more transparent in its operations because it has always been a source of fuss between CSOs whenever there are discovery of leakage of “secrets” which to a great extent are of public interest.
- Good professional and financial status is vital for the safety and security of journalists. Journalists who work professionally and are financially well facilitated face less risk than those who operate unprofessionally and without sufficient resources. We therefore, advice media owners to consider this reality and act accordingly.
- The government should ensure that the police force observes, respect and protects the rights of journalists when undertaking their daily duties in the country.
- The police force should create a criminal system that provides an independent investigation to investigate all cases involving journalists who were killed or assaulted while on duty.
- The government should create a civic space and conducive environment for civil society and human rights defenders to work freely.
- The government should develop a national policy and law that recognizes and protects human rights NGOs and human rights defenders in Tanzania.
- The government should amend all draconian laws such as the Newspaper Act, 1976 and the recently passed media related laws (Cybercrimes Act, Media Services Act, 2016).
- The government should amend the NGO Act 2002 especially all the repressive provisions such as sections 18, 35 and 36.
- An inclusive environment to the public and other key stakeholders when developing laws regarding media services, access to information and freedom of expression should be provided
- The government should amend all laws that restrict and affect the work of CSOs and human rights defenders in Tanzania.
- Authorities should fully investigate all cases of intimidation and attacks against civil society activists and human rights defenders to bring perpetrators to justice and deter similar acts.
- A legal framework that does not contradict the existing legal framework that governs CSOs’ operations in Tanzania ought to be created particularly enacting one law which governs the establishment and operations of CSOs. CSOs should be involved in each stage of discussions and reforms.
- The government should create an environment for civil society and the media to operate in accordance with the rights enshrined in the Constitution of United Republic of Tanzania, International Covenant on Civil and Political Rights (ICCPR) and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be ensured: freedom of association; freedom of expression; the right to operate free from unwarranted state interference; the right to seek and secure funding; and the State’s duty to protect.

- The government and international development partners should support the implementation of the National Human Rights Action Plan by allocating sufficient resources to CHRAGG through an independent funding mechanism directly from the Treasury and not through the Ministry.
- The government should end the culture of impunity for violations against innocent people, journalists, and human rights defenders by ensuring that investigations are promptly and impartially conducted, perpetrators are held accountable, and victims obtain appropriate remedies.
- The Registrar of NGOs in collaboration with other registrars as well as representatives / networks of NGOs registered under other laws should convene a meeting to discuss and find a solution to the controversial legal issue much related to the certificate of compliance.
- Government leaders should take CSOs sector as a vital link to the community development especially in terms of job creation, economy, welfare and social services, development, human rights and welfare of the Democratic country. The NGOs sector should be given respect, protection, recognition and cooperation rather than scorn and isolation even in matters relating to coordination with their registration.

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



## Annex Two: The List of Oppressive Laws & Proposed Bills

No	Thematic Areas Affected	Laws	How
1.	Women HRDs	<p>1. Marriage Act of 1971</p> <p>2. Inheritance Laws such as the Probate and Administration of Estates Act, Cap 445 [R.E 2002]</p> <p>3. Religious laws</p> <p>4. Customary laws including inheritance laws</p>	<p>These laws and policies have gaps with its provision contributing to the persistence of gender inequality, discrimination and gender based violence. The conclusion can therefore be derived that the work of WHRDs is not fully supported by these laws but rather the said legislations create hardship and risky environment for their work. For instance, customary laws treat them as minors who have to depend on others to inherit, instead of recognizing widows' right to inherit matrimonial property. With this kind of legal framework; it was observed that WHRDs conducted their activities in a very challenging environment which seems to be supported by the existing laws.</p>
2.	Journalists	<p>5. The Newspaper Act of 1976 Cap. 229, R.E. 2002</p> <p>Section 25.-(1) of the Newspaper Act of 1976 Cap. 229, R.E. 2002: "Where the Minister is of the opinion that it is in the public interest or in the interest of peace and good order so to do, he may, by order in the Gazette, direct that the newspaper named in the order shall cease publication as from the date (hereinafter referred to as "the effective date") specified in the order.</p>	<p>The law allows the minister to ban a newspaper at his/own discretion. This law violates the rule of natural justice such as the right to be heard and the right to appeal. For instance, a ban on Mwanahalisi was disclosed to Saed Kubenea the managing editor of Mwanahalisi without even giving him the right to defend himself. The indefinite ban of Mwananchi and Mtanzania is vivid evidence that the press freedom in Tanzania can be violated at any given time, when few individuals at the government feel displeased by some released information. Press terror is possible because the law permits the Minister responsible for information to act as an 'Editor in Chief' and at the same time act as a complainant, prosecutor and judge.</p> <p>Section 22 of this law also permits any police officer "to seize any newspaper, wherever found, which has been printed or published, or which he reasonably suspects to have been printed or published" in violation of the Law</p>

	6. Prison Act, 1967, Cap 58 [R.E 2002]	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.
	7. National Security Act of 1970, Cap. 47 [R.E 2002]	<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.<sup>9</sup></p>
	8. The Public Leaders Code of Ethics Cap 398 [R.E 2002]	Restricts the investigative role of media and does not allow it to investigate and report on the property holdings of public leaders
	9. The National Defense Act, Cap 192 [R.E 2002]	<p>This law prohibits journalists or any HRDs to publish any information relating to the National Defense Force. Sometimes members of this force commit offences like other citizens in public places but when journalists report the incident, soldiers follow them and start all sorts of harassments.</p> <p>This law played a role in Mtwara during the gas saga where the public turned against members of the press and attacked them on account that they had failed to report on their grievances little did they know that there was no way they could report any misconduct by defense forces without higher authorities.</p>

		10. 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.
		11. 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
		12. 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.
		13. 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. <sup>10</sup>
		14. Registration of News Agents, 15. 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.
		16. Broadcasting Services 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.

	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.
	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)
	Media Services Act, 2016	Various provisions of the Media Service 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.

### (Footnotes)

- 1 <http://www.oas.org/juridico/english/ga-res99/eres1671.htm>
- 2 Grand Bay Declaration and Plan of Action of 16 April 1999 , paragraph 19 <http://www.achpr.org/instruments/grandbay/>
- 3 Kigali Declaration of 8 May 2003, paragraph 28 <http://www.achpr.org/instruments/kigali/visited> feb 2014.
- 4 *ibid*
- 5 Focus -2014 at pg 7
- 6 <http://www.achpr.org/sessions/19th-eo/resolutions/336/>
- 7 The European Union (EU) Guidelines on Human Rights Defenders (2004)
- 8 [http://europa.eu/legislation\\_summaries/human\\_rights/human\\_rights\\_in\\_third\\_countries/l33601\\_en.htm](http://europa.eu/legislation_summaries/human_rights/human_rights_in_third_countries/l33601_en.htm)
- 9 <http://www.article19.org/data/files/pdfs/publications/tanzania-media-law-and-practice-in-southern-africa.pdf>. Visited on 8/8/2013.
- 10 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.



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