

# Report on the Situation of Human Rights Defenders and Civic Space in Tanzania



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THE 2018 REPORT ON THE SITUATION OF HUMAN RIGHTS  
DEFENDERS AND CIVIC SPACE IN TANZANIA

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## Abbreviations

|                    |   |
|--------------------|---|
| <b>AU</b>          | African Union   |
| <b>BRELA</b>       | Business Registration Licensing Agency                            |
| <b>Cap</b>         | Chapter   |
| <b>CCM</b>         | Chama Cha Mapinduzi   |
| <b>CHADEMA</b>     | Chama Cha Demokrasia na Maendeleo                                 |
| <b>CIVICUS</b>     | World Alliance for Citizen Participation                          |
| <b>CPJ</b>         | Committee for Protection of Journalists                           |
| <b>CSOs</b>        | Civil Society Organizations                                       |
| <b>CUF</b>         | Civic United Front  |
| <b>CoRI</b>        | Coalition of the Right to Information                             |
| <b>DIT</b>         | Dar es Salaam Institute of Technology                             |
| <b>EHARDP</b>      | Eastern and Horn of Africa Human Rights Defenders                 |
| <b>EU</b>          | European Union  |
| <b>Etc</b>         | Et cetera   |
| <b>HIV/AIDS</b>    | Human Immuno-deficiency Virus/Acquired Immune Deficiency Syndrome |
| <b>HRDs</b>        | Human Rights Defenders  |
| <b>HRNGOs</b>      | Human Rights Non-Government Organizations                         |
| <b>IACHR-Inter</b> | Inter- American Commission on Human Rights                        |
| <b>ICCPR</b>       | International Covenant on Civil and Political Rights              |
| <b>ITV</b>         | Independent Television  |
| <b>KRAs</b>        | Key Result Areas  |
| <b>LHRC</b>        | Legal and Human Rights Centre                                     |
| <b>NGOs</b>        | Non-Government Organizations                                      |
| <b>NEC</b>         | National Electoral Commission                                     |
| <b>MSA</b>         | Media Services Act  |
| <b>OSIEA</b>       | Open Society Initiates for East Africa                            |
| <b>Pg</b>          | Page  |
| <b>RBA</b>         | Rights Based Approach   |
| <b>TACAIDS</b>     | Tanzania Commission for Acquired Immune Deficiency Syndrome       |
| <b>TAWLA</b>       | Tanzania Women Lawyers Association                                |
| <b>TCRA</b>        | Tanzania Communication Regulatory Authority                       |
| <b>TGNP</b>        | Tanzania Gender Networking Programme                              |
| <b>THRDC</b>       | Tanzania Human Rights Defenders Coalition                         |
| <b>UPR</b>         | Universal Periodic Review   |
| <b>UN</b>          | 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 2014*  
*The Penal Code [Cap 16 R.E.2002]*  
*The Law of Marriage Act of 1971 Cap 29 [RE; 2002]*  
*Probate and Administration of Estates Act, [Cap 445 [R.E 2002]*  
*The Newspaper Act of 1976 [Cap. 229, R.E. 2002]*  
*The Media Services Act, 2016*  
*The Cyber Crimes Act, 2015*  
*The Statistics Act, 2015 and its 2018 Amendments*  
*The Prison Act, 1967, Cap 58 [R.E 2002]*  
*The National Security Act of 1970, [Cap. 47 [R.E 2002]*  
*The National Defence Act, Cap 192 [R.E 2002]*  
*The Prevention and Combating of Corruption, Act No. 11 of 2007*  
*The Area Commissioner Act 1962 & Regions and Regional Commissioners Act 1962*  
*The Civil Service Act 1989*  
*The Film and Stage Act No 4 of 1976*  
*The Newspapers and Books Act (1988)*  
*The Broadcasting Services Cap. 306 of the R. E 2002*  
*The Land Act, 1999 (Act No.4 of 1999)*  
*The Wildlife Conservation Act of 2009 (Cap 5 of 2009)*  
*The Investment Act, 1997 (Act No. 26 of 1997)*  
*The Forest Act, 2002 (Act No. 14 of 2002)*

*The Political Parties Amendment Act, 2018*  
*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,*  
*The Non-Governmental Organizations Act (Amendment)*  
*Regulations, 2018*  
*The Online Content Regulations, 2018*  
*The Regional Administration Act, 1997*  
*Political Parties Act, (Amendment) 2018*  
*The Police Force and Auxiliary Services Act, 1969*

## **(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 Convention on the Rights of Child, 1989*  
*The American Convention on Human Rights 1969*



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We note with admiration the vital role of the THRDC members, lawyers, journalists, for the cooperation accorded to us during our visits. Furthermore, we appreciate the strengthened working relationship between THRDC with some government institutions such as Commission for Human Rights and Good Governance, Police and others for their generous contribution in accomplishing this report.

# 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. 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.

# Vision, Mission, Values

## 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 overall goal of the THRDC

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

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

- I Members and the General Public are Mobilized and Effectively Addressing Human Rights Protection Issues- MEMBERSHIP AFFAIRS
- 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 The legal and policy frameworks (and practice) addressing the Human Rights Defenders' issues and CSOs networking improved-ADVOCACY
- IV Protection mechanisms established and accessed by HRDs at risk- PROTECTION
- V An improved performance and sustainability of the Tanzania Human Rights Defenders' Coalition-INSTITUTIONAL BUILDING

# Executive Summary

This report on the situation of human rights defenders and Civic Space in Tanzania is the sixth by the THRDC after the 2013, 2014, 2015, 2016 and the 2017 reports. The report is intending to assess the situation of Human Rights Defenders and the Civic Space in the country for the year 2018. According to the data collected, HRDs and CSOs in the country have continued to work in a very difficult environment mainly due to the country's legal framework being hostile towards protection of HRDs, state impunity as well as the political and the current regime. Further, the report indicates that human rights defenders have continued to be the target of different harassment such as attacks, arrests, killings, abduction and malicious prosecutions.

In this Report, **Chapter one** introduces the meaning and importance of human rights defenders and the legal protection available at 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 of 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 the 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** explores human rights violations committed against HRDs in 2018 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 two details further on HRDs in Tanzania work in a highly difficult and risky environment as they are being harassed, tortured, criminalized, and arbitrary arrested, attacked, killed, abducted and maliciously prosecuted. 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** explores the Freedom of expression, access to information and the situation of journalists. Other issues highlighted include the risk that journalists face in the line of their duties as well as the legal setbacks which breach freedom of expression and access to information. Draconian media pieces which break Article 19 of the Universal Declaration of Human Rights such as Media Services Act, 2016, Access to Information Act, 2016, The Cyber Crimes Act of 2015, The Statistics Act, 2015, Online Content Regulations, 2018 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 planning for the security through security plans and policies.

**Chapter five** presents the situation of civil society space in Tanzania for the year 2017. 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.

The chapter also explains the relationship between CSOs and the state where by CSOs in Tanzania have been regarded as the opposition and experience censorship from the government and at times threatened and suppressed.

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



# Chapter 01

# General Introduction

## 1.0 Introduction

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

### (i) ‘Human Rights Defender’ Defined

There is no a universally accepted definition of the phrase “Human Rights Defender”. According to the Office of the High Commission for Human Rights (OHCHR), HRD is a term used to describe people who, individually or with others, act to promote or protect 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

<sup>1</sup> <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>

<sup>2</sup> Protection International (2011) Legislators and Human Rights defenders at pg 2.

<sup>3</sup> 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)

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 movement circulation and non-discrimination.

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

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. Needleless to say, during the execution of their duties, they have found themselves turning into victims of murder, imprisonment, torture, side-lining, and expulsion from their communities.

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<sup>4</sup> Irish –HRDs Guidelines 2010

<sup>5</sup> *Ibid.*

## **(ii) The role 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.

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<sup>6</sup> European Union Guidelines on Human Rights Defenders 2004

<sup>7</sup> Ibid.

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.

### 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

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

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

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 1.1.1 HRDs Rights Protected under the Declaration**

|   |  |
|---|--|
| 1. To conduct human rights work individually and in association with others;  | 2. To unhindered access to and communication with non-governmental and intergovernmental organizations ;   |
| 3. Formation of associations and non-governmental organizations ;   | 4. To benefit from an effective remedy;  |
| 5. To meet or assemble peacefully;  | the lawful exercise of the occupation or profession of human rights defender;  |
| 6. To seek, obtain, receive and hold information relating to human rights;  | 7. To effective protection under the national laws in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights; |
| 8. To develop and discuss new human rights ideas and principles and to advocate their acceptance;   | 9. To solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad);  |
| 10. To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals to improve their functioning and to draw attention to any aspect of their work that may impede the realization of human rights; | 11. To attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations;  |
| 12. To file complaints about official policies and conducts relating to human rights and to have such complaints reviewed;  | 13. Unhindered access to and communication with non-governmental and intergovernmental organizations ;   |

|   |  |
|---|--|
| 14. To offer and provide professionally legal assistance or advice and assistance in defense of human rights; | 15. To benefit from an effective remedy;   |
| 16. To the lawful exercise of the occupation or profession of human rights defender; and                      | 17. Effective protection under the law in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights. |

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

In 2015, Finland passed its 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;

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

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

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

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

On 29/11/2013, the UN adopted a landmark resolution on *Protection of Women Human Rights Defenders*<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.

<sup>13</sup> *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>

<sup>14</sup> *Ibid.*

**Table 1.1.2.1 Summary of Regional Mechanism**

| Continent | Legal Mechanism   | Brief Explanation   |
|-----------|---|---|
| AMERICA   | <i>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>15</sup></i>                               | In its 1998 annual report, the <b>Inter-American Commission on Human Rights (IACHR)</b> 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:<br>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. |
| AFRICA    | -The Grand Bay Declaration and Plan of Action of 16 April 1999 calls upon African Union Member States to take all appropriate measures to implement the United Nations Declaration on Human Rights Defenders. <sup>16</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.” <sup>17</sup>   |

<sup>15</sup> <http://www.oas.org/juridico/english/ga-res99/eres1671.htm>

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

<sup>17</sup> Kigali Declaration of 8 May 2003, paragraph 28 [http://www.achpr.org/instruments/kigali/visited\\_feb\\_2014](http://www.achpr.org/instruments/kigali/visited_feb_2014).



|  |  |   |
|--|--|---|
|  | <p>- Resolution 273 of the African Commission, which will surely be echoed at the United Nations level, is yet another useful instrument that will help secure a better working environment for HRDs.<sup>18</sup></p> | <p>In short, a system of promotion and protection of human rights does exist on a continental level in Africa. It has the potential to respond effectively to the obligation to protect all citizens and particularly HRDs. Coherent public policies for the protection of this target-group, however, remain lacking. It is imperative that States conform to article 2(2) of the UN Declaration on Human Rights Defenders: <i>"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"</i>. 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>19</sup></p>  |
|  | <p>2016 African Commission passed the following Resolution on Measures to Protect and Promote the Work of Women Human Rights Defenders<sup>20</sup></p>  | <p>Calls on State Parties to:</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> </ul> |

<sup>18</sup> *ibid*

<sup>19</sup> Focus -2014 at pg 7

<sup>20</sup> <http://www.achpr.org/sessions/19th-ee/resolutions/336/>

|        |   |   |
|--------|---|---|
|        |   | <ul style="list-style-type: none"> <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>   |
| EUROPE | EU Guidelines on Human Rights Defenders   | In Europe, the European Union established EU Guidelines on Human Rights Defenders as the best way to support the implementation of the Declaration on Human Rights Defenders in third countries. <sup>21</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 on-going EU efforts to protect the rights of HRDs. This may also provide for interventions by the EU on behalf of human rights defenders at risk, and suggest practical means to support and assist them.  |
|        | In 2010, the European Parliament adopted a Resolution on the EU policy in favour of Human Rights Defenders (2009/2199(INI). | It calls on the various EU institutions and its missions to reinforce their action for effective implementation of Guidelines, notably by ensuring regular contact with Human Rights Defenders prior to taking any action on their behalf and to provide them with feedback. These recommendations were reiterated with the adoption, on 16 December 2010. <sup>22</sup> 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. |

<sup>21</sup> *The European Union (EU) Guidelines on Human Rights Defenders (2004)*

<sup>22</sup> [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)

### 1.1.3 Legal Protection Mechanism at the National Level

The UN HRDs reports indicate that very few States have incorporated the UN 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>23</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>24</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>25</sup>

<sup>23</sup> <http://www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders#sthash.fcKqckKj.dpuf> visited on 23rd March 2018

<sup>24</sup> <http://www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders#sthash.fcKqckKj.dpuf> visited on 23rd March 2016

<sup>25</sup> <http://www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders#sthash.fcKqckKj.dpuf> visited on 23rd March 2016

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>26</sup>

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

The coalition's five years strategic plan focuses on Outcome One- Advocacy, among the outputs being to advocate for the availability of specific legal protection for HRDs in Tanzania and space of CSOs. Tanzania is yet to formulate a policy or draft a 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

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<sup>26</sup> Protection international Op. cit. at pg 9.

## 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 2018, the 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 does not have a 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 target of acts of repression perpetrated by States or by private or Para-State groups acting in complicity with States. In many countries, HRDs

are targets for attacks such as murders, kidnapping, arbitrary arrests, imprisonment, torture, improper treatment, retaliation against family or friends, death threats, defamation campaigns, adoption of restrictive legislation in terms of the freedom of association, expression and assembly. Thus the UN, International and Local NGOs were forced to chip and establish protection desks/unit to ensure HRDs mitigate these threats and in worst situation provide emergency 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>27</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 succeeds Ms. Margaret Sekaggya as Special Rapporteur on the situation of human rights defenders (2008-2014) and Ms. Hina Jilani as Special Representative of the Secretary General on the situation of human rights defenders (2000-2008).<sup>28</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.

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<sup>27</sup> <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx>

<sup>28</sup> *ibid*

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 emergency funds 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.

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

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

On 23rd April, 2009, Non-Governmental stakeholders in Africa adopted the Kampala Declaration on Human Rights Defenders, during a Conference on Human Rights Defenders at the Ugandan

capital.<sup>29</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.

On the 15th of November 2017, there was a change of the African Commission Rapporteur on Human Rights Defenders in Africa. Through resolution 381<sup>30</sup> the African Commission on Human and Peoples Rights (ACHPR), appointed Commissioner Prof. Remy Ngoy Lumbu as the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa for a period of two (2) years, with effect from 15 November 2017. The new Rapporteur has replaced Commissioner Reine Alapini Gansou.

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

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<sup>29</sup> <http://protectionline.org/2009/05/05/kampala-declaration-of-human-rights-defenders/>

<sup>30</sup> *Resolution on the Appointment of the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa - ACHPR/ Res.381(LXI) 2017*



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 national legislation. The Declaration requires States to adopt legislative, administrative and other steps to ensure that the rights and freedoms referred to are effectively guaranteed.

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

THRDC has 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 the 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 protection 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 counselling, emergency housing, emergency 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's comments.

# Violations Committed Against Human Rights Defenders

## 2.0 Overview of the Chapter

This Chapter explores various recorded incidents of violations committed against HRDs in the year 2018. During the reporting year, HRDs have continued to work in a hostile environment compared to previous years. According to the survey conducted by THRDC's Protection Desk in 2018, several incidents of human rights violations were documented which have increasingly hampered the working environment of HRDs in the country.

The situation is occasioned by the state of impunity, disrespect of the rule of law coupled with rampant undemocratic practices, strict enforcement of draconian laws such as the Media Services Act, 2016, the Statistics Act, 2015 and their amendments, Cyber Crimes Act, 2015, the Access to Information Act, 2016, Regional Administration Act, Police Force and Auxiliary Services Act, 1969, the Online Content Regulations, The NGOs Act (Amendment) Regulations, 2018 etc. For instance in the year 2018, THRDC documented at least 52 incidents of violations of HRDs rights which included arrests, malicious prosecutions, abduction, attacks, closing civic space for CSOs as well as criminalization of honest journalism practice, etc.

## 2.1 Violations Committed against Human Rights Defenders in 2018

This sub-chapter entails the cases that faced human rights defenders for the year 2018. It details both cases against HRDs and strategic litigation cases for the protection of human rights and rule of law in Tanzania. For the year 2018 at least 16 HRDs were arrested and maliciously prosecuted. Of those cases two were finalized with the accused persons found not guilty. The remaining cases are still pending in court and THRDC is providing full support of legal representation.

### 2.1.1 Arrests and Prosecution against HRDs in 2018

#### i. Abdul Nondo's Case

In March 2018, THRDC supported Abdul Mahmud Omari Nondo, a young human rights defender and student of the University of Dar es Salaam who disappeared from Dar es Salaam and was later on found in Mafinga-Iringa about (kilometres) away. Nondo reported to the police station about his abduction by unknown people who took him to the said place. He was however detained by police and later on transported to Dar es Salaam where he remained in custody for approximately 16 days before he was arraigned to court on 21st March 2018 and charged under section 16 of the Cyber Crimes Act, 2015 and section 122 of the Penal Cap 16. Both offences he was charged with relate to publishing

false information that he was kidnapped by the unknown people. Nondo appeared before the Iringa District Court several times with full representation of two advocates hired by THRDC. He won the case and was able to resume studies after the prosecution failed to prove the case beyond reasonable doubt.



*A team of advocates and other well-wishers who were present immediately after the judgment of the case of Republic vs Abdul Nondo (centre in white pants) who was set free after the prosecution side failed to prove their case beyond reasonable doubt.*

## **ii. Sophia Donald's Case**

May 2018, THRDC provided legal representation support to Sofia Donald who is a human rights defender based in Ukerewe-Mwanza. She is the Coordinator of Sauti ya Wanawake Ukerewe. She has been the voice of women HRDs in Ukerewe. She was arrested by police allegedly for conducting activities that were contrary to the statute establishing her organization (section 35 of the NGOs Act, 2002). She was fully represented by an advocate hired by THRDC and the case was withdrawn by the prosecution.

## **iii. Mbeki Mbeki and 1 Another Case;**

Mbeki Mbeki and Antidius Kalunde are journalist's human rights defenders who were sued for defaming one officer of TAKUKURU (PCCCB) namely; Hajinas Oneaphory. The two journalists were however in the course of implementing their duties as journalists and when inquired about corruption issues that were taking place in Bukoba. The information about corruption was published and thereupon, the two journalists were sued for defamation. THRDC provided legal representation support and their case will come for continuation with hearing in March 2019.

## **iv. Bob Chacha Wangwe's Case**

In May 2018, THRDC supported HRD Bob Chacha Wangwe, who was charged with section 16 of the Cyber Crimes Act, 2015 and was convicted to serve 3 years imprisonment or pay a fine of 5 million. THRDC supported the HRD by providing legal support and paid the imposed fine and the HRD was set free. THRDC lodged an application to high court to seek extension of time to file an appeal to the High Court of Tanzania. The appeal is pending in the High Court of Tanzania and THRDC ensured Bob is fully represented at the appeal stage as well.



*Advocate Jebra Kambole (left) with Bob Chacha Wangwe (right) immediate after court session*

## **v. Emmanuel Kibiki's Case**

In July 2018 THRDC provided legal support to journalist human rights defender Emmanuel Kibiki who was arrested and charged with publishing false information to a public servant contrary to s122 of the Penal Code. He was charged before the Njombe district court and is fully represented by an advocated hired by THRDC. His case is still pending in court.



*A photo of Emmanuel Kibiki, journalist from Iringa.*

## **vi. The Case of Clinton Kairungi and Ingrid De Draeve**

In September 2018, THRDC provided legal support to Ingrid De Draeve and Clinton Mshao who were arrested in Loliondo in September 2018. The two were arrested while the former was attending the marriage ceremony of Clinton Mshao. They were taken to Arusha Central Police for further investigation. Police mistakenly arrested Ingrid whom they mistook for a Swedish blogger, Suzan Nodrud who has written extensively on the issues facing the Maasai in the region. Later on when she was taken finger prints it was determined that she was not Suzan and then was released after staying in police custody for approximately 5 days. THRDC hired an advocate to represent the accused persons and they eventually were granted bail and set free.

## **vii. The Case of Mohab Fulwe and Friday Simbaya**

In September 2018, THRDC provided legal support to Friday Simbaya and Mohab Fulwe who were arrested in Iringa and Kahama respectively for running blogs without registration contrary to Online Content Regulations, 2018. The two were transported to Dar es Salaam where they stayed for 8 days before been taken back to where they were arrested and faced charges in court. Friday Simbaya was charged in Iringa while Mohab Fulwe was charged in Kahama. THRDC is representing Friday Simbaya in his case in Iringa. He is charged with running online TV without being registered contrary to regulation 14(1) and 18 of the Online Content Regulations, 2018.

## **viii. Sitta Tuma's Case**

In September 2018 THRDC provided legal representation support to journalist Sitta Tuma who was arrested and detained because of the allegations that he participated in an unlawful demonstration. He was arrested in Tarime along with MP Esther Matiko and other CHADEMA members. THRDC hired advocate Ernest Mhagama to help him process bail and hence he was released unconditionally.





*Journalist Sitta Tuma from Tarime-Mara region.*

## **ix. The Case of Patricia Erick**

In September 2018 THRDC in collaboration with TLS Moshi Chapter provided legal support to Advocate Patricia Eric who was arrested following the order of the district commissioner for Hai allegedly because of executing her legal work. THRDC in addition, issued a press statement which went viral and triggered the police to release advocate Patricia. Patricia was exercising her legal right to represent the interest of her client who was arrested allegedly because of tax evasion. She then wrote an appeal letter to the Regional Commissioner for Kilimanjaro asking her to take measures against the DC of Hai Lengai Ole Sabaya who was behind the orders of arrest. She was then arrested and stayed in Police custody for some-time before she was released on bail.



*Advocate Patricia Eric Ng'Mario*

## **x. Wilson Mafie's Case**

THRDC in collaboration with the Tanganyika Law Society provided legal support to Advocate Wilson Mafie in October 2018. Advocate Wilson Mafie who is based in Dar es Salaam was arrested and detained in Dar es Salaam Central Police for 8 days before he was released on bail without any further charges on his part. Wilson was arrested due to his legal work following a sale of car transaction he stood as an advocate been linked with theft.

## **xi. Nixon Tugara's Case**

In October 2018, THRDC in collaboration with TLS provided legal support Advocate Tugara who was arrested and detained in Musoma. Nixon Tugara is an advocate of the High Court of Tanzania based in Dar es Salaam. He was arrested when he travelled to Musoma to follow up on the bail of his clients. He was arrested and stayed in police custody for several days and without being told the offence he was arrested of. Advocate Tugara was given a letter by one of his clients to hand it over to PCCB-Mara region and immediately as he handed over the letter to PCCB he was asked to explain the whereabouts of the person who wrote the said letter and then PCCB officers ordered that he should be interrogated and detained in Musoma. He was released on bail and no case is pending in court against him.

## **xii. The Case of Christopher Gamaina and 2 others**

In November 2018, THRDC provided legal support to three journalists HRDs, Christopher Gamaina and two others who were arrested and charged with theft contrary to section c/s 269 of the Penal Code. In essence the three were arrested while searching for news after they received a tip from good Samaritans that there was a traditional herbalist in Magu who acts to be a professional doctor.



*Advocate Jones Sendodo (right) together with journalist, Christopher Gamaina.*

## **Strategic Litigation Cases**

For the past three years, we have witnessed a lot of draconian laws being enacted which to a greater extent have hampered civic space, human rights, democracy and rule of law. Stakeholders have used different ways including lobbying and advocacy but the same seem to prove futile. As such, THRDC thought it important to invest on strategic litigation cases. In 2018, THRDC conducted strategic litigation cases training to human rights lawyers in Tanzania and thereby created a pool of advocates who are willing to take up human rights cases in Tanzania. This pool of lawyers will help greatly in pushing for the amendment of draconian laws because at least now many cases are being flooded in courts of law. The following were the cases that THRDC took part in litigating;

**(i) The Registered Trustees of the Media Council of Tanzania (MCT), Legal and Human Rights Centre (LHRC) and Tanzania Human Rights Defenders Coalition (THRDC) Vs. The Attorney General of the United Republic of Tanzania.**

April 2018, THRDC collaborated with Media Council of Tanzania (MCT) and LHRC to file Reference before the East African Court of Justice in Arusha challenging the Media Services Act, 2016. Reference No. 2 before the East African Court of Justice is seeking to challenge several provisions of the Media Services Act, 2016. The applicants are suing the Attorney General of the United Republic of Tanzania. The case was heard on merit and the judgment date is scheduled to be delivered on 28th March 2019.



*Advocates and other partners getting out of the East African Court of Justice after the final submission of the case.*

**(ii) Registered Trustees of the Media Council of Tanzania (MCT), Legal and Human Rights Centre (LHRC) and Tanzania Human Rights Defenders Coalition (THRDC) vs the Ministry of Information, Youth, Culture, Arts and Sports, Tanzania Communication Regulatory Authority (TCRA) and the Attorney general of the United Republic of Tanzania.**

June 2018, THRDC participated and supported the filing of an application for certiorari in the High Court of Mtwara to challenge

the Online Content Regulations, 2018 which to a greater extent violates the right to freedom of expression as enshrined under Article 18 of the Constitution of the United Republic of Tanzania as amended from time to time. The case was heard on merit and the applicants who are THRDC, MCT and LHRC did not win the case save for one aspect where the court quashed the word content which the Minister had gone beyond the meaning provided in the parent. The applicants have filed necessary documents for appeal to the Court of Appeal of Tanzania.



*Advocates Jeremiah Mtobesya (left), Adv. Jones Sendodo (second from left), James Marena, Fulgence Massawe and Humphrey Mtuy outside the High Court of Mtwara.*

## **Other Strategic Litigation Cases for HRDs in Tanzania**

### **(i) The case No 4 of 2018 of Francis Muhangirwa Garatwa Vs The Attorney General of the United Republic of Tanzania.**

This case was filed in 2018 to challenge the Police Force and Auxiliary Services Act, 1969 which requires people to seek permission from police before gathering. The case was filed following political leaders especially oppositions failing to conduct their meetings because of their denial of permission by police for what is alleged to be intelligence reasons which in their view, jeopardizes national security. The case seeks to annul section 43 of the said law which puts the said requirement of permission. The case is still pending in court.

## **(ii) Bob Chacha Wangwe Vs. The Attorney General of the United Republic of Tanzania**

This case was filed by Bob Chacha Wangwe following different violations that happened during general and by –elections. The law at the moment entitles the District directors to monitor elections. District directors are presidential appointees who are prone to be biased when it comes to monitoring of general elections. Therefore the case seeks to challenge the Election Act to do away with provisions which makes the district directors monitors of the general election.

## **(iii) Jebra Kambole vs. The Attorney General of the United Republic of Tanzania.**

The Regional Administration Act, 1997 is a draconian law which has been used by regional and district commissioners to infringe rights of the citizens. The law gives district and regional commissioners’ powers to order arrest and detainment of a person for 48 hours if the DC or RC is of the view that the person may cause backlash of the national peace and security. In 2018, THRDC recorded over 11 incidents of DCs and RC orders of arrest and detaining of HRDs. What was unique in 2018, was that even lawyers were arrested when attempting to execute their legal jobs. The case was therefore filed to challenge the said law for in violating rights of many citizens of Tanzania including HRDs who have been great victims of the said law.

## **2.2 Physical violence, Attacks, and Torture**

Human rights defenders faces different challenging environment despite the Declaration on Human Rights, in every region of the world, human rights defenders, including women human rights defenders and often their beloved ones continue to be subjects of intimidation, threats, killings, disappearances, torture and ill-treatment, arbitrary detention, surveillance, administrative and judicial harassment and more generally, stigmatization by State authorities and non-State actors. The mandate on human rights defenders in their 2011 commentaries noted clear that they are

extremely concerned about allegations received over acts of intimidation, threats, attacks, arbitrary arrests, ill-treatment, torture and killings of human rights defenders who collaborate with the UN or other international mechanisms.<sup>31</sup>

The situation is similar for almost all HRDs in Tanzania. HRDs from different thematic groups experienced physical violence, attacks, arbitrary arrest, and malicious prosecutions, being branded bad names, abductions, torture and killings. The most at risk HRDs who were victims of incidences of attacks, harassment, malicious prosecutions, arbitrary arrests, physical violence and torture in the year 2018 were journalists and land rights defenders and those who advocates for human rights generally.

### **2.2.1 Pastoralists Land Rights Defenders and the Situation in Loliondo**

The situation of land rights defenders in Loliondo is still tense and calls for immediate interventions. In 2018 for instance, we witnessed a serious violations of rights against residents of Loliondo due to forceful evictions that were conducted by police in collaboration with SENAPA leaving a large number of people homeless, injured, and massive loss of property. Human rights defenders who were at the fore front defending natives of the area were also arrested and some of them still have pending cases in court. Some of the recorded incidents include;

- August 2018 four HRDs namely; Yohana Toroge- (Chairman, Kirtalo village), Kerry Ole Dukuny- (Chairman, Ololosokwan village), Nekitio Ledidi- (Chairman, Olorien village) and Kenya Ole Sikoyo- (Chairman, Arash village) who are village leaders and indigenous land rights defenders from Loliondo were arrested. They have been fighting for the rights of indigenous people in Loliondo for many years. During the forceful evictions of Maasai villagers in 2018, they were at the forefront defending their fellow villagers

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<sup>31</sup> 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

despite several threats they have been receiving from the government. They went ahead and even instituted a case at the East African Court of Justice (EACJ) to challenge the said evictions. After they filed the case, they were all arrested and charged with different counts including mobilizing villagers to contribute money for filing case at EACJ without permission. They stayed in police custody for sometime. Three of them were released while Nekitio Ledid is still in prison pending his bail application in the High Court in Mwanza.

- December 2018, Supuk Ole Maoi and Clinton Mshao were arrested by police in Loliondo and stayed under police custody for one week before they were released on bail. The reasons for their arrest is not clear. Analysts believe that their arrest is probably connected to their human rights work as they have been working tirelessly in defending land rights in Loliondo. Supuk and Clinton Mshao Kairungi had in 2016 been arrested and charged with espionage contrary to the National Security, 1967. Their case was successfully litigated by an advocate hired by THRDC and won against the government after the prosecution side failed to prove their case beyond reasonable doubt.

## 2.3 State of Impunity

Tanzania like many other countries is faced with the problem of state impunity. The situation in Tanzania has however increased beginning the year 2015 right after the general election. Within the three years of operation of the fifth government regime we have witnessed unprecedented state of impunity where government officials especially police, regional and district commissioners and Ministers have been using arbitrary powers and unreasonable force to violate rights of majority of Tanzanians HRDs without any appropriate measures being taken against them.

According to Margaret Sekaggya, a Special Rapporteur on the situation of human rights defenders, States have the primary



responsibility to ensure that defenders work in a safe and enabling environment. Under this call States should end impunity for violations against defenders by ensuring that investigations are promptly and impartially conducted. Perpetrators should be held accountable; while victims should obtain appropriate remedies<sup>32</sup>.

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>33</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>34</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 many cases involving violation of human rights defenders rights have not been investigated and perpetrators been held accountable.

The justice system in Tanzania is comprised of three main organs such as the Police, adjudication, and prison. The Judiciary has a role to dispense justice while the Police Force maintains peace and ensures the security of people and their properties and the prisons ensures that prisoners are kept in a safer and rehabilitative environment. 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, government leaders and other security officers. The independence

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<sup>32</sup> 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).

<sup>33</sup> Commentaries to declaration on human rights defenders July 2011 pd 18

<sup>34</sup> Ibid

of Tanzanian Judiciary is highly questionable mainly because the government officials have in many occasions seem to intimidate the system let alone the fact that the decisions coming out of the court are not respected by law enforcers. 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 incidents have never been investigated and prosecuted for their deeds;

For instance incidents of abduction of Azory Gwanda, journalist from Mwananchi newspaper, Dr. Ulimboka (the leader of Doctors Union in Tanzania), Absalom Kibanda (journalist HRDs), Saed Kubenea (journalist HRDs and now MP for Ubungu Constituency) who was attacked and an unknown liquid thrown on his face have never been acted upon. The following are other incidents which have never been investigated and perpetrators been held accountable todate;

- Killers of Godfrey Luena, the then ward councillor for Namawalla Ward in Kilosa-Morogoro region have never been apprehended and taken to court to face the charges against them.
- Kidnappers of Azory Gwanda, who is a journalist HRD from Kibiti have never been found and no report has ever been issued officially regarding his whereabouts.
- Killers of Daniel John, CHADEMA ward leader for Kinondoni have never been investigated and no report was ever issued with that regard.
- The shooting of Tundu Antipasi Lissu (MP) has never been investigated and no report has ever been issued from the police regarding the incident.
- Kidnappers of Abdul Omari Nondo, who was abducted in March 2018 have never been investigated and no report was ever issued with regard to his case except the decision of the court which shifted the burden of proving whether Nondo kidnapped himself or not.
- The kidnappers of Salma Said who is a journalist HRD from Zanzibar have never been found and charged for

their deeds. She was abducted and tortured by unknown people in 2016 as she landed at the Julius Kambarage International Airport-Dar es Salaam. Critics have argued that, perhaps the government is directly or indirectly behind her abduction and that is why measures are not taken to find the kidnappers.

- The abduction and torture of a JKT movement leader George Mgoba in 2015 has never been investigated. Worse enough the HRD has continued to receive threats from police despite the fact that his case was finalized in his favour.
- Abduction and torture of the singer Ibrahim Musa alias Roma Mkatoliki and other three artists in May and June 2017, the results of the investigation have never been released neither have the police issued any statement on the progress of the investigation.
- The findings of the Report of the then Minister for Information, Nape Nnauye regarding the invasion of the Clouds Media Group by the RC of Dar es Salaam have never been acted upon. The security officer who pointed a gun to Mr Nape Nnauye has never been taken to court for excessive use of force.
- The 2017 incident of invasion of the Clouds Media Group by RC Makonda has never been investigated by police to arraign and prosecute the perpetrator despite the video clip which showed clearly the event of invasion. The RC is still in power and no efforts are being made to ensure he is held responsible for what he did.
- The incident of a police officer who shot the gun on air in presence of the former Minister of Finance, Kigoma Malima allegedly dispersing people while they were not having any weapons to harm anybody has also never been acted upon. Worse still, the IGP, Simon Sirro justified the act saying the police officer acted within the parameters of the law.
- The incident of the Regional Commissioner for Arusha, Mrisho Gambo directing police to arrest journalists, some political and religious leaders who went to donate

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

- Measures against the police officer who shot to death Sheikh Mohammed Bin Almas have never been taken. Sheikh Almas was crossing the area going to the ATM while there was an advert saying that no person was allowed to cross the area before police finishes the exercise of depositing money to the ATM machine
- The attackers of the journalists and other participants during the CUF meeting at Vina Hotel Dar es Salaam have never been arraigned and prosecuted for the horrific event they did on 21st April, 2017 seriously beating up journalists and members and leaders of CUF.
- Attackers of journalists in Geita who were covering the story of a students' demonstration have not been prosecuted by responsible authorities. According to the report, the attackers were police officers who are the ones entrusted with making investigation and thus under normal circumstances the investigation could not be conducted.
- Attackers of the office of IMMMA Advocates have never been found neither have there be efforts from the government/police to investigate the matter.

THRDC is highly disturbed with the state of impunity at the high level and recommends investigations with the view to bringing perpetrators to justice. Investigation should be conducted to all HRDs cases who in one way or another found themselves in trouble because of their 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 intimidating human rights defenders in any way because what they are doing is legally recognized under our laws.

The future is still bright in terms of the fight against state impunity in Tanzania owing to the introduction of criminal Jurisdiction,

International crimes against humanity and war crimes to the African Court under Malabo Protocol on statute of the African Court of Justice and Human Rights. All is needed is country's commitment to honour the said international and regional legal instruments in good faith. CSOs should also cooperate with the government in ensuring that all sorts of impunity are properly and timely dealt with for the betterment of HRDs and the general public.

## 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. It also highlights the role of police according to the law and how they are expected to conduct themselves in the cause of execution of their legitimate roles and responsibilities. The sub chapter indicates that more than 3 police officers were killed in the year 2018 while others left injured compared to 2017 whereby 12 police officers were killed. The killings were prevalent mostly in Uvinza-Kigoma region where also many civilians were killed by unknown assailants. Police officers have been reported to violate human rights when arresting and even during detainment. Citizens and even HRDs have been arbitrarily arrested and most of them are brutally tortured while in police stations. The report of THRDC shows that at least 27 were arbitrarily arrested and tortured while under arrest. Many of the accused were left injured after their arrest and detainment.

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 Policy Force and Auxiliary Services Act, 1969 and the Constitution of the United Republic of Tanzania, 1977. As rightly pointed out under Chapter one of this report, 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 are by virtue of their daily work qualified to be HRDs.

However in reality most human rights defenders in the country do not regard law enforcers as colleagues in the human rights arena. This is simply because in most cases their rights are violated by the State through its agents such as the police. For instance the 2018 events of police officers using excessive force to deal with the suspects in different regions in Tanzania depicts a negative picture on how people perceive police officers.

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 2018. The following are some of the incidences of violation, which THRDC managed to capture under its protection desk;

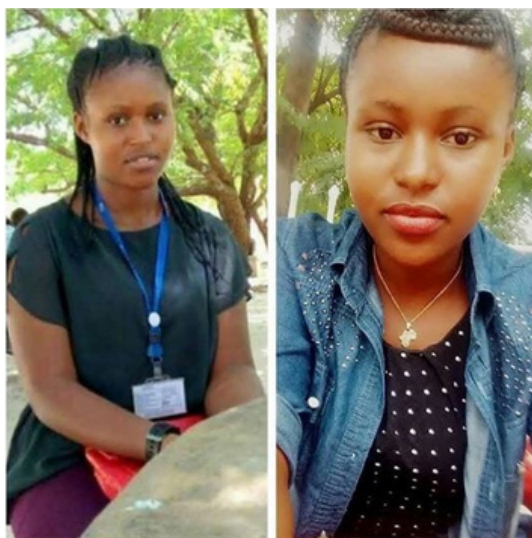
- On 16th October 2018 civilians killed 3 police officers in Uvinza-Kigoma region. The said police were dispersing civilians from a Ranch owned by the National Ranching Company Limited (NARCO) for allegedly conducting farming activities contrary to the law.



*Picture of police officers and some citizens of Uvinza inspecting the scene of the crime*

Police officers as human rights defenders are supposed to carry out their duties according to the law (The Police Force and Auxiliary Services Act, 1969), the Constitution of the United Republic of Tanzania, 1977 as well as the accepted standards of their profession. However, this has been different given the serious violations of human rights that police officers are associated with.

- In July 2018, Police used excessive force to disperse CHADEMA followers who were marching to the Director of Election in Kinondoni to get election observer forms. Police then used live ammunition to disperse the people and eventually shot a student of National Institute of Transport, Aquilina Akwilina. The Report from Dar es Salaam Special Zone Commander, Lazaro Mambosasa said that it was the police who shot the gun on air and led to the killing of Aquilina. However, after investigations police claimed Aquilina could have been shot by the demonstrating opposition's supporters and not the police. The Chairman of CHADEMA, Freeman Mbowe has a pending court case and one of the charges against him is causing death of Aquilina.



*A picture of Aquilina Akwilina*

- July 2018, Police used excessive force to deal with opposition supporters and eventually killed Daniel John who was a leader of ward government in Kinondoni.



*Picture of Daniel John who was killed during the Kinondoni Constituency by-election.*

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 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.

Actions by members of the police force going against the law and their profession are numerous and some of them have been already elaborated in other chapters and therefore their repetition here is of no value. Incidents of police officers using excessive force to deal with suspects are increasingly becoming worse. This is so bad to the police and if not properly addressed may lead to continuing atrocities in the future. Citizens have created hatred with police and they sometimes retaliate.



# Media Security and Safety of Journalists

## 3.0 Overview of the Chapter

Chapter three details on the situation of Journalists as human rights defenders and the state of media industry as important stakeholders towards realization of the right to information. This chapter discusses security challenges encountered by journalists and the media industry in general. These challenges includes but not limited to harassment, abductions, criminalization of journalist work, detention, torture, killings, defamation, and suspension from their employment, denial of freedom of movement and other legal and regulatory related challenges.

## 3.1 Specific Challenges Facing Journalists

Freedom of expression is a constitutionally guaranteed right. 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 for long periods of time without justification. 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>35</sup>

With the enactment of the Media Service Act, 2016, Cyber Crimes Act, 2015 and their respective Regulations, the Electronic and Postal Communications (Online Content Regulations), 2018 and amendment of the Statistics Act, and the Media Services Rules, press freedom has been diminishing over time. These laws, which the Government claims are aimed at propping up the media, are in fact having a devastating effect on the media industry in Tanzania.

In the year 2018, the THRDC's protection desk documented over 19 different cases of intimidation, arrests attacks, abduction, malicious prosecutions and threats to journalists in Tanzania. Details of the incidents against journalists are provided below.

### **3.1.1 Physical threats, attacks, arbitrary arrests, abductions and malicious prosecutions against journalists;**

For the year 2018, THRDC protection desk recorded at least 19 incidents of violation of rights against journalists. Most of these involve direct attack, threats, denial of access to information, arrests, prosecutions, fines and ban of media outlets and arbitrary confiscation of journalist's working tools. The following details depict the situation of journalists in Tanzania;

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<sup>35</sup> Joint CIVICUS Tanzania UPR report 2015

## (A) Physical Attacks and Threats

- On June 18, 2018, a journalist with Majira newspaper and TV Iman, Mr. Suleiman Abeid, was chased away by Shinyanga Regional Police Commander Simon Haule. The journalist went to the Regional Police Commander's office to ask for information regarding the operation to disconnect clean water supply conducted by the Shinyanga Urban Water and sanitation (SHUWASA) in Shinyanga Municipality. The operation was conducted by SHUWASA employees who were accompanied by police officers. Following a public outcry, the journalists opted to visit the Regional Police Commander to get his views regarding the exercise. It is at this point that Mr. Abeid was denied information and later unceremoniously kicked out of the regional police headquarters.
- On June 7, 2018, Mr. Emmanuel Michael of Star TV/RFA, Mr. Leonard Manga of TBC, Mr. Emmanuel Amasi of TBC and Mr. Cales Katemana of Standard Radio were at Mtavira Village in Ikungi District, Singida Region, seeking further details after a pastoralist was fined 30,000,000 Tanzanian shillings for allowing his cattle to enter a Forest Reserve Area. The journalists conducted an interview with the Ward Executive Officer before taking pictures of the cattle. Surprisingly, the Tanzania Wildlife Division's anti-poaching unit (KDU) threatened the journalists with firearms in a bid to stop them from taking pictures.
- On August 8, 2018, Mr Silas Mbise, a sports reporter with the independent Wapo FM radio station, was beaten by riot police as he lay on the ground, shirtless and with his hands in the air. The Media Council of Tanzania (MCT) and Tanzania Sports Writers Association (TASWA) issued a statement on August 11, saying the journalist had been singled out for a beating as he sought to interview two football coaches. "This incident is not only harassment (of the) journalism profession but sabotage against the whole media industry," they said. THRDC together with MCT and LHRC agreed to support the journalist if charged and/or help him seek his rights. However, the victim decided not to pursue the matter further.

- On August 8, 2018, a journalist with Tanzania Daima, Mr. Sitta Tuma, was harassed and brutally beaten by the police in Turwa Ward, Tarime District, in Mara Region. According to the victim, he was arrested by police while covering a campaign rally in the Ward despite having a Press Card with him. He was then taken to a police cell where he stayed until the following day when he was released on police bond following the intervention of a lawyer. September 5, 2018, Ms. Nasra Hashim, a journalist with Maarifa FM in Tanga Region, was attacked by unidentified assailants while on her way back home and severely beaten. The attackers took all her work tools before disappearing from the scene. According to the victim, she was returning home after working on a radio programme about the extent of depression in the country. Ms. Hashim was left with serious injuries and was admitted to Bombo Regional Hospital for more than two weeks. Those who assaulted her have yet to be identified and their motive is still unknown.
- In October 2018, Mr. Francis Godwin was threatened by the Regional Commissioner's office over a story that exposed a conflict between the Regional Commissioner and the Tanesco Regional Manager. The Tanesco manager arrived late for a meeting called by the Regional Commissioner, which prompted the RC to order that the manager be arrested and locked up for two hours. After the story was published, the Regional Commissioner's Office ordered Mr. Godwin to write a "positive" article that would have that skipped the conflict between the two men.

### **(B) Confiscation of Journalists' working tools**

- On many occasions, state agents have confiscated journalists' work tools, which include cameras, memory cards, writing pads, etc. In June 2018, this happened to Ms. Florence Sanawa of Mtanzania newspaper when she went to cover an Uhuru Torch Race ceremony in Mtwara Region. Her notebook was confiscated by security officers.

## (C) Arrests

- January 2, 2018, the Deputy Secretary of the Central Press Club, Mr. Ramadhani Hassan, witnessed a scene on Uhindini Street in Dodoma involving two traffic police officers who were questioning two people, who were apparently employees of the Dodoma Water and Sanitation Authority (DUWASA). They were riding on a motorcycle, and one of them had no helmet. Mr. Hassan, who reports for Mtanzania newspaper, took pictures of the incident with his mobile phone. The traffic police officers were not happy. They arrested him and took him to the Central Police Station for questioning. He was detained for three hours before he was released. However, all the pictures he took of the incident were deleted by the police. This is a clear case of preventing a journalist from performing his duties.
- August 3, 2018, Ms. Hadija Omary, a reporter with Mtanzania newspaper based in Lindi Region, was arrested and detained by police officers at Lindi Police Station. This happened during the Nane Nane commemoration when the journalist took pictures of the NMB Bank pavilion at the Nane Nane grounds. Ms Omary was taken to the police station where she was detained until a group of journalists gathered outside the police station and protested, forcing the officer in charge to order her release.
- October 2, 2018, three journalists were arrested by police officers in Umba Village in Kalambo District, Rukwa Region. Mr. Mussa Mwangoka of Mwananchi newspaper, Mr. Gulan Adolf of Nipashe newspaper and Mr. Sammy Kisika of Azam TV were arrested as they were covering a story about a land dispute between residents of the village and the Tanzania Forest Services (TFS). The dispute had been raging for a while with no solution in sight. This, understandably, attracted journalists' attention. As the three journalists were covering the story, police officers showed up and arrested them. They were not only threatened, but also denied information.

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- October 9, 2018, two journalists – Mr. Friday Simbaya from The Guardian and Mohab Fulwe from an online news site – were arrested by Tanzania Telecommunications Regulatory Authority (TCRA) officers in Iringa and taken to Dar es Salaam, where they were charged with providing online content without a licence from TCRA in their respective areas of operation. Prosecutors said Mr. Fulwe operated an online station known as Mohab TV. In September, six prominent media figures, including the host of the popular TV programme Shilawadu Sudi Brown and sports reporter Shafi Dauda, both from Clouds Media Group, were arraigned in court on charges of using a domain not registered in Tanzania and providing online content illegally. They were later released on bail.

### **(C) Denial of the right to access and Impart information**

- January 16, 2018, a journalist with Mtanzania newspaper, Pendo Fundisha, was working on a story at the Post Office Internet Café in Mbeya City. As she continued with her work, she was approached by a police officer who demanded to see what she was writing before she was forced to leave the computer. After the police officer went through the story, he ordered the journalist not to send the article without saying why.

- January 17, 2018, some 15 journalists organized a dinner meeting at Mbeya City Pub to host visiting information officers from the US Embassy Benjamin H. Ellis and Japhet Sanga. While having their dinner, they were suddenly surrounded by a contingent of police officers who came in two Land Rovers led by the Mbeya District Investigation Officer and the Mbeya District Commissioner, Mr. Paul Ntinika. Before the police officers ambushed the journalists' gathering, they mistakenly ambushed another group of people attending a dinner hosted by Water Reed, who were at the same venue thinking that they were journalists. The Water Reed officials were having dinner with officials from the US embassy and Water Reed representatives from Kenya, Malawi and Rwanda. According to the police, they had received intelligence reports that the journalists having dinner were actually having a press conference. It is believed that the incident involving Pendo Fundisha was also instigated by intelligence reports that she was designing flyers for the opposition party Chadema. When asked to clarify on the issue, the Mbeya Regional Police Commander said he was not aware of the incident, and promised to make a follow-up. He is reported to have said that police are professionals, and that he was not sure what kind of intelligence they had received that prompted them to act the way they did.
- June 4, 2018, a journalist with Mtanzania newspaper, Mr. Derick Milton, was chased away from the Meatu District Court where he had gone to make a follow-up on a case involving a secondary teacher who was accused of raping one of his students. This has happened in Singida Region where the regional spokesperson was reported to have strained relations with journalists. He was accused of being selective in providing information to journalists. Worse still, the spokesperson demanded money from journalists to give them stories, and those who were not ready to dig deep into their pockets were denied

information which they were supposed to be provided free of charge.

- August 2018, a correspondent with Mwananchi newspaper reporting from Kibondo District in Kigoma Region, Mr. Muhingo Mwemezi, was assigned to cover the Buyungu by-election by the Nyanza Bureau Chief, Mr. Peter Saramba. In collecting the relevant information, he interviewed various people, but when he approached Mr. Lusubilo Mwakabibi, the Returning Officer for Buyungu Constituency, who is also the Kakonko District Executive Director, the official refused to comment on the election. It is believed that the reporter had in the past written a story about Mr. Lusubilo's arrest and subsequent, which prompted the government official to refuse to provide information about the election.
- August 6, 2018, Mr. Juma Kapipi, a reporter with Azam TV in Tabora region, was prohibited from broadcasting news he obtained and prepared regarding the Tanzania Forest Services (TFS), whereby local residents had complained about being brutally beaten by TFS wardens. It was claimed that the residents were illegally selling charcoal. Mr. Kapipi was warned against publishing any information about the operation.
- On August 10, 2018, a reporter with Clouds TV in Mtwara, Mr. Juma Mohamed, visited the police gender desk at the Mtwara regional police headquarters with the intention of gathering information regarding gender-based violence in the region. While at the police station, he was directed by a police officer on duty to write a letter to the Regional Police Commander requesting for the information. Despite complying with the directive, Mr. Mohamed was neither provided with information and nor did he get a response to his letter despite several visits and phone calls.
- September 30, 2018, Mr. Ernest Magashi of Mwananchi newspaper reported about the shortage of toilets for teachers at Kazibizyo Primary School in Bukombe District, Geita Region. He was later summoned by Mr.



Said Nkumba, the Bukombe District Commissioner, to prove the report's authenticity. When Mr. Magashi arrived at the District Commissioner's Office, he found the entire District Security Committee waiting to question him. Luckily for him, also present was the head teacher of the said school, who played a vital role in substantiating his report. The District Commissioner nevertheless warned Mr. Magashi against writing articles that "tarnish" Bukombe's image.

### 3.1.2 Ban of newspapers and Fines imposed to Media Outlets

- The Tanzania Communications Regulatory Authority (TCRA) on 2nd January, 2018 announced that its Content Committee had fined five television stations for airing what it said was "seditious" content. The Content Committee Chairman, Mr. Joseph Mapunda, named the five stations as Star TV, which 21 was fined Tsh7.5 million (\$3,375); Azam Two (Tsh7.5 million, \$3,375); East Africa TV (Tsh15 million, \$6,750), Channel 10 (Tsh15 million, \$6,750) and ITV (Tsh15 million, \$6,750). According to Mr. Mapunda, the stations aired the evaluation of civic by-elections conducted by the Legal and Human Right Centre of November 26, 2017, which, according to TCRA, was "unethical, offensive, unlawful and contravened the provisions of sections 2 and 5 of the Broadcasting Act, 2005".

In the year 2018, the THRDC's protection desk documented incidents of 5TV Stations been fined different fines for allegedly publishing seditious contents.

### 3.1.3 Digital threats/incidents

The enactment of Cybercrime Act 2015, Media Services Act, 2016 and the Access to Information Act, 2016 and its enforcement remained to be the most threats to people who are using social media to express their own views. Users of blogs and online TVs were also faced with some threats from the government especially the Tanzania Communication Regulatory Authority (TCRA) where some online TV, bloggers and other media platforms were threatened to be fined and their owners arrested if they do not register them with TCRA in accordance with the new Online Content Regulations, 2018. The list of cases resulting from the operation of the Cyber Crimes Act, 2015 will be discussed right after the discussion on the challenges of the Act.

Generally speaking, in Tanzania the government seems to control the access and use of ICT by enacting laws, which limits the freedom of expression via the internet. Laws such as the Cybercrimes Act, 2015, the Statistics Act, 2015, the Electronic and Postal Communication Act, 2010 and the Media Services Act, 2016 seems to erode the freedom of expression through the internet. Again, there are some incidents in which the government has been alleged of conducting online surveillance and intercepting communications. These seem to erode the basis of freedom of expression through the Internet.<sup>36</sup>

The 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 addresses of the users who have posted on the website. The report also point out the level of chill effect caused by the Cybercrime Act in Tanzania.

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<sup>36</sup> CIPESA (2015) Report on Internet freedom in Tanzania.

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 behavior 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 before.<sup>37</sup>

In 2018 there have been for instances some announcements from the government that it intends to control internet use during office hours to ensure people utilize most of their time for work. However, critics perceive this as a way of restricting the right to internet use. Most of the information is found online and even the daily activities of workers are conducted using internet. Therefore, while the government aim seems as promoting the slogan “Hapa Kazi Tu” “Job is paramount” the same will restrict the right to internet use by the majority of Tanzanians.

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

The Constitution of the United Republic of Tanzania<sup>38</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, 1948 and the International Covenant on Civil and Political Rights, 1966 guarantees everyone with the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.

<sup>37</sup> Ibid.

<sup>38</sup> Constitution of United Republic of Tanzania 1977 as revised

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

## **i) Access to Information Act 2016**

This Act was passed by the National Assembly on the 7th day of September 2016 and assented by the President on 23rd day of September 2016. According to section 2(1), this Act applies only to Mainland Tanzania. This is an Act to provide for access to information, define the scope of the information which the public can access, promote transparency and accountability of the information holders and to provide for other matters pertinent thereto.<sup>39</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 restricting the right to access information as provided under the Constitution of the United Republic of Tanzania and other human rights instruments to which Tanzania is a signatory party. These provisions must be amended in order to ensure unhindered access to information.<sup>40</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>41</sup>

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<sup>39</sup> MCT Analysis of the Access to Information's Act 2016

<sup>40</sup> Ibid

<sup>41</sup> Ibid

## ii) Media Services Act, 2016

On 5th of November 2016, the Parliament of United Republic of Tanzania enacted the Media Services Act and the same has been assented to by the President on 16th day of November 2016. This Act provides for promotion of professionalism in the media industry, establishment of the Journalists Accreditation Board, Independent Media Council, and framework for regulation of the media services and for other related matters.<sup>42</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>43</sup>

Structurally, this Act has eight parts, 67 sections, and one schedule. Application of the Act is confined only to mainland Tanzania. It is worth noting that, the current Media Services Act, 2016 introduced new provisions which were not featured in the Media Service Bill of 2015, for instance section 7 which provides for rights and obligations of the media houses and journalists, sections 22 which establish Media training fund, section 58 which provides for power of the Minister to prohibit importations of publications and section 59 which provides for powers of the Minister to prohibit or sanction publication of any content which in his opinion jeopardizes national security or public safety.<sup>44</sup> Section 59 of the MSA, 2016 has been used as a backup provision in almost every ban of the newspapers. Some of these newspapers include Mawio, Tanzania Daima and Raia Mwema. They were all ban using section 59 of the Media Services Act, 2016.

Again, the Act contains a number of weaknesses such as the retention of accreditation of the journalists, licensing of the printing media, criminalization of the defamation, seditious offences, establishments of non-independent regulatory bodies and replication of some of the draconian provisions from the Newspaper Act, 1976, for instance section 58 and 59 which gives power to Minister to prohibit importation or sanctioning of any publication in his absolute discretion if in his own opinion such publication is against public

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<sup>42</sup> See preamble to the Act.

<sup>43</sup> MCT report on the Media Services Act Analysis

<sup>44</sup> *Ibid*

interest or jeopardizes national security.<sup>45</sup> During the year 2017, the Minister of Information Sports, Youth and Culture used the Media Services Act, 2016 to ban newspapers such as Mawio, Raia Mwema, Tanzania Daima and MwanaHalisi.

### **iii) 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). The new amendments to the Statistics Act, also criminalizes any person who questions/criticizes official statistics given by the government. The Statistics Act, does not recognize any other statistics other than the official statistics. Any person wishing to produce official statistics should seek approval from the National Bureau of Statistics.

### **iii) Online Content Regulations, 2018**

The Electronic and Postal Communications (Online Content) Regulations of 2018 are made under Section 103(1) of the Electronic and Postal Communications Act, Cap. 306 of the laws of Tanzania. Therefore, they are enforceable by the TCRA.

Clauses 2 of the 2018 Regulations make provisions for which these regulations are applicable for. According to this Clause, the regulations are applicable for (a) application services licensees; (b) bloggers; (c) internet cafes; (d) online content hosts; (e) online forums; (f) online radio or television; (g) social media; (h) subscribers and users of online content; and (i) any other related online content. It is obvious that CSOs' activities are subject to these regulations because majority of them are now engaging with or through alternative media outlets.

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<sup>45</sup> *Ibid.*

The regulations are criticized by many CSOs and internet users for being restrictive of freedom of information, which is guaranteed under the URT Constitution.

There are several provisions which either restrict the said freedom or have left ambiguous – and therefore, gives TCRA discretionary powers against the internet users. For instance, some of the prohibited (online) contents under Clause 12 of these regulations are *'content that portrays violence, whether physical, verbal or psychological, that can upset, alarm and offend viewers and cause undue fear among the audience or encourage imitation' (Clause 10(1)(f)); 'portrays sadistic practices and torture, explicit and excessive imageries of injury and aggression, and of blood or scenes of executions or of people clearly being killed' (Clause 10(1)(g)); and, the 'content that causes annoyance, threatens harm or evil, encourages or incites crime, or leads to public disorder' (Clause 10(1)(h)).*

### **a. Challenges of the applicability of the Online Content Regulations**

Some analysts<sup>46</sup> are of the views that the prohibiting such overly broad and ambiguous categories of content (Clause 12) is an unlawful restriction on the freedom of expression. Specifically, the first prong of the Article 19 of the International Covenant on Civil and Political Rights of 1966 (ICCPR), which requires restrictions to the freedom of expression to be both predictable and transparent. According to the ICNL analysis, to meet the requirement of predictability, the law in question must be formulated with sufficient precision to enable both the individual and those charged with its execution to conform their conduct to the law. Individuals and authorities must know precisely what speech is permitted and what is prohibited. Therefore, Clause 12 of the 2017 regulations fails this test.

Furthermore, ICNL analyses shows that, applicability of such kinds of provisions could prohibit broadcasting of news regarding violent crimes or campaigns highlighting the dangers of domestic violence

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<sup>46</sup> Especially: ICNL 'Analysis of the Tanzania Online Content Regulation, September 2017'. Note, ICNL is the International Centre for Non-Profit Law, based in Washington DC, USA.

or sexual trafficking; and that, prohibited images or content may also expose abuses at the hands of police or other authorities, such as unnecessary violence against protesters or marginalized groups, which is information that clearly is the public's right to know.

Another effect of the regulations is the requirement that anyone who operates a blog or forum in Tanzania should moderate all user-submitted content before it is publicly visible. This would require bloggers, for example, to review every comment posted on their blog and to check that it meets the requirements of the regulations before that comment is published. For any blog or forum that currently receives large amounts of user-generated content, this requirement would either introduce massive additional staffing requirements and costs and/or massively reduce the amount of content that gets published. In either case, operating a platform with an active community of users would become financially impossible for anyone other than the very wealthy.

The requirement for pre-moderation would be to deny users their right to freedom of expression, by requiring that any opinion they express must be approved by site operators.

Moreover, there is also concern about registration of the social media owners as such process attracts a lot of fees, which could be unaffordable by some of the bloggers. Lastly, the concern is also on the severity of punishment. Accordingly to Clause 16 of these Regulations, 'any person, who contravenes the provisions of these Regulations, commits an offence and shall, upon conviction be liable to a fine not less than five million Tanzanian Shillings (approximately USD 2190) or to imprisonment for a term not less than twelve (12) months or to both.' The discussion on judicial freedom to impose punishment basing on the merit of each case is valid here as well.

The definitions and other terms of the Regulations create uncertainty around social media. In particular, some forms of social media – including Facebook, Twitter and Instagram – would meet the definition of a forum as a "site where people can hold conversations in the form of posted messages or journals and whereby most



forums allow anonymous visitors to view forum postings, but require creation of an account in order to post messages in the forum.” As such, the regulations would appear to require Facebook and the other social media companies to fulfil the requirements for blogs and forums, including registration with TCRA, pre-moderation of all content posted by users, identification of all users, etc.

These large social media companies are not based in Tanzania but have significant numbers of users in Tanzania. It is unlikely that the companies would be willing to register with TCRA, and inconceivable that they would introduce pre-moderation and prohibit anonymity for their Tanzanian users. It is more likely that they would choose to make their services unavailable to users in Tanzania, thus depriving Tanzanian citizens of the opportunity to engage fully and freely in communications with the wider world, and of all the benefits that this can bring.

#### **iv. 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.

In 2018 THRDC had managed to document 12 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 of the Act pointed out that section 16 of the Cyber Crime Act, 2015 which was coined to prevent publication of false information was vague.

Article 19 pointed out clearly that the provision of section 16 violates international freedom of expression standards, and further stated that

it makes the work of journalists covering current affairs unreasonably dangerous as in a situation of breaking news; facts are often difficult to verify, moreover it is often debateable as to what the truth of a particular matter is and the 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>47</sup>**

| S/N | Case                           | Offences Charged   | Law cited   | Status/Outcome  |
|-----|--------------------------------|--|---|---|
| 1.  | 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                              | Bob Wangwe has appealed against the decision to the Court of Appeal and the case will come for mention on 11 <sup>th</sup> March 2019 |
| 2.  | Republic vs Abdul Omari Nondo  | Disseminating false information to wit; "I am at risk" through WhatsApp  | Section 16 of the Cyber Crimes Act, 2015                              | The case was finalized with Abdul Nondo winning against the Republic  |
| 3.  | 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   |
| 4.  | Republic v LeylaSinare& 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   |

<sup>47</sup> Based on a data base from Protection desk at THRDRC

|    |                               |  |   |  |
|----|-------------------------------|--|---|--|
| 5. | 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 |
| 6. | 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  |
| 7. | 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  |
| 8. | 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  | Section 16 of the Cyber Crime Act               | Unknown  |

|     |   |   |  |                              |
|-----|---|---|--|------------------------------|
|     |   | 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 |  |                              |
| 9.  | 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 | Hearing of the case underway |
| 10. | Republic V. Shilinde                    | Advocate Shilinde was arrested on 22nd 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             |
| 11. | 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             |
| 12. | 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             |

Cases relating to internet use are many. Challenges have been to get the full list of the Cyber Crimes Cases at the Office of the Ministry of Home Affairs. Most of the documented cases are those in which THRDC has been monitoring them and/or those obtained online.

### 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>48</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>49</sup>

The Constitution of the United Republic of Tanzania<sup>50</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*

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<sup>48</sup> 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.

<sup>49</sup> 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.

<sup>50</sup> The Constitution of the United Republic of Tanzania, 1977. Available at: <http://www.judiciary.go.tz/downloads/constitution.pdf>

*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 2018, 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 the websites Jamii Forums and FikraPevu with more than 2.4 million users. Jamii Forums is one of the websites that provides access to users to post, engage and follow up posts of various issues and information of various matters regarding the society. The forum among others allows users to post on its websites by using anonymous or other hidden identities, with a guaranteed declaration of the users IDs protection (under the websites Privacy Policy)

In 2011, Jamii Forums, dubbed the Kiswahili Wiki leaks, was directed by the government to halt the posts of members associated with the opposition. The founders of the forum were also detained and interrogated for 24 hours in 2008.<sup>51</sup> On top of that the Managing Director has in several occasions been summoned by the police 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 a few months after the Act came into force some provisions were used by the Police to arbitrary demand Jamii Forums to disclose some information and IP addresses of their client.

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<sup>51</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 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-defence before the court of law. THRDC is of the view that the section infringes the right to be heard as provided for under the Constitution of United Republic of Tanzania of 1977 as amended.

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

Section 3 of the Act;

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

*“Competent Authority” means-*

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

*(b) in the case of a wrongdoing that is committed outside a public or private institution, a superior person who has an authority to investigate the wrongdoing reported;*

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

***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’*



# Security Management and Risk Assessment

## 4.0 General Introduction

To Human Rights Defenders, the concept of Security means freedom from risk or harm resulting from violence or other intentional acts.<sup>52</sup> Protection measures refer to various measures taken by HRDs or other actors to enhance security of HRDs.<sup>53</sup> Security management is basically a long term overview to prevent risks, attacks and security incidences likely to happen to an individual HRD or to the HRDNGO. Because of the focus on the defence of others' rights, HRDs normally take for granted their own security and protection.

Being a human rights defender without security and risk management capacities is risky. This risk can lead to the state of insecurity which in turn can have a tremendous cost on defenders, their physical and mental well-being their family and friends and the people they work with (colleagues, the victims of human rights abuses, witnesses, etc).

Nevertheless, defenders could achieve significant improvements in their security if they followed certain strategies and proceedings which have been tested and are effective. THRDC strives to create a more secured working environment for HRDs in Tanzania. The THRDC's security management trainings both

<sup>52</sup> Frontline Defenders 2011; Workbook on security practical steps for human rights defenders at risk; Frontline Publishers, Dublin.

<sup>53</sup> Ibid

physical and digital are designed to cover a wide range of issues on how to analyse working environment, risk assessment, threat analysis, reaction to security incidents, and how to produce organizational security approach.

Through security management capacity building, HRD is equipped with techniques, tactics on how to carry out the activism safely. The knowledge imparted to HRDs makes them aware of their capacities, vulnerabilities and hence put them in a position to positively react to any situations.

This chapter narrates HRDs security management capacities for the year 2018 following the security management and risk assessment training sessions conducted by THRDC. The chapter, before presenting the situation as of 2018, begins with the background to the situation before the inception of THRDC and five years of THRDC's security management sessions through the capacity building program. The chapter concludes by highlighting the fact that there is an improved level of security management and risk assessment to HRDs in Tanzania, still the security situation of these HRDs in Tanzania is appalling hence calling for increase effort to protect HRDs in Tanzania.

## **4.1 The Need to Build Capacity in Security Management to HRDs in Tanzania**

Being a new organization specifically for security and protection of HRDs, THRDC considered the need to conduct a security needs assessment to existing HRDs in Tanzania. The survey conducted was very pivotal since it provided opportunities for those existing HRDs working in the field to inform THRDC about their security challenges and needs.

Therefore, the conducted survey helped THRDC to get first-hand stories from those who are affected in the field. It also provided an opportunity for them to interact and discuss security matters which had never happened in most organizations previously visited by this

security body. For THRDC it was an opportunity to understand fully the kind of waters in which its stakeholders find themselves swimming.

In summary, with regard to HRDs security management the survey findings indicated that the concept of a Human Rights Defender was alien to the Tanzanian context. Most HRDs were unaware of both physical and digital security. A total of 95% of the 200 visited human rights NGOs during the survey were unaware of security management and protection measures.

With regard to the number of HRDs who had ever attended security trainings, out of the projected 2000 HRDs in the visited zones by then, only 135 individual HRDs in human rights organizations and the media had attended security management trainings whether locally or outside Tanzania.

As a result of this situation, HRDNGOs are prone to various security incidents which as time goes on have become more open and daring. HRDs are physically attacked, arrested, charged, kidnapped, or being intimidated because of their work of defending human rights.

As these threats to HRDs were becoming more open and daring real due to the low level of security management and risk assessment, THRDC was incepted as a specific organization aimed to address the rights of HRDs in the country. Committed to enhancing the security and protection of Human Rights defenders in Tanzania, the Tanzania Human Rights Defenders Coalition (THRDC) devised the capacity building program through its five years strategic plan 2013-2017. This program was tailored to benefit two categories of Human Rights Defenders, the first group being the already existing and identified new human rights defenders as well as media practitioners (mainstream and social).

## 4.2 Awareness Level on Security Management for HRDs in the Past Five Years 2013-2017

After five years of defending human rights defenders in Tanzania, in December 2017, THRDC completed its five years Strategic Plan (SP) 2013-2017. For the period of five years of the capacity building program, THRDC managed to reach a total of 1546 which is 77.3 per cent of the targeted 2000 beneficiaries thereby utilizing about USD 402,719/- out of 589,651/- estimated budget. In 2017, the Coalition conducted a total of six (6) capacity building activities thereby reaching about 270 beneficiaries including journalists whom were identified as the most at risk group of human rights defenders in the country.

Through security management and risk assessment trainings, empowered HRDs were exposed to matters of security and been able to recognize the nature of their working environment hence easy to note and identify and respond to security incidents whenever they are targeted. To mention the names, some of the trained HRDs who managed to identify security incidences and reported them for help are Mr. Deus Kibamba (Former Executive Director, Jukwaa la Katiba Tanzania) and Mr. Maxence Melo, the Executive Director, Jamii Media.

Moreover, the trainings offered by the coalition have proved efficiency leading to Human rights defenders working on pastoral and land rights in collaboration with victims of illegal eviction of the Maasai community in Loliondo to lodge the complaint to the National Human Rights Institution (Commission for Human Rights and Good Governance) which issued injunction order to the Government pending its official enquiry. Specifically, in 2017 the Coalition trained pastoral rights defenders in documentation and reporting to domestic, regional and international human rights mechanisms and defenders were empowered on how to access and use various human rights mechanisms. The Human Rights Commission is one among the domestic mechanism taught.

Last but not least; trained HRDs became confident and able to use regional and international available mechanisms for the protection of their rights and the group they defend. In 2017 for example THRDC managed to train and mobilize about 40 HRDs working on rights of people with disabilities and led to the successful preparation and validation of PWDs shadow report for the purposes of submitting it to the United Nations Committee on People with Disabilities as a way to implement the Convention on the Rights of Persons with Disabilities (2006) in Tanzania.

### **4.3 The Situation of HRDs with Regard to Security Management in 2018**

2018 is the first operational year for THRDC's new five years (2018-2022) strategic plan. Under the capacity building program which was retained from the previous five years SP (2013-2017), THRDC planned to empower about 300 HRDs in 2018. These HRDs were to be reached through trainings, training of the trainers, round table discussions, dialogues and seminars on various aspects of security management, human rights and their enforcement mechanisms.

The following below is the brief analysis of the situation of HRDs for the year 2018 with regards to their security management and risk assessment levels following various trainings, workshops and seminars of the capacity building program. The situation focuses mainly on the following major program indicators;

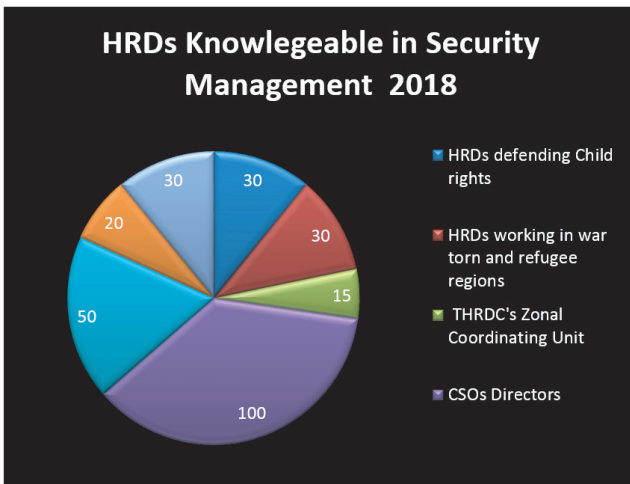
- i. Number of HRDs knowledgeable on risks assessment and security management strategies
- ii. The level of office security and availability of security policies and plans
- iii. The Level of confidence and Solidarity among Tanzanian CSOs/HRDs to initiate campaigns and interventions on human rights issues
- iv. Level of compliance by the HRDs to the legal, policy and regulatory framework on matters related to HRDs, media and CSOs operations in Tanzania

- v. Level of awareness by HRDs on Regional and International human rights mechanisms for the protection of HRDs and Human Rights in General

### 4.3.1 Number of HRDs Knowledgeable on Risks Assessment and Security Management Strategies

For the year 2018, a total of about 275 Human rights defenders were empowered through various security management sessions, dialogues and trainings. These sessions were conducted in either zonal classification (Northern Zone, Central Zone, Lake Zone, West Zone, Southern Highland, South Coastal Zone and East Coastal Zones) or at thematic levels (freedom of expression, women rights, social and economic rights, political rights, minority rights and indigenous/pastoral rights).

Although THRDC targeted to reach about 300 HRDs throughout the year, it managed to reach about 275 which is 92% of the total number of expected HRDs. Among the factors which led THRDC’s failure to reach the whole planned number was the fact that most of the planned trainings for 2018 were delayed due to fundraising activities which dominated almost the whole 1st half of 2018. The following pie chart illustrates the number of HRDs who were empowered through security management trainings for the year 2018.



The above pie chart indicates that 275 HRDs in various groups were reached and trained in security management and Risk assessment.

The Security management and risk assessment for human rights defenders is provided as preventive measures to help Human Rights Defenders have more secured working environment. The trainings are designed to cover matters such as working environment analysis, risk assessment, threat analysis, reaction to security incidents, digital security, and how to produce organizational security plans.

Generally, security trainings provide general knowledge and tools for understanding and improving HRDs security and protection. The significance of empowering HRDs is generally to inform them on the basics of HRDs rights as well as enabling them to learn self-protection mechanisms.

### During the 2018 sessions, the following topics/modules were covered

| Physical Security   | Information/Digital Security                | Other Human Rights Protection Mechanisms          |
|---|---|---|
| The concept of the Human Rights Defender and their Protection mechanisms  | Introduction to information security        | Accessing Domestic legal and non-legal Mechanisms |
| Human Rights Defenders working environment and the importance of making informed decision about Security and Protection | Threat assessment and the security circle   | Accessing Regional and Sub regional mechanisms    |
| Assessing Risk: threats vulnerabilities and capacities  | Windows Security                            | Accessing the UN mechanisms                       |
| Security incidences: Definition and analysis  | Password Protection                         | The UN Human Rights council                       |
| Preventing and reacting to aggression   | Information Backup, Destruction and Recover | Human Rights Monitoring and Reporting             |
| Organizational and Home Security  | Encryption                                  |   |
| Arrest, Detention and Prosecution of a Defender   | Internet Surveillance and Monitoring        |   |
| Security and Free Time (Stress Management)  |   |   |

### 4.3.2 The Level of Office Security

Security at working place is an aspect that cannot be ignored when assessing level of security management and protection measures. The most important issues assessed during the preparation of this report with regard to office security include office location; availability of security gears such as CCTV; General Office set up including the external gates / fences, doors to the building, windows, walls and roof, security guards, visitor admission procedures, Information security etc. Vulnerability of an office can always increase risk. An office with high level of vulnerability maximizes an authorized access, attacks and information insecurity.

The assessment conducted in 2013 before the establishment of THRDC indicated that out of the 200 assessed offices were found to have staff programs for security management training at office only four offices had security gears specifically the security alarm and CCTV cameras. Only 31 offices had professional security guards available for 24 hours, 29 offices (14.5%) had only security guards who work only at night while 130 offices (65%) didn't have at all.

In 2018, as a result of security management trainings conducted, many HRDs offices are furnished with CCTV cameras, security alarms and professional security guards. Many HRD organisations have put guest registers at the offices entrances. Some have even gone to the advanced stages of having security scanners and metal detectors.



Guest book register at **LHRC** Offices Professional Security guard at **TAWLA**

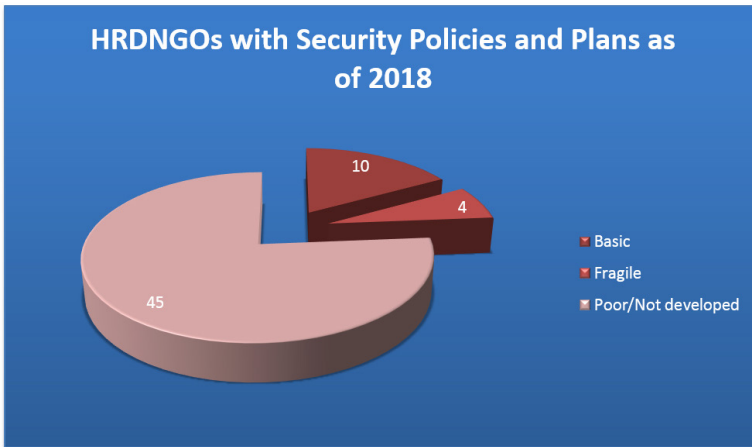




*Under Car Security Mirror and Security Scanner at THRDC offices*

With regard to HRDs security policies and plans, according to the 2013 survey findings, majority of HRDs did not have security plan and policies. Out of the 200 visited offices, only four HRD offices namely Action Aid Zanzibar, Care International Mwanza, OXFAM –Arusha and DONET in Dodoma had security policies at the basic level. Poor knowledge on security management and sufficient resources were among the reasons given as to why only international HRNGOs have security policies and plans.

According to the initial findings of the 2018 THRDC's needs assessment survey conducted in eight HRDs zones; many organizations have adhered to and considered the importance of security planning and staff security. Out of 180 visited HRDNGOs about 10 HRD organizations namely LHRC, TAWLA, HAKIELIMU, TGNP, UTSS, CAMMAC are some of the organizations with basic security policies and well defined security plans. Other HRDNGOs had either fragile, poor or not developed security policies or plans. The pie chart below illustrates the level of compliance in terms of security policies and plans.



### 4.3.3 The Level of confidence and Solidarity among Tanzanian CSOs/HRDs to Initiate Campaigns and Interventions on Human Rights Issues

Through HRDs security management empowerment sessions organized in 2018, the level of confidence, solidarity and networking among Tanzanian CSOs/HRDs was uplifted to the extent that they were able to jointly initiate about seven (7) major human Rights campaigns and interventions on human rights and HRDs protection issues. This is due to the knowledge imparted to them, making them aware of their capacities, vulnerabilities and hence put them in a position to positively react to any situation concerning human rights whether negative or positive.

These major campaigns include;

- i. HRDs involvement during the process of developing a NationalNGOsPolicyinTanzaniafromJanuarytoMay2018. During this process, THRDC and affiliated organizations successfully submitted their recommendations to the registrar and the Ministry concerned with NGOs through the National NGOs coordinating council (NaCONGO).

- ii. Issuing of the joint CSOs/HRDs statement on the 21st February 2018 calling on the Tanzanian Government to address rapidly deteriorating environment for media, human rights defenders and democracy.

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***'We urge the Government to establish an Independent Electoral Commission before the 2019 and 2020 elections which will be able to balance equality and justice for all parties to avoid conflicts that may arise from the Commission' s failure to maintain equity principles in the election.'*** This was one of the calls in the CSOs joint statement.

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- iii. Joint statement by Tanzania HRDs and the Media council in November 2018 to condemn the arbitrary arrest of CPJ journalists Angela Quintal and Muthoki Mumo by the Tanzania Immigration authority.
- iv. Jointly organizing of the CSOs week celebrations in October 2018 in Dodoma whereby various issues on shrinking civic space specifically government's commitment to protect CSOs/HRDs were discussed presented and responded to by Government officials responsible for NGOs regulation and coordination.

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***'The Government through the President's office Regional Administration and Local Government (PORALGA) is ready to cooperate with CSOs to develop the guideline on coordination for purposes of getting approval to implement project in various regions.'*** Dr. Andrew Komba, the Director of Sector Coordination, Presidents Office Regional Administration and Local Government (PORALGA) during the CSOs week ceremony.

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- v. Organizing various joint dialogues among HRDs/NGOs, the Ministry and the office of Registrar of NGOs to discuss the operationalization and effects of the recently signed Non-Governmental Organizations (Amendments) Regulations, 2018(GN 609 of 2018) on NGOs transparency and accountability.
- vi. Joint actions and calls to the Tanzania Government and the community by women and child rights HRDs during the 16 Days of Activism Against Gender-Based Violence commemorating the International Human Rights Day.

- vii. The call by HRDs on the 9th December 2018 to the government of Tanzania to ensure the protection of human rights defenders, notably by observing the Declaration on Human Rights Defenders, African Charter on Human and Peoples' Rights and other human rights treaties to which Tanzania is signatory to during the 20 years anniversary of the UN Declaration of Human Rights Defenders.

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***'We call upon the government of Tanzania to take deliberate action to stop incidents of harassments, arrest, attacks and malicious prosecutions of HRDs which may be perpetrated by individuals or its agents'.*** This was one of the calls during the joint HRDs statement.

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#### **4.3.4 Level of Compliance by the HRDs to the Domestic Legal, Policy and Regulatory Framework**

Compared to 2017 which witnessed the suspension of the Community Health Services and Advocacy (CHESA) for the allegedly violating the NGOs Act, in 2018 there have been no reported incidence of HRDs suspension or deregistration because of failure to comply with the law. This is partly because of the security management sessions to HRDs whereby HRDs are also empowered in the knowledge of the laws regulating the sector.

Following the empowerment sessions to CSOs Directors in 2018 on laws and regulations governing CSOs in Tanzania, the Kigoma women Development (KIWODE) successfully managed to be registered as a fully-fledged NGO and got a certificate of registration from the registrar of NGOs. Before 2018, KIWODE was registered as women CBO based in Kigoma urban. The following testimony was written by the KIWODE Executive Director Ms Sophia Patrick.

*Habari Wakurugenzi! Asasi ya KIWODE inatoa shukrani kwa mafunzo au maelekezo ambayo tuliyopokea kutoka kwa uongozi wa THRDC bila kumsahau Mratibu wa mtandao wa THRDC Mr. Onesmo Olengurumwa. Tunashukuru sana tulikuwa na certificate of registration rules 1954 jina likiwa Kigoma Women Development Group baada ya maelekezo tukiwa Tanga tumefuata maelekezo sasa tumepata Certificate of Registration kutoka Maendeleo, Jinsia na Watoto na jina la shirika kwa sasa ni Kigoma Women Development Organization (KIWODE) kilichotoka ni kikundi kwenda shirika. Tunawashukuru sana THRDC kutusaidia sisi ambao kupata taarifa kwetu ni vigumu sana. lakini tunafundiswa, tunaelekezwa, tunaongozwa. Mungu awabariki sana na wanachama wa KIWODE wanashukuru sana THRDC kwa wema ambao wanauonesha kwa wanachama wake Mungu awabariki sana Asante Sophia Patrick Mkurugenzi kutoka Asasi ya Kigoma Women Development Organization (KIWODE)Asante.*

### **4.3.5 Level of Awareness by HRDs on Regional and International Human Rights Mechanisms**

Essentially, many HRDNGOs in Tanzania are not conversant with the modern human rights ideas and modern human rights systems and mechanism. Each of the international instruments has a different system for its implementation, ranging from general and specific reporting procedures. These reporting procedures include quasi-judicial and judicial mechanisms involving the adjudication of complaints brought by individuals or groups of individuals, Non-Governmental organization and, in some instances, even by other States.

As part of security management trainings, THRDC empowers HRDs on how to effectively utilise the available regional and international human rights mechanisms for the protection of their rights and general human rights advocacy.

In 2018, there has been an increase on the level of HRDs awareness and access to regional and international human rights mechanisms.

Compared to 2017 for example where by less than 5 HRDs from Tanzania attended the ACHPR ordinary session, in 2018's 63rd ordinary session of the ACHPR about 20 HRDs from Tanzania, both mainland and Zanzibar attended and addressed various human rights concerns. Recently, there has also been an increase of HRDNGOs from Tanzania applying for the observer status with the African commission on human and peoples' rights. THRDC decided to take the initiative to emphasize and assist HRDNGOs to obtain the consultative status with the commission after observing that out of 517 NGOs with consultative status in Africa, only 7 NGOs are from Tanzania.

#### 4.4 Conclusion

Generally, despite the fact that there is an improved level of security management and risk assessment to HRDs in Tanzania, the security situation of these HRDs in Tanzania is still appalling. A number of HRDs especially journalists are being arrested, some tortured and baseless charges have been brought against them before courts of laws. Following these situations, THRDC has a specific Department which deals with the protection of HRDs. The Coalition has been providing the victims with assistance such as legal aid, and relocation when there are threats for the life of the victim.

# The Situation of Civic Space in Tanzania

## 5.0 Introduction

This chapter presents the situation of civil society space in Tanzania for the year 2018. It addresses the space of the CSOs based on the various indicators. According to the International Centre for Non-profit Law (ICNL), Civil society means: “that element of society outside of government and business sectors, both organized and essentially disorganized, that represents the workings of people among, and with one another to achieve their aspirations, meet their needs and live creative, active, healthy lives.”<sup>54</sup> 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 society often differs depending on 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.

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<sup>54</sup> Edwards, M., *Civil Society*, Polity Press, Cambridge (UK) (2004), Ch. 1.

## 5.1. The Role and Significance of Civil Society

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

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

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

“The presence of a robust, vocal and critical civil society sector guarantees, almost without exception, that a State also possesses a good business environment. The rule of law is stronger, transparency is greater and markets are less tainted by corruption. In other words, when civil society does well, business does well too.”

Former UN Special Rapporteur on Freedom of Assembly and Association, Maina Kiai.



## 5.2 Historical Background of Civil Society 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>55</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.

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<sup>55</sup> 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.

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>56</sup>

### 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>57</sup>

Civic space is defined as the set of conditions that determine the extent to which all members of society, both as individuals and in informal or organised groups, are able to freely, effectively and without discrimination exercise their basic civil rights.<sup>58</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>59</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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<sup>56</sup> Ibid

<sup>57</sup> Ibid

<sup>58</sup> Civil Society space and the United Nations human rights system pp 5.

<sup>59</sup> Olengurumwa, O (2016). The Shrinking Space of Civil Society in Tanzania. A Paper Presented During KupaAnnual 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.

### 5.3.1 Indicators of the Space of Civil Society

In measuring the space of Civil Society various indicators are used to see whether the space is improving or shrinking<sup>60</sup>. 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).

*Civic space is therefore defined as the set of conditions that determine the extent to which all members of the society, both as individual and in informal or organised groups, are able to freely, effectively and without discrimination exercise their basic civil rights*

<sup>60</sup> Accountability Initiative London pp26-32

**Figure 1. Table illustration of indicators for Civil Society space**

| No. | Dimension/Indicators of Civic Space          | Principle/ Sub indicators  |
|-----|--|--|
| 1.  | <b>Freedom of Information and Expression</b> | Access to Information is guaranteed by law and respected in practice   |
|     |  | Freedom of Expression is guaranteed by law and respected in Practice   |
|     |  | Media Freedom is guaranteed by law and respected in Practice   |
|     |  | Internet Freedom is guaranteed by law and respected in Practice  |
| 2.  | <b>Freedom of Assembly and Association</b>   | Rights of Assembly are guaranteed by law and respected in Practice   |
|     |  | Rights of Associations are guaranteed by law and respected in Practice   |
|     |  | CSOs are able to function independently and free of government interference  |
|     |  | There is an enabling fiscal environment for CSOs   |
| 3.  | <b>Citizen Participation</b>                 | Democracy and free and fair Elections  |
|     |  | The government facilitates the participation of citizens and CSOs in processes of public deliberation and decision-making                  |
|     |  | The government recognizes and respects the legitimate role of citizens and CSOs as independent advocates, watchdogs and development agents |
| 4.  | <b>Non-Discrimination/Inclusion</b>          | Women have equal civil rights and equal access to civic space  |
|     |  | Minority groups have equal civil rights and equal access to civic space  |
|     |  | Marginalized groups have equal civil rights and equal access to civic space  |
| 5.  | <b>Human Rights/Rule of Law</b>              | Basic human rights are guaranteed by law and respected in practice   |
|     |  | Effective Rule of Law including enactment of non-draconian laws  |

## 5.4 The Space of Civil Society Organizations at Regional and International Level

International, Regional civil society and Sub regional Coalitions have an important role to play as a complement and a backup to national groups. They are less exposed to risks compared to national CSOs and in many cases they can really contribute, influence and pressurize member states through the regional and continental bodies on regional policy issues. For many International CSOs cooperate with UN without any commotion. UN, EU and AU have taken a number of efforts to protect and expand the Space of CSOs. There are a lot of international and regional instruments and initiatives for creation and protection of Civil Society Space. At these levels Civil Society Organizations are given space to present their issues of concerns and they are taken into consideration in the deliberations made. At this level there are also avenues which CSOs space can be protected.

### 5.4.1 Civil society space at International (UN) Level

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

The first venue by which non-governmental organizations took a role in formal UN deliberations was through the Economic and Social Council (ECOSOC). In 1945, 41 NGOs were granted consultative status by the council; by 1992 more than 700 NGOs had attained consultative status and the number has been steadily increasing ever since with more than 4,000 organizations today.<sup>61</sup>

Article 71 of the UN Charter opened the door by providing suitable arrangements for consultations with non-governmental

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<sup>61</sup> <http://esango.un.org/civilsociety/displayConsultativeStatusSearch.do?method=search&sessionCheck=false>

organizations.<sup>62</sup> The consultative relationship with ECOSOC is governed by ECOSOC resolution 1996/31, which outlines the eligibility requirements for consultative status, rights and obligations of NGOs in consultative status, procedures for withdrawal or suspension of consultative status, the role and functions of the ECOSOC Committee on NGOs, and the responsibilities of the United Nations Secretariat in supporting the consultative relationship.

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

In addition to the ECOSOC, there are avenues which the UN human rights mechanisms can protect civil society space, that is documentation about obstacles, threats to civil society space, and good practices.<sup>63</sup> Documentation about human rights situations forms the basis for interventions by UN human rights mechanisms. Well-documented and verified information by CSOs makes a strong case for action, is more credible and persuasive, difficult to refute, and an effective way to promote and protect human rights. Through this avenue CSOs are invited to share documentation that is accurate, factual information, careful analyses, and concrete recommendations about obstacles, and threats they face.

### 5.4.2 Civil Society space at the Regional level

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

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<sup>62</sup> Art 71 UN Charter; The Economic and Social Council may make suitable arrangements for consultation with nongovernmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.

<sup>63</sup> UN Office of the High Commissioner for Human Rights(OHCHR) 2014; Civil Society Space And The United Nations Human Rights System; A Practical Guide for Civil Society pp 21

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

Moreover, the during the annual Ordinary Sessions of the African Commission on Human and Peoples’ Rights, NGOs participates in the ‘NGOs Forum’, an advocacy platform coordinated by the African Centre for Democracy and Human Rights Studies (African Centre) aiming at promoting advocacy, lobbying and networking among Human Rights NGOs, for the promotion and protection of human rights in the continent.

The NGOs Forum shares updates on the human rights situation in Africa by the African and international NGOs community with a view of identifying responses as well as adopting strategies towards improving the human rights situation on the continent. A series of panel discussions on general human rights related issues are organized within the main agenda of the NGOs Forum as well as at side events. Basically, during the forum NGOs discuss issues relating to the;

- i. Status of Human Rights and Democracy in Africa (update from sub-regional Focal Points on the general situation of human rights in Africa)
- ii. Special Interest Groups Discussions (Kindly note that the list of not exhaustive, new interest groups are welcome)
- iii. Prisons and Conditions of Detention in Africa
- iv. Rights of Women in Africa
- v. Human Rights Defenders in Africa
- vi. Freedom of Expression and Access to Information in Africa
- vii. Prevention of Torture in Africa
- viii. Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa
- ix. Indigenous Populations/Communities in Africa

- x. Economic, Social and Cultural Rights in Africa
- xi. Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa
- xii. Rights of Older Persons and People with Disabilities in Africa
- xiii. People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV
- xiv. Extractive Industries; Environment and Human Rights Violations
- xv. Policing and Human Rights
- xvi. Sexual Orientation and Gender Identity (SOGI)
- xvii. Freedom of Association and Assembly
- xviii. Peace and Security in Africa
- xix. Enforced disappearances

### 5.4.3 The Space of Civil Society Organization at National Level

At national level, the space of civil society 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. 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 on 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 organizations 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 scrutinization have to a greater extent led to failure and/or delays in the execution of CSO’s activities.

## 5.5 A critical analysis of the Civic Space in Tanzania

The space of CSOs is affected by both internal and external factors. The internal factors involve CSOs themselves not cooperating 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.

This part provides a critical analysis of the civic space in Tanzania based on the indicators of the civil society space that are freedom of information and expression (access to information; freedom of expression; media freedoms; and, internet freedoms); Rights of assembly and association (right of assembly; right of association; CSO autonomy and rights; and, CSO funding); Citizen participation (free and fair elections, citizen participation, and citizen advocacy); Non-discrimination/ inclusion (women’s rights; minority rights; and, the rights of marginalized groups); and, Human rights/rule of law (human rights; rule of law).

## 5.5.1 Freedoms of Information and Expression

This indicator entails state's guarantee and respect to access to information, freedom of expression, Media and Internet freedom. Restriction of these rights to civil society eliminates the voices of people, brings into question the legitimacy of a government and might lead to a diplomatic consequence due to non-adherence to international and regional commitments to the fundamental freedoms of information and expression.

Of Recent, new laws have been enacted which limit the enjoyment of the rights of freedom of expression and the right to information to Civil Society Organizations as well as individuals. These laws include the Cyber Crimes Act, 2015), The Statistics Act, 2015 The Media Service Act 2016 and the 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 criticism from stakeholders that it tends to close down democratic space in Tanzania. It goes against freedom of the media and contradicts the government's stated commitment to open government. Worse still, the government of Tanzania has pulled out of the Open Government Partnership (OGP). This means that CSOs looking for data and statistics from various sources including the government will now find themselves in a difficult situation when implementing their activities and programs.

The Media Services Act, 2016 requires journalists to be licensed or accredited; it establishes statutory Media Services Council to replace the self-regulatory body, currently the a Media Council of Tanzania and it introduces severe sanctions for a number of media-specific offences and allow for the banning of newspapers. In effect, it is intended to restrict both the space of civil societies as well as the individual's access to information.

With these draconian laws, THRDC has recorded various incidences of limiting the civic space such as imposition of hefty fines to five media outlets (ITV, Channel Ten, EATV, Star TV and Azam 2), attack of journalists, and arbitrary arrest of more than 20 HRDs from January to November 2017. Sanctions imposed to the Media houses were strongly condemned by CSOs including the THRDC and LHRC on the 3rd of January 2018.

JAMHURI YA MUUNGANO WA TANZANIA

WIZARA YA HABARI UTAMADUNI SANAA NA MICHEZO

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Jengo la LAPF,  
Ghorofa ya Nane,  
Makole Uhindini,  
S. L. P 25,  
DODOMA.

TAARIFA KWA UMMA

Waziri wa Habari, Utamaduni, Sanaa na Michezo Dkt. Harisson Mwakymbe (Mb) ametangaza rasmi kanuni mbili za Sheria ya Mawasiliano ya Kielektroniki na Posta (EPOCA) ya Sura namba 306 ya mwaka 2010, katika gazeti la Serikali namba 133 (GN.No.133) na 134 (GN.No.134) zilizochapishwa tarehe 16/03/2018.

Kanuni za Sheria ya Mawasiliano ya Kielektroniki na Posta (Maudhui ya Habari za Mtandaoni) ya mwaka 2018 ijulikanayo kama **The Electronic and Postal Communications (Online Content) Regulations, 2018** zimetangazwa kupitia Tangazo la Serikali Namba 133 (GN.No.133).

Kanuni nyingine ni Sheria ya Mawasiliano ya Kielektroniki na Posta (Maudhui ya Utangazaji katika Redio na Runinga) ya mwaka 2018 ijulikanayo kama **The Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations, 2018** ambazo zimetangazwa kupitia tangazo la Serikali namba 134 (GN.No.134).

Kanuni hizi kwa pamoja zimetengenezwa chini ya Kifungu cha 103 cha sheria ya EPOCA na zimetwa saina na Waziri wa Habari, Utamaduni, Sanaa na Michezo Dkt. Harrison Mwakymbe ambaye ndiye mwenye dhamana na Maudhui ya Habari na Utangazaji.

Kwa ujumla kanuni hizi zinalenga kuongeza ufafanuzi wa mambo muhimu katika Sekta ya Habari, kwa ajili ya kuongoza vyombo vyenye mamlaka ya kusimamia pamoja na kurahisisha utekelezaji kwa watumiaji mbalimbali wa huduma ya Sekta hiyo.

Mchakato wa kuandaa Kanuni hizi ulihusisha wadau mbalimbali wa Habari wakiwamo wamiliki wa vyombo, watoa huduma za mawasiliano ya mtandaoni, watumiaji wa mtandao, waandishi wa habari, pamoja na wanaharakati na watetezi wa haki za walaji wa huduma za sekta hii pamoja na Wizara ikisaidiana na wataalamu wa Mamlaka ya Mawasiliano Tanzania (TCRA).

Kanuni za Maudhui ya Utangazaji wa kwenye redio na kwenye runinga pamoja na mambo mengine zimefafanua juu ya dhana kuu mbili ambazo zimekuwa katika mijadala ya watoa huduma na watumiaji wengi, mambo hayo ni kuhusu Chaneli ambazo ni lazima kubebwa na anayemiliki miundombinu ya kurushia matangazo hata kama hazijalipiwa kwenye king'amuzi cha mlaji wa mwisho (*free to air channels*).

*A press statement issued by the Ministry of Information, Culture, Arts and Sports, informing the public about the enactment of the Electronic and Postal Communication Regulations (Online Content Regulations) on 27th March 2018*

An engagement in research activities by CSOs has increasingly become a challenge due to a number of reasons according to CSOs themselves. Most of these challenges are posed by the presence of many regulatory bodies which are established under several laws in order to oversee research activities in Tanzania. These laws include the Statistics Act of 2015, Commission for Science and Technology (COSTECH) Act of 1986 and the National Institute of Research (NIMRI) Act. Some of the challenges include insufficient funds to pay for statutory fees to National Bureau of Statistics (NBS) and COSTECH; costs associated to data collection; bureaucratic procedures to start researches at regional or district levels e.g RAS has to authenticate the permission and study mission; complying with requirements of the Statistics Act and COSTECH Act (obligation to engage with NBS and COSTECH); and, reactions of the some of the government leaders and other audience after the publication of the research results.

One of the notable incidents which could illustrate the mentioned challenge over the reaction of government leaders and research institutions is the case of TWAVEZA, which found itself in a legal wrangle with COSTECH after releasing its public opinions' poll results in July 2018. TWAVEZA, a local NGO, normally conducts researches to collect public opinions on various socio-economic and political trends. It then publishes the 'Sauti za Wananchi.' Unlike its previous findings, which were, generally, criticized by some researchers for various reasons (normal academic critics), this time around COSTECH, 'intervened.' Through its letter dated 9th July 2018, reference as CST/SC.186/1145/2018, signed by Dr. Amos Nungu, COSTECH instructed TWAVEZA to 'show cause' why they should not be taken to task for violating research procedures.<sup>64</sup>

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<sup>64</sup> See also THRDC, (2018) Compendium of Legal Challenges Affecting CSOs in Tanzania

# Tanzania's Twaweza in trouble as Costech claims recent survey was uncertified

WEDNESDAY JULY 11 2018



*One of media clips addressing claims from the Commission for Science and Technology (COSTECH), that a survey which was conducted by a local NGO - TWaweza was illegal due to the fact that a research permit was not granted by the Commission*

## 5.5.2 Rights of assembly and association

States are required to ensure CSOs rights of assembly and associations are guaranteed by law and respected in practice. In addition to that, the state has to guarantee enabling environment for operations and functioning of CSOs in terms of technical and fiscal without any government interference.

Article 20(1) of the Constitution of the United Republic provides for the right to freedom of association.<sup>65</sup> In addition to the constitutional guarantee, among the objectives of the NGOs policy were to put in place NGOs registration procedures which are transparent, decentralized and which will facilitate better coordination of NGOs while safeguarding the freedom of association.<sup>66</sup>

<sup>65</sup> Every person has a freedom, to freely and peaceably assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests.

<sup>66</sup> Objective (iii) Tanzania NGOs policy 2001.

The major constraint for Civil Society limiting its rights of assembly and association is the legal framework regulating CSOs registration and operations. Before 2002 CSOs in Tanzania were registered and established under various laws and authorities. These authorities are the Business Registration and Licensing Agency (BRELA) in charge of registration of companies without 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.

In 2002 NGOs Act as amended in 2005 was enacted. The law established the Directorate of NGOs of the Ministry of Community Development, Gender and Children who is responsible for the registration of NGOs. The new Act is considered as merely state's attempt to control NGOs and not enabling an environment where CSOs can evolve independently.

The law has the provision which violates constitutional guarantees and objectives of the NGOs policy with regard to freedom of association by putting a compulsory registration requirement with the registrar of NGOs.<sup>67</sup> More over the Act further, 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 a Certificate of Compliance.<sup>68</sup>

This requirement for compliance has been used by the government as a shield to threaten CSOs which do not comply with the requirement. Government is now exploring loopholes available under the law to de-register CSOs. During the preparation of the amendment to the Act, NGOs proposed the provision be amended to provide for non-mandatory registration with the registrar due to presence of other laws preceding the NGOs Act. This recommendation was however not considered.

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<sup>67</sup> Section 11 NGOs Amendment Act 2005; Each Non-Governmental Organization shall be required to register with the Registrar pursuant to the provisions of this Act.

<sup>68</sup> Provisions of Section 11(3) of the NGOs Amendment Act 2005

Apart from the NGOs Act, authorities have been using both penal laws and administrative pronouncements to limit CSOs association rights and the work of HRDs in general. Interruption of HRDs internal meetings and workshops and intimidation of HRDs working for marginalized groups such as pastoralists in Loliondo, people with disability and key populations. Intimidation, frivolous cases and arbitrary arrest of human rights defenders has been very common in 2018 including the arrest of HRDs working on the rights of sexual minorities in Zanzibar.

## **Political rights**

Article 21(1) of the Constitution provides that subject to the provisions of Article 39, 47 and 67 of this Constitution and of the laws of the land in connection with the conditions for electing and being elected or for appointing and being appointed to take part in matters related to governance of the country, every citizen of the United Republic is entitled to take part in matters pertaining to the governance of the country, either directly or through representatives freely elected by the people, in conformity with the procedures laid down by, or in accordance with, the law. Sub article (2) of the same Article provides that every citizen has the right and the freedom to participate fully in the process leading to the decision on matters affecting him, his well-being or the nation. The Political Parties Act, 2009 further guarantees the rights of political parties' leaders to participate in political activities in accordance with the laws.

However, for the past three years there has been serious crackdown on political activities in the country. Opposition leaders have been the target in this move. They have been seriously restricted from conducting political activities with their right to assembly been seriously curtailed at the pretext of national peace. The Police Force and Auxiliary Services Act, 1969 is particularly the law that police have been using to deny permission to opposition leaders from conducting public meetings. What is more repulsive is that even internal meetings of political leaders have been suppressed. The use of the law is in addition to the public statement that was made by the President that there should be no political activities whatsoever

until the 2020 election campaigns. Surprisingly, this statement and even the misuse of the law seems to be tolerated while the ruling party has been conducting series of meetings in different places while enjoying the security of the police.



*Secretary of Publicity and Ideology for CCM, Humphrey Polepole as he was campaigning in Tabora in September 2018.*

For the opposition, the story is different. As of December 2018, 17 Tanzanian opposition legislators faced various politically motivated offenses in courts. 2 were convicted with prison terms and 4 are in remand prisons including the leader of the opposition in parliament and 2 women popularly elected from constituencies. One barely survived an assassination attempt when he was shot at with more than dozen bullets in his body.



## List of MPs with pending cases in court

| Sn | Name                                | Constituency  |
|----|-------------------------------------|---------------|
| 1  | Rt. Hon. Freeman Mbowe              | Hai           |
| 2  | Rt. Hon. Zitto Kabwe                | Kigoma Urban  |
| 3  | Rt. Hon. Tundu Lissu                | Singida East  |
| 4  | Rt. Hon. Selemani Bungara ( Bwege ) | Kilwa South   |
| 5  | Hon. Esther Matiko                  | Tarime Urban  |
| 6  | Hon. Esther Bulaya                  | Bunda Urban   |
| 7  | Hon. John Mnyika                    | Kibamba       |
| 8  | Hon. Godbless Lema                  | Arusha Urban  |
| 9  | Hon. John Heche                     | Tarime Rural  |
| 10 | Hon. Cecil D Mwambe                 | Ndanda        |
| 11 | Rt. Hon. Halima Mdee                | Kawe          |
| 12 | Hon. Zubeda Sakuru                  | Special seat  |
| 13 | Hon. Rev. Peter Msigwa              | Iringa Urban  |
| 14 | Hon. Susan Kiwanga                  | Mlimba        |
| 15 | Hon. Peter Lijualikali              | Kilombero     |
| 16 | Hon. Pascal Haonga                  | Mbozi         |
| 17 | Hon. Frank Mwakajoka                | Tunduma Urban |

## List of MPs in remand prisons

| Sn | Name                   | Constituency |
|----|------------------------|--------------|
| 1  | Rt. Hon. Freeman Mbowe | Hai          |
| 2  | Hon. Esther Matiko     | Tarime Urban |
| 3  | Hon. Susan Kiwanga     | Mlimba       |
| 4  | Hon. Peter Lijualikali | Kilombero    |

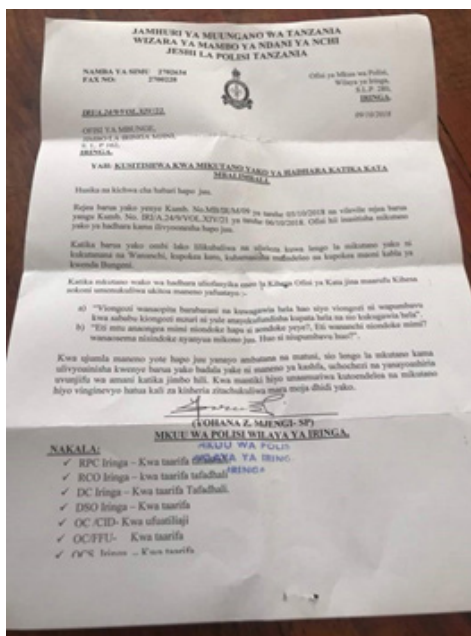
## List of MPs who have served jail terms

| Sn. | Name                   | Costituency |
|-----|------------------------|-------------|
| 1   | Hon. Joseph Mbilinyi   | Mbeya Urban |
| 2   | Hon. Peter Lijualikali | Kilombero   |

## Assassination attempt

| Sn | Name             | Constituency |
|----|------------------|--------------|
| 1  | Hon. Tundu Lissu | Singida East |

All these MPs with decided and pending cases were charged with different offences emanating from conducting their political activities. In 2018, for example police used live ammunition to quell a demonstration of the opposition CHADEMA party and in the process killing of Aquilina Akwilini. Thereafter, the chairman of CHADEMA, Freeman Mbowe was implicated to have caused the death of Aquilina. His implication follows two conflicting statements from the Special Zone Commander, Lazaro Mambosasa; who publicly admitted that it the police who killed Aquilina during the exercise of dispersing opposition supporters who were demonstrating BUT later on he changed the statement and implicated Freeman Mbowe to have caused the death.



*The picture above is a letter that was issued to Reverend Peter Msigwa, MP for Iringa urban, to deny him permission to conduct public meeting for the reasons that there is likelihood of breach of peace if the meeting proceeds.*

Letters of this nature are common to opposition leaders who seek permission from police to conduct their peaceful meetings.

Luckily, a constitutional case No. 4 of 2018 was in 2018 filed by Francis Muhangirwa Garatwa vs Attorney General of the United Republic of Tanzania to challenge several provisions of the Police Force and Auxiliary Services Act, 1969 which has been used by police to deny permission to conduct public meetings.

The recent amendments in the political parties Act is yet another obstacle to the enjoyment of political rights. The amendment introduces unnecessary criminalization of the basic duties and responsibilities of political parties and other actors, combined with excessively punitive measures without provisions for due process in the Act. The powers of the Registrar of political parties have been increased and he now manages the provision of civic education, deregister a political party, interfere with internal affairs of parties, among other powers. In essence, the amendment seeks to seriously restrict the scope of democracy rather than widening the same.

### **The Review of the NGOs Policy of 2001**

In January 2018 the Ministry of Health, Community Development, Gender and Children through the Registrar of NGOs published a notice announcing the process of developing a New NGOs Policy. This followed several economic and social changes that have taken place in the past 17 years since the adoption of the current NGOs Policy in 2001. Following this process THRDC and some other organisations took initiatives to develop recommendations for possible amendments. On its part the THRDC played part in coordinating its members and other affiliate NGOs to participate in the process by collecting recommendations from them and develop a NGOs Model Policy.

Two major meetings were conducted in relation to the review of the NGOs Policy. On the 11th of April 2017 an inception meeting was conducted by more than 60 NGOs' representatives from across the country. Second meeting was conducted on the 27th April 2018, in

which CSOs had a chance to validate the NGOs Policy Review Report and the Proposed NGOs Model Policy.

According to the NGOs Policy Review Report and the NGOs Model Policy developed by the THRDC and Human Rights NGOs in Tanzania there are several areas which require amendment and improvement in the current NGOs Policy. A total of 10 key issues were proposed to be included in the new NGOs Policy in relation to the widening of the space of NGOs in Tanzania. These issues are as follows:

- NGO and Government Partnership in Development
- Autonomy and Freedom of NGOs
- Threats to NGOs Personnel and Operations
- Accounting and sharing of information
- Fundraising and Government Support
- Conducive environment for growth, development and sustainability of NGOs in Tanzania
- Self-regulatory framework
- Accountability and transparency of NGOs
- Decentralisation, digitalization and coordination of NGOs registration procedures in Tanzania
- Compliance after registration under other laws



*Mr. Ludovic Utouh, Rtd. CAG and the current Executive Director WAJIBU - Institute of Public Accountability explaining to participants of the CSOs Inception Meeting on the strategies for successful policy engagement. The meeting was held on 11th April 2018 at Seashells Hotel Dar es Salaam*

However, despite the fact that the process of reviewing the current NGOs Policy was announced by the Registrar of NGOs, the process was left unfinished by the Government. Despite the fact that NGOs, including the THRDC submitted its recommendations and its model policy, the Government has not shown any sign of being ready to adopt a new NGOs policy after the completion of the review process in the mid-2018.

### **Non-Governmental Organizations Act (Amendment) Regulations (2018)**

In October 2018, the Ministry of Health, Community Development, Gender Elderly and Children gazetted NGOs Act (Amendment) Regulations. The Regulations seek to improve financial transparency and accountability. According to the Regulations NGOs are required to inter alia publish information about the sources of fund or resources obtained; expenditure of the fund or resources obtained; purpose of fund or resources obtained; and Activities to be carried from fund or resources. In case the NGO raises more than 20 Million Tshs, the NGOs will be required to release biannually information about the raised fund and expenditure. This information is required to be published in a well circulated newspaper or any other media which is easily accessed by the beneficiaries of the project.

Another challenging provision of the new Regulations which has been highly criticized by stakeholders in the NGOs Sector is Regulation 13 (b) which requires NGOs to submit to the treasury and the Registrar all contracts or agreements entered with donor or person who grant the said fund not later than ten days from the date of entering the said contract or agreement for approval. Authorization of contracts imposes an overwhelming administrative burden on the treasury and the Registrar. If every contract over \$8,700 conceivably needs authorization, these institutions will need to review a considerable number. In practice, this will create a significant impediment to programming through arbitrary delays to an organization's ability to use the funds. It defies logic to submit contracts which have already been signed to the Registrar for approval.<sup>69</sup>

<sup>69</sup> THRDC, (2018) Analysis of the New Non Governmental Organisations Act (Amendment) Regulations, by Members of Tanzania Human Rights Defenders Coalition. The analysis was also submitted to the Permanent Secretary of the Ministry of Health, Community Development, Gender, Elderly and Children as a way of influencing possible amendments.



*The Permanent Secretary of the Ministry of Health, Community Development, Gender, Elderly and Children, Mr. John Jingu during a press conference which was held on the 31st of October 2018 in Dodoma. During this press conference, NGOs were given 14 more days to submit their annual activity and financial reports to the Ministry.*

Due to such challenging provisions of the new regulations, Tanzania Human Rights Defenders Coalition (THRDC) organised several meetings with its members and other affiliate organisations as a way of collecting recommendations which could subsequently be submitted to the office of the Registrar of NGOs and the Permanent Secretary of the Ministry of Health, Community Development, Gender, Elderly and Children. It was very unfortunate that the recommendations from the THRDC members and other stakeholders have never been considered by the responsible Ministry. Some of important weaknesses observed from the enactment of the new Regulations include the following:

#### a. Stakeholder's Involvement

The wider civil society sector and NGOs play an important role in stimulating social, economic and cultural development in our society. Their active participation at local, national trans-boundary and regional level in all aspects of development, awareness raising, policy formulation, planning, management, implementation, monitoring and evaluation of different projects makes their involvement in any decision that affects their interests even more crucial.

In order to ensure a meaningful, coordinated and effective participation of civil society in the above mentioned phases, there is a need to actively involve them in decision making processes. In 2001, the Tanzania Government passed the National Policy on Non-Governmental Organizations (NGOs). The Policy sought to

“enhance self-regulation, transparency and accountability of NGOs and the modalities for interaction between NGOs and the state and between NGOs and other stakeholders.”

The promulgation of the new NGOs Regulations did not follow the procedure, as the law requires consultations of the Board. This is based on the facts that there is no Non-Governmental Organization Coordination Board which has not been formed since the expiration. Section 25(1) of the NGO Act establishes the National Council for Non-Governmental Organizations (NACONGO) as a collective forum for purposes of coordinating and networking NGOs in the country. Therefore, failure to consult key stakeholders such as NACONGO and NGOs Board in the making of these Regulations makes them lose their legitimacy. It was therefore proposed by the THRDC that the Regulations should cease to be used until all key stakeholders are involved in the process of making them.

#### b. Procedural Propriety

Section 38(1) and (2) of the NGO Act empowers the Minister upon consulting the Non-Governmental Organizations Coordination Board to make regulations. Regulations can be made dealing with:

- (a) Various forms to be used in this Act;
- (b) Fees payable under this Act;
- (c) The format of the reports of activities to be submitted by the Non-Governmental Organization; and
- (d) Any matter which needs to be prescribed under this Act.

Section 38(3) requires that the Regulations made by the Minister to be published in the Government Gazette. It is important to note that whenever a law requires that a subsidiary legislation, including regulations must be published in the Government Gazette, then the said regulations must be published in the Government Gazette and can only come into effect upon being so published and not otherwise. The Non-Governmental Organizations (Amendments) Regulations, 2018 seems to be in compliance with this requirement as they have been published on 19th of October 2018 as GN No. 609 of 2018.

### c. Validity of the Regulations

It is elementary to note that an Act of parliament is operationalized by a subsidiary legislation. This means therefore that guidelines as to how particular sections of an Act are to be implemented can to be found in a particular piece of subsidiary legislation promulgated for that purpose. It is in that premise that courts have always been strict to limit the scope of the subsidiary legislation to the confines of a particular section in the parent Act from which the legislation is drawn. Where it appears that the subsidiary legislation has gone beyond what was envisaged in the parent Act, courts have not hesitated to declare such excesses illegal and un-procedural.

The newly enacted Regulations are intended to operationalize Section 32 of the NGOs Act which provides to the effect that, “Non-governmental Organizations registered under this Act shall be entitled to engage in legally accepted fund raising activities.”

From the foregoing provision, and from the foundation we laid in the foregoing paragraph, it was expected that the provisions of GN No. 609 of 2018 would be confined to providing guidelines as to what comprises ‘legally accepted fundraising activities’ and the procedure on how to engage in said activities. To the contrary, the provisions of Regulations 12 and 13 of GN No. 609 of 2018 have gone beyond what was expected; they provide for matters that are beyond fundraising activities. This provisions are ultra vires the parent Act and as such illegal and therefore are supposed to be struck out of GN No. 609 of 2018.

### d. The Constitutionality of the Regulations

Regulations 12 and 13 seek to force non-governmental organizations (NGOs) to do disclosure which we submit that interferes with NGOs’ right to privacy as provided for under Article 16 of the URT Constitution of 1977 as amended. For instance, Regulation 12 requires NGOs, inter alia, to disclose to the public sources of fund or resources obtained, expenditure of the funds or resources obtained,



the purpose of the funds or resources obtained, activities to be carried from the funds or resources obtained, whereas Regulation 13 requires NGOs to publish bi-annually funds received and its expenditure in wide circulated newspapers and other media channels which are easily accessible by the targeted beneficiaries, cause the contracts or agreements entered with donors or person who granted the funds to be submitted to the treasury and the Registrar not later than ten days from the date of entering the said contract or agreement for approval, declare to the Registrar of NGOs any other resource received either in cash or in kind before its expenditure.

First of all, the disclosure of information to the public sought under Regulation 12 and disclosure by publication sought in Regulation 13 are unnecessary and uncalled for. Complying with Regulation 12 is hard because all information are supposed to be published within 14 days contrary to financial principles which requires publication of only audited financial information which principally indicates sources, purpose and expenditure of the grant.



*A front page of one of the local Newspapers (Mtanzania) with a headline 'NGOs Tightened' following the Release of the NGOs regulations in 2018*

### 5.5.3 CSOs Engagement and Participatory rights

Governments are only credible partners as long as they represent their countries` interests. Recognition of constructive engagement and collaboration with Civil Society Organizations (CSOs) is an important ingredient to achieving better governance. When Civil Society has opportunity to engage with the government, can influence policy making and democratic processes through promotion of citizens` political participation.

This can be done by educating people about their rights and obligations as democratic citizens expose the corrupt conduct of public officials and lobby for good governance reforms, develop citizens` skills to work with one another to solve common problems, to debate public issues, and express their views.

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.<sup>70</sup> However, the current status of state cooperation, engagement and support where the government and CSOs have worked together, reveals that the relationship is occasional and isolated. Civil society representatives 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.

CSOs engagement and participatory rights have not been automatic. In 2018 CSOs have continued to struggle a lot for these rights despite some obvious constraints from state actors both at the central and local government Rights levels. Following the announcement by the Ministry of the President`s Office, Regional Administration and Local Government Authorities in 2017, in 2018 CSOs have continued to struggle in securing permits from the Ministry Responsible with the Local Government Authorities. It should be noted that the Ministry

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<sup>70</sup> 2001 NGOs Policy; policy rule 1.1.1 pp3

for Local Government Authorities requires all CSOs to apply for permits in the ministry before such organisations start to implement projects at the Local government level.

The process of securing permits in the Ministry of Local Government Authorities was another challenge to the space of CSOs in 2018 due to the fact that CSOs were now required to spend some time, financial resources and sometime delays of projects as they wait for the permits. Due to such challenges, the THRDC conducted several meetings with Government officials in order to influence the removal of such cumbersome and burdensome requirements. On the 14th of October 2018 during the CSOs Directors Reflection Meeting in Tanga, the Minister of the President's Office, Regional Administration and Local Government, Hon. Selemani Jafo declared that his ministry will establish a specific department in his Ministry that will be responsible with the coordination of the CSOs work at the local government level.



News cut from one of the newspapers in October 2018 titled "A Special Department to be established in order to resolve challenges affecting CSOs in Tanzania."

Branding of CSOs by government officials is yet another challenge which shrinks the space of CSOs. For a long time and repeatedly, various leaders of the government have continued to brand 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. There have always been threats to deregister NGOs, especially those advocating for legal, policy reforms and governance.

## Tanzania warns NGO against involving in political, inflammatory activities

THURSDAY JUNE 7 2018



On the 3rd of July 2018 during the swearing in of the current Minister of Home Affairs Hon. Kangi Lugola, the President of the United Republic of Tanzania, His Excellency President of the United Republic of Tanzania, John Pombe Magufuli condemned some NGOs which do not allegedly serve the interests of the public but the interests of the people who own the NGOs.

*“NGOs nyingine za hovy na zinafanya mambo ya hovy kinyume na maslahi ya Watanzania. Tunahitaji NGO zinazofanya kwa maslahi ya Watanzania na sio ya wenye NGO ” President Magufuli*

Through unified Civil Society efforts to struggle for CSOs engagement and participatory rights, the THRDC has continued to note indications for a prospective future despite obvious limitations. Some of notable illustrations to this are as follows:

During the commemoration of the fifth Human Rights Defenders day on the 28th April 2018 in Dar es Salaam, t THRDC was able to revive the dream of Human Rights Defenders/CSOs cooperation in Tanzania with Local Government Authorities. During the last two years the relationship between CSOs and the Ministry of Local Government Authorities has not been good due to a requirement which was imposed on local government authorities, that all CSOs which intended to conduct projects at the Local Government must first secure permit at the Ministry Responsible with Local Government Authorities. The theme of this 5th Defenders day was **“Forging Effective Engagements between CSOs and Local Governments”**. This event provided a forum for discussion of various matters affecting Human Rights Defenders/CSOs including poor cooperation between the CSOs and the Ministry responsible with Local Government Authorities. CSOs managed to persuade the Guest of Honor and through his speech

*“There must be a good relationship between the CSOs and the Local Government. The government has witnessed success especially in rural areas due to the work of CSOs. Many CSOs have been successful and some, not very much, but we are commending all CSOs for their accomplishments”. Hon. Joseph Kakunda the then Minister of Regional Administration and Local Government Authorities*

later, he invited CSOs for a talk at his office in order to discuss various challenges which face CSOs in working with the Local Government Authorities. The Guest of Honour was the Minister of the Ministry

of the President's Office Regional Administration and Local Government who was represented by his deputy minister, Hon. Joseph John Kakunda. He said there must be a good relationship among the CSOs and the Local Government. The government has witnessed success especially in rural areas due to the work of CSOs. Many CSOs have been successful and some, not very much, but we are commending all CSOs for their accomplishments.



*A banner of the commemoration of the 5th Anniversary of the Tanzania Human Rights Defenders Day depicting the main theme of the event*

On another note, during the 4th CSOs Directors Reflection Meeting which was held on the 13th to the 14th of October 2018 (The event is organized annually by CSOs Directors under the coordination of THRDC). The invited guest of honor was the Minister of State, President's Office, Regional Administration and Local Government Authorities, Hon. Selemani Jafo. Hon. Jafo assured CSOs Directors that the Government recognises the contribution of CSOs in the national economy and therefore it will continue to create better environment for CSOs in Tanzania.



*'The government cannot work alone in serving the people in the country. CSOs are playing very crucial role in the society. One of very important roles that aren't talked about most times is the creation of employment opportunities for people in the country. Most youth who aren't employed in the government after they finish school, they expect to be employed in different CSOs and NGOs. The government fully supports CSOs for reducing the unemployment rate. Hon. Selemani Jafo.*

## 5.5.4 Human rights and Rule of Law

Threats and intimidation to de-register CSOs in Tanzania is still a problem. Both legal instruments and administrative pronouncements have been a threat to the work of CSOs. Old and new legislative enactments including, the Newspaper Act (Act No. 3/1976), (this is repealed) and the National Security Act. The Cyber Crimes Act (Act No. 14/2015), The Statistics Act, 2015 The Media Service Act, 2016 and the Access to Information Act, 2016 to mention but a few have jeopardized the existence and work of CSOs by either All these laws limit free expression and information rights or being interfered.

Branding of CSOs by government officials as puppets of imperialists is yet another challenge which shrinks 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.

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.

## 5.6 Improving Civil Society Space in Tanzania

From the above critical analysis of the civil society space in Tanzania, it is obvious that there is still a lot that needs to be done. Both internal and external challenges affecting the civic space should be worked on in order to widen the shrinking space. The following are key recommendations for widening of the CSOs space suggested by CSOs directors, veteran, representatives from the government, academicians and other stakeholders during the 4th CSOs Directors self-reflection meeting conducted in October, 13 and 14 2018 in Tanga.

- i. The need for CSOs to become more engaged with governments on the laws governing them. A consultative and less combative approach to advocacy will help lessen the tensions between the two sectors.
- ii. CSOs should be more engaged at regional level at EAC, SADC and African Union as this will enhance their bargaining power and overall strength. It is important for CSOs to be part of ongoing processes and campaigns at regional levels as this enhances their relevance and overall sustainability, e.g. integration and common market at EAC, ending child marriages and social protection campaigns at the AU, NGO Forum agenda at the Banjul Commission, etc.
- iii. CSOs should seek national resource mobilization strategies for enhanced effectiveness. At the same time, CSOs should negotiate with donors and development partners for more long term (5-10 years) and core funding as opposed to project funding.
- iv. Engage in institutionalization (beyond individualization) and succession planning processes to boost leadership and management in CSOs
- v. Need to have series of Self-educating and awareness creation among the CSOs on various aspects of the Legal Framework through which CSOs are registered, operating and required to comply.
- vi. The need to re-strategize and reorganize in order to push for reform of the oppressive and out-dated legislation affecting CSOs.



- vii. Doing away with Internal CSOs challenges such as internal CSOs management and, leadership, advocacy strategies and good alliance with the public.

## 5.7 Conclusion;

All in all, the general assessment of CSOs space indicates that a lot has to be done. The civic space continues to be limited especially through legislations and administrative pronouncements. THRDC advises the government of the United Republic of Tanzania to embrace the Media, HRDs and the Civil Society in general as key and internal actors of development and nation building rather than seeing them as antagonists. In addition to that, CSOs are advised to re-strategize and reorganize in order to push for reform of the oppressive and out-dated legislation affecting CSOs. They are also urged to remove internal CSOs challenges which are in fact more dangerous than the external challenges. To this CSOs need to have a tool for periodical self-reflection and peer-review in order to ensure that their 'houses are in good order.

## Chapter 06

# General Conclusion and Recommendations

## 6.0 Conclusion

The 2018 Tanzania human rights defenders situation report indicates that HRDs in the country still operate under unsafe environment and therefore making their work even more difficult. The report indicates that HRDs are continuously harassed, abducted, killed, attacked, maliciously prosecuted, and branded bad names just because of their work as human rights defenders. It further shows a drastic shrinking space for civil society operations, disrespect of rule of law, non-independence of the judiciary, lack of democracy and the growing tendency of state impunity. This is not in favour of the principles of human rights and the Declaration for Human Rights Defenders of 1998 as well as the Constitution of the United Republic of Tanzania, 1977 and other laws of the land. The Coalition through this report comes with recommendations for the way forward for various stakeholders including the government, CSOs, regional and international partners to work towards improving the situation and security of human rights defenders as outlined below:

## 6.1 Way Forward

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

- Encourage the law reforms to enable HRDs gain legal recognition and thus become part and parcel of the

governing structure. This will help in bridging the gap between them with the government functionaries a good number of whom 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 affected HRDs.
- Continue to advocate for the amendment of the laws that have been identified as been a stumbling block towards the work of HRDs in Tanzania.
- Conduct thorough media campaigns and change of behaviour trainings in areas where HRDs are threatened due to some social cultural issues.
- Utilize the current country's major legal reform to fight for inclusion of HRDs rights and protection in the 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 favourable working environment for HRDs in the country.

- HRDs need to work by adhering to strict ethical and moral conduct so as to avoid unethical conducts to avoid being targeted by both state and non-state actors.
- International and regional partners, donors, embassies, African and UN bodies should be keen to monitoring human rights situation in Tanzania and intervene especially at this time where violations of human rights and the situation of HRDs generally is quite tense.
- 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,

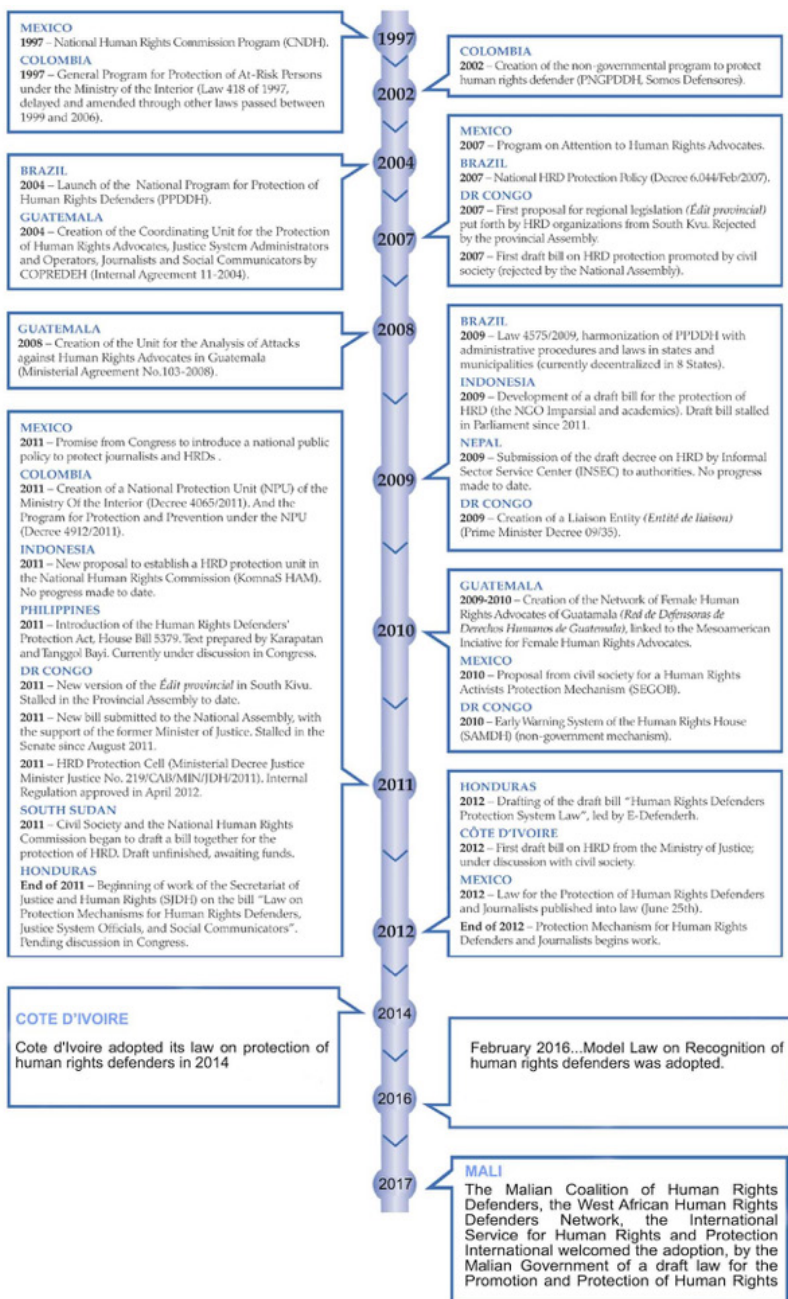
advice media owners to consider this reality and act accordingly.

- 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 (Cybercrimes Act, Media Services Act, 2016), Access to Information Act, Media Services Rules, 2018, Political Parties (Amendment) Act, 2018, The Online Content Regulations and the Statistics Act, 2015 and its Regulations in order to expand civic space and freedom of expression in the country.
- The government should amend the NGO Act 2002 especially all the repressive provisions such as sections 18, 35 and 36 and the NGOs Act (Amendment) Regulations, 2018 as per the recommendations issued in the last part of this report.
- 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
- 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.
- Government should come up with the law 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

| No | Thematic Areas Affected | Laws   | How it affect HRDs rights/Proposed amendments   |
|----|-------------------------|--|---|
| 1  | Women HRDs              | 1. <i>Marriage Act of 1971</i>   | <p>These laws and policies have gaps with its provision contributing to the persistence of gender inequality, discrimination and gender based violence. The conclusion can therefore be derived that the work of WHRDs is not fully supported by these laws but rather the said legislations create hardship and risky environment for their work. For instance, customary laws treat them as minors who have to depend on others to inherit, instead of recognizing widows' right to inherit matrimonial property. With this kind of legal framework; it was observed that WHRDs conducted their activities in a very challenging environment which seems to be supported by the existing laws.</p> <p>This affects the rights of HRDs and journalists when it comes to advocating for the rights of prisoners and prison officials. The law requires anyone including Journalists who want to communicate with any prisoner or take any photo from the prison or outside the prison to write a letter to the Commissioner of Prisons requesting the permission to do so. The process has been so bureaucratic, that it has made the media fail to advocate for the improvement of the prison services in the country as <u>little is known to the outside world.</u></p> <p>This law makes it a punishable offence in any way to investigate, obtain, possess, comment on, pass on or publish any document or information which the government considers to be classified. This includes documents or information relating to any public authority, company, organization or entity which is in any way connected with the government.</p> <p>The reference can be traced to incidents involving active journalists such as Adam Mwaibabile. The police in Songea were instructed by the regional commissioner to charge him with possession of classified documents. The magistrate wrongly convicted Adam on the ground that he had committed offences under this law. The High Court observed this error in law and ruled out that the resident magistrate had misconstrued the provisions of the Act and hence quashed the decision and acquitted Mr. Mwaibabile.[71]</p> <p>Restricts the investigative role of media and does not allow it to investigate and report on the property holdings of public leaders</p> <p>This law prohibits journalists or any HRDs to publish any information relating to the National Defense Force. Sometimes members of this force commit offences like other citizens in public places but when journalists report the incident, soldiers follow them and start all sorts of harassments.</p> <p>This law played a role in Mtwara during the gas saga where the public turned against members of the press and attacked them on account that they had failed to report on their grievances little did they know that there was no way they could report any misconduct by defense forces without higher authorities.</p> <p>The law prohibits journalists from making follow ups of any corruption case under the PCB investigation.</p> <p>These two have been used against journalists who expose malpractice and maladministration in public offices</p> <p>The law curtails access to information and prevents any commissioner or civil servant from disclosing information obtained in the course of his/her</p> <p>Curtails the independence and creativity of individuals as it prohibits taking part or assisting in making a film unless the Minister has granted permission and prohibits the making of "home movies" by individuals.[72]</p> <p>This operates in Zanzibar. It also has restrictive provisions. For instance it provides for the licensing of journalists and the establishment of a government-controlled "advisory board" to oversee the private print media.</p> |
|    |                         | 2. <i>Inheritance Laws such as the Probate and Administration of Estates Act, Cap 445 [R.E 2002]</i> |   |
|    |                         | 3. <i>Religious laws</i>   |   |
|    |                         | 4. <i>Customary laws including inheritance laws</i>  |   |
|    |                         | 5. <i>Prison Act, 1967, Cap 58 [R.E 2002]</i>  |   |
|    |                         | 6. <i>National Security Act of 1970, Cap. 47 [R.E 2002]</i>  |   |
|    |                         | 7. <i>The Public Leaders Code of Ethics Cap 398 [R.E 2002]</i>                                       |   |
|    |                         | 8. <i>The National Defense Act, Cap 192 [R.E 2002]</i>   |   |
|    |                         | 9. <i>The Prevention and Combating of Corruption, Act No. 11 of 2007</i>                             |   |
|    |                         | 10. <i>The Area Commissioner Act 1962 &amp; Regions and Regional</i>                                 |   |
|    |                         | 11. <i>Civil Service Act 1989</i>  |   |
|    |                         | 12. <i>Film and Stage Act No 4 of 1976</i>   |   |
|    |                         | 13. <i>Registration of News Agents,</i>  |   |
|    |                         | 14. <i>Newspapers and Books Act (1988)</i>   |   |

<sup>71</sup> <http://www.article19.org/data/files/pdfs/publications/tanzania-media-law-and-practice-in-southern-africa.pdf>. Visited on 8/8/2013.

<sup>72</sup> 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.

|  |  |  |   |
|--|--|--|---|
|  |  | <i>15. Broadcasting Services Cap. 306 of the R. E 2002</i> | The Act allows the government to regulate and place restrictions on the use of electronic media. The Act does not guarantee the independence of   |
|  |  | <i>Cybercrimes Act 2015</i>                                | Cybercrimes Act which criminalizes information deemed false, misleading, inaccurate or deceptive. The Act prohibits citizens or   |
|  |  | <i>16. Statistics Act 2015</i>                             | 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)   |
|  |  | <i>17. Media Services Act, 2016</i>                        | Various provisions of the Media Services Act, 2016 contravene Article 18 of the Constitution of the United Republic of Tanzania. These sections are sections 7 (2) (B) (III), (IV), (V), 7 (3) (A), (B), (C), (F), (G), (H), (I), (J), 8, 9(B), 10(2), 11(4), 13, 14, 19, 20, 21, 24, 25, 26, 35, 36, 37, 38, 39, 40, 50, 52, 53, 54 58 AND 59 of the Media Services Act No 12 of 2016. It is therefore proposed that these provisions be amended to allow freedom of expression as provided for in the Constitution. |
|  |  | <i>18. Access to Information Act, 2016</i>                 | This Act has several provisions which infringe the freedom of expression in Tanzania. It restricts free flow of information. It therefore contravenes the Constitution of the United Republic of Tanzania specifically on the right to information guaranteed under Article 18 of the Constitution, 1977.   |
|  |  | <i>19. Online Content Regulations, 2018</i>                | The Regulations has provisions which to a greater extent violates the right to freedom of expression. The Regulations needs to be wholly amended for the Minister acted in excess of her powers while promulgating the same. The Regulations imposes unnecessary restrictions and burden to online users which in essence curtail their freedom of expression.  |
|  |  | <i>20. Media Services Rules, 2018</i>                      | The rules need to be amended for they are against the right to information enshrined in our Constitution under Article 18.  |
|  |  | <i>21. NGOs Act (Amendment) Regulations, 2018</i>          | These Regulations should be amended to remove parts which introduce burdens to CSOs complying with some unnecessary requirements. Sections which require disclosure of contracts and publication of budget, expenditure and sources of funds should also be amended.  |
|  |  | <i>22. Political Parties (Amendment) Act, 2018</i>         | The Act should be amended to widen the scope of democracy, reducing the powers of the Registrar, remove all provisions with criminal sanctions and fines among others.  |



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