



SITUATION REPORT

ON HUMAN
RIGHTS DEFENDERS
AND CIVIC SPACE
IN TANZANIA 2021

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ABREVIATIONS

AU	African Union
BRELA	Business Registration Licensing Agency
CAP	Chapter
CCM	Chama Cha Mapinduzi
CHADEMA	Chama Cha Demokrasia na Maendeleo
CIVICUS	World Alliance for Citizen Participation
CPJ	Committee for Protection of Journalists
CSOs	Civil Society Organizations
CUF	Civic United Front
CORI	Coalition for the Right to Information
DIT	Dar es Salaam Institute of Technology
EHARDP	Eastern and Horn of Africa Human Rights Defenders
EU	European Union
ETC	Etcetera
HRDs	Human Rights Defenders
HRNGOs	Human Rights Non-Government Organizations
IACHR-Inter	Inter- American Commission on Human Rights
ICCPR	International Covenant for Civil and Political Rights
ITV	Independent Television
KRAs	Key Result Areas
LHRC	Legal and Human Rights Centre
NGOs	Non-Government Organizations
NEC	National Electoral Commission
MSA	Media Services Act
OSIEA	Open Society Initiates for East Africa
SAHRINGON	Southern Africa Human Rights NGO-Network
RITA	Registration, Insolvency and Trusteeship Agency
RBA	Rights Based Approach
TACAIDS	Tanzania Commission for Acquired Immune Deficiency Syndrome
TAWLA	Tanzania Women Lawyers Association
TCRA	Tanzania Communication Regulatory Authority
TGNP	Tanzania Gender Network Programme
THRDC	Tanzania Human Rights Defenders Coalition
UPR	Universal Periodic Review
UN	United Nations



LIST OF STATUTES AND INTERNATIONAL INSTRUMENTS

(i) Statutes

The Constitution of the United Republic of Tanzania, 1977
The Constitution of the Revolutionary Government of Zanzibar, 1984
The Second Draft Constitution of the United Republic of Tanzania 2013
The Penal Code [Cap 16 R.E.2002]
The Marriage Act of 1971 Cap 29 [RE; 2002]
Probate and Administration of Estates Act, [Cap 445 [R.E 2002]
The Newspaper Act of 1976 [Cap. 229, R.E. 2002]
The Media Services Act, 2016
The Cyber Crimes Act, 2015
The Statistics Act, 2015 and its 2019 Amendments
The Prison Act, 1967, Cap 58 [R.E 2002]
The National Security Act of 1970, [Cap. 47 [R.E 2002]
The National Defence Act, Cap 192 [R.E 2002]
The Prevention and Combating of Corruption, Act No. 11 of 2007
The Area Commissioner Act 1962 & Regions and Regional Commissioners Act 1962
The Civil Service Act 1989
The Film and Stage Act No 4 of 1976, and its 2019 amendments
The Newspapers and Books Act (1988)
The Broadcasting Services Cap. 306 of the R. E 2002
The Land Act, 1999 (Act No.4 of 1999)
The Wildlife Conservation Act of 2009 (Cap 5 of 2009)
The Investment Act, 1997 (Act No. 26 of 1997)
The Forest Act, 2002 (Act No. 14 of 2002)
The Political Parties Amendment Act, 2019
The National Park Act, Cap 282 [R.E 2002]
The Ngorongoro Conservation Act, 1959 Cap 284 [R.E 2002]

The Mining Act, 2010 (Act No. 14 of 2010)
The Basic Rights and Duties Enforcement Act No. 33 of 1994
The Police Force and Auxiliary Services Act, 1939 Cap. 322, [R.E. 2002]
The Non- Governmental Organizations Act 2002.
The Written Laws (Miscellaneous Amendment) Act No3 of 2019
The Written Laws (Miscellaneous Amendment) Act No3 of 2020
The Non-Governmental Organizations Act (Amendment) Regulations, 2019
The Electronic and Postal Communications (Online Content) Regulations, 2020

(ii) International and Regional Human Rights Instruments

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

EXECUTIVE SUMMARY

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

Chapter two covers strategic cases, cases against HRDs, and various documented incidents on violations committed against HRDs. In 2021, HRDs have worked under extreme hostile environment compared to other years. According to the survey conducted by THRDC's Protection Desk in 2021, incidents of HRDs' violations have been increasing, hampered by the working environment of HRDs in the country.

For the year 2021, a total of seventy-eight (78) human rights defenders were accorded with relocation, medical, legal and other emergency support. Five families at risk were relocated with a total of seventeen (17) family members (8 women, 9 men), three (3) HRDs were provided with medical support (2 women, 1 man), one (1) human rights organization was supported in terms of rent, fifty-five (55) HRDs were given legal support (3 female and 52 male), nine (9) strategic cases were supported and two fact finding mission were conducted where three (3) pastoralists' rights defenders were financially supported.

Most of the incidents were related to arbitrary arrest, malicious prosecution and conviction, threats, curtailment of freedom of expression etc. Most of the perpetrators in these incidents are the state machineries, private companies and other individuals.

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

Chapter four provides for the situation of Human Rights Defenders on Protection, Planning and Risk Management. In this Chapter a reader is introduced to challenges affecting HRDs in self-protection and risk management. It is in this chapter a detailed elaboration of the measures taken to empower HRDs is given.

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

Lastly, Chapter six contains recommendations, conclusions and annexures.



CHAPTER
ONE

GENERAL INTRODUCTION

1.0 Introduction

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

1.1 Who is a Human Rights Defender?

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

1 <https://www.ohchr.org/en/issues/srhdefenders/pages/defender.aspx> Accessed on 20.02.2022

The above definition has been widely interpreted by several articles of the Declaration but invariably excludes individuals or groups who commit acts of violence or who support the use of violent means in order to achieve their objectives.

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

Human Rights Defenders champion basic human rights as diverse as the right to life, food and water, the right to better healthcare which may be prevented, the right to adequate housing or accommodation, to a name and nationality, education, freedom of movement circulation and non-discrimination².

Human Rights Defenders occasionally, 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.

HRDs are recognized due to their work, as they protect, and enhance human rights, politically, economically, socially, and culturally. They also champion for human rights and enhance constitutional rights such as education, freedom of expression development and policy changes.³

2 <https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx> Accessed on 20.02.2022

3 <https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx> Accessed on 20.02.2022

Human rights defenders are the only hope to ordinary citizen towards humanity. Needless to say, during the execution of their duties, they often become the victims of murder, imprisonment, torture, side-lining, and expulsion from their communities.

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

Activities of human rights defenders include:⁴

- Documenting violations of human rights.
- Seeking remedies for victims of such violations through the provision of legal, psychological, medical and other support.
- Combating cultures of impunity which serve to cloak systematic and repeated breaches of human rights and fundamental freedoms.
- Mainstreaming human rights culture and information on human rights defenders at national, regional and international level.
- Seeking and dissemination of information.

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

- To conduct human rights, work individually and in collaboration with others.
- To get free access to and communication with non-governmental and intergovernmental organizations, to form associations and non-governmental organizations.

4 <https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx> Accessed on 20.02.2022

5 <https://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders?> Site visited on February 2022

- To benefit from an effective remedy.
- To meet or assemble peacefully, the lawful exercise of the occupation or profession of human rights defender.
- To seek, obtain, receive and hold information relating to human rights.
- To develop and discuss new human rights ideas and principles and to advocate their acceptance.
- To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals to improve their functioning.
- To draw attention to any aspect of their work that may impede the realization of human rights.
- To effectively protect under the law in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights.

States such as Norway, Switzerland, Ireland and the Netherlands are great example for recognition of HRDs as they have adopted the UN Declaration on Human Rights Defenders. These states have recently between the years of 2018-2021 issued and updated various protection guidelines, advocacy programmes, grants, support and protection to Human Rights defenders globally⁶. They have also published guidelines directing their diplomats and decision-makers to prioritize the protection of human rights defenders and civil society space abroad. They have been consistently singled out for praise by human rights and democracy activists⁷.

6 <https://www.amnesty.eu/human-rights-defenders/> site visited in February 2022

7 *Ibid*

1.2 Protection Mechanisms for Human Rights Defenders

HRDs are recognized and protected under international law. In some countries, various policies, guidelines, instruments, and legislations have been enacted to recognize and protect HRDs. Legal protection mechanism for HRDs covers initiatives by the United Nations, States, Judiciary, Administrative, and other organs in enactment of laws, regulations, policies or making of judicial precedents that recognize the role of HRDs in promoting and protecting human rights.

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.

1.2.1 Legal Protection Mechanism at International Level

The United Nations adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms on December 9, 1998⁸.

This Declaration is also commonly known as the Declaration on Human Rights Defenders. The adoption of this salient document was marked as a historic achievement in the struggle towards better protection of those at risk for carrying out legitimate human rights activities. This Declaration was the only UN instrument that openly and comprehensively defined and recognized the work and protection of HRDs.

⁸ <https://www.ohchr.org/en/issues/srhrdefenders/pages/srhrdefendersindex.aspx> Accessed on 20.02.2022

The Declaration is a well-defined international instrument that codifies and puts together standards to protect activities of human rights defenders all over the world. It recognizes the legitimacy of human rights activity and the need for this activity and those who carry it out to be protected.⁹

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

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

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

9 <https://www.google.com/search?q=declaration+of+human+rights+defenders&> Accessed on 20.02.2022

10 <https://www.google.com/search?q=declaration+of+human+rights+defenders&> Accessed on 20.02.2022

11 <https://www.google.com/search?q=declaration+of+human+rights+defenders&> Accessed on 20.02.2022

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

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

1.2.2 Legal Protection Mechanism at Regional Level

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

12 <https://www.google.com/search?q=un+resolution+2013+human+rights+defenders&rlz> Accessed on 20.02.2022

13 <https://www.google.com/search?q=declaration+of+human+rights+defenders&> Accessed on 20.02.2022

Table 1 Summary of Regional Protection Mechanism

Continent	Legal Mechanism	Year of Adoption	Brief Explanation
AMERICA	Human Rights Defenders in America, support individuals, groups, and organizations of civil society working to promote and protect human rights in America (AG/RES.16715).	In 1969, the American Convention on Human Rights was adopted. The Convention entered into force in 1978. As of August of 1997, it had been ratified by 25 countries: Argentina, Barbados, Brazil, Bolivia, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay and Venezuela	In its 1998 annual report, the Inter-American Commission on Human Rights (IACHR) highlighted the importance of the work carried out by Human Rights Defenders and recommended to Members. In June 1999 the General Assembly of the OAS adopted a resolution entitled: The IACHR to issue preventative measures to Human Rights Defenders under threat to avoid any irreparable harm, to request information from States, issue recommendations and request the Inter-American Court adopts provisional protection measures.
AFRICA	The Grand Bay Declaration and Plan of Action of 16 April 1999 ¹⁴	Adopted at Grand Bay, Mauritius on 16 April 1999. Member states are :Benin , Cameroon, Chad , Ghana , Kenya ,Liberia, Malawi, Mauritania, Nigeria, Rwanda , Senegal, Sierra Leone ,South Africa ,Sudan , Togo , Uganda and Zambia .	The African Union (AU) touched on the issue of the protection of Human Rights Defenders in 1999 during its Ministerial Conference on Human Rights in Africa.
	The Kigali Declaration of 8 May 2003	Adopted in 2003 By the following member state, Republic of Zimbabwe, Republic of Zambia, Uganda, Tunisia, Togo, Tanzania, Swaziland, Sudan, South Sudan, South Africa, Somalia, Sierra Leone, Seychelles, Sahrawi Arab Democratic Republic, Rwanda, Nigeria, Republic of Niger, Namibia, Republic of Mozambique, Morocco, Mauritius, Mauritania, Mali, Republic of Malawi, Madagascar, Malawi, State of Libya, Liberia, Lesotho, Kenya.	Recognizes the key role played by civil society organizations and Human Rights Defenders, in particular in promoting Human Rights in Africa” and “calls upon Member States and regional institutions to protect them and to foster their participation in the decision-making process.” ¹⁵
	Resolution 273 of the African Commission is another useful instrument that will help secure a better working environment for HRDs. ¹⁶	The African Commission on Human and Peoples’ Rights (the Commission) at its 55th Ordinary Session in Luanda, Angola, from 28 April to 12 May 2014 recognizes	Its mandate is to promote and protect human and peoples’ rights under the African Charter on Human and Peoples’ Right. African Union member States under the African Charter and under other regional and international human rights instruments for the protection of human rights. The system has the potential to respond effectively to the obligation to protect all citizens and particularly HRDs. States should conform to article2 (2) of the UN Declaration on Human Rights Defenders ¹⁷ .

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

¹⁵ Kigali Declaration of 8th May 2003, paragraph 28 available at www.achpr.org/instruments/kigali/.

¹⁶ www.achpr.org/ Accessed on 20.02.2022

¹⁷ www.achpr.org/ Accessed on 20.02.2022

Continent	Legal Mechanism	Year of Adoption	Brief Explanation
	A Resolution on Measures to Protect and Promote the Work of Women Human Rights Defenders ¹⁸	Resolution Passed by African Commission in 2016. A landmark resolution adopted at the African Commission on Human and Peoples' Rights calls on African States to ensure specific legal recognition and protection of women human rights defenders and end impunity for attacks against them.	Calls on State Parties to: Disseminate and implement the recommendations of the Commission's Report on the Situation of Women Human Rights Defenders in Africa, end impunity by adopting specific laws and relevant measures, Ensure efforts are designed to prevent and address violations and discrimination against women human rights defenders, Train the judiciary and public security and other relevant authorities on the specific risks and protections for human rights defenders and in particular women human rights defenders.
	Marrakech Declaration 2018.	Adopted on 12 th October 2018 by Global Alliance of National Human Rights Institutions.	The declaration has focused on the role of National Human Rights Institutions. The declaration seeks to involve the Commission for Human Rights and good Governance as the only National Human Rights Institution in Tanzania in implementation of this declaration to; Declare responsibility and obligation to protect, Respect and promote the fulfilment of Human Rights and fundamental freedoms of all persons, the Rule of Law, eradication of Human rights violations, to adopt the 2030 Agenda for sustainable development regarding Human Rights development and peace and security. ¹⁹
EUROPE	EU Guidelines on Human Rights Defenders. ²⁰	Adopted in 2004	In Europe, the European Union established EU Guidelines on Human Rights Defenders as the best way to support the implementation of the Declaration on Human Rights Defenders in third world countries ²¹ These guidelines provide practical suggestions to enhance EU action in relation to HRDs. Guidelines can be used in contact with third countries at all levels to support and strengthen ongoing EU efforts to protect the rights of HRDs.
	In 2010, the European Parliament adopted a Resolution on the EU policy in favour of Human Rights Defenders (2009/2199(INI).	Adopted in 2010	It calls on the various EU institutions and its missions to reinforce their action for effective implementation of Guidelines, notably by ensuring regular contact with Human Rights Defenders prior to taking any action on their behalf and to provide them with feedback. These recommendations were reiterated with the adoption, on 16 th December 2010. ²²

18 www.acdhrs.org/2015/04/tres00542015-resolution-on-women-human-rights-defenders-in-africa-we-the-participants-of-the-forum-on-the-participation-of-ngos-in-the-56th-ordinary-session-of-the-african-commission-on-human-an/, Accessed on 22.02.2022

19 <https://www.google.com/search?q=marrakech+declaration+december+2018> site visited in February 2022

20 https://eeas.europa.eu/sites/eeas/files/eu_guidelines_hrd_en.pdf Accessed on 20.02.2022

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

22 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:I33601> Accessed on 20.02.2022

Continent	Legal Mechanism	Year of Adoption	Brief Explanation
	UNGA74 Global agreement on key elements of an effective defender protection policy.	On 20.11.2019 UN General Assembly's human rights committee in New York – the Third Committee –passed by consensus a resolution focusing on implementation of the Declaration on Human Rights defenders and some key elements of protection policy.	On human rights defender protection policy, the resolution states: the need for comprehensive risk analysis, that protection mechanisms should provide an early warning function to enable human rights defenders immediate access to competent and adequately resourced authorities to provide effective protective measures and address causes of attacks against defenders and barriers against the defence of rights ²³ .

1.2.3 Legal Protection Mechanism at the National Level

The UN HRDs reports indicate that very few States have incorporated the *International Declaration on Human Rights Defenders, 1998* into their national laws despite 22 years of its adoption.²⁴ Worse still, governments in all regions are increasingly enacting laws which restrict and even criminalize the work of human rights defenders and NGOs. For example in Tanzania several draconian laws have been enacted such as the Cybercrimes Act of 2015, the Statistic Act of 2015, the Media Services Act of 2016, Access to Information's Act of 2016²⁵ and the Electronic and Postal Communications (Online Content) Regulations of 2020.²⁶

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.²⁷

The model law will assist States to develop laws, policies and institutions

²³ www.ishr.ch/news/unga74-global-agreement-key-elements-effective-defender-protection-policy Accessed on 20.02.2022

²⁴ www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefenders Accessed on 20.02.2022

²⁵ www.parliament.go.tz Accessed on 20.02.2022

²⁶ www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefenders Accessed on 20.02.2022

²⁷ www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders#sthash.fcKqacKj.dpuf Accessed on 20.02.2022

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.²⁸

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.²⁹

The Constitution of the United Republic of Tanzania of 1977 and the Constitution of Zanzibar of 1984 including the proposed Constitution of the United Republic of Tanzania of 2014 do not guarantee in any way the rights of HRDs despite the tough work done by THRDC to lobby for its inclusion in the Mother Law. In an effort to do so, THRDC prepared a Human Rights Model Policy that will help the government and the legislature to enact national human rights defenders' policy and laws.

The legal framework at the national level including the Draft Constitution provides for general protection of human rights but remains silent on the rights of human rights defenders. In short, lack of specific legal protection renders HRDs vulnerable and easy prey for perpetrators of human rights violations.

28 www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders#sthash.fcKqgcKj.dpuf Accessed on 20.02.2022

29 www.ishr.ch/news/asia-ishr-launches-new-report-legislative-protection-human-rights-defenders-seven-countries Accessed on 20.02.2022

The Commission for Human Rights and Good Governance in Tanzania is the only National Human Rights Institution (NHRI), with full mandate to protect human rights and good governance in general.³⁰

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

One of the efforts that THRDC has made in engaging with CHRAGG is in efforts to implement the Marrakech Declaration of 2018. This declaration has focused on the role of National Human Rights Institutions.³¹ The Declaration seeks national human rights institutions to among other things: declare responsibility and obligation to protect, respect and promote the fulfilment of the human rights and fundamental freedoms of all persons, to promote the rule of law, and the eradication of human rights violations and to interact, cooperate and build partnership among civil society organisations, media, business entities , networks, governmental and non-governmental organizations.³²

‘Enacting the rights of human rights defenders in national law would be a significant step towards transforming the international promise of the Declaration on Human Rights Defenders into a national-level reality.’ – Gustavo Gallon, Director of the Colombian Commission of Jurists³³

30 www.chragg.go.tz Accessed on 20.02.2022

31 www.google.com/search?safe=active&rlz=1C1CHBF_enTZ850TZ850&sxsrf Accessed on 20.02.2022

32 www.google.com/search?safe=active&rlz=1C1CHBF_enTZ850TZ850&sxsrf Accessed on 20.02.2022

33 www.ishr.ch/news/developing-model-national-law-protect-human-rights-defenders Accessed on 22.02.2022

1.3 Non-Legal Protection mechanism

Protection mechanisms for HRDs can simply be defined as defence strategies put in place to ensure that HRDs are safe and operate in a safe environment. Through their active commitment, HRDs are frequently a target of acts of repression perpetrated by States or by private or Para-State groups acting in complicity with States. In many countries, HRDs are targets for attacks including murders, kidnapping, arbitrary arrests, imprisonment, torture, improper treatment, retaliation against family or friends, death threats, defamation campaigns, adoption of restrictive legislation in terms of the freedom of association, expression and gathering.

Thus UN, International NGOs and Local NGOs were forced to take measures and establish protection desks/units to ensure HRDs mitigate these threats and in worst situations provide emergency assistance.

1.3.1 Non-Legal Protection mechanism at International level

The mandate on the situation of human rights defenders was established in 2000 by the Commission on Human Rights (as a Special Procedure) to support implementation of the 1998 Declaration on Human Rights Defenders. In 2014, the UN Human Rights Council came up with a resolution number 25/18, in a bid to continue the mandate on human rights defenders for a consecutive period of three years.³⁴

In 2000, the UN Secretary General's office under special request from the UN Commission on Human Rights established a mandate on human rights defenders to effectively implement and bring into force the Declaration on Human Rights Defenders. A special rapporteur was appointed to support the implementation of the declaration and the collection of information on the situation of human rights defenders all over the world³⁵.

34 www.ohchr.org/EN/Issues/SRHRDefenders/Pages/SRHRDefendersIndex.aspx Accessed on 22.02.2022

35 www.ohchr.org/en/issues/srhrdefenders/pages/srhrdefendersindex.aspx Accessed on 22.02.2022

In June 2014, Mr. Michel Forst (France) was appointed by the President of the Human Rights Council as the UN Special Rapporteur on the situation of human rights defenders. Mr. Forst succeeded Ms. Margaret Sekaggya (Ugandan) as Special Rapporteur on the situation of human rights defenders (2008-2014) and Ms. Hina Jilani as Special Representative of the Secretary General on the situation of human rights defenders (2000-2008).³⁶

The following are the major duties assigned to the UN Special Rapporteur on human rights defenders³⁷

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

In performing their duties, Special Rapporteurs³⁸:

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

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

36 www.ohchr.org/en/issues/srhrdefenders/pages/srhrdefendersindex.aspx Accessed on 22.02.2022

37 www.tandfonline.com/doi/full/10.1080/13642987.2011.537463 Accessed on 22.02.2022

38 www.tandfonline.com/doi/full/10.1080/13642987.2011.537463 Accessed on 22.02.2022

Freedom House, CIVICUS, Civil Rights Defenders, 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.³⁹

1.3.2 Non-Legal Protection Mechanism at Regional level

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

The Human Rights Defenders Declaration requires states at the regional level to establish regional mechanisms to protect human rights defenders. On 4th June 2004, the African Commission on Human and Peoples' Rights (ACHPR) introduced the post for Special Rapporteur on Human Rights Defenders in Banjul, Gambia. Currently, the position is held by Ms. Reine Alapini-Gansou.⁴⁰

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

The African Commission on Human and Peoples' Rights assigned the special Rapporteur for HRDs in Africa to perform the following duties⁴¹:

- i. To submit reports at every Ordinary Session of the African Commission on the situation of human rights defenders in Africa;

39 www.academia.edu/12256645/Human_Rights_Defenders_Situation_Report Accessed on 23.02.2022

40 https://en.wikipedia.org/wiki/Reine_Alapini-Gansou Accessed on 26.01.2022

41 <https://www.achpr.org/specialmechanisms/detail?id=4> Accessed on 26.01.2022

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

Africa has made a step forward regarding the enactment of laws protecting human rights defenders. However, one remaining challenge is the inclusion in those texts of a large definition of defenders, as inclusive as the one adopted by the UN through the UN Declaration on defenders” said Michel Forst, UN Special Rapporteur on the situation of human rights defenders⁴².

42 www.ishr.ch/news/achpr-65-protecting-human-rights-defenders-through-protection-laws-africa Accessed on 25.02.2022

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.⁴³ 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.⁴⁴

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).⁴⁵

1.3.3 Non legal Protection Mechanism at National Level

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

However, gradually, African civil societies continue to form networks and coalition for human rights defenders in their respective countries and regions. Coalitions and Networks in Africa include: East and Horn of Africa Human Rights Defenders Network and Pan Africa Human Rights Defenders Network. Others on the list are Kenya, Eritrea, Djibouti, Malawi, Uganda, Tanzania, and Burundi Human Rights Defenders Coalition. The final group in the list is South Sudan, Rwanda, Somali and Senegalese Human Rights Defenders Coalition.

Thus, the Coalition is working in the framework of accepted international mechanisms which have been established and adopted by other human

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

44 <https://www.achpr.org/legalinstruments/detail?id=39> Accessed on 25.02.2022

45 <https://defenddefenders.org/> Accessed on 25.02.2022

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

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

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

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

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

1.3.4 Challenges with both International and Regional Protection Mechanisms for HRDs⁴⁶

- The mentioned declaration on human rights defenders provides protection and legitimacy to the work of HRDs. But in order to do this, the Declaration has to be known and respected by the authorities, and the population as a whole. It also has to be known and used by HRDs themselves. The findings of this survey indicate that majority of HRDs have never been informed about this declaration. This, therefore, requires some intervention by THRD to rectify the situation.
- They don't know how to use the special UN and the AU rapporteurs on human rights defenders to protect them.
- The declaration on Human Rights defenders provides protection and legitimacy to the work of HRDs. But in order for that to happen, the Declaration has to be widely known and respected by authorities, and the population as a whole. It also has to be known and used by HRDs themselves.
- Again, the EU Guidelines on HRDs are also not widely known by HRDs in Tanzania despite the fact that EU has been taking some action to defend them. A lot more has to be done to raise HRD awareness about and the usefulness of the guidelines as a form of capacity building to enable them enhance their security.



CHAPTER
TWO

VIOLATIONS COMMITTED AGAINST HUMAN RIGHTS DEFENDERS

2.0 Chapter Overview

This Chapter covers strategic cases instituted by human rights defenders and cases against human rights defenders, recorded incidents of violations of HRDs' rights in 2021. According to the survey conducted by THRDC's Protection Desk in 2021, incidents of HRDs' violations were perpetrated by individuals and some state organs hence limiting the scope of HRDs operation in Tanzania.

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

For the year 2021, a total of seventy-eight (78) human rights defenders were accorded with relocation, medical, legal support, and other emergency support. Five families at risk were relocated with a total of seventeen (17) family members (8 women, 9 men), three (3) HRDs were provided with medical support (2 women, 1 man). One (1) human rights organization was supported in terms of rent, fifty-five (55) HRDs were provided with legal support (3 female and 52 male), nine (9) strategic cases were supported and two fact finding mission were conducted where three (3) pastoralists' rights defenders were financially supported.

2.1 Strategic Cases

i. Edson Kilatu versus the Attorney General

On 8th October 2020, the Attorney General (AG) instituted complaints before the Advocates Committee claiming against two advocates: Jebra Kambole and Edson Kilatu that they committed a misconduct.

The charge of Advocate Edson Kilatu stems from the allegation that on 08th August 2020 posted via his Facebook account comments which, in facie curiae, malign the confidence of the Court of Appeal of Tanzania, the legal profession and public respect for law and justice. His comments are alleged to violate the Advocates (Professional Conduct and Etiquette) Regulations, 2018.

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

The Attorney General instituted a complaint before the Advocates Committee against the above named advocates seeking a declaration that the two advocates committed gross professional misconduct and an order of

removal of the advocates' name from the Roll of Advocates. The case is still pending before the Advocates Committee.

The Committee is statutorily established and the AG or his representative or the Director of Public Prosecutions forms the quorum together with one judge and an advocate from the Bar association. But the AG is the one who lodged complaints, his representative in the Committee cannot act against the wishes of the AG, therefore justice cannot be done in such circumstances. The same to the DPP or his representative cannot act against the wishes of the AG because they are from the same arm of the state. In March 2021, under the support of THRDC, Advocate Kilatu filed a case challenging the statutory provisions establishing such a composition and arguing that justice will not be done if the matter is determined under such circumstances.

Mr. Kilatu was personally affected hence the requirement under the amendments made in 2020 requiring one to show how he has been personally affected for his case to be admitted by the High Court, were met. In September 2021, the case was struck out on the allegations that Mr. Kilatu can obtain redress from the Advocates Committee where his case was pending for hearing. However, the case before the Advocates Committee was withdrawn by the Attorney General on 27th September 2021.

- ii. Onesmo Olengurumwa versus the Attorney General of Tanzania [Miscellaneous Civil cause no 9 of 2021]

The National Assembly of Tanzania on 10th June 2020 passed the Written Laws (Miscellaneous Amendments) (No. 3) Act⁴⁷ and assented to by the President on 15th June 2020. On 19th June 2020, the government gazetted

the Act.⁴⁸ The Act amended thirteen (13) laws.⁴⁹ Among the amendments is, an amendment to Section 4 of the Basic Rights and Duties Enforcement Act (BRADEA)⁵⁰ (under Section 7 of the Written Laws (Miscellaneous Amendments) Act, No. 03 of 2020) which has been amended

“Abolishing Public Interest Litigation (PIL) in Tanzania. The amendments require one to prove how an action complained of “has affected that person personally for his case to be admitted by the High Court”⁵¹. On the other hand, it conferred sovereign immunity on heads of the Executive, Legislature, and the Judiciary.⁵² These amendments barred NGOs and HRDs from instituting strategic cases before courts.

In August 2020, THRDC supported one strategic case [Onesmo Olengurumwa versus the Attorney General, Miscellaneous Civil Cause No 15 of 2020] to challenge such amendments. On 17th December 2020, the case was struck out with costs. This increased fear of instituting strategic cases because most of HRDs cannot pay costs if the case is struck out with costs.

THRDC supported attorneys to refile and defend the case challenging the said amendments. On 15th February 2022 the High Court held that Section 4 (2) (3) (4) (5) of the Basic Rights and Duties Enforcement Act, Cap 3 R.E 2019 is proper and in line with article 26(2) and 30(3) of the Constitution of United Republic of Tanzania, 1977. Immediately after the judgment, THRDC lodged an appeal in the Court of Appeal of Tanzania against the judgment of the High Court.

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

49 The Written Laws (Miscellaneous Amendments) (No. 3) Act, 2020

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

51 Section 7 (2) of the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2020

52 Section 7 (4) of the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2020

- iii. Onesmo Olungurumwa Vs the Attorney General [Civil Appeal No 165 of 2021 at CAT, Originating from Miscellaneous Civil Cause No. 36 of 2019]

THRDC provided legal support to lawyers working on the case of Mr. Onesmo who petitioned on 16th December 2019 before the High Court of Tanzania in Dar es Salaam. He challenged the committal proceedings and preliminary inquiries because they subject the accused persons to a delay of hearing of their cases and negates the right to fair trial and delay of justice. In Tanzania there has been a tendency of Police officers to arrest HRDs, institute a case before a committal court which has no jurisdiction to handle the case and such a HRD is taken to prison for the whole period of conducting committal and preliminary inquiries. Committal and preliminary inquiries may take up to eight years.

Through that strategic case, Mr. Onesmo specifically challenged section 178, 243, 244, 245, 246, 247, 248, 249, 250, 256, 257, 258 and 259 of the Criminal Procedure Act Cap 20 R.E 2002 that they are unconstitutional, null and void and same sections be expunged from the statute book. Such sections contravene the provisions of the Constitution, violate the fundamental rights and freedoms of people, suppress the rule of law and the due process of the law, and encourages abuse of power and authority.

On 21st October 2020, the High Court of Tanzania dismissed the case on the ground of being res- judicata with the case of Zephine Galeba v. Honorable Attorney General [Miscellaneous Civil Application No 21 of 2013]. Being aggrieved, Mr. Onesmo lodged an appeal before the Court of Appeal of Tanzania in April 2021. The appeal is pending for hearing schedule in the Court of Appeal of Tanzania.

- iv. Tanzania Human Rights Defenders Coalition (THRDC), Legal and Human Rights Centre (LHRC) versus the United Republic of Tanzania [Application No 039 of 2020]

On 18th November 2020, THRDC and LHRC (Supra) approached the African Court on Human and Peoples' Rights challenging section 148(5) of the Criminal Procedure Act.⁵³ This was after the Court of Appeal of Tanzania declaring that section 148(5) of the Act is in compliance with the Constitution of the United Republic of Tanzania, through a Criminal Appeal No 175 of 2020 [Attorney General versus Dickson Sanga]

Tanzania enacted the Criminal Procedure Act on 1st November 1985 where Section 148(5) contains a list of unbailable offences. Section 148(5) violates provisions of the African Charter on Human and People's Rights (Charter), the Universal Declaration on Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Constitution of the United Republic of Tanzania, 1977.

THRDC jointly with the Legal and Human Rights Centre (LHRC) filed an application before the African Court on Human and Peoples' Rights on 18th November 2020 to challenge section 148(5) of the Criminal Procedure Act. The Act provides for unbailable offences contrary to the Banjour Charter, International Covenant on Civil and Political Rights. The government replied to the Application, and therefore THRDC and LHRC are supposed to file their reply on the case. To date, the case is pending for judgement in the African Court on Human and Peoples' Rights.

- v. Tanzania Human Rights Defenders Coalition (THRDC), Media Council of Tanzania (MCT), Legal and Human Rights Centre (LHRC) versus the Attorney General

53 *The Criminal Procedure Act [Cap 20 R.E 2019]*

THRDC in collaboration with other Applicants (LHRC and MCT) filed a strategic case at the East African Court of Justice (EACJ) in August 2020 challenging the Electronic and Postal Communications (Online Contents) Regulations of 2020. The Regulations repealed the Online Content Regulations of 2018 with a list of prohibited contents under its schedules. The Regulations indeed curtail freedom of expression by imposing restrictions to online platforms among other things. The case is pending for a scheduling conference at EACJ.

- vi. Tanzania Human Rights Defenders Coalition (THRDC), Pan African Lawyers Union (PALU), Tanganyika Law Society (TLS), Legal and Human Rights Centre (LHRC), and Centre for Strategic Litigation (CSL) versus the Attorney General of the United Republic of Tanzania [Reference No 25 of 2020]

The National Assembly of Tanzania on 10th June 2020 passed the Written Laws (Miscellaneous Amendments) (No. 3) Act and assented to by the President on 15th June 2020. On 19th June 2020, the government gazetted the Act. The Act amended thirteen (13) laws. Among the amendments is, an amendment to Section 4 of the Basic Rights and Duties Enforcement Act (under Section 7 of the Written Laws (Miscellaneous Amendments) Act, No. 03 of 2020) which abolished Public Interest Litigation unless a person shows how he has been personally affected.

On 14th August 2020, THRDC, PALU, TLS, LHRC and CSL (Supra) instituted Reference No 25 of 2020 at the First Instance Division of the East African Court of Justice challenging the amendments of Section 4 of the Basic Rights and Duties Enforcement Act⁵⁴ (under Section 7 of the Written Laws (Miscellaneous Amendments) Act, No. 03 of 2020) that they contain a blatant violation of Articles 6(d), 7(2) and 8(1) (c) of the Treaty for establishment of

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

the East African Community⁵⁵; Articles 2, 3(1) and 7 of the African Charter on Human and Peoples' Rights⁵⁶ and all other international agreements to which the United Republic of Tanzania is a party to. The case is pending for a scheduling conference at EACJ

- vii. Tanzania Human Rights Defenders Coalition (THRDC), Pan African Lawyers Union (PALU), Tanganyika Law Society (TLS), Legal and Human Rights Centre (LHRC), and Centre for Strategic Litigation (CSL) versus the Attorney General of the United Republic of Tanzania [Reference No 27 of 2020]

The National Assembly of Tanzania on 10th June 2020 passed the Written Laws (Miscellaneous Amendments) (No. 3) Act and assented to by the President on 15th June 2020. On 19th June 2020, the government gazetted the Act. The Act amended thirteen (13) laws. Among the amendments is, an amendment to Section 4 of the Basic Rights and Duties Enforcement Act (under Section 7 of the Written Laws (Miscellaneous Amendments) Act, No. 03 of 2020) which abolished Public Interest Litigation unless a person shows how he has been personally affected.

On 17th August 2020, THRDC, PALU, TLS, LHRC and CSL (Supra) instituted Reference No 27 of 2020 at the First Instance Division of the East African Court of Justice challenging the Act,⁵⁷ that it violates Articles 6(d), 7(2) and 8(1)(c) of the Treaty.⁵⁸ Specifically, Sections 33, 35, 37, 39, 40, 41, 43, 45, 46, 48 and 49 of the Act violate the fundamental and operational principles codified in Articles 6(d) and 7(2) of the Treaty and Articles 3(1) and 7 of the African Charter.

55 *The Treaty for establishment of the East African Community, 1999*

56 *The African Charter on Human and Peoples' Rights, 1981*

57 *The Written Laws (Miscellaneous Amendments) (No. 3) Act, 2020*

58 *The Treaty for establishment of the East African Community, 1999*

The Reference is premised on the failure by the United Republic of Tanzania through the acts of its agents to abide by its commitments under the EAC Treaty, the fundamental and operational principles of the EAC Treaty, specifically the principles of the rule of law, good governance, equality before the law and protection of the human rights. The case is pending for a scheduling conference at EACJ.

- viii. Francis Muhingira Garatwa, Baraka Mwago and Allan Bujo Mwakatumbula Versus the Attorney General (Consolidated Miscellaneous Civil Cause No. 4 of 2018 and Miscellaneous Civil Cause No. 8 of 2018)

The petitioners filed the case in 2018 before the High Court of Tanzania seeking the court to declare the constitutionality of Sections 43, 44, 45 and 46 of the Police Force and Auxiliary Services Act (Cap 322 R.E 2002) and Section 11 (2), (4), (6) and (7) of the Political Parties Act (Cap 258 R.E 2002) for offending Articles; 13(6) (a), 18, 20(1), 21 and 29 of the Constitution of the United Republic of Tanzania. The petitioners also sought the court to expunge the same after it declares them unconstitutional.

The stated provisions under the Police Force Auxiliary Services Act requires that for any person wishing to conduct a public rally or procession must give notice of not less than 48 hours to the OCD of that respective area where the public rally or procession is scheduled to take place, for purposes of providing security. The spirit of the law might be very good, but its practice has never been realistic. Those provisions have been highly misused by the Police, including denying people to conduct their public rallies or procession especially the opposition political parties. Meanwhile the provision of the Political Parties Act requires all Political Parties to notify the Police before they hold public meetings.

On 18th March 2020, the High Court of Tanzania delivered its judgment by declaring that such provisions are constitutional and hence they cannot

be expunged from the statute book. Mr. Garatwa and his colleague being aggrieved filed an appeal before the Court of Appeal of Tanzania. To date, the appeal is pending before the Court of Appeal for scheduling a hearing date.

ix. Two HRDs versus the Attorney General

THRDC supported a strategic case of two human rights defenders challenging the Prisons Act and the Regulations made there under and the practice of Tanzania Prison Service. The case is also challenging the unhuman treatment of prisoners in prison services. The case is on progress before the High Court of Tanzania.

2.2 Cases against HRDs

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

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

Advocate Jebra Kambole was charged before the Committee with professional misconduct and seditious offense as stated herein. That on 10th March 2020, Kisutu Resident Magistrates' Court convicted and sentenced nine (9) leaders of an opposition political party, Chama cha Demokrasia na Maendeleo (CHADEMA) for 12 counts in criminal case no 112 of 2018. CHADEMA leaders were sentenced to pay fine that amounted to Million

350 Tanzanian Shillings in total or serve a jail term up to five months.

In his application, the Attorney General alleged that, Advocate Jebra Kambole posted a comment via his Twitter account “Kisutu Revenue Authority (KRA)” On the part of Advocate Edson Kilatu, his charge stems from the allegation that on 8th August 2020 he posted via his Facebook account comments which, in facie curiae, malign the confidence of the Court of Appeal of Tanzania, the legal profession and public respect for law and justice. His comments are alleged to be in violation of the Advocates (Professional Conduct and Etiquette) Regulations, 2018.

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

The Attorney General instituted a complaint before the Advocates Committee against the above named advocates seeking for a declaration that the two advocates committed gross professional misconduct and an order of removal of the advocates name from the Roll of Advocates. On 27th September 2021, the complaint withdrew the case with a leave to refile. However, to date, it has not been refiled.

ii. Republic versus Mdude Nyagali

On 13th May 2020 a human rights activist through different online platforms was arrested and detained for a week on the allegation of cyber offences. Contrary to the primary allegations, on 13th May 2020, he was charged with an economic crime case for allegedly trafficking in narcotic drugs heroine hydrochloride contrary to the Drug Control and Enforcement Act, No. 5 of 2015 as amended together with Paragraph 23 of the First Schedule to, and Section 57 (1) and 60 (2) both of the Economic and Organized Crime Control Act, [Cap 200 R: E 2002]. He was charged before the Resident Magistrates’ Court in Mbeya.

However, on 27th May 2020, the Republic withdrew the case and filed a fresh one, charging the Mr. Mdude with trafficking in narcotic drugs heroine hydrochloride contrary to the Drug Control and Enforcement Act, No. 5 of 2015 as amended. On 28th June 2021, he was set free by the court as the prosecution failed to prove the case beyond reasonable doubt.

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

A human rights defender Mr. Ambrose Mallya together with Fabian Richard Gombanila, on 16th October 2019, were charged before the district court of Mufindi, Iringa Tanzania. Both were charged with the allegation of stealing a motor of peeling machine worth at Tshs 5,600,000/= (Five Million and Six Hundred Thousand Only), the property of one Hong Wei International Company Limited.

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

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

iv. The case of a HRD, Bishop Emmaus Bandekile Mwamakula

On 15th February 2021, Bishop Emmaus Bandekile Mwamakula of the Moravian Revival Church was arrested and detained for one day at Oysterbay Police station facing sedition charges. He was accused of using social media platforms to mobilize citizens, to take part in a countrywide demonstration to demand a new constitution and an independent electoral commission. Police claimed that mobilizing people to demonstrate is against the law since such an action can potentially cause a breach of peace and social harmony. Police officers conducted an official search at his home place on 16.02.2021 and found nothing to incriminate him.

THRDC engaged a human rights advocate to provide legal support in securing Police bail. He was bailed out on 16th February 2021 with a condition of reporting again on several dates from February 2021. He reported continuously up to July 2021, however, no charges were laid against him.

v. Mr. Joseph Melau (Advocate) and seven (7) Other HRDs

On 6th September 2021 Adv. Joseph Melau and seven other community/HRDs members in Ngorongoro District were arrested and detained at Ngorongoro Police station. Mr. Melau and his colleagues were arrested on the allegations that they were organizing community members to carry on placards to raise voices about the problems facing residents of Ngorongoro before H.E. President Samia Suluhu Hassan who paid a visit in Ngorongoro on that day. Three among the seven arrested community members were the staff from Pastoral Women's Council (PWC). PWC is an organization that defends human rights in Ngorongoro.

THRDC engaged a human rights advocate to provide legal support in securing Police bail. They were bailed out in the evening on 6th September and conditioned to report on 10th September 2021. They accordingly

reported and were informed that, their case is still under investigation and would be informed if further needed.

vi. Human rights artist Mr. Vitali Maembe

On 2nd November 2021 a seasoned human rights artist Vitali Maembe was arrested and detained at Bagamoyo Police station, coast region on unrevealed allegations. Human rights advocates under THRDC's instructions went at the Police station for making follow up, however, they were informed and witnessed the detention register that, at around 16:00hrs Mr. Maembe was transferred to the Regional Commanding Officer (RCO) Kibaha Police Station, coast region for further interrogation. The reasons for his arrest and detention were undisclosed by the Police officers at Bagamoyo Police station.

Mr. Maembe was released on the next day and conditioned to report continuously on future dates. However, no charges were laid against him.

vii. One HRD and 19 others at risk were supported

On 17th July 2021 a HRD in Mwanza with nineteen (19) others were arrested and detained for one day at Mwanza Central Police station on the allegations of conducting unlawful assembly for demanding the new Constitution of the United Republic of Tanzania. He was accused of conducting unlawful assembly to mobilize citizens, to take part in a countrywide quest for a new Constitution. Police claimed that mobilizing people to demand for the new Constitution is against the law since such an action can potentially cause breach of peace and social harmony.

THRDC engaged a human rights advocate to provide legal support in securing Police bail. They were bailed out unconditionally on 18th July 2021.

viii. Hardson Brayson Mchau (Advocate)

On 16th August 2021, advocate Hardson Brayson Mchau was arrested

at Goba Police station, he was moved to and subsequently detained at Mabwepande Police station on the allegations of publishing false information through his twitter account.

THRDC engaged a human rights advocate to provide legal support in securing Police bail. He was bailed out on condition of reporting on 17th August 2021. Upon reporting on 17th together with the advocate engaged by THRDC. He was informed that; a summons will be issued if he will be further needed.

ix. HRD's case against the Republic

In 2019 a human rights online activist was arrested, detained, and tortured for more than a week on the allegation of cyber offences and other malicious prosecutions. He was charged for publication of false information contrary to the Cybercrimes Act of 2015. However, he was acquitted by the court. While under torture, he was badly injured and denied access to medical treatment, he filed a case against the Police Force claiming to be compensated.

He sought legal support from THRDC. THRDC engaged a human rights advocate to handle the case. In December 2021, the case was dismissed by the High Court for failure to prove the allegations of torture.

x. Two HRD's cases supported

A HRD was arrested and detained in Arusha for two days. He was charged with economic offences. Another HRD was arrested in Mwanza, transported to, and detained in Dar es Salaam for one week. He was charged with economic offences. THRDC provided legal support and the Republic withdrew the charges against them for reasons that it was not interested to further prosecute them.

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

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

Abdul is the former Chairperson of the Tanzania Students' Networking Programme (TSNP). On 6th March 2018 around midnight he disappeared, sent a message to his friend Mr. Paul Kisabo that "am at risk" and was later on found in Mafinga, Iringa Region on 7th March 2018 at 18:00hrs. Nondo reported to Mafinga Police station that he was kidnapped by unknown people at Ubungo in Dar es Salaam, and he was taken to the said place. He was however, detained for 14 days before being arraigned in court on 21st March 2018 and charged for publication of false information ("I am at risk") contrary to Section 16 of the Cybercrimes Act, 2015 and for giving false information to a person employed in public service contrary to section 122 (a) of the Penal Code Cap 16 R.E 2002.

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

The Director of Public Prosecutions being aggrieved by the decision of the High Court, lodged a notice of intention to appeal and finally an appeal before the Court of Appeal of Tanzania at Iringa. On 23rd March 2022 the Director of Public Prosecutions withdrew the case under Rule 77(4) of the Court of Appeal Rules.

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

On 20th December 2019 Mr. Tito Elia Magoti (Program Officer: Public Education Department at the Legal and Human Rights Centre and Mr.

Theodory Faustine Giyan the ICT Officer, were arrested by five unknown people at Mwenge area in Dar es Salaam. On 22nd December 2019 the Dar es Salaam Special Zone Police Commander, Lazaro Mambosasa confirmed to have arrested Mr. Magoti and Mr. Giyan without stating the charges that led to their arrest or whereabouts.

On 24th December 2019 both Mr. Magoti and Mr. Giyan were brought before the Kisutu Resident Magistrates' Court of Dar es Salaam and charged with three counts "leading an organized crime contrary to Section 4(1)(a) of the First Schedule and Section 57(1) and 60(2) of the Economic and Organized Crimes Control Act, "possession of a computer program designed for the purpose of committing an offence" contrary to Section 10(1) of the Cybercrimes Act, 2015 and "money laundering" contrary to Section 12(d) and 13(a) of the Anti-Money Laundering Act.

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

xiii. The Honourable Attorney General versus Fatma Amani Karume

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

Advocate Fatma did not enter appearance on the day of the ruling. However, she was accused of impropriety in her written submission without stating what impropriety she committed. She was suspended pending reference to the Advocates Committee, an order which was contrary to Section 22 of the Advocates Act.⁵⁹ THRDC issued a statement strongly condemning the disbarment of advocate Fatma Amani Karume.⁶⁰

59 *The Advocates Act, Cap 341 R.E 2019*

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

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

Being aggrieved by the decision of the Advocates Committee, Ms. Fatma Karume appealed to the High Court of Tanzania. Her case was before a panel of three judges of the High Court for consideration. On 21st June 2021, the High Court overturned the decision of the Advocates Committee because it was initiated contrary to the court order. The court order directed the Registrar of the High Court to refer the misconduct to the Advocates Committee, instead of doing so, the Attorney General instituted a fresh complaint before the Committee in connection with the court order.

Following the fact that the procedure was not followed, the High Court upheld the appeal and ordered for the proper procedure for instituting the complaint to be followed. Being aggrieved, the Attorney General sought for the leave of the High Court to appeal in the Court of Appeal of Tanzania. On 17th December 2021, the application for leave was dismissed for failing to establish an arguable case.

xiv. Freezing of THRDC's Bank Accounts

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

23.10.2020

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

Thereafter, THRDC received a second letter from the Bank extending the freezing period for six months to provide enough time for the government authorities to complete an investigation. The extension period depends on how the office of the Director of Public Prosecutions handles the case.

The delay necessitated THRDC to rescind all staff employment contracts in January 2021. One of the key group that was affected was THRDC staff, their families, relatives, and their dependents. The situation was worse on Human Rights Defenders across the country following the fact that THRDC was not in the position of providing assistance them.

The bank accounts were unfrozen in April 2021 allowing the organization to recover from the situation. However, even during the time when the accounts frozen, THRDC continued to defend HRDs in Tanzania. Since May 2021, THRDC tried to develop harmonious relationship and follow-up with the government ministries and departments as part of building trust between Human Rights Defenders and the Government.

2.3 Threats and arrest to HRDs

Several incidents of arrest and other threats were reported in 2021. This part provides some key incidents that were reported by the Tanzania human Rights Defenders Coalition in 2021. The following are the key selected incidents of arrest and other threats against HRDs.

i. Three HRDs family were attacked

Three HRDs' family of political activists faced risk and requested for relocation support from THRDC. THRDC assessed and scrutinized their request for support. After assessing the risk and the support requested, THRDC decided to provide subsistence support to all three HRDs' family to enable them for their stay at the safe place.

ii. Arrest of a women's rights defender in Tanzania Ms. Joyce Kiria

On 5th February 2021, a long-time women's rights defender was arrested by the Police, for publishing online content through her YouTube account without having a license from the Tanzania Communications Regulatory Authority (TCRA). She was held at Mabatini Police Station, Kijitonyama in Dar es Salaam. She was released on Police bail. This is part of the ongoing impunity of the TCRA for controlling communication for people who allegedly publish online content after the re-enactment of the Electronic and Postal Communications (Online Content) Regulations, 2020.

iii. Arrest of online activists for publishing information asking about the health status of the late President John Magufuli of Tanzania

In Tanzania, the President's well-being is a matter of grave public concern under the Constitution. From 6th March 2021, the then President of Tanzania went missing from the public. Rumors were swirling around suggesting that the president was seriously sick. Most of online activists were repeatedly querying about his whereabouts and some went further to post on the social media platforms that he was indeed sick. The government did not provide credible answers to legitimate questions that people had been asking. Instead, the police force had arrested and detained five (5) online activists from different regions, who relentlessly questioned the president's whereabouts as follows; Mr. Charles Majura in Kinondoni Dar es Salaam, Mr. Tito Augustine Mufindi- Iringa, Mr. Peter Silayo and Melchiory Shayo in Kilimanjaro, and Mr. Job Chacha in Tarime – Mara region.

iv. HRDs demanding for the new constitution were arrested

In August 2021 HRDs demanding for the new constitution in Mwanza, Mara, Dar es Salaam and Mbeya regions to mention a few experienced arbitrary arrests and detentions. Some were arrested even in churches just because they wore t-shirts written new constitution and some were detained on the allegations of conducting unlawful assembly and disrupting public harmony at churches. However, the church issued a statement condemning such kind of unusual, unacceptable, and intolerable arrest and detention.

v. Arrest and detention of two HRDs who were organizing internal meeting to demand new constitution

On 28th May 2021 THRDC issued a statement to strongly condemn the unlawful arrest and detention of Mr. Abubakari Fambo, the chairman for Umoja wa Kudai Katiba Mpya Tanzania (UKUKAMTA) (literary translated as “the Union for demanding the new Constitution in Tanzania”) and his assistant identified by one name as Mr. Saidi

The Coalition was informed that both Mr. Fambo and Mr. Saidi were arbitrarily arrested on 27th May 2021 at Buguruni in Dar es Salaam, while preparing themselves for a meeting with members of UKUKAMTA. THRDC condemned such an arbitrary arrest and detention which was done contrary to the laid out arresting procedures as stipulated under the Criminal Procedure Act [Cap 20 R.E 2019]. THRDC further instructed human rights advocates to process for their police bail and they were released unconditionally on the next day, 29th May 2021.

vi. HRD at risk supported

In October 2020 a HRD was seriously injured by unidentified people while exercising his duties of defending human rights in Kilimanjaro region. He was beaten, tortured, and thrown in the bush under the cover of darkness. Fortunately, the victim was assisted by samaritans, and was accorded

medical treatment using his own money. However, due to the nature of the injury sustained, further medical treatment was needed. He sought financial support from THRDC. The organisation provided medical support and covered transport costs to help him attend scheduled medical treatment appointments.

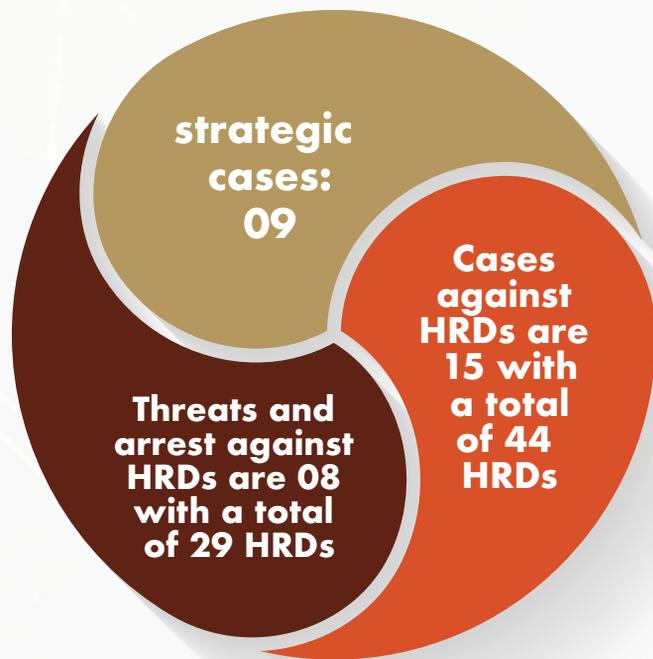
vii. A HRD defending child and women rights

In July 2021 a HRD advocating for children and women's rights reported an incident of a child who was allegedly sodomized in Dar es Salaam. She reported at the Police station and the perpetrator became arrested, detained, and arraigned in court. Although the suspect was under detention, the HRD who reported the incident received threats from unidentified people both at her residence and in office especially during the night. She requested THRDC for support to facilitate her relocation and the organization swiftly organized her relocation to safer place where she stayed for two months.

viii. Key population rights defender

On 13th September 2021, a secondary school teacher and human rights defender was physically attacked by a group of unknown assailants at around 7:30 pm while doing community sensitization and educating people living with HIV Aids. He was taken to unknown place while blindfolded. He was brutally assaulted with clubs, his personal effects including money, laptop and a smartphone were taken by the assailants who threatened him that he is not supposed to live in that region. He sought for medical, cost of living, psychological and relocation support from THRDC. THRDC relocated him to undisclosed place for safety reasons.

For the relocation support offered to the HRDs, no further risks were experienced by them during and after the lapse of relocation period.



2.4 Statistical presentation of cases, threats, and violation in 2021

2.5 Physical violence, Attack and Torture

Human rights defenders face various challenges despite the Declaration on Human Rights Defenders, in every region of the world, human rights defenders, including women human rights defenders and often their beloved ones continue to be subjects of intimidation, threats, killings, disappearances, torture and ill-treatment, arbitrary detention, surveillance, administrative and judicial harassment and more generally, stigmatization by State authorities and non-State actors.

The mandate on human rights defenders in their 2011 commentaries noted clear that they are extremely concerned about allegations received over acts of intimidation, threats, attacks, arbitrary arrests, ill-treatment, torture and killings of human rights defenders who collaborate with the UN or other international mechanisms.⁶¹

⁶¹ *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms P 15*

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. The most at risk HRDs who received several incidences of attacks, harassment, malicious prosecutions, arbitrary arrests, physical violence, and torture in the year 2021 were journalists and HRDs defending digital freedom of expression and those who advocate for human rights generally.

2.6 State of Impunity

Like in other country, the problem of state impunity is rife in Tanzania. The situation in Tanzania, however, worsened under the fifth-phase political regime which operated for six years. We had witnessed unprecedented state of impunity where government officials especially Police officers, head of government departments, Regional and District Commissioners and Ministers were using their powers arbitrarily, unreasonable forces to violate rights of majority of Tanzanians HRDs without any appropriate measures being taken against them.

According to Margaret Sekaggya, a Special Rapporteur on the situation of human rights defenders, States have the primary responsibility to ensure that defenders work in a safe and enabling environment. Under this call, States should end impunity for violations against defenders by ensuring that investigations are promptly and impartially conducted. Perpetrators should be held accountable; while victims should obtain appropriate remedies.⁶²

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.⁶³

⁶² 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.

⁶³ Commentaries to declaration on human rights defenders July 2011 P 18

Addressing the issue of impunity, in line with Article 12 of the Declaration is a key step to ensure a safe environment for defenders. The degree of security enjoyed by human rights defenders will determine the capacity to expose human rights violations and to seek redress for victims of such violations. Tanzania as a State has made no significant efforts of legislation let alone take effective measures to end the numerous and violent attacks against defenders. So far, many cases involving violation of human rights defenders' rights have not been investigated and perpetrators been held accountable.

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

2.7 Uninvestigated incidents committed against HRDs.

The perpetrators of the following incidents have not been investigated and prosecuted for their deeds.

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

- iv. Abductors of Dr. Steven Ulimboka have never been arrested and no any investigative report has been issued.
- v. Abductors of Mr. Raphael Ongangi, a Kenyan National and former Assistant of the ACT- Wazalendo's Opposition party leader Mr. Zitto Zuberi Kabwe (MP) have never been arrested. He was abducted by unknown people at around 9.30 pm on Monday, June 24, 2019 and later on found in Mombasa, Kenya on Wednesday, July 3, 2019.
- vi. Abductors of Mr. Saed Kubenea (journalist HRD and previously MP for Ubungo Constituency) who was abducted and sprayed with unidentified toxic substance on his face, have never been dealt with and no investigation report has been issued.
- vii. Attackers of a journalists in Geita who were covering the story of students' demonstration have not been arrested and prosecuted by the respective authorities. According to the report, the attackers were police officers who are supposedly entrusted to investigate and thus under normal circumstances the investigation could not be conducted.
- viii. Attackers of Mdude Mpaluka Nyagali have never been arrested and investigation report has not been issued.
- ix. Attackers of Mr. Sirili John also known as Rasta, businessman, resident of Arusha and previously a CHADEMA candidate at Unga Ltd Council Local Government Elections of 2019, who was allegedly brutally slaughtered on election day by unknown assailants who have never been brought to justice.
- x. Attackers of the office of IMMA Advocates have never been found neither have there been efforts from the government/police to investigate the matter.
- xi. Attackers who gunned down the Member of Parliament from the opposition CHADEMA party Hon. Tundu Antiphas Lissu have never

been investigated and no report has ever been issued from the police regarding the incident.

- xii. The Kidnapping incident of student leader Abdul Omari Nondo, who was abducted in March 2018 have never been investigated and no report was ever issued with regard to his case except the decision of the court which shifted the burden of proving whether Nondo kidnapped himself or not.
- xiii. Kidnappers of Azory Gwanda, who is a journalist HRD from Kibiti have never been found and no report has ever been issued officially by police regarding his mysterious disappearance.
- xiv. Killers of Daniel John, CHADEMA ward leader for Kinondoni have never been investigated and no report was ever issued with that regard.
- xv. Killers of Godfrey Luena, the then Namawalla Ward Councilor in Kilosa, Morogoro region have never been apprehended and taken to court to face the charges against them.
- xvi. Disciplinary actions against the police officer who allegedly shot dead Sheikh Mohammed Bin Almas have never been taken. Sheikh Almas was crossing the area going to the ATM while there was a notice preventing people to cross the area, money was being deposited at the ATM machine.
- xvii. The 2017 incident where Clouds Media Group offices were invaded by former Dar es Salaam Regional Commissioner Paul Makonda, has never been investigated by police to arraign and prosecute the perpetrator despite the video clip which clearly showed the raid. The RC was still in power and no efforts were being made to ensure he would be held responsible for his actions.

- xviii. The abduction and torture of a JKT movement leader George Mgoba in 2015 has never been investigated. Worse enough the HRD has continued to receive threats from police despite the fact that his case was ruled in his favour.
- xix. The attackers of journalists and other participants during the CUF meeting at Vina Hotel Dar es Salaam have never been arraigned and prosecuted for the horrific crime they committed on 21st April 2017 seriously beating up journalists, members and leaders of the opposition party - CUF.
- xx. The uninvestigated incident of Israel Michael Manyulane who was arrested and detained by the Police officers on 6th July 2020. He was arrested at Police check point in Kakonko district while travelling from Kasulu, Kigoma to Kahama.
- xxi. The findings of the Report, commissioned by the then Minister for Information, Nape Nnauye regarding the invasion of the Clouds Media Group by the RC of Dar es Salaam have never been acted upon. The security officer who threatened Mr Nnauye with a pistol has never been taken to court for excessive use of force.
- xxii. The incident involving a police officer, who allegedly shot live ammunition in the air as he was attempting to arrest the former Minister of Finance, Adam Malima has not been acted upon. The police were allegedly dispersing people who had gathered to witness the arrest of the minister, who had used a wrong parking slot. Unfortunately, the Inspector General of Police (IGP), Simon Sirro was indifferent to the conduct of the police officer, saying he acted within the parameters of the law.
- xxiii. The incident involving the former Arusha Regional Commissioner, Mrisho Gambo, who directed police officers to arrest journalists, some political and religious leaders who went to handover condolences

money to the victims of a tragic car accident involving students at Lucky Vincent Primary School has never been investigated nor are there any plans to hold the ex-RC responsible for his actions.

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

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

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

CHAPTER **THREE**

MEDIA SECURITY AND JOURNALISTS' SAFETY

3.0 Chapter Overview

Chapter three examines the situation facing journalists as human rights defenders and the state of media industry Tanzania. The Minister responsible for Information in Tanzania while addressing the Public on world press Freedom Day on 3rd May 2021, stated that currently, the government of Tanzania has registered a total of 246 Newspapers, 194 Radio and 53 Television stations. Further, on 6th April 2021, President Samia Suluhu Hassan ordered that the online media whose licenses had been revoked be allowed to operate. She was speaking shortly after a swearing ceremony of some Ministers and Permanent Secretaries for different ministries. The President insisted that, media outlets should operate in accordance with the law.

"I have been told there are media outlets that were banned. Reopen them, we should not give them room to say we are shrinking press freedom...We should not ban the media by force." Said the President in the statement that rekindled hope for the life of media outlets.

THRDC issued a statement highlighting the state of media industry in Tanzania and advised the government to lift the ban on all media outlets including the newspapers and radio. The Minister responsible for information took

steps by inviting owners of suspended media outlets to have an audience with him and deliberate on the best way to operate. Leaders for Tanzania Daima newspaper and Mwanahalisi newspaper met with the minister and the ban was lifted.

Therefore, this chapter discusses the current state of media industry, security challenges encountered by journalists and the media industry in general. The challenges include but not limited to harassment, suspension, criminalization, detention, torture, killings, and other legal and regulatory related challenges.

3.1 Specific Challenges Facing Journalists

Freedom of expression is constitutionally guaranteed under Article 18 of the Constitution of United Republic of Tanzania.⁶⁴ The Constitution provides for the respect of freedom of expression and opinions of Tanzanians. On the other hand, Article 19 of the International Covenant on Civil and Political Rights⁶⁵ states, “everyone shall have the right to freedom of expression”. This right shall include freedom to seek, receive, and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice. These right carries certain duties and responsibilities and may be subject to certain restrictions only as provided by the law.

Despite such guarantees, the applicability of laws raises issues of concern including banning on some the media outlets; prosecution of social media users; and penalization of media houses. Protection of private data is also not guaranteed. There were also reported attacks to journalists including threats, arrests, assaults, confiscation of working equipment.⁶⁶

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

65 *The International Covenant on Civil and Political Rights, 1966*

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

With the enactment of the Media Service Act of 2016, Cyber Crimes Act of 2015, the Electronic and Postal Communications (Online Content Regulations) of 2020, press freedom has been diminishing over time especially in 2020 where press freedom was absolutely trampled on. These laws, which the Government claims are aimed at improving the media, are in fact having a devastating effect on the media industry in Tanzania.

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

In the year 2021, THRDC Protection Desk documented a total of twenty-nine (29) incidents of violation of rights totalling forty (40) journalists/media whose rights were violated. Most of these involve arbitrary arrest, malicious prosecution, killing, threats and torture, suspension and banning from operation as well as confiscation of journalist's working tools. The following details depict the situation of journalists and media outlets in Tanzania for the year 2021.

3.2.1 Killing of a female journalist

i. Journalist Blandina Sembu

On 28th March 2021, journalist Blandina Sembu was reported to have been murdered and her body being thrown alongside the road, at Mwenge area, Kinondoni, Dar es Salaam, Tanzania.

The Kinondoni Regional Police Commander Mr. Ramadhan Kingai while speaking to the media confirmed to have received reports that Blandina's body was dumped in front of Maryland bar, Mwenge on Saturday, March 27, 2021, at 11 pm. He said a Toyota Noah whose registration has not been confirmed arrived at the scene and stopped shortly before throwing Blandina's body; she was already dead by then.



Photo of the Late Journalist Blandina Sembu, (R.I.P Blandina Sembu)

The deceased was also found with injuries on her head and face which are yet to be established whether they were the cause of death. According to commander Kingai, the bodaboda riders in the vicinity spotted which had its full lights on, stopping for two minutes and then saw the body of woman being thrown out.

“Investigations are ongoing but what we have found out so far is that the woman was not killed there, the killing took place elsewhere, and they only went to dump the body”- RPC Kingai.⁶⁷

Journalist Bandina Sembu was known for her programme Jarida La Wanawake on ITV. She also worked with her Ability Foundation, a Tanzanian-registered NGO with registration number OONGO/R/0108. The NGO was striving to unlock and showcase the potential of university girls with disabilities. One suspect was arrested and detained by the Tanzania Police Force.

3.2.2 Threats and torture

i. Journalist Mabere Makubi

On 9th April 2021, the Nyamagana District Commissioner Dr. Philis Nyimbi threatened journalist Mabere Makubi working for ITV that he will do something that would render him jobless on the grounds that journalist

⁶⁷ www.thecitizen.co.tz/tanzania/news/itv-presenter-blandina-sembu-was-murdered-says-police-3339380 Accessed on 28.03.2021

Makubi has been publishing information that put the career of his (DC) at risk. Journalist Makubi continued receiving threats and little cooperation from the government leaders in Mwanza. On 6th December 2021, his reporting contract was rescinded by ITV.

ii. Journalist Jesse Mikofu

On 21st April 2021, a journalist working for Mwananchi Communications Ltd (MCL) in Zanzibar, Jesse Mikofu was attacked by SMZ security personnel while carrying out his duties. Mikofu was attacked while taking photographs of the security forces who were evacuating petty traders who displayed their merchandises along the road at Darajani area.



Describing the situation, Mikofu said in addition to being beaten, dragged in mud, the officers also forced him to roll muddy water and later do push-ups; his work equipment including the smart phone he had used to take the photographs was also destroyed.⁶⁸ Mikofu was further beaten by the uniformed officers asking him to show them the pictures he had taken and then forced him to change the password on his email. He was then directed to lay in a pond of stagnant dirty water and roll again, it was after the final lap of punishment that he was allowed to leave the area.

iii. Two journalists were blocked in Chato

In April 2021, two Journalists, Zephania working for Kwizera FM and Paschal Mussa working for Radio Free Africa were blocked to attend village meeting to access information in Chato District. No proper reasons were issued by the village leaders.

68 <https://www.thecitizen.co.tz/tanzania/news/mwananchi-reporter-attacked-by-security-forces-in-zanzibar-3370978>

iv. Journalists covering court cases were threatened in Arusha

In June 2021 Journalists covering Olengai Sabaya's case before the resident magistrates' court in Arusha complained that they had been threatened not to cover court proceedings. This was an open threat against journalists who fulfil their duty of informing the public.

v. Journalist John Marwa

In October 2021 a journalist Mr. John Marwa received a phone call ordering him to report at Oysterbay Police station. He accordingly reported and interrogated on the allegation of livestreaming a press conference organized by the Chairperson of the elderly wing of an opposition political party in Tanzania, Chama cha Demokrasia na Maendeleo. He was released unconditionally.

vi. Journalist Pascal Katona

In April 2021, Journalist Pascal is a reporter for Channel 10 in Mpanda, Katavi region. He went to cover news at Makanyagio mosque during the election of leaders. As he was publishing the released results, he was attacked by a group of people who were not impressed by the results. His working tools had also been destroyed.

vii. Journalist Baraka Lusajo

In October 2021, the Kalambo District Commissioner Ms. Tano Mwera in Katavi region ordered for the arrest and interrogation of journalist Baraka Lusajo, who is working with Independent Television (ITV) on the allegation of publishing information without consulting the district commissioner. He published information about a heavy downpour on 1st October, 2020 that rendered 30 families at Mkowe village, Kalambo district Katavi region homeless. He was interrogated and later released unconditionally.



3.2.3 Arbitrary arrests and/or Malicious Prosecutions

- i. Police authorities arrested Christopher James (for ITV & Radio One) and Dickson Bilikwija – Island TV

The District Executive Director for Temeke Municipal Mr. Lusabilo Mwakabibi ordered the detention of two journalists claiming that they trespassed his meeting. The meeting was conducted at Temeke municipal offices with businessmen and entrepreneurs. The journalists who went to cover the news, were detained at Temeke Municipal offices for three hours. They were unconditionally released after the meeting.

On 13.04.2021 the Minister responsible for information said that he is making a follow up on the incident and the Minister of State in the Prime Minister's office subsequently removed Mr. Lusabilo from office for misuse of a public office. This decision had a positive impact since it indicates that the government is seriously concerned about wanton disregard of HRDs rights by public officers.

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

A Journalist human rights defender Mr. Ibrahim Godfrey Mlele was arrested on 29th February 2020, interrogated in the absence of his advocate, and subsequently detained at Njombe town police station for 4 days.

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

Since then Mr. Mlele was charged before the court, the Prosecution failed to bring witness to the court and no evidence was adduced to prove the prosecution case beyond reasonable doubt. Hence on 4th September 2021, the Resident Magistrate Court of Njombe acquitted Mr. Mlele.

iii. Republic Vs Benedict Brown Kisawa [Criminal Case No. 43 Of 2020]

A human rights defender Mr. Benedict Brown Kisawa was arrested on 29th February 2020, interrogated in the absence of his advocate, and detained at Njombe town police station for 4 days.

On 4th March 2020, he was charged before the Njombe Resident Magistrates' Court for provision of online content without a license in his

online YouTube account/ channel known as NJOMBE YETU TV contrary to section 103(1) of the Electronic and Postal Communications Act [Cap 306 R.E 2017] read together with Regulation 14(1) and 18 of the Electronic and Postal Communications (Online Content) Regulations, 2018. The case was dismissed on 17th June 2021 on the request of prosecution (the prosecution failed to bring witnesses to prove the case beyond reasonable doubt.)

iv. Republic Vs Jabir Johnson Mking'imle [Criminal Case No 63 of 2021]

On 18th February 2021 journalist Jabir Johnson Mking'imle based in Moshi Kilimanjaro was arraigned in court and charged for providing online content service in contravention of the provision of Regulation 14(1) and (2) and 18 of the Electronic and Postal Communications (Online Content) Regulations, 2018 at the District Court of Moshi.

THRDC engaged a human rights advocate to provide legal support in securing court bail. He was bailed out with a condition of two sureties each signing a bond of TZS five million. On 22nd September 2021 the case was struck out by the court on the request of prosecution prosecution. The prosecution was unable to either bring witnesses in court or prove the case beyond reasonable doubt as a cardinal principle requirement of international criminal law.

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

A journalist human rights defender Mr. Dickson Kanyika was arrested on 29th February 2020, interrogated in absence of his advocate, and detained at Njombe town police station for 4 days.

On 4th March 2020, he was charged before the Njombe Resident Magistrates' Court for provision of online content without a license in his online YouTube account/ channel known as HABARI DIGITAL contrary to section 103(1) of the Electronic and Postal Communications Act [Cap 306

R.E 2017] read together with Regulation 14(1) and 18 of the Electronic and Postal Communications (Online Content) Regulations, 2018. When the case was coming for judgment on 22nd July 2021, the Republic withdrew the case on the grounds that it has no interest to proceed with the case against Mr. Kanyika.

vi. Journalist Fredrick Siwale

On 6th September 2021 a journalist human rights defender Mr. Fredrick Siwale was arrested, detained and his phone was confiscated by the Police officers at Makambako Police station on the order of the Njombe Regional Police Commissioner (RPC) for publishing information alleging that a certain commuter bus plying between Tunduma to Dar es Salaam was over crowded contrary to government directives.

The government in July 2021 issued guidelines directing owners of buses not to carry passengers beyond seats available in the bus to ensure that all passenger are confined on their sits to reduce the risk of spreading Covid-19. While under detention, he was interrogated on publishing such aforesaid information through online platforms.

Journalist Fredrick Siwale also works with Tanzania Legal Knowledge and Aid Centre, a member of THRDC. In making sure that HRDs at risk are helped under the project objective, THRDC engaged a human rights advocate to provide legal support in securing Police bail for Mr. Siwale. He was bailed out during the night on 6th September and conditioned to report on 7th September 2021. He reported as conditioned and was released unconditionally. His phone was given back to him.

vii. Republic versus Cartoonist Opptertus John Fwema

Cartoonist Opptertus John Fwema was arrested at his home, Bunju area in Dar es Salaam on Friday 24th September 2021. On 30th September 2021 Mr. Fwema was interrogated in absence of his advocate or family members

for cyber offences. During the evening on 5th October 2021, Oysterbay Police officers took Mr. Fwema to his parents' residence, searched the house looking for the technical tools that he uses in preparing cartoons. However, they found nothing useful.

After that, Mr. Fwema was taken back for detention at Oysterbay Police station. Neither search warrant was issued by the Police officers, nor the local government leader was consulted.

On 6th October 2021, human rights advocates under THRDC's instructions instituted miscellaneous criminal application no 27 of 2021 before the Resident Magistrates' Court of Dar es Salaam at Kisutu. It was an application for bail in favour of Mr. Fwema against the Director of Public Prosecutions, Officer Commanding Station (Oysterbay Police Station), Inspector General of Police, Zonal Crimes Officer Dar es Salaam and the Director of Criminal Investigation.

The application was lodged under certificate of most extreme urgency; thus, it was scheduled for hearing on Monday 11th October 2021 at 09:00am before a Resident Magistrate, Hon Kassian. Among other things, THRDC sought for arraignment of Mr. Fwema before the court for bail consideration since he was under unlawful detention for fourteen (14) days.

However, on 8th October, Mr. Fwema was arraigned before the Resident Magistrate Court of Kivukoni charged with publication of false information contrary to section 16 of the Cybercrimes Act, 2015. On his behalf an advocate engaged by THRDC processed court bail on the same day. The case is on-going at the court.

viii. Journalist Shemsanga

On 2nd October 2021, a journalist human rights defender Mr. Harlod Shemsanga of Mgawe Tv was arrested and detained at Mbweni Police station in Kinondoni, Dar es Salaam region. He was accused of publishing

information concerning opposition political party members who were conducting jogging exercise without Police authorization.

THRDC engaged a human rights advocate to provide legal support in securing police bail. He was bailed out on 5th October 2021.

ix. Republic versus Daniel Msangya [Criminal Case No 108 of 2020]

In 2019 a journalist human rights defender Mr. Daniel Msangya was arrested and detained for a week at Newala Police station in Mtwara region because of his work of defending human rights. He was conducting a fact-finding mission on the allegation of TAMOSA leaders were soliciting bribes from cashew nut farmers and community members. The money solicited was alleged for development programs but in fact it was a means of the TAMOSA leaders to get kickbacks.

Mr. Daniel was arrested, detained, and charged for obtaining money by false pretense contrary to Section 305(a) of the Penal Code Cap 16 R.E 2019. TAMOSA is an association of motorcycle owners in Mtwara region, Tanzania.

THRDC engaged a human rights advocate to provide legal support in 2021 and on 20th September 2021, the Prosecution withdrew the case against him. However, he was re-arrested the moment he stepped out of the court's premises. The advocate managed to obtain his bail on 21st September 2021. The advocate was informed that the Prosecution may charge again Mr. Daniel (Prosecution may re-institute the case). To date no charges have been laid against the journalist.

x. Shagata Suleiman

On 20th July 2021 Mr. Shagata Suleiman, a journalist based in Mwanza was arrested and detained for one day at Mwanza Central Police station on the allegations of following up of the information concerning HRDs who were detained on accusation of unlawful assembly for demanding the new

Constitution of the United Republic of Tanzania. He was accused of being rude to the Police (he was making close follow up of the incident such as interviewing Police officers).

THRDC engaged a human rights advocate to provide legal support to securing Police bail. He was bailed out on 21st July 2021 around midnight without any condition.

xi. Republic versus George Marato [Corruption case No 01 of 2019] George Marato is a journalist working with Independent Television (ITV). He was arrested and charged with corrupt transactions contrary to section 15(1)(a) and (2) of the Prevention and Combating of Corruption Act no. 11 of 2017. The reasons for his arrest are well connected with his journalistic work. THRDC provided legal support, he was acquitted by the District Court of Musoma on 31st March 2021 after the state's prosecutors failed to prove the case beyond reasonable doubt.

xii. Friday Wenston Simbaya

A journalist Mr Friday Wenston Simbaya was arraigned before the resident magistrates' court of Iringa on 19th October 2018. He was charged on four counts: use of the domain not registered in Tanzania contrary to Regulation 10(1) read together with Regulation 17(6) of the Electronic and Postal Communication Act (Electronic Communication Numbering and Addressing) Regulations, GN No 62 of 2018, provision of online content without licence contrary to Regulation 14(1) and 18 of the Electronic and Postal Communication Act (Online Content) Regulations GN No 133 of 2018. The case is still ongoing before the court.

xiii. Republic versus Charles Kombo [Criminal Case No 131 of 2019] Charles Kombo is a blogger who was arrested and detained at Mabatini police post for nearly two weeks. The reason for his arrest was running online Blog without registration. On 12th April 2021, the court dismissed the case on request of prosecution.

xiv. Ibrahim Yamola Vs Mwananchi Communications Ltd [CMA/DSM/ILALA/373/2020]

A journalist who is the Mwananchi Newspaper Chief Reporter Mr. Ibrahim Yamola was terminated from employment on 14th April 2020. He was terminated on the alleged violation of Mwananchi Communications Limited (MCL) Editorial Policy.

The charge served to him alleged that, on 13th April 2020, Mr. Yamola shared a video captioned 'JPM SOKONI' in the MCLHabariChamps working WhatsApp group. The video displayed the President being surrounded by people while purchasing fish at the market, during the outbreak of COVID-19. That video was later posted through the company's social network platforms.

The video was later removed from the company's social network platforms and MCL made a public apology, that such a video was posted by mistake. Due to this incident Mr. Yamola was terminated from employment.

THRDC provided legal support to challenge his termination at the Commission for Mediation and Arbitration (CMA) and on 22nd October 2020, it was held in favour of Mwananchi. Under THRDC's legal support, Mr. Yamola filed an application for revision at the High Court of Tanzania (Labour Division) to challenge the CMA decision on 27th November 2020. However, the case was withdrawn from the court by Mr. Ibrahim Yamola.

xv. Yusta H. Kisaka versus Mwanza Press Club [CMA/M2/NYAM/APP/05 of 2020]

Mwanza Press Club is a membership non-governmental organization based in Mwanza, Tanzania. Its members are media outlets, individual journalists, and journalists' clubs. It defends the rights and welfare of journalists in Tanzania.

The Respondent one, Mr. Yusta Kisaka was an employee of Mwanza Press

Club (MPC). Yusta was alleged to have committed a misconduct and parted with some MPC properties like Television set, projector, and laptop. He was requested to return the properties but denied, as a result he was terminated from employment. He lodged a complaint at the Commission for Mediation and Arbitration claiming to have been unfairly terminated. During mediation stage, parties met and agreed to settle the matter amicably.

Without the knowledge of MPC, Mr. Yusta, went on with the case at arbitration stage and prayed for an ex-parte proof, which he was granted and awarded remedies. MPC applied for stay of execution at the High Court of Tanzania, Labour Division. THRDC provided legal support and the stay of execution order was issued on 9th April 2020. However, Mr. Kisaka refiled the case before the CMA of which the judgment was issued in his favor. Still MPC lodged an appeal to the High Court which is still pending to date.

xvi. Gordon Kalulunga

Journalist Gordon Kalulunga was arrested and detained at Mbalizi Police station in Mbeya on 8th November 2021. He was accused of publishing government information without permission. THRDC provided legal support and he was released on 10th November 2021 on condition of reporting on 17th November 2021. Upon reporting, he was informed that a summons will be issued if further needed. Most of this kind of cases ends at this stage as it shows that there is no enough evidence to arraign a HRD before a competent court of law.

For the HRDs' cases supported, nineteen cases were won/some HRDs were unconditionally released, benefiting thirty human rights defenders. Eight cases against HRDs are on progress at different courts of law. All the HRDs whose case were won have continued promoting and protecting human rights across the country.

xvii. Journalists James Lanka

On 21st March 2021, journalist James Lanka an independent journalist working for the Guardian. He was arrested and detained for three days at Moshi Central Police station upon conducting an investigative story in Uru ward, Moshi Kilimanjaro. He was investigating about existence of suspicious corruption as one Mr. Stanley Kisaka (an accountant at Moshi District Council) and his four colleagues from Moshi Municipal Council were collecting money from the people and giving already generated EFD receipts. He was released on 23.03.2021 and conditioned to report every Monday of the week. However, upon reporting for two weeks, he was released from reporting unconditionally.

3.2.4 Suspension and Banning from Operation

i. Wasafi Tv

The Tanzania Communications Regulatory Authority Content Committee suspended Wasafi TV from operation for six months on the allegation of live streaming a live performing concert in Dodoma with musicians who were indecently dressed on 1st January 2021. Wasafi TV is an entertainment media in Tanzania.

ii. Uhuru Newspaper

On 11th August 2021 the government suspend the licence of Uhuru Newspaper for 14 days. Uhuru Newspaper is owned by Chama Cha Mapinduzi, the ruling party in the United Republic of Tanzania. The decision to suspend the said licence was made by the Director of Information Services Department in the Ministry of Information, Culture, Arts and Sports. The Director suspended the license by virtue of Section 9(b) of the Media Services Act (MSA), 2016. The Statement issued by the Director did not state whether the paramount right to be heard was accorded to Uhuru Newspaper before a suspension was issued.

According to the statement issued by the Director of information, Uhuru Newspaper's license was suspended allegedly for publishing false information against the President of the United Republic of Tanzania, the information published read "Sina wazo kuwania Urais 2025 – Samia" which literally means "I have no idea of running for Presidency in 2025 – Samia". Such information was alleged to contravene Section 50(1)(a),(b) and (d) and Section 52 (d) and (e) of the Media Services Act, 2016. However, all these provisions were successfully challenged by THRDC and other organizations at the East African Court of Justice through Reference No 02 of 2017.

iii. Raia Mwema Newspaper

On 5th September 2021 the government suspended from operation the licence of Raia Mwema Newspaper for thirty (30) days. Such a decision was made by the Director of Information Services Department in the Ministry of Information, Culture, Arts and Sports. The Director suspended the license by virtue of Section 9(b) of the Media Services Act (MSA), 2016. The Statement issued by the Director did not state whether the paramount right to be heard was accorded to Raia Mwema Newspaper before a suspension was issued.

According to the statement issued by the Director of information, Raia Mwema Newspaper's license was suspended because of its trends and style of writing news and articles, which to a large extent contradicts with the principles of professional ethics of journalism by publishing misleading and seditious information. Thus, by doing so, it contravened with the conditions of the license. The statement further provided that, to a large extent such a contravention jeopardized national security by bringing hatred among the people themselves and/or with their government leaders.

The statement quoted few examples of the headings published as follows; "Maumivu mapya 17" literally means "new 17 pains" published on 21st August 2021 alleged to be contrary to Section 52 (1)(a), (c), (d) and (e) and Section 54(1) of MSA, such information showed that the government

brought pains to the people by introducing 17 levies on different works done by artists.

Secondly “Hamza wa CCM hatari” literally means “Hamza of CCM is dangerous” published on 3rd September 2021 alleged to be contrary to Section 50 (1)(b), (d), (e) and Section 52(1) (e) of MSA, such information was meant for the people to believe that Hamza is a member or CCM leader. Hamza, a suspected terrorist was reportedly shot three Police Officers and one security guard in Dar es Salaam, Tanzania.

Thirdly; “DC kizimbani akidaiwa Millionsi 100” literally means “DC arraigned in court, owed 100 million” such a heading was alleged not to reflect the contents of the information published by such newspaper because the way the heading was framed it was as if the DC is still in a public office while in fact such a DC retired from office. THRDC issued a statement to condemn such a suspension.

- iv. Ten (10) radio and television stations suspended from provision of content

The Tanzania Communications Regulatory Authority (TCRA) suspended 10 radio and television from publishing content contrary to the license conditions. They were removed from the licensees register. However, a public statement issued by TCRA did not state the exact requirements which were not met by the said radio and television.

THE UNITED REPUBLIC OF TANZANIA



MINISTRY OF INFORMATION,
COMMUNICATION AND INFORMATION
TECHNOLOGY

TANZANIA COMMUNICATIONS
REGULATORY AUTHORITY

ISO 9001:2015 CERTIFIED



PUBLIC NOTICE

SUSPENSION FROM PROVISION OF CONTENT SERVICES AND REMOVAL FROM LIST OF LICENSEES

The Tanzania Communications Regulatory Authority (herein referred to as the Authority), in exercise of its regulatory powers and functions under Sections 5 and 6 of the Tanzania Communications Regulatory Authority Act CAP. 172 had, on various dates, issued licences to the radio and television stations appearing in this notice.

By virtue of Section 22 of the Electronic and Postal Communications Act, CAP. 306, and powers vested to it under Section 6 of the Tanzania Communications Regulatory Authority Act, Cap 172 of the Laws of Tanzania, the Authority notifies the general public that the radio and television stations listed hereunder, having failed to meet licence conditions, and can no longer continue with the provision of content services.

STATION NAME	AREA	TYPE OF LICENCE
1) COUNTRY FM RADIO	IRINGA	Content Services (Radio Broadcasting) Licence
2) HOT FM RADIO	IRINGA	
3) GENERATION FM RADIO	MBEYA	
4) BEST FM RADIO	LUDEWA	
5) BREEZE FM RADIO	TANGA	
6) KIFIMBO FM	DODOMA	
7) RASI FM RADIO	DODOMA	
8) INFO RADIO	MTWARA	Content Services (Television Broadcasting-Free to Air Television) Licence
9) TABIBU TELEVISION	DAR ES SALAAM	
10) VIASAT1 TANZANIA LIMITED (TV 1)		

The general public is notified further that, following failure of the above listed radio and television stations to meet licence conditions, the Authority declares the above listed radio and television stations as no longer licensees of the Authority and are removed from licensees register effective from the date of this notice.

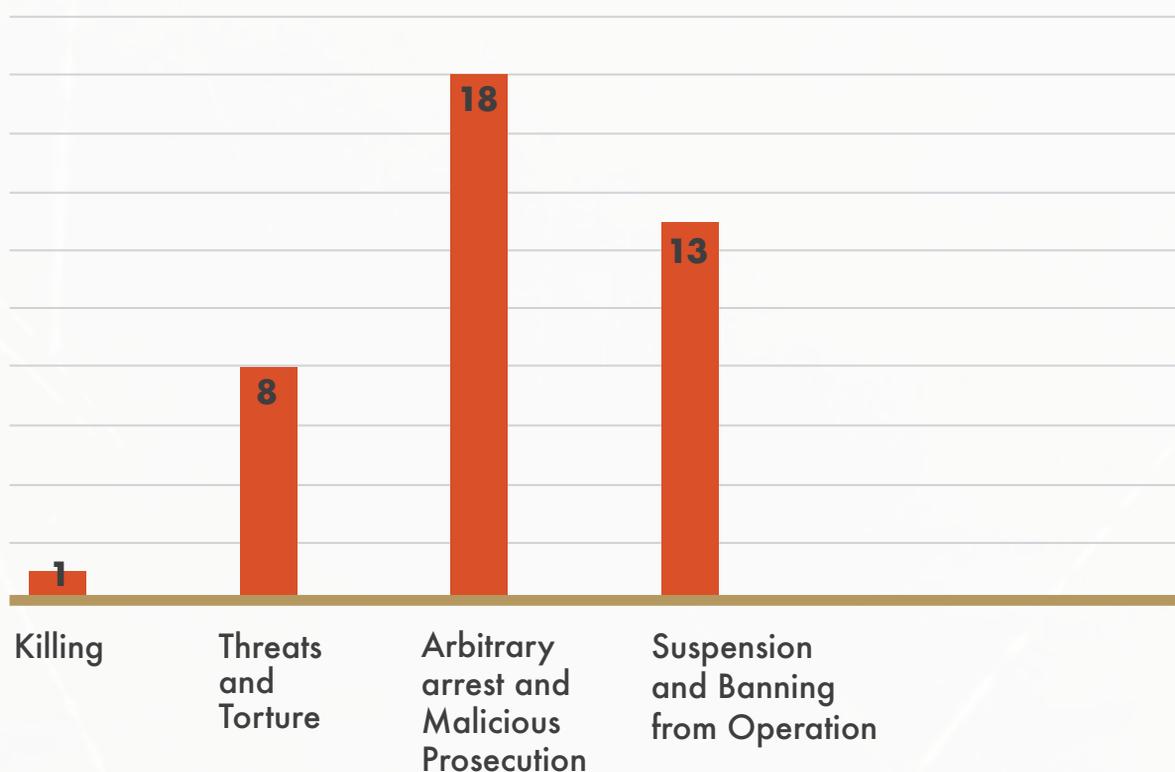
Take further notice that the above listed entities are not authorized to conduct, carry, provide, offer or operate any broadcasting services in the United Republic of Tanzania.

Issued by:

Director General,
Tanzania Communications Regulatory Authority,
Mawasiliano Towers,
20 Sam Nujoma Road,
P. O. Box 474,
DAR ES SALAAM

2165507

Trend of Journalists and Media Incidents in 2021



It is interesting to note that, most of the reported incidents of violations of journalists' rights were promptly attended to by the Tanzania Human Rights Defenders Coalition by issuing press statement, assisting in bail processing and legal representation for those who were arraigned to court.

3.3 Digital threats/incidents

The enactment of the Online Content regulations of 2020, the Cybercrime Act of 2015, Media Services Act of 2016, its regulations and its enforcement remained to be the most threats to people who are using social media to express their own views.

3.4 Legal challenges affecting the security of Media and Journalists

The Constitution of the United Republic of Tanzania⁶⁹ guarantees for the 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.

Despite these guarantees, the media environment in Tanzania is restricted by the selective implementation and application of laws with restrictive provisions. Such laws have been used to suspend independent newspapers and prosecute as elaborated below.

i) The Media Services Act, 2016

On 5th of November 2016, the Parliament of United Republic of Tanzania enacted the Media Services Act and the same has been assented to by the President on 16th day of November 2016. This Act provides for promotion of professionalism in the media industry, establishment of the Journalists Accreditation Board, Independent Media Council, and framework for regulation of the media services and for other related matters.⁷⁰ 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.⁷¹

Structurally, this Act has eight parts, 67 sections, and one schedule.

69 Constitution of United Republic of Tanzania 1977 as revised

70 See preamble to the Act.

71 MCT report on the Media Services Act Analysis

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.⁷² Section 59 of the MSA, 2016 has been used as a backup provision in almost every ban of the newspapers. Some of these newspapers includes Mawio, Tanzania Daima and RaiaMwema. They were all banned under section 59 of the Media Services Act, 2016.

Again, the Act contains a number of weaknesses such as the retention of accreditation of the journalists, licensing of the printing media, criminalization of the defamation, seditious offences, establishments of non-independent regulatory bodies and replication of some of the draconian provisions from the Newspaper Act, 1976, for instance section 58 and 59 which gives power to Minister to prohibit importation or sanctioning of any publication in his absolute discretion if in his own opinion such publication is against public interest or jeopardizes national security.⁷³ In 2021 the government used the Media Services Act, 2016 to suspend from operation Raia Mwema and Uhuru newspapers.

ii) The Access to Information Act 2016

This Act was passed by the National Assembly on the 7th day of September 2016 and assented by the President on 23rd day of September 2016. According to section 2(1), this Act applies only to Mainland Tanzania. This is an Act to provide for access to information, define the scope of

⁷² *Ibid.*
⁷³ *Ibid.*

the information which the public can access, promote transparency and accountability of the information holders and to provide for other matters pertinent thereto.⁷⁴

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.⁷⁵

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.⁷⁶

iii) The Statistics Act, 2015

The Statistics Act imposes harsh penalties on those found guilty of publishing misleading and inaccurate statistics or statistics not approved by the National Bureau of Statistics. Those found guilty of providing false or misleading statistics without authorization from the National Bureau of Statistics are liable to a one-year jail term and a fine of 10 million Shillings (approximately US \$ 4500). The new amendments to the Statistics Act, also criminalizes any person who questions/criticizes official statistics given by

74 *MCT Analysis of the Access to Information's Act 2016*

75 *Ibid*

76 *Ibid*

the government. The Statistics Act, do not recognize any other statistics other than the official statistics. Any person wishing to produce official statistics should seek approval from the National Bureau of Statistics.

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

On 17th July 2020, the Tanzanian Minister for Information, Culture, Arts and Sports published the Electronic and Postal Communications (Online Content) Regulations, 2020 (2020 Online Content Regulations). The Regulation provides a list of prohibited contents under the Third Schedule, it covers, among other things, content that motivates or promotes phone tapping, espionage, data theft, tracking, recording or intercepting communications or conversation without right.

v) The Cybercrimes Act, 2015

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

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

Privacy is a fundamental human right, enshrined in numerous international human rights instruments.⁷⁷ 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.⁷⁸

The Constitution of the United Republic of Tanzania⁷⁹ guarantees the right to privacy under Article 16 which provides that “every person is entitled to respect and protection of his person, the privacy of his own person, his family and of his matrimonial life, and respect and protection of his residence and private communications.”

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

In 2015, the government enacted the Whistle Blower Act 2015, yet to come into force. Needless to speak, the law itself does not provide enough protection for whistle blowers especially those using social media platforms

77 *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.*

78 *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.*

79 *The Constitution of the United Republic of Tanzania, 1977.*

to reveal information of public interest. This is simply because the definition of the Act is too narrow to cover the same and limits a person who unveils it for only competent authority something which is almost impossible for the Tanzanian environment.

Section 3 of the Act defines a “Whistleblower” to mean any person who makes disclosure of wrongdoing in accordance with the provisions of this Act.

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

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

Before a Competent Authority if that person is of reasonable belief that-
THRDC recommends the amendment of this Act and the section to remain;
‘any person who makes a public interest disclosure”

3.6 Internet as a human right

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 and Regulations made thereunder seem to erode the freedom of expression in internet.

CHAPTER **FOUR**

PROTECTION, PLANNING AND RISK MANAGEMENT

4.0 Overview of the Chapter

Capacity on protection, planning, and risk management continues to be greatly required among human rights defenders in Tanzania. This has been a recurring observation during the Coalition members' visits as well as capacity building sessions. This chapter looks at the capacity situation of HRDs in 2021 particularly in areas including: physical and digital security; compliance to regulatory laws; monitoring, documentation and reporting human rights violations, and public interest litigation. In these areas, HRDs have often found themselves in risky working environment.

Therefore, in response to this, in 2021 THRDC continued to build capacity of HRDs through training sessions, round table discussions, dialogues and seminars on various security management issues, human rights and their enforcement mechanisms. Moreover, the Coalition also continued to train advocates on public interest litigation not only in order to increase availability of legal assistance to HRDs at risk, but also to get more lawyers to actively engage in matters of public interest.

To better inform this chapter, a survey was conducted to 106 HRDs including individuals and organizations across 20 regions in Tanzania. The respondents being members of the Coalition were taken as a small sample

representing a greater number of both members and non-members across the country. Furthermore, to build upon the survey information, secondary and anecdotal data has also been utilized.

4.1 Physical and Digital Security

HRDs continue to encounter challenges in their physical and digital security. On digital security, while many are mindful of how to address security risks emanating from digital communication and storage platforms, there are still some who lack adequate knowledge and skills to respond to the risks. Some claim to have had experienced hacking attempts, phishing emails, phone tapping, data corruption, and virus attacks. On the other hand with regard to physical security, some HRDs mention difficulty in affording the cost of security measures like electric fencing and CCTV camera installation for their offices. Others also admitted to not practicing simple measures like designating specific staff to handle office keys, keeping first aid kits and having fire extinguishers at their office premises.

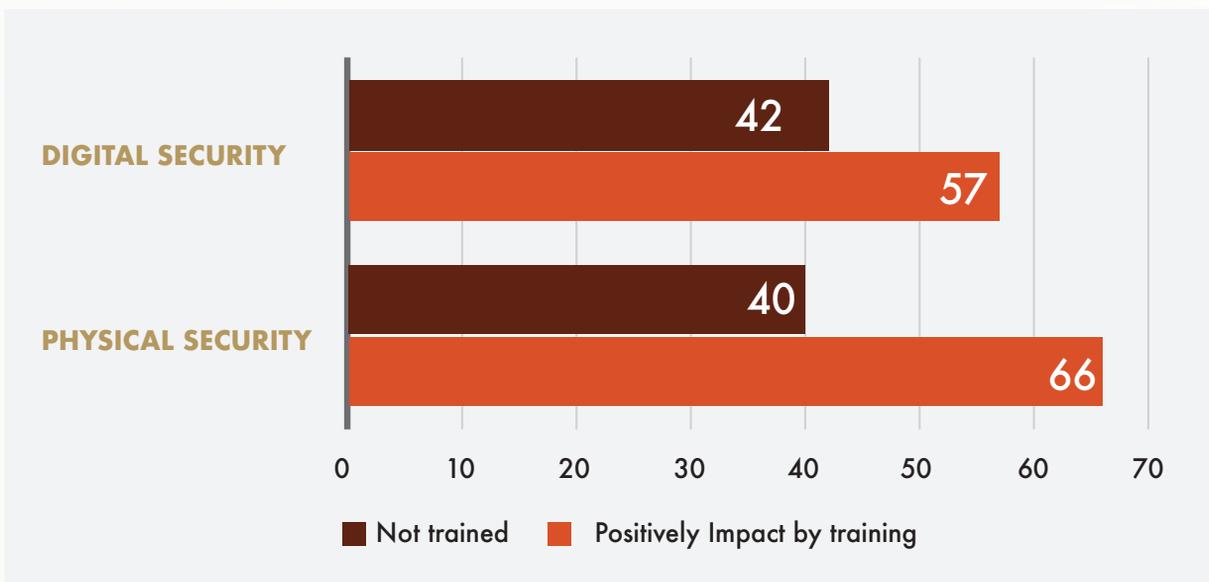
In response to these issues, THRDC conducts digital and physical security training sessions for HRDs. The trainings have had positive impact among participant HRDs individually and as organizations.



HRDs practicing fire control measures at a physical security training session

In the aforementioned survey, 57 out of 106 HRDs said to have positively gained from digital security training sessions, and 66 from physical security training sessions. For physical security, some have become more careful with whom they share their data, others now register all visitors, some have employed security guards, others changed their office locks and designated specific office key keepers, and some installed CCTV cameras and fire extinguishers.

Likewise for digital security, many have adopted better data security practices including using stronger passwords, installing antivirus software, designating specific staff to handle data security, and using communication apps like signal which are more secure. One thing to note though, is that out of the 106 respondents, 42 said to have never received digital security training and 40 physical security training. This shows that there are HRDs still in need of such training. As one respondent from Manyara said, “We haven’t received security training. Therefore we may have encountered risk, but couldn’t recognize it”.



Positive Impact of Physical and Digital Security Training on HRDs

4.2 Compliance to Regulatory Laws

A 2020 fact finding mission conducted by THRDC found that most HRDs including online media journalists and editors are not aware of legal compliance requirements especially regulatory laws governing HRDs activities for instance, the NGO Act and its recent amendments. Meanwhile, HRDs especially online media journalists continue to face curtailing of their freedom of expression ranging from fines, arrests, detention, and criminal charges because of the enforcement of draconian laws like The Media Services Act of 2016, The Electronic and Postal Communications (Online Content) Regulations, 2020, The Statistics Act of 2015, The Cybercrimes Act of 2015, and The Police Force and Auxiliary Services Act. Therefore there is still great demand for training on compliance to these laws.



Percentage Understanding of NGO Regulatory Laws

From data gathered from the 2021 HRDs situation survey as illustrated above, only 14 out of 106 respondents claimed to have 100% understanding of NGO regulatory laws. 50 said 75% while the other 42 ranged from 25 to 50%. This shows that there is still a knowledge gap that requires capacity building. HRDs have also been largely unaware of Taxation laws and regulations and this has subjected their organizations to fines, penalties, and interest rates higher than their budgets. This has been aggravated by practices including poor documentation by organizations resulting into losing most of important data to guide them in legal compliance processes.



Percentage Understanding of Taxation Laws

The above illustration shows that only 3 out of 82 respondents claimed to have 100% understanding of Taxation laws. 23 said 75% while the other 56 ranged from 0 to 50%. This shows an even greater knowledge gap that requires capacity building.

As for HRDs who were able to participate in THRDCs capacity building sessions on compliance to regulatory laws, a number of them testified to have had positive outcomes. The outcomes included better relationship with government authorities. They made improvements in timely compliance to the requirement of submission of quarterly financial and activity reports to the registrar of NGOs. Moreover, Some NGOs obtained their Taxpayer Identification Number and now adhere to required taxes. One HRD even said that they have been able to obtain a charitable status certificate which makes them eligible for some tax exemption.

4.3 Monitoring, Documentation and Reporting Human Rights Violations

HRDs still lack adequate capacity to monitor, document, and report human rights violations. This escalated in recent years where there was shrinking of space in the exercise of freedom of information and expression, and freedom of assembly and association. However, recently the situation has been gradually changing for the better. From data gathered in the 2021 HRDs situation survey only 30 out of 106 respondents said to have participated in THRDC training session on monitoring, documentation and reporting human rights violations. 28 of them said to have been positively impacted by the sessions as they improved in taking safety precautions, better information follow-up, recording and privacy, developing case management strategies, ensuring data authenticity, compliance to laws and regulations, as well as improved networking with stakeholders for information gathering.

However, in the 2021 survey, 74 out of 106 respondents said to have had no such training. This was also observed in a post-training survey taken a July 2021 training session on monitoring, documentation and reporting human rights violations where only 1 of 14 respondents stated to have participated in such training in the past. For the rest, that was their first. Along with this, a number of challenges faced when reporting human

rights issues were mentioned. These included: misunderstandings between HRDs and government due to political interests; poor/hindered access to information; inadequate financial and human resources; poor cooperation from the community due to fear of being added as witnesses; culture of secrecy especially where violations occur within family; and safety and security concerns especially where violations involve powerful suspects vis a vis powerless victims.

Despite the challenges, there has been some positive results where HRDs successfully gathered information and acted upon it. For example: in November 2021 where THRDC, LHRC, and the Tanzania Albinism Society conducted a joint press conference denouncing the grave exhumation and theft of some remains of a deceased man with albinism who was buried in Lushoto-Tanga. The HRDs acted immediately after being contacted by the victim's family in October 2021 where information was gathered and a detailed report was then put together and communicated to stakeholders for action.



A November 6, 2021 report about the Tanga Police update on recovering the deceased's leg



An article about the November 1, 2021 press conference on the NIPASHE newspaper

It was also observed that majority HRDs focus on using the reports in local advocacy rather than regional and international advocacy. Therefore, regional and international human rights platforms remain underutilized by only a few active HRDs. This shows great need for capacity building not only in human rights reporting but also in resource mobilization and regional and international human rights advocacy.

4.4 Public Interest Litigation

Since 2015, Tanzania has witnessed a drastic decline in respect to the freedoms of expression, association, and assembly in both mainland and Zanzibar. HRDs have been subjected to human rights abuses including harassment and unlawful detainment. Although the situation is getting better, all draconian laws affecting freedom of expression are still in operation, leaving HRDs in risky working environment.

In response to this, the Coalition established a working group of Tanzanian human rights lawyers aiming at handling public interest litigation and provide legal aid to HRDs at risk. However, in June 2020 the Written Laws (Miscellaneous Amendments Act (No. 3) of 2020 was passed to amend section 4 of the Basic Rights and Duties Enforcement Act. This amendment introduced a legal requirement for individuals and civil society to establish that they have been personally affected when taking public interest cases to court. This amendment is an obstruction to PIL practice in Tanzania. Moreover, lawyers practicing PIL have also been facing reprisals from authorities where the cases challenge government interests. Moreover, PIL cases are often handled pro-bono, thus attract fewer lawyers due to lack of financial gain.

For women lawyers, the situation is aggravated further because they still face social norms and constructs which are discriminatory against women. A number of women specific challenges have been identified including:

being labelled as violent or activist women by authorities, the general society and in their families since PIL mostly deals with cases against the government; lack of coordination among women human rights advocates; gender demands among lawyers who are working mothers; and patriarchy both within and outside the legal profession.

This results into few women lawyers venturing into PIL compared to male lawyers despite their ability to handle other cases with boldness and



excellence. THRDC, TAWLA, and TLS in the 2021 International Women's day agreed that women lawyers should be empowered with knowledge through illustrative seminars in order to build their confidence and competence to be able to engage in PIL.

Women lawyers at an empowerment session hosted by THRDC in 2021

Judges and magistrates have also been observed to play a critical role in the success of PIL cases. However, inadequate knowledge about international human rights standards as well as reluctance to take a liberal approach in adjudicating human rights related cases have been challenging towards cases involving human rights violations individual or public in nature. In response to this, the Coalition has been engaging the judiciary both in Mainland and Zanzibar in order to sensitize judges and magistrates on adherence to human rights standards in adjudication.

CHAPTER **FIVE**

THE SITUATION OF CIVIC SPACE IN TANZANIA

5.0 Introduction

This chapter elaborates in detail about the situation of Civic Space in Tanzania. The chapter highlights definitions of important phrases in relation to Civic Space including Civil Society Organizations, their roles and indicators of civic space. Furthermore, the situation of Civic Space at international, regional and local level is comprehensively covered. Lastly, the reader is introduced to various ways that can be used by Civil Society Organizations/Human Rights Defenders in to ensure that the Space of Civil Society Organizations is improved.

5.1. The Role and Significance of Civil Society

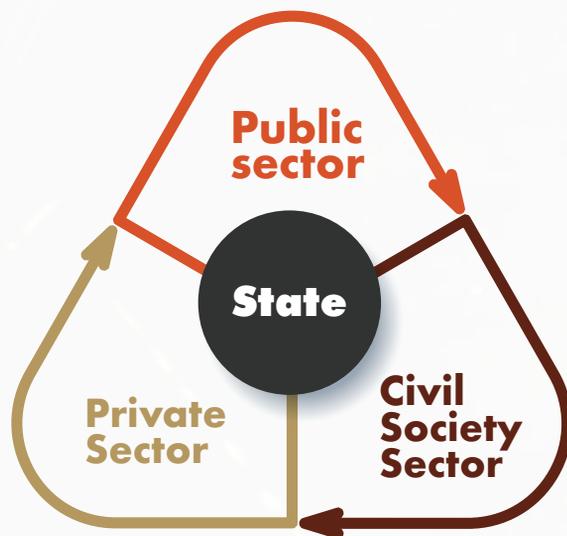
Civil society contributes a lot to the promotion, protection and advancement of human rights in every single day and every part of the world. Civil society organizations work for a better future and share common goals of justice, equality, and human dignity as their major tasks are to promote awareness 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 way – by educating the public, protecting the environment, defending the interests of vulnerable groups, meeting basic needs, conducting social research and analysis.

5.2 The Space of Civil Society

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

It is worth noting that, in the modern society the main common sectors legally recognized to form part of the main state sectors include Public Sector, which is the government and its branches;



A Civil society or Civil Sector which is comprised of groups or organizations working not for profit, in the interest of the citizens but operating outside of the government; and the Private sector, which includes businesses and corporations.

Figure 1: Three Common Sectors in a Modern Society

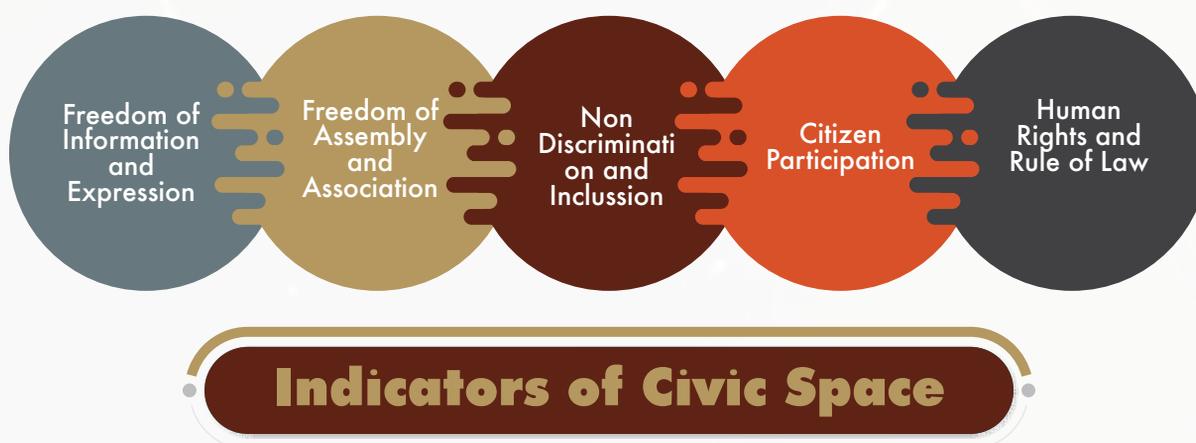
5.3 Indicators of the Space of Civil Society

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

. These indicators are as follows;

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

Figure 2. An illustration of indicators for Civil Society space



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.

Article 71 of the UN Charter opened the door by providing suitable arrangements for consultations with non-governmental organizations. The consultative relationship with ECOSOC is governed by ECOSOC resolution

1996/31, which outlines the eligibility requirements for consultative status, rights and obligations of NGOs in consultative status, procedures for withdrawal or suspension of consultative status, the role and functions of the ECOSOC Committee on NGOs, and the responsibilities of the United Nations Secretariat in supporting the consultative relationship.

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

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

5.4.1.1 CSOs' Participation in the Universal Periodic Review

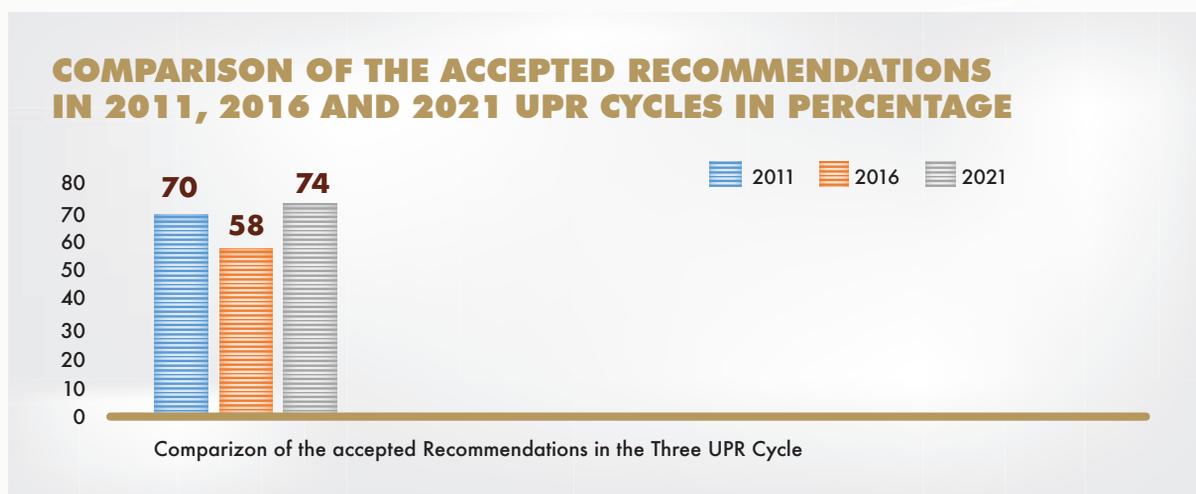
In March 2021, CSOs under the coordination of the Tanzania Human Rights Defenders Coalition (THRDC), Save the Children and Legal and Human Rights Centre, submitted a joint stakeholders Universal Periodic Review Report (UPR) to the United Nations Commission on Human Rights. In the process of developing the report a number of consultative meetings were conducted including CSOs and Government UPR Refresher meetings that started in 2020.

CSOs UPR submission was clustered in nine thematic areas including: social rights; pastoralist and indigenous rights; freedom of expression; economic rights; women rights; child rights; minority, elderly and persons with disabilities; civil society and human rights defenders; and general human rights.

Tanzania conducted its third actual Universal Periodic Review (UPR) on 05 November 2021 during the 39th sessions of the United Nations Human Rights Commission. Tanzania received a total of 252 recommendations from various countries. 187 out of 252 recommendations, equivalent to 74.2% were accepted by the government of the United Republic of Tanzania (20 of them were partially accepted) and 65 recommendations equal to 25.8% were not accepted. The percentage of accepted recommendations increased from 70% in 2011, 58% in 2016 to 74% in the year 2021.

These positive developments indicate that there are some positive steps taken by the Government of the United Republic of Tanzania in the process of the Universal Periodic Review.

Figure 3: Comparison of Accepted Recommendations in the Past Three UPR Cycles

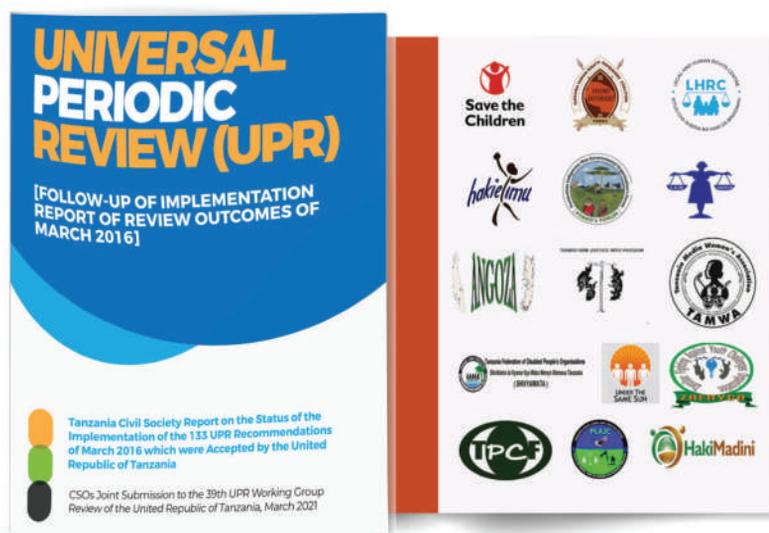


Most of recommendations that were accepted in the first meeting in Geneva in November 2021 include those relating to women's rights, children rights and Social rights in relation to the improvement of social services such as health and inclusive education; the rights of people with disabilities especially people with albinism; and the right to progress in implementation of national and regional development plans. Some of the

The vast majority of recommendations that were rejected earlier in 2021 are related to various rights mainly civil and political rights including: the right to bail, prohibition of illegal detention, abolition of the death penalty, as well as the ratification of various international and regional human rights treaties aimed at prohibiting torture and enforced disappearance; amendment to the laws governing the operation of Civil Society Organizations and Human Rights Defenders; refugee rights; children's rights under the Marriage Act 1971 in relation to child marriage. Other recommendations that have not been accepted in the review of the year 2021 touches on fundamental rights in various areas such as; social rights; freedom of expression; economic rights; the rights of human rights defenders; freedom of civil society, political rights, international treaties, legislative reforms and human rights in general.

Further engagement meetings between CSOs/HRDs and the Government through the Ministry of Constitutional and Legal Affairs were conducted in November and December 2021. Through these meetings CSOs submitted their recommendations to the government so that recommendations that were rejected by the Government in Geneva should be accepted. As a result of the meetings that were conducted later, the final report that was adopted by the government in March 2022 contain more Accepted recommendations compared to the initial report that was released in 2021. As stated earlier, most of recommendations including those relating to Civil Societies, Human Rights Defenders and Freedom of Expression have been accepted by the Government.

Figure 4: A cover page of a Joint CSOa UPR Report together with some logos of Thematic Leaders



Among key challenges in the process of developing and submission of the report include the existence of COVID 19 pandemic. Some of the consultative meetings among the CSOs and stakeholders were conducted virtually. One of the notable meeting that was conducted virtually is the UPR Geneva Pre-sessions and the actual review sessions which were all conducted virtually.



Picture 1: A group photo of the Guest of Honor Hon. Amon Mpanju – Deputy Permanent Secretary of the Ministry of Constitution and Legal Affairs together with special guests and participants of UPR In-country Pre Session at Hyatt Regency Hotel, Dar es Salaam on 5th October 2021

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.

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

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

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

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

5.5 A critical analysis of the Civic Space in Tanzania

This part provides an analysis of the situation of civic space in Tanzania for the year 2021 based on its indicators. As stated above, there are mainly five indicators of civic space. These indicators include, freedom of assembly and association; freedom of information and expression; human rights and rule of law, women participation, and Non-Discrimination.

5.5.1 Freedoms of Information and Expression

Freedom of information and expression is recognized in accordance with national, regional and international laws. Article 18 of the constitution of the United Republic of Tanzania, 1977, the International Declaration of Human Rights, 1948, the African Charter on Human and People's Rights as well as the International Covenant on Civil and Political Rights of 1966 have set standards for the rights to freedom of expression, access to information and right to disseminate information.

Freedom of information and expression goes hand in hand with freedom of press. Free press plays a pivotal role in the society and to the government. Some of its roles include gathering, releasing and disseminating news and information to the society; to report on important development activities done by the government to the public; to inform the public about new incidents happening in the society; to expose corruption and public malfeasance in the society; and to educate the public about important issues necessary for the development of our country.

In order to ensure that our nation continues to have a free Press which has a role to play for development, the Tanzania Human Rights Defenders Coalition (THRDC), in conjunction with other media stakeholders, has in numerous occasion helped the media sector. Some of THRDC's immense contribution in this sector include, frequent trainings for journalists, conducting advocacy activities to influence enactment of better laws and policies, and to provide legal aid to journalists who face problems in the course of duty.

Violations against freedom of expression and access to information rose in a period of five years since 2016 to 2020. However, the affirmation of Her Excellency the President of the United Republic of Tanzania Hon. Samia Suluhu Hassan was a green light and brought new hope for Human Rights Defenders. This was nailed through a call by the President in early April 2021, instructing relevant authorities to lift a ban on media outlets that had been suspended from operating for different reasons. The media outlets that were banned/suspended until that time were five (5). These are MwanaHalisi, Mawio, Mseto, Tanzania Daima newspapers and Best FM Radio.

The President's instruction to lift the ban against the media was received with hope by Human Rights Defenders across the country. On 8th April 2021, THRDC issued a comprehensive press statement to congratulate the President and highlighted statistics on the media outlets that have been banned or suspended.

“As a network of human rights defenders, we sincerely congratulate the President for taking such an action, which we think has rekindled hope and show a new lease of life for local media outlets, which can now perform their duties freely without fear or favor.

Before the president's directive, there was great fear that had engulfed local media organizations, where editors and journalists were unable to perform their duties freely. We thank the president for restoring Freedom of the Press in Tanzania.”
Press Statement issued by THRDC on 8th April 2021

5.5.2 Rights of Association and Assembly

Freedom of association and assembly is the cornerstone for the existence of a Civil Society Organisations or Human Rights defenders. It is through these rights, CSOs/HRDs may exist as a group of people and jointly pursue their goals.

It is undisputable fact that there has been many challenges that affect rights to freedom of association and assembly for several years. Laws such as the Non-Governmental Organisations Act (2002) and its Regulations contain some legal provisions that have continued to limit rights of HRDs to freely associate. For example, overregulation in fundraising and the use of funds has continued to cause difficulties in fundraising and delay of implementation of projects by CSOs.

With regard to right to freedom of assembly, the major constraint has been the requirement under the Police Force and Auxiliary Services Act [Cap. 322, RE. 2010], that any person who is planning to organize any public assembly should submit a written notification to the police officer in charge of the area. It is unfortunate that in most cases when HRDs/individuals submit their notifications to the Police they are denied on the grounds that there is intelligence information that there will be breach of peace during the gatherings.

Police Force and Auxiliary Services Act [Cap. 322, RE. 2010]

43(1) Any person who is desirous of convening, collecting, forming or organising any assembly or procession in any public place shall, not less than fortyeight hours before the time when the assembly or procession is scheduled to take place, submit a written notification of his impending assembly or procession to the police officer in charge of the area

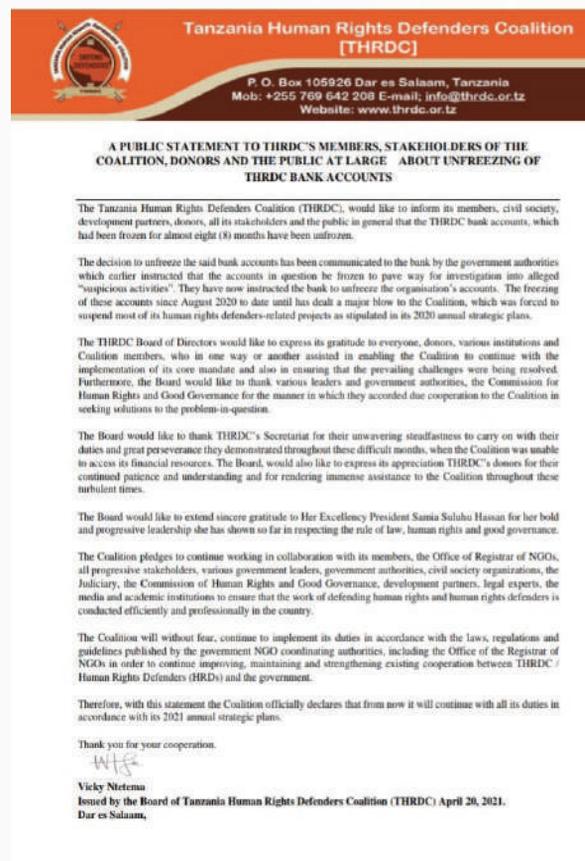
A number of incidents of arrests and detention based on allegations of unlawful assembly were reported in 2021. Some of them include arrests of individuals and supporters of the opposition party (CHADEMA) who were rallying to demand new Constitution. Specific examples of incidents of arrests and detention of HRDs are provided under Chapter two of this report.

With the swearing in of the new President of the United Republic of Tanzania, Her Excellence Samia Suluhu Hassan in March 2021, there has been some positive trends towards respect of these rights. Some of the In the year 2021, CSOs faced a number of challenges affecting their rights to associate and freely assemble. Some of the notable issues include the following:

5.5.2.1 State Unfreezes THRDC's Bank Accounts

In April 2021, Tanzania Human Rights Defenders Coalition's (THRDC) bank accounts were unfrozen. This followed the freezing of the accounts on 14th August 2020, by the Government. It is unfortunate that there was no justifiable reason that was given in writing.

THRDC was forced to close some of its operations for eight months due to closure of its accounts. During that period several initiatives were taken by the Coalition to engage responsible ministries and government departments in order to unfreeze the account.



5.5.2.2 Verification of Non-Governmental Organisations

In early 2021, the Ministry of health, Community Development, Gender, Elderly and Children through assistant registrars of Non-Governmental Organisations (Community Development Officers) in every district in Tanzania Mainland, initiated the process of verification of NGOs. All NGOs were called to submit their constitutive documents including the Constitution and certificate of registration at the offices of assistant registrars located in their respective districts as part of the verification process.

It should be noted that, this was the second time NGOs have been verified in a period of five years. The first verification process was done in 2017 where NGOs under the coordination of the National Council of NGOs (NaCoNGO) and THRDC took an active role in the observation of the process.

This followed a Government notice published by the Ministry of Health, Community Development, Gender, Elderly, and Children, which required all NGOs to visit district offices for verification. The major aim was to update the NGOs data base and to evaluate the activities of such NGOs for the purpose of creating vibrant NGOs sector. Like what happened in 2017, the biggest fear among NGOs during the 2021 verification process was deregistration of such NGOs in case of failure to be verified.

Fortunately, there is no report of deregistered NGOs until now. According to the report issued by the responsible Ministry in February 2022, a total of 2301 NGOs were verified in a period of one year. This number is small compared to 3168 Organizations verified in 2017.

Figure 5: A Table showing the number of Non-Governmental Organisations Verified from 8th March 2021 to 28th February 2022 based on Regions in Tanzania Mainland

Region	Number of Verified NGOs in the Region	Region	Number of Verified NGOs in the Region
Kagera	94	Arusha	329
Mwanza	165	Kigoma	96
Geita	19	Tanga	104
Mara	75	Kilimanjaro	151
Shinyanga	56	Manyara	48
Tabora	21	Iringa	106
Simiyu	18	Njombe	63
Singida	9	Songwe	14
Mbeya	133	Dodoma	115
Pwani	81	Lindi	68
Dar es Salaam	429	Morogoro	107
Mtwara	65	Rukwa	48
Katavi	19	Ruvuma	44

5.5.3 CSOs Engagement and Participatory rights

In 2021, Human Rights Defenders (HRDs)/Civil Society Organisations (CSOs) had a chance to exercise their right to participate in different development processes and events. Some of the processes include policy, law making processes. On the other hand, HRDs/CSOs had a chance to meet in several occasions and discuss issues that affect their space. The following are some of key events that brought together HRDs/CSOs.

5.5.3.1 Commemoration of the 7th Human Rights Defenders Day

Tanzania Human Rights Defenders Coalition (THRDC) commemorated the seventh Human Rights Defenders (HRDs) day anniversary on 2nd July 2021 at Mlimani City Conference Centre in Dar es Salaam, Tanzania. As an umbrella organization for Human Rights Defenders in the country, one of THRDC's major roles is to encourage HRDs' solidarity, networking and engagements among themselves and with other stakeholders such as the Media, the Private Sector, Development Partners and the Government.

Since 2013, on 28th April every year, THRDC organizes a national Human Rights Defenders' Day to commemorate the United Nation's establishment of the special mandate on Human Rights Defenders, the Tanzania Human Rights Defenders' Day.

In commemorating the Tanzania Human Rights Defenders' Day, the Coalition has been engaging all its members, CSOs, grassroots HRDs, the Commission for Human Rights and Good Governance (CHRAGG), development partners, media, UN agencies, embassies, international NGOs, human rights stakeholders as well as government entities. These engagements aim at building further and strengthening the relationship between Human Rights NGOs and the Government.

In doing so, for the last five (5) years, the Tanzania Human Rights Defenders' Day ceremony has been officiated by Guests of Honor from the Government. For instance, in 2017 the Guest of Honour at the 4th Tanzania Human Rights Defenders' Day was the then Vice President of the United Republic of Tanzania, Her Excellency, Samia Suluhu Hassan who was represented by Hon. Professor Palamagamba Kabudi (MP) – the Minister for Constitution and Legal Affairs.

In 2018, the Guest of Honour at the 5th Tanzania Human Rights Defenders' Day was the Minister of the President's Office: Regional Administration and Local Government, Hon. Selemani Jaffo who was represented by Hon. Joseph George Kakunda (MP) – the then Deputy Minister at the Ministry of the President's Office: Regional Administration and Local Government. And in 2019, the Guest of Honour at the 6th Tanzania Human Rights Defenders' Day was Hon. Isaac Kamwelwe – the then Minister of Works, Transport and Communications who was represented by Mr. Mulembwa Munaku who is the Director of ICT Sector in the Ministry of Works, Transport and Communication.

Due to the outbreak of the COVID-19 pandemic in Tanzania earlier in March 2020, the commemoration of the 7th Tanzania Human Rights Defenders Day which was scheduled to take place on 28th April 2020, was postponed to 11th September 2020 and later cancelled until further notice due to the reasons beyond the THRDC's ability. However, the 7th Tanzania Human Rights Defenders' Day was scheduled and conducted on 2nd July 2021.

On the commemoration day about 300 HRDs, CSO representatives, Faith Based Organizations, INGOs, CHRAGG, Government Officials, Members of the Judiciary, Development Partners, UN agencies, members of the diplomatic corps, CSOs regulatory authorities, media and other human rights stakeholders attended the anniversary at Mlimani City Conference Centre to discuss about the roles and contributions of non-profit sharing sector (Civil Society Sector) in National Development. The main theme of the 7th anniversary was "Chatting Out the Role of Civil Society Sector in the Implementation of the Five-Year National Development Plan (2021/22 – 2025/26).



5.5.3.1 Human Rights Organizations implementation plan for the Five Years National Development plan (2021/22-2025/26)

In attempt to effectively, strategically and systematically engage in an implementation of the Five-Year National Development Plan of 2021/22 - 2025/26 phase three (FYDP III). Members of the Tanzania Human Rights Defenders Coalition (THRDC) and other affiliate Civil Society Organizations (CSOs) jointly drafted a CSOs' FYDP III's roadmap and result based action plan.

This initiative is part of the inherent responsibility of the Civil Society Sector (CSS) to influence and play instrumental role in speeding up community development; thus supplement the State's insatiable quest to serve to the best interest of the wider society. Moreover, the FYDP III's framework offers a huge opportunity for CSOs including: (i) supporting the policy-making process through investment in research, analysis and recommendations to address barriers that hinder the financial sector from undergoing a robust growth; (ii) investing and participate in policy discussions pertaining to the

overall development; (iii) investing in innovative development programs and provide unfettered access to financial and other services; (iii) promoting gender balance and fighting against gender based violence (GBV); and, monitoring and evaluating the implementation of the plan.

As a way of taking advantage of this opportunity to work with the government on a common agenda CSOs, under the coordination of the Tanzania Human Rights Defenders Coalition (THRDC) in April 2021 initiated the planning processes. Such process included formation of a technical team of experts; collection of views from various actors in Civil Society Sector; analysis of the data; and, validation of the draft plan.

As per the National Development Plan, THRDC members have highlighted several areas they can work together with the government as part of implementation of the development plan. Such areas include among others education, health sector, natural peace, security, resources, environment, human rights, access to justice, gender equality, monitoring & evaluation, climate change, women rights and GBV, water/sanitation, legal aid, food security, employment, agriculture, community welfare, accountability, corruption, pastoralism, ICT, policy influence, democracy, job creation, foreign relation, rule of law and good governance.

CSOs provide services in diverse areas including health care, sanitation, water, education, livelihoods, economic and legal services. With this roadmap and action plan, the sector will continue to support government initiatives to implement the FYDP III.

For instance, according to FYDP III CSOs have been contributing 40% of investment in health sector. According to Tanzania Episcopal Conference (TEC), currently the Catholic Church in Tanzania owns One Zonal Consultant Referral Hospital; six Regional Hospitals; 19 Council Designated hospitals; 29 Voluntary Agency Hospitals; 94 Health Centers; and 338 Dispensaries. The Church in collaboration with Regional Governments implements an Eye

Care program in the three regions of Rukwa, Katavi, and Kigoma, where the main Eye Care targeting a population of about 3.800.000. Together with TEC, organizations under Baraza la Waislam Tanzania (BAKWATA) and other religious based organizations have been enormously contributing to the provision of health services in our country.

The same in the education sector CSOs will continue to implement various projects and align them with our five years plan (FYDP III). Up to 2020, CSOs sector especially FBOs has been contributing about 50% of higher learning institutions and 25% of investment in education sector.

In 2019/20, 52 organizations which are members of Tanzania Education Network (TENMET) had projects of about 34 Billion Tshs in education sector. Therefore, under the Action Plan CSOs will continue to support and strengthen education sector. However, this will be possible under conducive working environment for CSOs and mutual collaboration with the government.

5.5.3.3 Annual Non-Governmental Organization Forum

Tanzania Human Rights Defenders Coalition (THRDC) participated and supported its members and other stakeholders in the Annual Non-Governmental Organizations Forum in Tanzania. The annual forum was held between 29th – 30th September 2021 at Jakaya Kikwete Convention Centre in Dodoma, Tanzania. It was the first annual NGOs forum to be held since independence with a theme: “Enhancing NGOs Contribution towards National Development”. The guest of honour was the President of the United Republic of Tanzania Her Excellency Samia Suluhu Hassan.

Apart from THRDC and its members, other participants were different local and international NGOs, the Ministry of Health, Community Development, Gender, Elderly and Children, embassies, the National Council for NGOs (NaCoNGO), Tanzania Revenue Authority, Ms. Vickness Mayao the registrar of NGOs in Tanzania Mainland, the Chairperson for NGOS Coordination Board, Neema Lugangira a special seat Member of Parliament

representing NGOs, registrar of societies in Zanzibar, directors from the Ministry responsible with NGOs and other related government ministries and institutions.



Figure 6 Various participants following up sessions during the Annual Non-Governmental Organizations Forum

The Annual-Non Governmental Organization Forum in Tanzania offered an opportunity to engage with multi-sectoral actors for purpose of enhancing partnership in the interest of steering the national development agenda forward. During her speech, the guest of honor, HE. President Samia Suluhu Hassan reaffirmed her government's support to Non-Government Organisations that will enable a conducive working environment to undertake their duties efficiently. The president acknowledged the contribution of CSOs to national development emphasizing her administration commitment to collaborate in addressing various challenges including tax exemptions for charitable organisations.



Moreover, the president underscored the contribution of NGO in improving access to justice, health services, education, water, environment, agriculture, fisheries and infrastructure. Also, the “NGO Contribution to National Development Book” was launched in this forum.

This opens up and encourages the Civil Society sector engagement to government so as, collaboratively to work for the best interest of the public and making the world a better place for every person.

The Annual-Non Governmental Organization Forum included exhibition that was a perfect platform for THRDC to display its activities or works done to thousands of participants who attended the forum and citizens in Dodoma. Also, it was a great opportunity to interact with hundreds of CSOs as well as public and private sectors. In addition to that, the forum offered an opportunity to engage in high level deliberative debates and dialogue on Tanzania’s development whereby THRDC initiatives to defend human rights defenders and recognition of Civil Society Organisation to national development were a centre of discussion.

The forum included capacity building seminars aiming to capacitate NGOs on matters of Laws, Regulations and Guidelines. The implementation of NGOs’ activities depends on other laws of the country. The government expects much contribution from NGOs in the implementation of different development projects for the benefits of the people. THRDC understanding compliance challenges affecting its members and other Civil Society Organizations, the coalition have been researching and producing guidance manual to various

issues such as; NGO compliance manual, compendium of laws affecting civil society organization and human rights defenders in general.

This year 2021, THRDC along with other organizations and the Tanzania Revenue Authority (TRA) prepared a guide on Taxation for Non - Profit Organization Tanzania. THRDC in collaboration with TRA launched this guide on 24th September 2021. This tax tool kit was positively received by both the civil society sector and development actors.



Figure 7 Representatives from several NGOs struggling to take some copies of some publications at the THRDC's booth

During the Annual NGO forum, the office of registrar of NGO under the Ministry of Health, Community Development, Gender, Elderly and Children (MoHCDEC) with collaboration of Tanzania Revenue Authority (TRA) took part to highlight the content of this Tax Tool Kit and other publications of THRDC advising participants to visit THRDC booth for more learning and collection of guide tool kit in various issues.

Thus, during exhibition, THRDC booth received many visitors seeking to learn more about THRDC; human rights promotion and protections; NGO compliance issues and guidelines to non-government organizations. THRDC distributed more than 4000 publications to participants of the Annual NGO forum aiming to capacitate NGOs on matters of Laws, Regulations and Guidelines.

5.5.3.4 Civil Society Organization (CSOs) Week

On 23rd to 29th October 2021, Civil Society Organizations (CSOs) representatives from across Tanzania participated in the CSOs Week. The event was hosted by the Foundation for Civil Society (FCS) in collaboration with several other CSOs. The CSO week is the largest gathering of civil society organizations in Tanzania whereby the event offers an opportunity to engage with multi-sectoral actors for purpose of enhancing partnership in the interest of steering the national development agenda forward. The CSOs week included exhibition that was a perfect platform for THRDC to display its activities or works done to thousands of citizens in Dodoma, as well a great opportunity to interact with hundreds of CSOs as well as public and private sectors.

The CSO's week was an opportunity for in-depth discussions on CSO's work, share experiences, and see how CSOs can strategically collaborate with citizens, government, donors, and the private sector. The event began with two days of an exhibition featuring local and international CSO's and a four-day conference.

The theme for this year's CSO week was the Contribution of CSOs to National Development to highlight and showcase the role CSOs play in bridging the development gap between the government and communities. In line with this theme, THRDC hosted two sessions with media such as AZAM TV and TBC to demonstrate the value of the civil society sector in Tanzania's social-economic development. One of the sessions was about CSOs' Contribution towards effective Implementation of the Five Years National Development 111 (2021/22-2025/26) and the second session was about the Coalition generally and human rights protection and promotion.



Photo: On the left is a cross section of participants and on the right is a picture of THRDC staff at the THRDC's exhibition booth during the CSOs Week

5.5.4 Human rights and Rule of Law

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

In the year 2021, there were a number of incidences of human rights violations that show lack of rule of law. Some of key violations include the arrest and detention of HRDs, who were demanding for the new constitution in Mwanza, Mara, Dar es Salaam and Mbeya regions in August 2021. Many other incidents are covered under chapter two and three of this report.

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:

- i. Building awareness and resilience among different community groups to ensure participation of all groups in the protection of civic space. One of the major challenges that has been observed in recent years is that the struggle for civic space has been mainly done by only few individuals and CSOs. Groups such as the youth, women and the general Tanzanian community do not take an active role in the protection of civic freedoms.
- ii. Revitalisation of the Constitutional Making Process: Most of challenges to civic freedoms and democracy in our country are due to weak democratic systems. There is a need to adopt a strong Constitution that will establish independent structures for the betterment of our growing democracy.
- iii. CSOs should continue to engage the executive arm of the government, Parliament, Judiciary and other sub departments in order to influence amendment of the draconian laws. In 2019 there were some notable achievements that resulted from these engagements. For instance, the Amendment of the Statistics Act (2015) was highly contributed by the influence of CSOs and other human rights stakeholders mostly international organisations.
- iv. Improved solidarity among CSOs/HRDs from across the country, partners and other Human Rights Defenders at national, regional and international level in the protection of civic space and human rights in general.
- v. More strategic cases should be filed in the courts of law in different parts of the country as one of the mechanisms of influencing change. This follows some other achievements in the last year where among other things CSOs including the THRDC successfully won case at the East African Court of Justice that multiple provisions of the Media Services Act violate press freedoms.

- vi. Increase engagement of the CSOs at the Regional and international Human Rights arena. Through its programs on building solidarity among CSOs, the THRDC has contributed to the increase of CSOs participation in the African Commission on Human and Peoples Rights. For the first time the Coalition has been able to coordinate CSOs Forum in the African Commission Ordinary Sessions which have been attended by more than 30 NGOs in 2018 and 2019.
- vii. Increase campaigns which are aimed at building awareness about the concept of HRDs and civic space. In the year 2019 the THRDC has witnessed increased movement and discussions about the rights of HRDs and civic space. It must be remembered that according to HRDs Needs Assessment conducted by the THRDC in 2013, very few people had knowledge about the concept and rights of HRDs. Currently more CSOs are being engaged in the struggle for civic space. For example, there has been an increase of working groups on civic space, including groups such as the CSOs Working Group on Civic Space under the DDA program and CSOs Working Group on Democratic Rights (Ushiriki Tanzania). CSOs have increasingly been conducting dialogues and meetings on civic space issues.

5.7 Conclusion;

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

CHAPTER **SIX**

GENERAL CONCLUSION AND RECOMMENDATIONS

6.0 Conclusion

The 2021 Tanzania Human Rights Defenders situation report indicates that HRDs in the country still operate under unsafe environment and therefore making their work even more difficult. The report indicates that HRDs are continuously detained, maliciously prosecuted and convicted, harassed because of their work as human rights defenders. It further shows a drastic shrinking space for civil society operations, non-respect of the rule of law, non-independence of the judiciary, lack of democracy and the growing tendency of state impunity.

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

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

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

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

6.1 Way Forward

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

- Encourage the law reform to enable HRDs gain legal recognition such as the Human Rights Defenders Policy /law and thus become part and parcel of the governing structure. This will help in bridging the gap between them with the government functionaries a good number of whom perceive defenders negatively.
- Strengthen the Human rights lawyers working group by building more capacity through training on human rights and strategic litigation, so as to provide legal aid and protection to HRDs.
- Increase protection and emergency funds in order to avoid delays in the provision of services to afflicted HRDs.
- Continue to advocate for the amendment of the draconian laws as evaluated in chapters 3 and 4 of this report that have been identified as a stumbling block towards the work of HRDs in Tanzania.
- Conduct thorough media campaigns and change of behaviour trainings in areas where HRDs are threatened due to some social cultural issues.

- Utilize the country's present major legal reform to fight for inclusion of HRDs rights and protection in the coming Constitution.

6.2 Recommendations

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

6.2.1 Recommendations to Human Rights Defenders

- HRDs need to work sincerely and morally so as to avoid unethical conducts because they are often targeted by both state and non-state actors.
- Good professional and financial status is vital for the safety and security of journalists. Journalists who work professionally and are financially well facilitated face less risk than those who operate unprofessionally and without sufficient resources.
- HRD's to increase campaigns which are aimed at building awareness about the concept of HRDs and civic space.
- CSOs should re-strategize and reorganize in order to push for reform of the oppressive and out-dated legislation affecting CSOs, also should remove internal CSOs challenges which are in fact more dangerous than the external challenges.
- CSOs should continue to engage the executive arm of the government, Parliament, Judiciary and other sub departments in order to influence amendment of the draconian laws.
- Improved solidarity among CSOs/HRDs from across the country, partners and other Human Rights Defenders at national, regional and international level in the protection of civic space and human rights in general.

- More strategic cases should be filed in the courts of law in different parts of the country as one of the mechanisms of influencing change.
- Increase engagement of the CSOs at the Regional and international Human Rights arena. Through its programs on building solidarity among CSO's.

6.2.2 Recommendations to the government:

- Repressive laws that restrict freedom of the press in the country should be amended. For instance: The Media Services Act of 2016, the Cybercrimes Act of 2015, The Electronic and Postal Communications Act of 2010, and Online Contents regulations of 2000.
- In order to create better working environment for the Press and journalists we request the government to implement the decisions made by several local and international courts of law.
- The decision of the East African court of Justice in the case filed by the Tanzania Human Rights Defenders Coalition, Legal and Human Rights Centre and Media Council of Tanzania versus the Attorney General of the United Republic of Tanzania [Case number 02 of 2017] where the court ruled that sections number 7 (3) (a), (b), (c), (f), (g), (h), (i) and (j), 13,14,19,20, 21, 35, 36, 37, 38, 39, 40, 50, 52, 53, 54,58 and 59 of the Media Services Act of 2016 violate the Treaty of the East African Community, therefore the government of Tanzania is supposed to remove those sections from the Media Services Act of 2016.
- We call upon the president to form a special commission which will examine media laws in Tanzania and thereafter recommend to the government for amendment of such laws.
- In order to ease the challenges facing the media sector, we ask the government to remove a legal requirement for compulsory registration of Youtube Channels even if those platforms are not used as official media outlets. The need to register such online platforms should

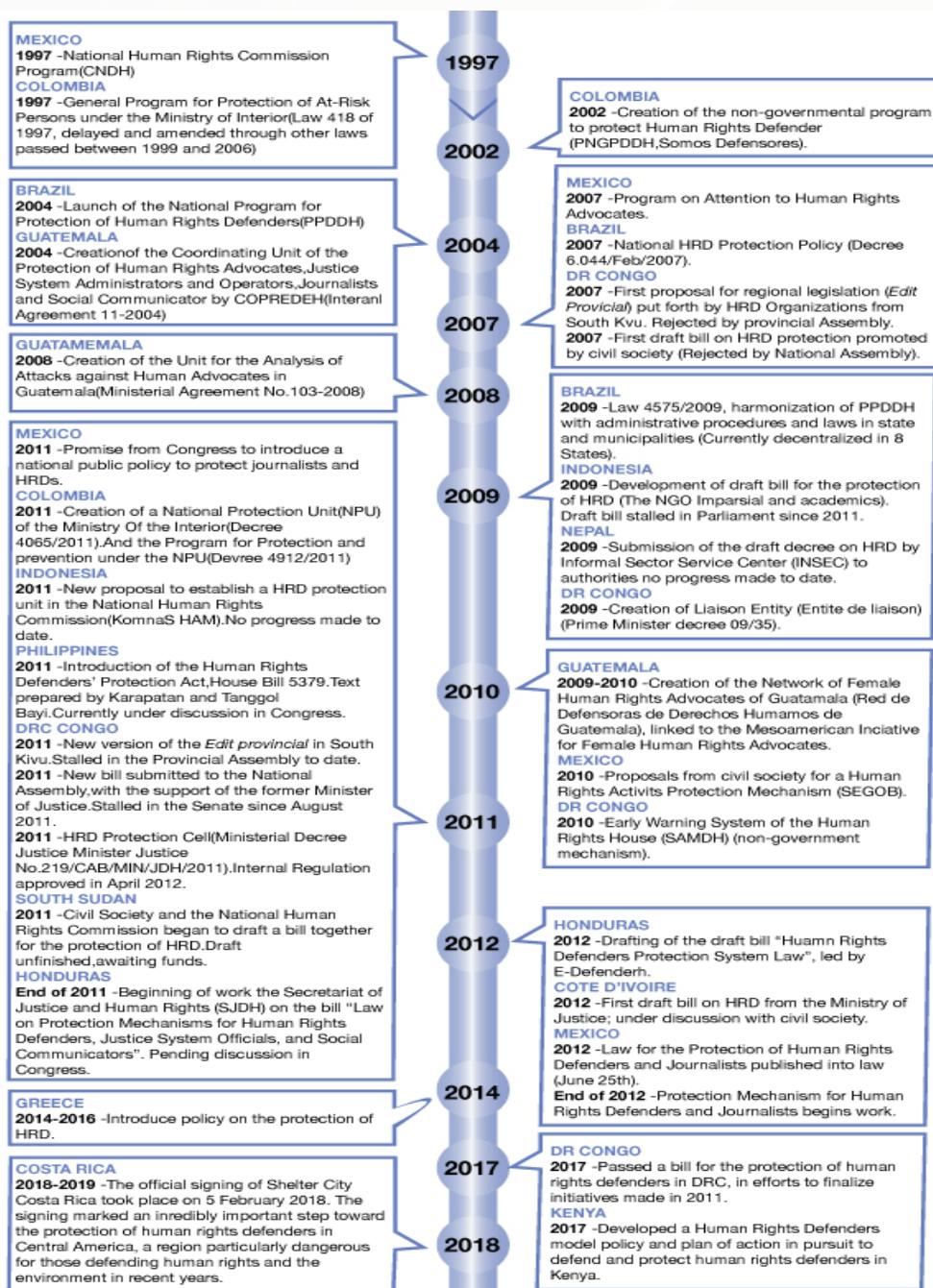
remain with those who use such platforms as an official Online Media and minimize license and registration fees as many of them operate without profit.

- THRDC also calls upon the government to provide legitimacy to the work of HRDs, and to create enabling environment for their operations. The State should refrain from intimidating human rights defenders in any way because what they are doing is legally recognized under our laws.
- The government should ensure that the police force observes, respects and protects the rights of journalists in the course of their duty in the country.
- The government and international development partners should support the implementation of the National Human Rights Action Plan by allocating sufficient resources to CHRAGG through an independent funding mechanism directly from the Treasury and not through the Ministry.
- The police force should create a criminal justice system that provides an independent body to investigate all cases involving journalists who were killed or assaulted while on duty.
- The government should end the culture of impunity for violations against innocent people, journalists and human rights defenders by ensuring that investigations are promptly and impartially conducted, perpetrators are held accountable, and victims obtain appropriate remedies.
- Government leaders should take CSOs sector as a vital link to the community development especially in terms of job creation, economy, welfare and social services, development, human rights and welfare of a democratic country. The NGOs sector should be given respect, protection, recognition and cooperation rather than

scorn and isolation even in matters relating to coordination with their registration.

- THRDC recommends the government to conduct investigations with the view to bringing perpetrators to justice. Investigation should be conducted to all HRDs cases who in one way or another found themselves in trouble because of their activities or human rights activities.
- The government should amend all laws that restrict and affect the work of CSOs and human rights defenders in Tanzania.
- The government should create an environment for civil society and the media to operate in accordance with the rights enshrined in the Constitution of United Republic of Tanzania, International Covenant on Civil and Political Rights (ICCPR) and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be ensured: freedom of association; freedom of expression; the right to operate free from unwarranted state interference; the right to seek and secure funding; and the State's duty to protect.
- The government should amend all draconian laws such as (Cybercrimes Act, Media Services Act, 2016), Media Services Rules, 2018, The Online Content Regulations in order to expand civic space in the country.
- The government should develop a national policy and law that recognizes and protects human rights NGOs and human rights defenders in Tanzania.
- The government should create a civic space and conducive environment for civil society and human rights defenders to work freely.
- An inclusive environment to the public and other key stakeholders when developing laws regarding media services, access to information and freedom of expression should be provided.

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



No	Thematic Areas Affected	Laws	How
1.	Women HRDs		
		1. Inheritance Laws such as the Probate and Administration of Estates Act, Cap 445 [R.E 2002]	<p>These laws and policies have gaps with its provision contributing to the persistence of gender inequality, discrimination and gender based violence. The conclusion can therefore be derived that the work of WHRDs is not fully supported by these laws but rather the said legislations create hardship and risky environment for their work. For instance, customary laws treat them as minors who have to depend on others to inherit, instead of recognizing widows' right to inherit matrimonial property. With this kind of legal framework; it was observed that WHRDs conducted their activities in a very challenging environment which seems to be supported by the existing laws.</p>
		2. Religious laws	
		3. Customary laws including inheritance laws	
		4. Prison Act, 1967, Cap 58 [R.E 2002]	<p>This affects the rights of HRDs and journalists when it comes to advocating for the rights of prisoners and prison officials. The law requires anyone including Journalists who want to communicate with any prisoner or take any photo from the prison or outside the prison to write a letter to the Commissioner of Prisons requesting the permission to do so. The process has been so bureaucratic, that it has made the media fail to advocate for the improvement of the prison services in the country as little is known to the outside world.</p>

		<p>5. National Security Act of 1970, Cap. 47 [R.E 2002]</p>	<p>This law makes it a punishable offence in any way to investigate, obtain, possess, comment on, pass on or publish any document or information which the government considers to be classified. This includes documents or information relating to any public authority, company, organization or entity which is in any way connected with the government.</p> <p>The reference can be traced to incidents involving active journalists such as Adam Mwaibabile. The police in Songea were instructed by the regional commissioner to charge him with possession of classified documents. The magistrate wrongly convicted Adam on the ground that he had committed offences under this law. The High Court observed this error in law and ruled out that the resident magistrate had misconstrued the provisions of the Act and hence quashed the decision and acquitted Mr. Mwaibabile.¹</p>
		<p>6. The Public Leaders Code of Ethics Cap 398 [R.E 2002]</p>	<p>Restricts the investigative role of media and does not allow it to investigate and report on the property holdings of public leaders</p>

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

	7. The National Defence Act, Cap 192 [R.E 2002]	<p>This law prohibits journalists or any HRDs to publish any information relating to the National Defence Force. Sometimes members of this force commit offences like other citizens in public places but when journalists report the incident, soldiers follow them and start all sorts of harassments.</p> <p>This law played a role in Mtwara during the gas saga where the public turned against members of the press and attacked them on account that they had failed to report on their grievances little did they know that there was no way they could report any misconduct by defence forces without higher authorities.</p>
	8. The Prevention and Combating of Corruption , Act No. 11 of 2007	The law prohibits journalists from making follow ups of any corruption case under the PCCB investigation.
	9. The Area Commissioner Act 1962 & Regions and Regional Commissioners Act 1962	These two have been used against journalists who expose malpractice and maladministration in public offices
	10. Civil Service Act 1989	The law curtails access to information and prevents any commissioner or civil servant from disclosing information obtained in the course of his/her employment in government without the express consent of the permanent secretary of the relevant ministry or department.

		11. Film and Stage Act No 4 of 1976	<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.²</p>
		12. Registration of News Agents, 13. Newspapers and Books Act (1988)	<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>
		14. Broadcasting Services Cap. 306 of the R. E 2002	<p>The Act allows the government to regulate and place restrictions on the use of electronic media. The Act does not guarantee the independence of electronic media and other governing bodies. The editorial policy and decision-making are not free from interference by the government. Like the News Paper Act, this law doesn’t give room for one to appeal to the Courts of laws if aggrieved by the decision of the regulatory authorities and the minister.</p>

83 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.

	Cybercrimes Act 2015	<p>Cybercrimes Act which criminalizes information deemed false, misleading, inaccurate or deceptive. The Act prohibits citizens or agencies from obtaining computer data protected against unauthorized access without permission. It empowers police or law enforcement officers to storm the premises of a news agency and confiscate a computer system or device and computer data if law enforcement officials believe that such information can be used as evidence to prove an offence has been committed. The police are equally given the right to search devices like cell phones, laptops or computers if they believe they contain information that can be used as evidence to prove a crime has been committed.</p>
	Statistics Act 2015	<p>The Statistics Act imposes harsh penalties on those found guilty of publishing misleading and inaccurate statistics or statistics not approved by the National Statistics Bureau. Those found guilty of providing false or misleading statistics without authorization from the National Bureau of Statistics are liable for a one year jail term and a fine of 10 million Shillings (approximately US \$ 4500)</p>
	Media Services Act, 2016	<p>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.</p>

		Access to Information Act, 2016	This Act has several provisions which infringe the freedom of expression in Tanzania. It restricts free flow of information. It therefore contravenes the Constitution of the United Republic of Tanzania specifically on the right to information guaranteed under Article 18 of the Constitution, 1977.
		Online Content Regulations, 2020	These Regulations needs to be wholly amended for the Minister acted in excess of her powers while promulgating the same. The Regulations imposes unnecessary restrictions and burden to online users which in essence curtail their freedom of expression.
		Media Services Rules, 2018	The rules need to be amended for they are against the right to information enshrined in our Constitution under Article 18.
		Miscellaneous amendment No 3 of 2018 amending the NGOs Act.	These amendments are burdensome to the CSOs example is Excessive and unrestricted powers to the minister such as to investigate, de registration, re registration after 10 years which has financial and administrative effect, no more companies limited by guarantee, submission of annual report and audit to the registrar and make their contracts public etc



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