



RULE BY LAW AND THE ATTACK ON CIVIC FREEDOMS IN TANZANIA

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Introduction

Tanzania's President John Magufuli was elected to office in 2015, and it has been under his tenure that the country's human rights record continues to deteriorate. Despite the fact that Tanzania's Constitution guarantees amongst others, the right to equality, the right to privacy, the right to freedom of expression and the right to freedom of assembly and association, the Tanzanian authorities continue to restrict these rights creating an extremely volatile situation for human rights defenders (HRDs), opposition parties and journalists. Fear of reprisals stifle criticism and creates a hostile environment for HRDs and lawyers who defend HRDs.

There are serious concerns over the misuse of the criminal justice system where the State continues to use existing legislation to deny human rights defenders bail or bond; or subjecting them to baseless endless court appearances. Recent legislative reforms have further made it extremely difficult for NGOs and journalists to operate without constant scrutiny from the Government.

The Government of Tanzania continues to disregard its regional and international human rights obligations leaving citizens without recourse in the face of violations. On 14 November 2019, the Tanzanian Minister of Foreign Affairs and East African Cooperation signed a notice of withdrawal of the declaration made under article 34(6) of the [African Court Protocol](#), which allowed individuals and non-governmental organisations (NGOs) to access the African Court on Human and Peoples' Rights. The declaration followed a decision by the African Court that Tanzania removes from its Penal Code the mandatory imposition of the death sentence on persons convicted of murder.

Tanzania's withdrawal from the African Court has left its citizens without a platform for redress after the exhaustion of local remedies. It deprives citizens who are victims of human rights violations from accessing justice. The Tanzanian Government has already denied its citizens access to a regional court by taking part in the withdrawal of individuals' access to the SADC Tribunal.

The international community has noted with concern the deteriorating human rights situation in Tanzania. In November 2019, the Chairperson of the African Commission for Human and Peoples' Rights issued a [statement](#) on the declining human rights situation in Tanzania. On 14 September 2020, Michelle Bachelet, the UN High Commissioner for Human Rights, issued a [statement](#) at the 45th session of the Human Rights Council, wherein she raised concerns over the infringements on democratic and civic space in Tanzania.

The Government of Tanzania has implemented a myriad of new laws which hinder the operation of civil society and the media and which continue to limit civic space in the country. Many of these laws were passed under certificates of urgency, avoiding public participation and adequate time for parliamentary discussion. A few of these laws and their potential to stifle freedom of expression, freedom of association and the rule of law, are highlighted in this brief.

The Use of Laws to Stifle Expression and Press Freedom

Cybercrimes Act of 2015

The Government of Tanzania has asserted that the main objectives behind the [Cybercrimes Act](#) No. 14 of 2015 are to protect sensitive infrastructures, reduce vulnerability and cyber bullying, and minimise the damage that cyber attacks may cause. Members of the public and opposition parties have however voiced concerns that the law will infringe on [freedom of information](#).

The Act prohibits publishing “information or data presented in a picture, text, symbol or any other form in a computer system knowing that such information or data is false, deceptive, misleading or inaccurate, and with intent to defame threaten, abuse, insult, or otherwise deceive or mislead the public”. The offence results in a mandatory minimum penalty of “a fine of **not less than** five million shillings or to imprisonment for a term of **not less than** three years or to both”.

Section 23 of the Act prohibits cyber bullying, which is defined as when someone “sends any electronic communication using a computer system to another person with intent to coerce, intimidate, harass or cause emotional distress”. The offence is liable to a punishment of not less than five million shillings or imprisonment of not less than three years.

The Cybercrimes Act has been used to clamp down on active citizenry. For example, in the 2015 Tanzania elections, the Act was used to [detain and interrogate](#) 36 members of the Tanzania Civil Society Election Consortium; reporter Sebastian Atilio was [arrested](#) in September 2019 over posts he shared in a WhatsApp chat group; and in May 2020, Tanzanian comedian Idris Sultan was [arrested](#) and placed in police custody for alleged cyber bullying of President John Magufuli. Sultan’s arrest came after a video of him laughing at an old photograph of President Magufuli was shared on social media.

Whistle Blower and Witness Protection Act of 2015

Tanzania’s [Whistle Blower and Witness Protection Act](#) No. 20 of 2015 provides that disclosures of wrongdoing are not permitted if they would likely cause prejudice to the “sovereignty and integrity of the United Republic of Tanzania, the security of the State, friendly relations with a foreign State, public order, decency or morality or in relation to contempt of court, defamation or incitement to commit an offence and the disclosure of proceedings of the Cabinet”. This list is so broad that it seriously undermines the efficacy of the entire protection framework and removes accountability from government authorities.

The Media Services Act No. 12 of 2016

The [Media Services Act](#) has been used to inhibit press freedom. In 2019, the East African Court of Justice (EACJ), in the case of [Media Council of Tanzania and Others v Attorney General of the United Republic of Tanzania](#), held that several provisions of the Act violated the right to freedom of expression. The State’s appeal of this decision was [dismissed](#) on procedural grounds.

The EACJ noted that section 7(3) of the Act, which prohibits certain information was overly broad: For example, the phrases; “undermine the national security”, “hinder or cause substantial harm”, “significantly undermines”, and “damage to the information holder’s position”. This, the Court said, undermined the principles of democracy, which include adherence to press freedom and principles of accountability and transparency. The EACJ further found that the absolute nature of the discretion granted to the Minister to prohibit publications violated the right to freedom of expression. See also the EACJ’s [decision](#) relating to the Minister’s order to ban two Tanzanian newspapers immediately after

they published articles relating to the Executive. In June 2020, the State’s appeal was dismissed on procedural grounds.

Section 19 of the Act states that a person shall not practice as a journalist unless accredited by the Board. A journalist who is not a citizen or permanent resident of Tanzania may only be accredited for a limited period of 90 days and is limited to the purpose for which accreditation was granted. Operating a media outlet without a licence or practising journalism without accreditation can result in a penalty of between Tsh 5 million (2000 USD) and Tsh 20 million (8600 USD) or to imprisonment for a period of three to five years. Regarding the **accreditation of journalists**, the EACJ held that the definition of journalist is too broad, and that the accreditation requirement was an unnecessary restriction on the practice of journalism.

Section 35 of the Act further prohibits defamation. It defines defamatory matter as any matter that, if published, is likely to injure the reputation of a person by exposing them to “hatred, contempt or ridicule”. The EACJ held that the offence of **criminal defamation** undermines the principles of democracy.

Section 50 of the Act prohibits **false news**, including where a person uses any media to make “any statement the content of which is threatening the interests of defence, public safety, public order, the economic interests of the United Republic, public morality or public health, or injurious to the reputation, rights and freedom of other persons...” or publishes “prohibited information”. The offence attaches a penalty of between Tsh 5 million and Tsh 20 million or to imprisonment for a period of three to five years. In terms of section 54 of the Act, it is an offence to publish “any false statement, rumour or report which is likely to cause fear or alarm to the public or to disturb the public peace”. The penalty for the offence is Tsh 10 million and Tsh 20 million or imprisonment for a period of four to six years. The EACJ held that phrases such as “likely to cause fear and alarm to the public or to disturb public peace” and “threatening the interests of defence, public safety, public order, the economic interests of the United Republic, public morality or public health” are too broad and imprecise to enable persons to regulate their actions.

Section 53 of the Act criminalises **sedition**. “Seditious intention” is defined broadly to include to “bring into hatred or contempt or to excite disaffection” against a lawful authority or the administration of justice, and to “raise discontent or disaffection amongst people”. The EACJ found that the provisions relating to sedition also failed the test of clarity and certainty.

These offences are not new and have existed in Tanzania for decades. The offences of sedition, the publication of false news likely to cause fear and alarm, and criminal defamation, were initially contained in the Penal Code, but were repealed and re-enacted in the Newspapers Act No. 3 of 1976, and have now been re-enacted in the Media Services Act.

Electronic and Postal Communications (Online Content) Regulations of 2018

In March 2018, Tanzania published the Electronic and Postal Communications (Online Content) Regulations. The Regulations apply to online content, including bloggers, online content hosts, online forums, online radio or television and social media. The Regulations empower the authorities to keep a register of bloggers, online forums, online radio and online television and to take action against non-compliance to the Regulations, including to order the removal of prohibited content. The Regulations are useful to the extent that they prohibit hate speech, including based on gender and sexual orientation. However, some of the other regulatory measures inhibit freedom of expression. For example, the Regulations apply to all content for consumption by Tanzanians, whether committed by Tanzania

residents, Tanzania citizens outside the country and non-citizens residing in Tanzania. Any person who contravenes the Regulations is liable to a fine of **not less than** five million Tanzanian shillings or imprisonment for a term of **not less than** 12 months, or both. These mandatory minimum sentences are arguably unconstitutional.

The Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations of 2018

In March 2018, the State published the Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations. The Regulations include positive requirements, such as ensuring the content service providers give equal coverage to all participating political parties during the broadcasting of election campaigns and prohibiting the broadcasting of content which promotes violence, gender-based violence and hate speech. The Regulations also require licensees to respect persons with disabilities in the provision of content and to ensure that news bulletins and current affairs programmes are subtitled, translated into sign-language and include audio description. However, other provisions are overly broad and could be used against persons who are critical of the State. For example, licensees may not broadcast programmes “likely to promote civil or public disorder”, or that promote “immoral activities”. The Regulations stipulate that content must uphold “national sovereignty, national unity, national interest, national security and Tanzania’s economic interests”, project “Tanzania’s cultural values and identity” and uphold “public morality”. All these phrases are so vague and subjective that the provisions do not pass the test of legality.

The **Electronic and Postal Communications (Radio and Television Broadcasting Content) (Amendment) Regulations** published in June 2020 further infringes on media freedoms by prohibiting a content service provider from allowing any foreigner to visit or carry any business concerning broadcasting content without being accompanied by a Government official or staff from the Authority.

The Use of Laws to Inhibit Freedom of Association and the Separation of Powers

The Written Laws (Miscellaneous Amendments) Act of 2019

The Written Laws (Miscellaneous Amendments) Act No. 9 of 2019 has made it increasingly difficult for civil society to operate freely, by restricting the way non-profit organisations (NPOs) can be registered and promptly deregistering NPOs that failed to meet the new registration requirements. The Act amended the Companies Act, Non-Governmental Organisations Act, Societies Act, and Trustee’s Incorporation Act. Within two weeks from the law being passed, the Business Registrations and Licensing Agency (BRELA) issued a public notice of its intention to deregister companies by 30 August 2019. BRELA subsequently issued a notice that all companies whose objectives did not fall within the new definition of companies were struck off the Register of Companies from 1 September 2019 and are legally inoperative.

The **Non-Governmental Organisations Act (Rights and Duties of Assistant Registrars) Regulations** further requires that NPOs obtain approval from the State where a funding contract exceeds Tsh 20 million. Regulation 4(e) empowers the Registrar “to ensure that the objectives, programmes, projects and duties of an NGO are in line with the Act, other laws of the land, **national plans and priorities, and respond to the challenges of the area of implementation.**” This section suggests a much broader focus of the Registrar to ensure that NGOs programmes comply with State objectives. The Regulations are a disproportionate infringement of the right to freedom of association.

On 12 August 2020, the Tanzanian Human Rights Defenders Coalition (THRDC) was notified that its bank accounts had been frozen, and the organisation suspended its operations pending resolution of the issue. THRDC coordinator was summoned by the police to explain why THRDC had failed to submit its contractual agreements with donors to the State Treasury, as required by law. He was later released on police bond.

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

The Written Laws (Miscellaneous Amendments) (No. 3) Act No. 6 of 2020, included amendments to section 4 of the Basic Rights and Duties Enforcement Act and section 5 of the National Assembly (Administration) Act.

Basic Rights and Duties Enforcement Act

The amendment to section 4 of the Basic Rights and Duties Enforcement Act (BRADEA) requires that all applications made to the High Court challenging violations of the Bill of Rights, be accompanied by an affidavit made by a person who is personally affected by the alleged violation. This amendment creates a barrier to access to justice, especially for the most vulnerable who are unable to represent themselves.

Since the courts are tasked with protecting and upholding the provisions in the Constitution, courts must be able to give a broad interpretation to legal standing when the interests of justice so require. To be able to dispense justice requires that courts are empowered to allow litigants to approach the courts in cases where rights violations are likely but have not yet occurred; in cases where the relief sought affects the rights not only of the individual applicants before the court but a wider group who have not been able to approach the courts; and in cases where injustice has occurred, but individuals are unable to approach the courts in their personal capacity due to safety and other risks.

By limiting legal standing in constitutional matters, the Act removes a critical mechanism for ensuring good governance, accountability and the rule of law. Sections 26(2), 21(2) and 18(d) of the Constitution indicate that what was envisioned is an active citizenry, which promotes the public interest and holds the Government accountable. It is contrary to the rule of law for a subsidiary piece of legislation to prescribe an interpretation of a constitutional provision which is contrary to the rules of constitutional interpretation and the broader vision of the Constitution.

The amendment to section 4 of BRADEA further provides that any suit against the President, Vice President, Prime Minister, Chief Justice and Speaker under any application brought in court under the Act, be brought against the Attorney General. In effect, this amendment relieves the President and others of their obligations under their oaths of office to uphold and defend the Constitution. This amendment is also in contravention of section 13 of the Constitution which provides for equality before the law.

The Amendment Act further amends section 5 of the **National Assembly (Administration) Act** by adding the words “upon approval by the President”. The effect is that a Commission of the National Assembly will not pass any activity before the approval of the President. This amendment contravenes the principle of separation of powers as enshrined in section 4 of the Constitution as it purports to bestow upon the President the power to interfere with and control the administration of the National Assembly.

State Regulation of the Legal Profession

A raft of laws and regulations have been enacted to regulate the legal profession, including amendments to the Advocates Act (cap 341) through the [Written Laws \(Miscellaneous Amendments\) \(No. 4\) Act](#) No. 11 of 2019, the [Advocates \(Professional Conduct and Etiquette\) Regulations of 2018](#), the [Advocates \(Disciplinary and Other Proceedings Rules of 2018](#), and the [Tanganyika Law Society \(Elections\) Regulations of 2018](#). Already we are seeing increased scrutiny of the conduct of lawyers, with the Attorney General even launching proceedings against lawyers for commentary they made on any matters relating to the courts.

On 23 September 2020, Tanzanian lawyer and former President of the mainland bar association, Fatma Karume, was removed from the roll of advocates. The decision to disbar her was announced by the Tanganyika Law Society (TLS) Ethics Committee sitting at the High Court, which found her to have breached the code of ethics. The decision of the Committee was announced following a year-long suspension by the High Court of Tanzania after allegations of misconduct were made against Ms Karume concerning the language used in her written submissions in a constitutional case which challenged President Magufuli's appointment of the Attorney General of Tanzania.

The United Nations [Basic Principles on the Role of Lawyers](#), clearly state that charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and heard under appropriate procedures, and lawyers shall have the right to a fair hearing. The principles further state that “lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in matters concerning the law, the administration of justice and the promotion and protection of human rights”.

The 2020 Elections

On 28 October 2020, Tanzanians are expected to head to the polls in what will be the 6th general elections since the reintroduction of multiparty politics in 1992. The ruling party, Chama Cha Mapundizi (CCM), is the longest-serving independence party in Africa and has been in power since 1961. Meaningful oversight of the 2020 elections is limited within the current prohibitive legal framework.

The Political Parties Act as amended in 2019

The [Political Parties Act](#) (cap. 258) was amended by the [Political Parties \(Amendment\) Act](#) No. 1 of 2019. The Act extended the powers of the Registrar of Political Parties, including to monitor intra-party elections, demand information from political parties, require registers of the membership of political parties, suspend members from political parties, and monitor the finances of political parties.

A political party will not qualify for provisional registration if it “allows its leaders and members to utter or use obscene language, vindictive, defamatory or inciting words which are likely to cause or lead to the disruption of peace”. This provision is so broad that it can easily be used to curtail freedom of expression and association. Section 11E of the amended Act further allows the Registrar to suspend any member of a political party who has contravened any provision of the Act. The political party member is then prohibited from conducting political activities and participating in elections during the suspension.

Section 5A of the Act now requires any institution wishing to conduct civic education or any kind of capacity building training to a political party, to inform the Registrar 30 days in advance of such training

of the agenda, persons involved and expected results. The Registrar will then approve or disapprove the training. Contravening the provision may result in a fine of between Tsh 5 million and Tsh 30 million.

In June 2020, the National Electoral Commission [published](#) a list of 96 civil society groups that were accredited to observe the 2020 elections and 245 to conduct voter education. Organisations had applied between November 2019 and January 2020 for accreditation. Tanzanian human rights organisations such as the Tanzanian Human Rights Defenders Coalition and the Legal and Human Rights Centre did not form part of that list.

The 2020 election will be the first election since 1995 without the assistance of UNDP since the State did not extend an invitation to the UN body. Observers have pointed out some of the [key gaps](#) in the Tanzanian legislative framework, such as the lack of provision for independent candidates. According to section 39 of the Constitution, every presidential candidate or candidate for the National Assembly must be nominated by a political party. Therefore no independent candidates are permitted to stand.

In addition, there is no legislative provision to challenge presidential results, despite a decision by the African Court on Human and Peoples' Rights criticising this situation on 15 July 2020, in the case of [Kambole v the United Republic of Tanzania](#). The case concerned section 41(7) of the Constitution which ousts the jurisdiction of the courts to consider any complaint concerning the election of a presidential candidate after the Electoral Commission has declared a winner. The African Court noted that since no remedy existed for an aggrieved person, the section violated the right to a fair hearing and the right to non-discrimination. The African Court ordered the State to take necessary measures to amend the section and to report on measures taken within 12 months of the judgment.

It is further worth noting that Tanzania has not signed or ratified the [African Union's African Charter on Democracy, Elections and Governance](#) despite participating in the establishment of the instrument

Conclusion

The above-mentioned laws and regulations are contrary to Tanzania's obligations under the Universal Declaration of Human Rights, the [African Charter on Human and Peoples' Rights](#), and the International Convention on Civil and Political Rights. The [Declaration on the Principles of Freedom of Expression and Access to Information in Africa](#) clearly states that "everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination". The right to freedom of association is core to any democratic society. It is a necessary right to enable citizens to monitor the human rights situation and protect democratic principles.

Inevitably, the increased limitations on press freedom, the operation of civil society organisation civic education and election observers as a result of the above laws and regulations will influence the election outcome. We are concerned that these barriers to civic space will limit the extent to which civil society can monitor the elections and bring electoral and human rights violations to the attention of the international community. Without a free press, including the freedom of foreign journalists to report on any news, it will be impossible to determine whether Tanzania's elections were indeed free and fair.