



Decriminalisation of Laws Limiting Freedom of Expression in Africa: Tanzania Country Report

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Preface

Across the world, there exist numerous criminal laws which restrict the enjoyment of the right to freedom of expression, as guaranteed by numerous international and regional human rights treaties as well as national constitutions. These laws which are generally relics of colonial times, have nevertheless continued to be used, and in some cases further strengthened by post-colonial governments. In Africa, offences such as sedition, criminal defamation, criminal libel, publication of false news and insult remain on the statute books of most countries. In recent times, anti-terrorism laws are increasingly being utilised to 'criminalise' free speech.

While many governments justify the continued maintenance of these laws on grounds such as protecting national security and the right to privacy, in reality, this is rarely the motivation for their use. Rather, these laws are routinely utilised to stifle public debate and legitimate criticism on issues of national interest such as corruption, lack of respect for the rule of law and poor service delivery. For some, the mere knowledge of the existence of these laws induces self-censorship. For others who remain undeterred, their eventual arrest, charge, conviction or sentencing and the attendant consequences on their professional and personal lives, becomes their lived reality. Inevitably, the existence and use of these laws creates an unfavourable climate for the promotion and protection of all human rights, limits the accountability of elected officials, hinders the effectiveness of democratic institutions and ultimately stunts democratic governance.

The African Commission on Human and Peoples' Rights (African Commission) recognising the important role of freedom of expression in the realisation of other human rights has continuously reiterated that these criminal laws constitute a violation of the right of freedom of expression. Thus, the Declaration of Principles on Freedom of Expression in Africa, adopted by the African Commission in October 2002, in principle 12 states that individuals should not be 'liable for true statements, opinions or statements regarding public figures, which it was reasonable to make in the circumstances'; requires public figures to 'tolerate a greater degree of criticism; and prohibits the imposition of sanctions which are 'so severe as to inhibit the right to freedom of expression'.

Furthermore, in a communication submitted to the African Commission by Kenneth Good against the Republic of Botswana, the African Commission reiterating principle 12 of the Declaration stated that a high level of tolerance is expected when political views are expressed and 'an even higher threshold is required when it is directed towards the government and government officials'. Again, in November 2010, the African Commission adopted a resolution, ACHPR/Res169 (XLVIII) 2010: Resolution on Repealing Criminal Defamation Laws in Africa. This resolution called on states parties to the African Charter to repeal criminal defamation and insult laws and to 'refrain from imposing general restrictions that are in violation of the right to freedom of expression'.

On my part, I have consistently appealed to Member States of the African Union to decriminalise media offences through my Activity Reports, presented to each Ordinary Session of the African Commission, as well as through numerous letters of appeal sent to heads of states, expressing concern about the application of these laws. It was with this in mind that during the 52nd Ordinary Session of the African Commission held in October 2012 in Cote d'Ivoire, I announced the launch of a pan-African campaign for the decriminalisation of laws that restrict freedom of expression, to be implemented under my leadership.

It was thus as part of this this campaign, that a multi-country research into the use and impact effect of laws criminalising freedom of expression in Benin, Burundi, Lesotho, Tanzania, Zambia and Zimbabwe, was commissioned in September 2013, with the principal objective of providing a solid evidence base of the effects of these laws on freedom of expression.

This report on Lesotho, as with all the other 5 country reports, provides empirical evidence of the use and impact of laws criminalising freedom of expression in Lesotho. The findings of this research will most certainly be useful in future engagements by the African Commission and my mandate with the government of the Republic of Lesotho in encouraging the decriminalisation of these laws. It is also my earnest hope that freedom of expression activists in Lesotho and beyond, will find the information provided in this research useful, in championing the cause for the repeal of the relevant criminal laws in Lesotho.

A handwritten signature in black ink, reading "P. Tlakula". The signature is written in a cursive, flowing style.

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List of Abbreviation

ACHPR	African Charter on Human and Peoples' Rights
AHRL	African Human Rights Law Journal
ASP	Afro Shirazi Party
CCM	<i>Chama Cha Mapinduzi</i>
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHADEMA	Chama Cha Democrasia na Maendeleo
CHRAGG	Commission for Human Rights and Good Governance
CUF	Civic United Front
EAC	East African Community
FODPSP	Fundamental Objectives and Directive Principles of State Policy
GEMSAT	Gender Media in Southern Africa Tanzania Network
ICCPR	International Covenant on Civil and Political Rights
LHRC	Legal and Human Rights Centre
MCA	Magistrate Court
MCT	Media Council of Tanzania
MISA	Media Institute of Southern Africa
MOAT	Media Owners Association of Tanzania
MPs	Members of Parliament
NIGF	National Internet Governance Forum
RM's	Resident Magistrate's (Court)
TAMWA	Tanzania Media Women Association
TANU	Tanganyika African National Union
TCRA	Tanzania Communications Regulatory Authority
TEF	Tanzania Editors Forum
TLP	Tanzania Labour Party
TLR	Tanzania Law Report
TPSF	Tanzania Private Sector Foundation
UDHR	Universal Declaration of Human Rights
UTPC	Union of Tanzania Press Clubs

Introduction

Tanzania is the largest country in East Africa which borders the Indian Ocean in the East and lies between Kenya and Mozambique in the North and South respectively. It has approximately 47 million people, with women accounting for 51.3 percent while men constitute 48.7 percent¹. Because of its vast coastline of about 1,424 km, Tanzania has four major ports that serve as gateways to landlocked countries such as Uganda, Zambia, Rwanda, Malawi, Burundi and the Democratic Republic of Congo. Of its total land mass of 947,300km², 12.25% is arable with only 1.7percent of it being used for agricultural production. The rest is used for other ventures such as national parks, game reserves, mining, residences, among other usages. The fact that a small portion of the country's land is used for agriculture leaves the country with immense potential for investment in the agricultural sector.³

Moreover, Tanzania has an area of 945,087 km² out of which 61,500 km² is water including maritime claims of territorial sea of 22.2 kilometers and exclusive economic zone of 370.4km⁴. It is believed that the exclusive economic zone for Tanzania provides the country with potential for economic growth especially due to the availability of gas and prospects of oil reserves⁵.

The country has a unique governing structure when compared to other countries in the region. It is a democratic republic formed through the union of Tanganyika and the island of Zanzibar in April 1964. The area now known as Tanzania Mainland became an independent nation, named Tanganyika, on 9 December, 1961. A year later, Tanganyika attained the status of a Republic under the leadership of Julius Kambarage Nyerere.

Zanzibar gained her independence from the British on 10 December 1963, while it remained under the domination of the Sultan of Zanzibar. It was only after the overthrow of the Sultan in January 1964 and the takeover by the Afro-Shirazi Party (ASP) that Tanganyika and Zanzibar merged to form the current United Republic of Tanzania on 26 April, 1964.

Upon uniting on 26 April 1964, Tanganyika and Zanzibar formed the United Republic of Tanzania and signed an agreement known as the Articles of the Union. The Articles of the Union were signed by the respective heads of state (Julius K. Nyerere and Abeid A. Karume) of the former Tanganyika and Zanzibar respectively. One of the important features of the Union was a decision to establish the two-government structure, with two political parties: Tanganyika African National Union (TANU) for the Mainland (Tanganyika) and Afro Shirazi Party (ASP) in Zanzibar. Moreover, other important changes stated in the Articles of the Union were adopted by changing the Tanganyika Constitution, which became the Interim Constitution of the United Republic of Tanganyika and Zanzibar, 1965.⁶ Thus the Interim Constitution of 1965 created a one party state. This was based on article 3(1) of the interim constitution of 1965 which paved the legal way for one party politics in Tanzania where one could hardly differentiate the government/executive mandate from the party's mandate in the daily running of the country. Later on in 1975, article 3 of the interim Constitution of 1965 was amended by Act No. 18 of 1975 adding more power to it and providing that "all political activities in Tanzania

¹ Tanzania National Bureau for Statistics, *Population Projection 2014*. <http://www.nbs.go.tz/nbs/index.php> (accessed on 28 October, 2014).

² This area includes famous Island of Unguja, Pemba, Mafia, Ukerewe, and small islands in lake Victoria. Other countries of East Africa are Uganda, Rwanda, Burundi and Kenya.

³ Legal and Human Rights Centre, Tanzania Human Rights Report (2013),1.

⁴ LHRC above, 2.

⁵ E M "Oil and Gas Exploration-General Overview" A Presentation to the Delegation from Tanzania Private Sector Foundation (TPSF), 2013 12 in LHRC n.3 above.

⁶ IG Shivji The legal foundations of the union in Tanzania's union and anzibar Constitutions (1990) 66.

shall be conducted by or under the auspices of the party" and that "the functions of all organs of the state of the United Republic of Tanzania shall be performed under the auspices of the party".⁷ The permanent constitution of the United Republic of Tanzania of 1977 was promulgated in 1977 incorporating all the changes that had taken place. In the same year the Chama Cha Mapinduzi (CCM) was borne resulting from the merger of TANU and ASP.

Although Tanzania was a multi-party state from 1961-1965⁸, there were only two parties in the country that largely had roots in the country's liberation. These were Tanganyika African National Union (TANU) in the Mainland and ASP in Zanzibar. The two parties merged on 5 February, 1977 to form one party *Chama Cha Mapinduzi* (CCM). Since 1977 to 1992 CCM was the only political party legally recognized in the country and the lines between the party and government were blurred. It is only after 1992⁹ that a multi-party democracy in its true sense emerged in Tanzania, though questions on its vibrancy remain¹⁰. These questions arise due to the continued dominance of CCM and its successive electoral victories amid opposition accusations that the party subverts democratic processes to tilt the scales in its favour.

There have been cases of electoral violence in the country. For instance, in the 2000 elections, violence erupted in Zanzibar as political activists loyal to Civic United Front (CUF) accused CCM of manipulating the electoral process. The activists clashed with security forces. Earlier, in 2005 there was also violence as CUF protested against the Zanzibar Election Commission's decision that the leader of CUF was ineligible to stand for Zanzibar presidency. In October 2005, Zanzibar held its presidential election. Amani Abeid Karume was elected president with 53.2 percent of the votes cast, while opposition candidate Seif Hamad received 46.1 percent. In the legislative elections, the ruling CCM took 31 seats, while the CUF won 18 seats in the House of Representatives¹¹. Like in the other elections, observers reported about election-related violence and claims of electoral fraud, which led the Commonwealth to call for an investigation into reported cases of violence. But the elections commission insisted that the elections were free and fair. In December 2005, elections were held in the mainland Tanzania and these were overwhelmingly won by the CCM, whose leader Jakaya Kikwete got 80 percent of the votes cast for the presidency. The CUF candidate got 11 percent. Similarly, CCM won 207 parliamentary seats against 18 won by the CUF. The trend was similar in the subsequent 2010 elections even though CCM's Kikwete's vote dropped from 80 percent to 61 percent.

Following his 2010 victory and increased political pressure, President Kikwete announced that his government would establish a commission to spearhead the country's constitutional review process. Key among demands for a constitutional review is the need for reduction in the presidential powers and reforms to the electoral system in the country, among other requisite democratic reforms.

In all this the country's economy has witnessed Gross Domestic Product growth and low inflation rate since the advent of multi-party democracy. However, this growth has not cascaded down to ordinary citizens, who are still confronted by high unemployment, poor health delivery services and poverty, among other socio-economic malaise.

⁷ M Nyirabu 'The Multiparty Reform Process in Tanzania: The Dominance of the Ruling Party' (2002) Vol. 7 No. 2 *African Journal of Political Science* 101.

⁸ The 1965 Interim Constitution created a

⁹ LHRC, 8.

¹⁰ Interview with an editor of *Nipashe* Newspaper who expressed his personal views on the media industry in Tanzania. The interview was carried out on 2 June, 2014. See also M Wambali 'The practice on the right to freedom of political participation in Tanzania' (2009) *AHRL*, 202.

¹¹ Tanzania: Background and Current Conditions, Congressional Research Service, 2011

It is against the foregoing that the study on laws that criminalise freedom of expression in Tanzania is conducted.

Section One: Background and context

1.1 International and constitutional legislative framework

This section gives a broad background to existing legal instruments that have a bearing on freedom of expression, starting with international and regional instruments that Tanzania has ratified. Thereafter the report will briefly discuss constitutional and law reform processes, the judicial system and a broad overview of the media landscape in Tanzania.

1.1.1 International, African Union and sub-regional legal instruments

Table 1: Status of Tanzania’s International and Regional Legal Obligations

Tanzania has ratified the following international, continental and sub-regional legal instruments relating to or have a bearing on freedom of expression:

	Treaty Title	Signature Date	Ratification Date	Deposit Date	Reservations
1	International Covenant on Civil and Political Rights (1966)	11.06.1976 (accession)			None
2	Convention for the Protection of All Persons from Forced Disappearance (1966)	29.09.2008			None
3	International Convention on the Elimination of all Forms of Racial Discrimination (1966)	17.07.1980	20.08.1985		None
4	International Convention on the Elimination of All Forms of Racial Discrimination	27.10.1972 (accession)			None
5	International Covenant on Economic , Social and Cultural Rights (1966)	11.06.1976 (accession)			None
6	Convention on the Rights of the Child (1989)	01.06.1990	10.06.1991		None
7	Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict	11.11.2004 (accession)			None
8	Optional Protocol to the	24.04.2003			None

	Convention on the Rights of the Child on the Sale of Children child prostitution and child pornography	(accession)				
9	Convention on the Rights of Persons with Disabilities	30.03. 2007	10.11.2009			None
10	African Charter on Human and People's Rights (1981)	31.05.1982	18.02.1984			None
11	Constitutive Act of the African Union (2000)	15.12.2000	06.04.2001	11.04.2001		None
12	Declaration of Principles on Freedom of Expression in Africa (2002)					
13	African Charter on Democracy, Elections and Governance					
14	Declaration on Democracy, Political, Economic and Corporate Governance (2002)					
15	Universal Declaration of Human Rights					
16	The Windhoek Declaration on Promoting an Independent and Pluralistic African Press (1991)	Via UNESCO 1991				
17	Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights	09.06.1998				
18	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa	05.11.2003				
19	Protocol on the Amendments to the Constitutive Act of the African Union (2003)	05.11.2003	14.04.2004	30.04.2004		
20	Freedom of Association and Protection of the Right to		18.04.2000			

While the country is state party to several instruments, it has not domesticated many of those human rights instruments. However, although like in many other jurisdictions all instruments must be domesticated through a statute of parliament for them to directly apply under Tanzanian law, the country's constitution provides a legal leeway that could be used to claim state protection under the human rights instruments to which the country is a signatory.

The Constitution enjoins the state and all its agencies to comply with international instruments on human rights, particularly the universal declaration of human rights. This is enunciated under Article 9 of the constitution which falls under the Fundamental Objectives and Directive Principles of State Policy (FODPSP). It states:

9. The object of this Constitution is to facilitate the building of the United Republic as a nation of equal and free individuals enjoying freedom, justice, fraternity and concord, through the pursuit of the policy of Socialism and Self Reliance which emphasizes the application of socialist principles while taking into account the conditions prevailing in the United Republic. Therefore, the state authority and all its agencies are obliged to direct their policies and programmes towards ensuring –

- (a) that human dignity and other human rights are respected and cherished;
- (b) that the laws of the land are upheld and enforced;
- (c) that activities of the Government are conducted in such a way as to ensure that the national wealth and heritage are harnessed, preserved and applied for the common good and also to prevent the exploitation of one person by another;
- (d) that the national economy is planned and promoted in a balanced and integrated manner;
- (e) that every person who is able to work does work, and work means any legitimate activity by which a person earns a living;
- (f) that human dignity is preserved and upheld in accordance with the spirit of the Universal Declaration of Human Rights;
- (g) that the Government and all its agencies accord equal opportunities to all citizens, men and women alike without regard to their colour, tribe, religion, or station in life;
- (h) that all forms of injustice, intimidation, discrimination, corruption, oppression or favouritism are eradicated;
- (i) that the use of national wealth places emphasis on the development of the people and in particular is geared towards the eradication of poverty, ignorance and disease;
- (j) that economic activities are not conducted in a manner that may result in the concentration of wealth or the major means of production in the hands of a few individuals;
- (k) that the country is governed according to the principles of democracy and socialism.

Article 63 of the Constitution further compels parliament to deliberate and ratify instruments to which Tanzania is a state party. This is clearly stated under Article 63 (c), which states that for the purposes of discharging its functions, the National Assembly may among other functions deliberate upon and ratify all treaties and agreements to which the United Republic is a party and the provisions of which require ratification.

While the Constitution is clear on the state obligations with regards human rights instruments and treaties, state agencies have always argued that these can only be applicable only after an Act of Parliament has been enacted to domesticate them. This argument has been rejected by members of the judiciary as well as some legal experts¹² who contend that if Tanzania has signed a Convention, courts will apply it unless the country entered some reservations in accordance with international law procedures and that it is only to the extent of the reservations that the courts will not apply the Convention in local courts¹³. It is on this basis that the Tanzanian Courts have been able to apply the principles contained in international and regional instruments in some of its rulings relating to human rights issues.

For example, in the case of *Ephraim Bernado v. Holaria Pastory & Another*¹⁴ the Court addressed a customary law rule which barred women from inheriting clan land using both the constitution and international instruments. Whereas the High Court of Tanzania relied on the general equality provision of the Constitution in adjudging the case, it also ruled that the principle of equality before the law should also be considered in line with human rights instruments on non-discrimination that Tanzania has signed and ratified. These include the International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), African Charter on Human and Peoples' Rights (ACHPR) and Universal Declaration of Human Rights (UDHR). The Court noted that: 'the principles enunciated in these documents [international conventions] are standards below which any civilized state will be ashamed to fall'.

The international instruments referred to by the court in the above cited case were ratified by Tanzania but not domesticated.

The *ratio decidendi* in the above case was confirmed by the Court of Appeal of Tanzania in *Transport Equipment & Reginald John Nolan v Devram P. Valambhia*¹⁵ whereby it was held that the international Agreements and Conventions signed and ratified by the Tanzanian governments are valid undertakings and that the government is bound by its commitments to others.

After noting that international instruments are not self-executing and that there has to be an Act of Parliament to make such international instruments operative, the Court of Appeal applied the ICCPR to construe the relevant provisions of the Constitution of the United Republic of Tanzania. Finding that the Constitution of the United Republic of Tanzania fell short of what is provided by the Covenant, and stating that 'since Tanzania is a party to the Covenant, (he held) the "Court has to...interpret and apply all derogating law extremely strictly"'.

¹² GK Kazoba *Consumer protection and a guard against counterfeit and substandard pharmaceuticals in Tanzania: Examining national, regional and international legal and institutional frameworks* (2013) 133.

¹³ Interview with the Justice of Appeal and President of the EAC Court of Justice on 31 August, 2010 in Arusha at the EAC Court of Justice.

¹⁴ [1990] LRC 757.

¹⁵ Appeal case No 19 of 1993 (Ramadhani JA) (unreported).

1.1.2 Constitution

The history of Constitution-making processes in Tanzania can be traced from 1961 when Tanzania (then Tanganyika became) independent. From 1961, there has been a chain of events leading to enactments of about five different Constitutions. The current constitution was enacted in 1977 and it has gone through fourteen (14) amendments. The five major amendments are: the fifth amendment of 1984 which introduced the Bill of Rights into the constitution;¹⁶ the eighth amendment of 1992 which introduced the multiparty system; the eleventh amendment of 1994 introducing the system of a running mate for the presidential candidate to become the vice president; the 13th amendment of 2000 which introduced four major changes including those relevant to women as follows: introduced the criteria of sex as a ground of prohibited form of discrimination; up to thirty percent of the parliamentary seats to be reserved for women; independency of the judiciary and exclusive judicial powers of the judiciary were also expressly provided for and lastly the establishment of the Commission for Human Rights and Good Governance (CHRAGG). In February 2005, the Parliament passed the 14th amendment to the Constitution. Article 18 was repealed and replaced by a new provision which was more progressive than the previous one.¹⁷ 'The amendment repealed article 1, which subordinated the right to information and freedom of expression to other laws of the land, and replaced it with a new article 18, which guarantees freedom of expression and the right to information'.¹⁸ The amendment aimed at removing an overbroad claw back in the exercise of freedom of expression but in practice this has not happened.

Equality of all before the law

The Constitution of Tanzania provides for equality of all before the law under Articles 12 and 13. Article 12 provides as follows:

- 12.(1) All human beings are born free, and are all equal.
- (2) Every person is entitled to recognition and respect for his dignity.

While Article 13 stipulates:

- (1) All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law.
- (2) No law enacted by any authority in the United Republic shall make any provision that is discriminatory either of itself or in its effect.

¹⁶ The delay in incorporating the Bill of Rights in the constitution though had been proposed by the British government upon granting independence to the then Tanganyika (and not before that), the proposal was not accepted. The question was how best to recognize and protect the basic rights of individuals in Tanzania.¹⁶ It was considered that having a justiciable/enforceable Bill of Rights through the courts of law in the constitution was not ideal platform upon which the rights could be realized or secured. This is because it was considered that such a method of safeguarding basic rights of individuals needed a "nation with a very strong social-economic base, with a long tradition of democratic government and people with national ethics which would provide a sound rear base for basic rights" (DZ Lubuva 'Reflections on Tanzania's Bill of Rights', An address by the then Attorney General and Minister for Justice, to the Faculty of Law, University of Dar es Salaam on 16 October 1987. In *Commonwealth Law Bulletin* Vol 14, issue 2, (1998), 853.

¹⁷ Interview with Pili Mutambalike, the Manager of Regulations requirements of different persons on the basis of their nationality, tribe, place of origin, political opinion, colour, religion, sex or station in life such that certain categories of people are regarded as weak and Standards at the Media Council of Tanzania, head Office, Dar es Salaam.

¹⁸ *Media Institute of Southern Africa* (MISA), 'Tanzania: New law on Access to Information Underway' 2006, http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/tanzania/new_law_on_ati_underway.pdf (accessed on 10 November, 2014).

(3) The civic rights, duties and interests of every person and community shall be protected and determined by the courts of law or other state agencies established by or under the law.

(4) No person shall be discriminated against by any person or any authority acting under any law or in the discharge of the functions or business of any state office.

(5) For the purposes of this Article the expression “discriminate” means to satisfy the needs, rights or other or inferior and are subjected to restrictions or conditions whereas persons of other categories are treated differently or are accorded opportunities or advantage outside the specified conditions or the prescribed necessary qualifications except that the word “discrimination” shall not be construed in a manner that will prohibit the Government from taking purposeful steps aimed at rectifying disabilities in the society.

Subsection 6 then mandates the state to ensure the fulfilment of these provisions. It states:

To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely:

(a) when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned;

(b) no person charged with a criminal offence shall be treated as guilty of the offence until proved guilty of that offence;

(c) no person shall be punished for any act which at the time of its commission was not an offence under the law, and also no penalty shall be imposed which is heavier than the penalty in force at the time the offence was committed;

(d) for the purposes of preserving the right or equality of human beings, human dignity shall be protected in all activities pertaining to criminal investigations and process, and in any other matters for which a person is restrained, or in the execution of a sentence; and

(e) no person shall be subjected to torture or inhuman or degrading punishment or treatment.

Right to freedom of expression and the media

Article 18 of the Constitution of United Republic of Tanzania provides as follows

Every person -

(a) has a freedom of opinion and expression of his ideas;

(b) has a right to seek, receive and, or disseminate

(c) information regardless of national boundaries;

(d) has the freedom to communicate and a freedom with protection from interference from his communication;

(e) has a right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society.

However, these liberties are curtailed by very broad limitation clauses under Article 30 of the Constitution. It states:

(1) The human rights and freedoms, the principles of which are set out in this Constitution, shall not be exercised by a person in a manner that causes interference with or curtailment of the rights and freedoms of other persons or of the public interest.

(2) It is hereby declared that the provisions contained in this Part of this Constitution which set out the principles of rights, freedom and duties, does not render unlawful any existing law or prohibit the enactment of any law or the doing of any lawful act in accordance with such law for the purposes of-

(a) ensuring that the rights and freedoms of other people or of the interests of the public are not prejudiced by the wrongful exercise of the freedoms and rights of individuals;

There are no precise definitions of what constitutes public safety, morality, defence, which can be used to erode freedom of expression for example. Although some of these are also outlined as possible reasons for derogating freedom of expression under Article 19 of the International Covenant on Civil and Political Rights (ICCPR) as well as Article 9 of the African Charter on Human and People's Rights which stipulate that the enjoyment of the right to freedom of expression shall be within the law, it is crucial that the law is less ambiguous on the definition of terms so as to prevent the abuse of the Act. And as the limitation provisions stand, they are clearly not in line with regional and international instruments on freedom of expression.

Further, while the constitution guarantees freedom of expression there are no explicit guarantees for freedom of the Press/media. This liberty can only be inferred to under Article 18. It is now standard practice that these freedoms are constitutionally recognised in their own right to ensure their justifiability.

Judicial independence

The judicial independence of the Tanzanian courts is provided for under Article 107 of the Constitution.

Article 107A states:

(1) The Judiciary shall be the authority with final decision in dispensation of justice in the United Republic of Tanzania.

(2) In delivering decisions in matters of civil and criminal nature in accordance with the laws, the court shall observe the following principles, that is to say

(a) impartiality to all without due regard to ones social or economic status;

(b) not to delay dispensation of justice without reasonable ground;

(c) to award reasonable compensation to victims of wrong doings committed by other persons, and in accordance with the relevant law enacted by the Parliament;

(d) to promote and enhance dispute resolution among persons involved in the disputes; **and**

(e) to dispense justice without being tied up with technicalities provisions which may obstruct dispensation of justice.

This is further affirmed under Article 107B, which stipulates:

In exercising the powers of dispensing justice, all courts shall have freedom and shall be required only to observe the provisions of the Constitution and those of the laws of the land.

Besides guaranteeing independence of the judiciary, the Constitution also provides for constitutional challenges of the law. This is provided for under Article 30 (3) to (5). It states:

- (3) Any person claiming that any provision in this Part of this Chapter or in any law concerning his right or duty owed to him has been, is being or is likely to be violated by any person anywhere in the United Republic, may institute proceedings for redress in the High Court.
- (4) Subject to the other provisions of this Constitution, the High Court shall have original jurisdiction to hear and determine any matter brought before it pursuant to this Article; and the state authority may enact legislation for the purposes of -
 - (a) regulating procedure for instituting proceedings pursuant to this Article;
 - (b) specifying the powers of the High Court in relation to the hearing of proceedings instituted pursuant to this Article; and
 - (c) ensuring the effective exercise of the powers of the High Court, the preservation and enforcement of the rights, freedoms and duties in accordance with this Constitution.
- (5) Where in any proceedings it is alleged that any law enacted or any action taken by the Government or any other authority abrogates or abridges any of the basic rights, freedoms and duties set out in Articles 12 to 29 of this Constitution, and the High Court is satisfied that the law or action concerned, to the extent that it conflicts with this Constitution, is void, or is inconsistent with this Constitution, then the High Court, if it deems fit, or if the circumstances or public interest so requires, instead of declaring that such law or action is void, shall have power to decide to afford the Government or other authority concerned an opportunity to rectify the defect found in the law or action concerned within such a period and in such manner as the High Court shall determine, and such law or action shall be deemed to be valid until such time the defect is rectified or the period determined by the High Court lapses, whichever is the earlier.

The case of *Rev. Christopher Mtikila v Attorney General* (1995) TLR 31 demonstrates the independence of the judiciary in handling matters. In the case Mtikila, a human rights campaigner and political activist sought many reliefs among them being a declaration that the Eighth Constitutional Amendment made to the constitution through the constitutional amendment Act of 1992 were invalid as they infringed on individuals' right to participation in public affairs and freedom of association, which liberties were guaranteed by the constitution. Specifically, Mtikila sought the courts to invalidate provisions under the Newspapers Act and those under the Police Force Ordinance and the Political Parties Act, which the appellant argued violated freedom of assembly and expression as enjoined citizens to first seek police permission to hold a public meeting or gathering.

The challenge followed the charging of Mtikila and three others who were supporters of his political party with refusal to desist from convening a meeting in defiance of a police order barring the holding of the gathering, holding an unlawful assembly and using abusive and insulting language that was likely to cause breach of peace¹⁹.

The High Court sitting as a constitutional court struck down Section 40 of the Police Force Ordinance which compelled political parties to obtain permission from the police to hold a meeting arguing that instead parties should only should only notify the police in order to the enable the law enforcement agents to ensure security for the gathering. Passing judgment on behalf of the court Judge Mwalusanya (as he then was) stated as follows:

¹⁹ High Court of Tanzania at Dodoma, Appellate Jurisdiction, Appellate Criminal Appeal No. 90 of 1992.

No reasonable man who was in the audience could have taken the words spoken at their face value or in their literal meaning. The words were a figurative speech—that the President was a thief because he has bankrupted the country to Zanzibar, that the Father of the Nation had sold Tanzania or that the C.C.M was a party of thugs. Any reasonable man knows that this country is not bankrupt and that it has not been sold all; and that C.C.M has a lot of respected members.²⁰

However, although the courts can adjudge the constitutionality of any law as highlighted by the Mtikila case, the court's findings do not automatically render a contested piece of legislation void. Instead, the law would prevail despite its shortcomings until repealed by the parliament. For instance, despite the landmark ruling in the Mtikila case with regards to political parties' gatherings, the police still misinterpret the notification requirement to mean that they still have to grant permission or bar parties gathering. There are other cases which are not relevant to this topic demonstrating the point made above, for instance a court's ruling allowing independent candidate for elected positions.

Following a long time outcry of the civil society organizations and political parties in Tanzania to have a new constitution, the President Kikwete announced that the Government would embark on a constitutional review process on the 31st December, 2010. The Constitutional Review Act, 2011 Cap. 83 R.E 2012 was enacted providing for the establishment of the Constitutional Review Commission. The Commission's mandate includes collecting public views; examining and analysing those views and making recommendations to the government, among other functions and administrative responsibilities²¹..

Most of the processes have taken place so far as anticipated under the enabling Act and it is anticipated that the draft will be subjected to a referendum and possible adoption, if publicly approved, before the end of 2014 .

1.1.3 Judicial System

The legal system of Tanzania is largely based on common law principles. It also accommodates Islamic and customary laws. The later is mostly applicable in relation to personal or family matters but also in contracts which are based on customs²².

The judiciary comprises various courts of judicature which are organised in a hierarchical manner. At the top is the Court of Appeal followed by the High Court of Tanzania (mainland) and the High Court of Zanzibar; the Resident Magistrate Court and the District Court²³ and finally the Primary Court.

The Court of Appeal

The Court of Appeal is established under Article 117 of the Constitution of the United Republic. Article 117 (2) to (4) outlines the Court's jurisdiction as follows:

(2) The Court of Appeal shall not have any jurisdiction in arbitration of any matter which is to be dealt with in accordance with the provisions of Article 126 of this Constitution concerning a dispute between the Government of the United Republic and the Revolutionary Government of Zanzibar.

²⁰ In Rachel L. Ellet, *Pathways to Judicial Power in Transitional States: Perspectives From African Courts*, Routledge94

²¹ The Constitutional Review Act 2011 as amended in 2012.

²² NNN Nditi *General Principles of Contract Law in East Africa*, Dar Es Salaam University Press, Dar es Salaam, (2009) 14.

²³ The Resident Magistrate Court and the District Court are at the same judicial hierarchy

(3) The functions of the Court of Appeal shall be to hear and determine every appeal brought before it arising from the judgment or other decision of the High Court or of a magistrate with extended jurisdiction.

(4) A law enacted in accordance with the provisions of this Constitution by Parliament or by the House of Representatives of Zanzibar may make provisions stipulating procedure for lodging appeals in the Court of Appeal, the time and grounds for lodging the appeals and the manner in which such appeals shall be dealt with.

Cases before the Court of Appeal are presided over by a Chief Justice and not less than four other Justices of Appeal as stipulated under Article 18. The Article also stipulates the appointment procedures for the Chief Justice and other Justices of Appeal. In all their appointments, the President of the country is the final appointing authority.

The High Court

Underneath the Court of Appeal is established the High Court of the United Republic of Tanzania under Article 108. Its jurisdiction as outlined under Article 108(2) is as follows as follows:

Where this Constitution or any other law does not expressly provide that any specified matter shall first be heard by a court specified for that purpose, then the High Court shall have jurisdiction to hear every matter of such type. Similarly, the High Court shall have jurisdiction to deal with any matter which, according to legal traditions obtaining in Tanzania, is ordinarily dealt with by a High Court provided that: the provisions of this sub article shall apply without prejudice to the jurisdiction of the Court of Appeal of Tanzania as provided for in this Constitution or in any other law.

Functions of the High Court are further enunciated under Section 2(1) of the Judicature and Applications of Laws Act Cap. 543 which provides that the High Court has full, that is unlimited, civil and criminal jurisdiction. Such jurisdiction is however subject to the jurisdiction of the Court of Appeal of Tanzania as provided for by the Constitution of the United Republic of Tanzania and any other written laws²⁴. In the case of *Northern Tanzania Farmer's Coop Society Ltd v. Shelukindo* (1978), the High Court held that:

'The High Court is an organ deriving its establishment and existence by the operation of the constitution of this country. This organ unless otherwise expressly restricted by the legislature has unlimited criminal and civil jurisdiction, pecuniary...Apart from the court of Appeal it is the highest court for the administration of justice in this country.

In that light, the High Court also has jurisdiction on matters of a constitutional nature including cases under the Bill of Rights section of the Constitution and has authority to adjudicate over election petitions. The High Court's Main Registry, (which includes the sub-Registries available in different parts of the country²⁵) caters for all civil and criminal matters. It also has three specialised divisions, namely, the Commercial Court Division, the Land Division²⁶ and the Labour Court Division of the High Court²⁷. All appeals from subordinate courts may go to the High Court of Tanzania and finally to the Court of Appeal but in a latter case only for the determination of a point of law if any.

²⁴ GK Kazoba *A-5 Business Law* (2014), 5.

²⁵ The High Court of Tanzania (Mainland Tanzania) has established 10 sub Registries in different zones of the country.

²⁶ Both the Commercial Court Division of the High Court and the Land Division were established through an amendment of the High Court Registries Rules of 1984. The judges of both Divisions are appointed to sit in the respective divisions by the Chief Justice from amongst High Court Judges.

²⁷ The Labour Court Division of the High Court is established by section 50(1) of the Labour Institutions Act, no. 7 of 2004.

Article 109 to Article 111 outline the appointment procedures for the Principal Judge of the High Court, who is the special assistant to the Chief Justice in the administration of the High Court and of all the other courts subordinate to it, and other judges of the High Court as well as their terms of office and procedures for disciplinary action.

The Constitution, under Article 114 also establishes the High Court of Zanzibar whose jurisdiction according to Article 115(1) shall be as specified in the laws applicable to Zanzibar. However, as Article 115(2) stipulates;

Subject to the provisions of this Constitution or of any other law enacted by Parliament, where any law enacted by Parliament and which is applicable in Mainland Tanzania and also in Tanzania Zanzibar vests any power in the High Court, then the High Court of Zanzibar may exercise that power concurrently with the High Court of the United Republic.

Apart from the High Court of Zanzibar, the island's judicial system also includes Regional and District Magistrate Courts, Primary Courts, *Kadhi* Appeal Courts and *Kadhi* Courts. These courts have jurisdiction over cases arising in Zanzibar, which are non-union matters. Although the High Court of Zanzibar acts as the highest court of appeal on non-union matters, especially matters arising from the *Kadhi* Courts and the interpretation of the Constitution of Zanzibar, matters originating from the magistrates courts can be referred to the Court of Appeal of Tanzania.

Resident Magistrate (RM's) Courts and the District Courts

The Resident Magistrate Courts and the District Courts, both enjoy concurrent jurisdiction. These courts are established under the Magistrate Courts Act (MCA). The RM's Courts also known as subordinate courts are established by orders of Chief Justices published in the Government Gazette in accordance with Section 5(1) of MCA. The same Order of the Chief Justice designates the territorial jurisdiction for the magistrate's courts though in practice, they are found in major towns, municipalities and cities, which serve as the regional (provincial) headquarters. The District Courts, unlike the Resident Magistrates Courts, are found throughout all the districts in Tanzania (the local government units) in accordance with Section 6 of the MCA which establishes them. They receive appeals from the Primary Courts, several of which are found in one district.

Primary Courts

The primary courts are the lowest courts in the hierarchy of the judicial system and are established under section 3(1) the Magistrates Courts Act. They are found in every district. They deal with criminal cases and civil cases. Civil cases on property and family law matters which apply customary law and Islamic law must be initiated at the level of the Primary Court. However if any of the parties to the case wants to be represented by an advocate (attorney) then the case will have to be transferred to another higher court such as the district court or resident magistrate court.

Tribunals

There are specialized tribunals, which form part of the judicial structure. These for example include District Land and Housing Tribunal, Tax Tribunal and the Tax Appeals Tribunal and the Commission for Mediation and Arbitration which deals with labour matters.²⁸

²⁸ The Labour Institutions Act, 2004 establishes the various institutions in particular the Commission for Mediation and Arbitration for purposes of labour disputes in Tanzania; the Tax Revenue Appeals Act, Cap 408 of R E 2006 of the Laws of Tanzania establishes the Tax Revenue Appeals Board and the Tax Revenue Tribunal to adjudicate tax related issues whereas Land matters were expected to be adjudicated by Tribunals established under the Court (Land Disputes

The Court Martial System

The Court martial system is meant to adjudicate on cases involving armed forces personnel. Court Martial, which includes general court martial, disciplinary court martial and standing court martial, are regulated by the provisions of the National Defence Act. Such laws only concern themselves with matters where defence personnel commits a crime in line of duty or off duty.

The Special Constitutional Court of Tanzania

There is also the Special Constitutional Court of United Republic of Tanzania, which is established under Article 125 of the Constitution of the United Republic of Tanzania. It is of an ephemeral status. Its main function according to the constitution is reconciliatory in cases where there is a dispute between the Governments of the mainland Tanzania and that of Zanzibar concerning the interpretation and application of the constitution of the United Republic of Tanzania.

Article 126 (2) and (3) state:

(2) In the performance of its functions in accordance with the provisions of this Article, the Special Constitutional Court shall not have power to inquire into or to alter the decision of the High Court or the decision of the Court of Appeal which has been given in accordance with the provisions of Article 83 of this Constitution or the decision of the Court of Appeal which has been given in accordance with Article 117 of this Constitution.

(3) Every conciliatory decision given by the Special Constitutional Court pursuant to this Article shall be final; there shall be no right of appeal to any forum.

Half of the members of this court are appointed by the government of the united Republic and the half by the government of Zanzibar and they must be former judges of the high court or qualify to be appointed a high court judge.

Another crucial arm of the Tanzanian judicial is the Commission for Human Rights and Good Governance established under Article 129. Its functions are outlined under Article 130 (1) as follows:

- (a) to sensitise countrywide about preservation of human rights and duties to the public in accordance with the Constitution and the laws of the land;
- (b) to receive complaints in relation to violation of human rights in general;
- (c) to conduct inquiry on matters relating to infringement of human rights and violation of principles of good governance;
- (d) to conduct research, to impart or disseminate to the public countrywide education in respect of human rights and good governance;
- (e) if necessary, to institute proceedings in court in order to prevent violation of human rights or to restore a right that was caused by that infringement of human rights, or violation of principles of good governance;
- (f) inquire into the conduct of any person concerned and any institution concerned in relation to the ordinary performance of his duties or functions or abuse of the authority of his office; and

Settlements) Act, 2002. In practice land matters are dealt with by ordinary registries due to the fact that they are too many for the tribunals.

(g) to advise the Government and other public Institutions and private sector in respect of human rights and good governance;

(h) to take necessary action in order to promote and enhance conciliation and reconciliation among persons and various institutions appearing or being brought before the Commission.

Article 130(2) then seeks to establish the commission's autonomy as thus:

The Commission shall be an autonomous department, and without prejudice to other provisions of this Article, in exercising its powers in accordance with this Constitution, the Commission shall not be bound to comply with directive or orders of any person or any department of government or any opinion of any political party or of any public or private sector institution.

1.1.4 Law reform process

The law making process in Tanzania is partly governed by Article 64 which vests legislative powers in the Parliament as well as Articles 97 to 99 of the Constitution. These provide for the legislative procedure after the Bill has been passed by the National Assembly and on its way for presidential assent..

According to Article 64 of the Constitution, the legislative powers for issues relating to Tanzania mainland and union matters are vested in the Parliament of the United Republic of Tanzania²⁹. The House of Representative of Zanzibar enjoys legislative powers in respect of non-union matters that only concern Zanzibar.³⁰ However, by virtue of Article 97(5) parliament may delegate its legislative powers in some cases to any person or department of Government the power to make regulations that have the force of law or conferring the force of law on any regulations made by any person, or any department of Government.

For the legislative powers of the parliament to be exercised there must be a Bill to be debated upon, passed or rejected. A Bill may be introduced in the House by a Government Minister or by a Private Member of parliament. This means that there are two types of Bills, namely Government Bills, which are introduced into the Assembly by a Minister or Attorney-General, and Private Member's Bills, which are introduced into the Assembly by a Member of Parliament who is not a Minister or the Attorney-General³¹.

Parliament exercises its legislative power through the process of debating and passing Bills which eventually are assented to by the President, for them to become law³². Like in many common law states, the Bill passes many stages before it is enacted. These include first reading stage, second reading stage, committee stage, report stage, and third reading..

After a Bill is presented to the President for his signature, the President may either assent or withhold his assent. In the event, the President withholds his assent to a Bill, he or she shall return it to the National Assembly together with reasons for non-approval³³.

A Bill so returned to the National Assembly by the president cannot be further presented to the president until an expiry of six months. The six months lapse requirement can be waived if at the last

²⁹ Article 64(1) of the Constitution of the United Republic of Tanzania, 1977.

³⁰ Article 64(2) of the Constitution of the United Republic of Tanzania, 1977.

³¹ Fact Sheet No. 1 "The Legislative Process in Tanzania" Available at http://www.parliament.go.tz/docs/FACTSHEET_1.pdf (accessed up to 9 May, 2014).

³² Article 97(1) of the Constitution of the United Republic of Tanzania, 1977.

³³ Article 97(2) of the Constitution of the United Republic of Tanzania, 1977.

stage in the National Assembly before the Bill is again presented to the President, it is supported by the votes of not less than two-thirds of all the Members of Parliament.³⁴

When a Bill is presented to the president for his/her assent after complying with Article 97(3) described above,³⁵ the president is obliged to assent to the Bill within twenty-one days of its being presented to him. If the President does not assent to the Bill for the second time the president shall have to dissolve the parliament.³⁶

However, there are matters that the National Assembly cannot exercise its legislative mandate without the express approval by the President and unless the proposal is tabled by a Minister. These are outlines under Article 99 of the constitution, which and include

- (a) a Bill to enact a law providing for any of the following -
 - (i) to levy a tax or to alter taxation otherwise than by reduction;
 - (ii) the imposition of any charge upon the Consolidated Fund or any other public fund or the alteration of any such charge otherwise than by reduction;
 - (iii) the payment, issue or withdrawal from the Consolidated Fund or any other public fund of any moneys not charged thereon, or any increase in the amount of such payment, issue or withdrawal;
 - (iv) the composition or remission of any debt due or payable to the United Republic;
- (b) a motion or any amendment of a motion for the purpose of any of the matters referred to in paragraph (a) of this sub article.

In summary the law making process is as follows:

- Preliminary discussions

Before a Government Bill is introduced in the Assembly, it goes through a lengthy process of consultation and decision-making at Ministerial level, Permanent Secretaries level and finally the Cabinet.

- Publication of Bills

After the Bill has been approved by the Cabinet, (in the case of government bills) it is published in the official/ government Gazette with a statement of its objects and reasons, signed by the Minister responsible for introducing the bill in the National Assembly. It must be published in at least two issues of the gazette at intervals of not less than seven clear days. The first publication of a Bill must contain its full text, and must be published at least twenty-one days before it is introduced in the National Assembly for first reading.

The second publication of the Bill is deemed to have been made by the insertion of a notice in the Gazette naming the title of the Bill, plus the number and date of the Gazette in which it was first published.

- Bill under certificate of urgency

³⁴ Article 97(3) of the Constitution of the United Republic of Tanzania, 1977.

³⁵ i.e either after waiting for six month from the first rejection of the bill to returning it to the president or where the Bill to be re-presented to the president is supported by the votes of not less than two-thirds of all the Members of Parliament. See N. 30 above.

³⁶ Article 97(4) of the Constitution of the United Republic of Tanzania, 1977.

³⁶

The above mentioned procedure for publication (in case of ordinary Bills) may be dispensed with in respect of a government Bill, if a certificate under the hand of the President is laid on the table of the Assembly by a Minister or Attorney-General stating that the relevant Bill is of such an unusually urgent nature that time does not permit compliance with the prescribed procedure.

- Private member's bill

As already mentioned, any Member of Parliament who is not a Minister may introduce a Bill into the Assembly. Such bill is known as a private member's bill

A member desiring to do so must notify the Clerk of the National Assembly of his intention. He or she must also submit the name of his/her Bill and with full description of the objects and reasons of the Bill. As far as printing and publication is concerned, the procedure is exactly the same as for government Bills.

- First reading

The first reading stage of any Bill is done by the Clerk of Parliament before the Assembly. At this stage, no discussion takes place. Instead, the Speaker refers the Bill to the appropriate Standing Committee for consideration, the consideration which includes whether the proposed law is constitutional.

The appropriate Standing Committee has no power to amend a Bill referred to it but may request the Minister responsible for the Bill to introduce amendments to the Bill in the Assembly.³⁷

- Second reading

After the Chairman of the appropriate Standing Committee has reported to the Speaker that his Committee has concluded its consideration of the Bill, the Speaker orders the Bill to be entered on the Order Paper ready for the Second Reading.

At this stage, the Minister in charge of the Bill moves a motion that the Bill be now read for the second time. The Minister provide details of the Bills to the Assembly before the Members start debating the proposals contained therein.

The Minister's speech is followed by a statement of the Chairman of the appropriate Standing Committee, which considered the Bill who has a duty of outlining the views of the Committee regarding that bill.

The official spokesman for the opposition then takes the floor to give the views of the official Opposition regarding the Bill. This is followed by a general debate by the Members regarding the merits or otherwise of the Bill.

- Committee of the whole house

On completion of the general debate, the Assembly immediately reconstitutes itself into a Committee of the whole House. The Clerk calls the number of each clause in succession together with any amendments which may have been made by the Minister in charge on the Bill. The Presiding Officer (who at this stage is designated Chairman, not Speaker) puts the question "that the Clause (or the clause as amended) be approved.

- Third reading and passing of the bill

When the clauses of the Bill have been dealt with, the Assembly resumes and the speaker returns to the Chair at the conclusion of the proceedings in the Committee of the whole House. The minister in-charge of the Bill then reports to the Assembly that the Committee has considered the Bill, clause by clause and approved the same. Thereafter the minister requests the Assembly to concur with the findings of

³⁷ The grounds for assessment and recommendations include all of Tanzania's existing obligations such as under the constitution of the United Republic of Tanzania f 1977 and any other international and regional instruments that Tanzania has signed and ratified.

the Committee. At this stage the Assembly votes, and if the majority of the MPs give their consent then the Bill can be passed.. If the majority of MPs say 'No' then the Bill is deemed rejected by the Assembly.

- Assent to Bills

When a Bill has been passed by the Assembly, a printed copy of the Bill is submitted by the Clerk of the National Assembly to the President for his/her assent or disapproval. If the bill is assented to then it becomes an Act of Parliament.

- Withhold of assent

In case the President withholds his assent to the Bill, he/she must return it to the Assembly together with a statement of reasons for withholding assent.. After the Bill is returned to the Assembly, it shall not be presented again to the President for his assent within six months of its return. In order for it to be presented again to the President, it must be supported by the votes of not less than two-thirds of all the Members of the Assembly.

If the same Bill, which was returned to the Assembly by the President, is passed again by the Assembly with the support a two-thirds of all the Members of the Assembly, and is presented a second time to the President for his/her assent then the President is obliged to assent to the Bill within twenty one days of its being presented to him/her, otherwise he/she must dissolve Parliament and call for a new general election.³⁸

1.2 Media Landscape

1.2.1 Overview of media landscape

Tanzania, like many countries in the region, has had an expansion of the media sector despite the macro political and socio-economic challenges that blight the country, which have had a bearing on the media freedom and their operations.

For example, the broadcasting services industry in Tanzania has undergone significant changes and rapid growth since the introduction of the multiparty system as well as trade liberalization. Until 1993 when the Broadcasting Services Act came into force and opened up space for private sector participation, broadcasting services were only being provided by government through Radio Tanzania Dar es Salaam in Tanzania Mainland and Radio Tanzania Zanzibar in the Island. Following the opening up of the broadcasting sector broadcasting services are being provided by several radio and TV stations, that include both government-run and privately owned broadcasters across the country. Same applies to the print and online media. It has been argued that with the increase in the number of media outlets in the country, citizens have been able to engage with their leaders than previously. According to a recent study on the perception of the media, 81 percent out of 100 percent of East Africans rated their media as effective watchdogs. 76 per cent of Tanzanians responded that they are free to say what they think

Print media

The newspaper industry is estimated to have grown to more than 30 daily papers with Global Publishers standing out as the most dominant media house with six titles and an estimated 300,000

³⁸ Parliament of Tanzania, Factsheet No. 1 , the Legislative Process in Tanzania, available at http://www.parliament.go.tz/docs/FACTSHEET_1.pdf

copies selling weekly and reaching 1.5 million readers. It has also been argued that the “yellow press” surpasses the serious media print by far³⁹.

The Africa Media Barometer Tanzania 2012⁴⁰ sums up affordability and reach of newspapers as thus:

Newspapers are relatively affordable to urban citizens, selling for between TZS 500 (US\$ US\$0.32) and TZS 1, 000 (US\$0.63). However, rural distribution is an issue and Newspapers do get outlying areas but are often not on time, arriving two days late due to infrastructural challenges.

The Tanzania Media Product Survey conducted in 2011 by Synovate showed that Mwananchi, a Kiswahili newspaper, had the highest circulation in the country, selling about 40,000 copies each day.⁴¹

Table 2: List of some Newspapers in Tanzania

	Name	Ownership	Language	Orientation
1	24 Tanzania	Private	English	General/development
2	Arusha Raha	Private	Kiswahili	General/development
3	Arusha Times	Private	English	General/development
4	<i>Business Time</i>	Private	English	General/development
5	The Citizen	Private	English	General/political
6	Daily News	Public/Government	English	General/political
7	East Africa News Post	Private	English	General/political
8	The Express	Private	English	General/ political
9	<i>Guardian/The Guardian on Sunday</i>	Private	English	General/political
10	In2EastAfrica	Private	English	General
11	<i>Nipashe/Nipashe Jumapili</i>	Private	Kiswahili	General
12	<i>Majira</i>	Private	Kiswahili	General
13	<i>Uhuru</i>	Private	Kiswahili	Political
14	<i>Mwananchi</i>	Private	Kiswahili	General/political
15	<i>Tanzania Daima</i>	Private	Kiswahili	General/Political
16	<i>Raia Mwema</i>	Private	Kiswahili	General
17	Kafoi Online	Private	English/ Swahili	
18	<i>Kawowo Sport</i>	Private	English	Sports
19	<i>NTA Newstime</i>	Private	English	

³⁹ MCT, 2012.Pg 5.It should be noted that the yellow press is not member to, and regulated by, the MCT. One reason for this state of affairs is that the MCT is a voluntary self regulatory body whereas the yellow press media have not opted to MCT membership (Interview with Manager of Regulations at MCT).

⁴⁰The Africa Media Barometer Tanzania 2012.

⁴¹ Synovate, Tanzania Media Product Survey, 2011.

20	Tanserve	Private	English		
21	Mzalendo	Private	Kiswahili		Political
22	Sunday News	Public	English		General/Political
23	The African	Private	English		General
24	The East Africa Business Week	Private	English		General/Business
25	Habari Leo	Private	Kiswahili		General
26	Mwanasport	Private	Kiswahili		Sports

Source: <http://www.onlinenewspapers.com/tanzania.htm>(accessed on 5 July, 2014)

Radio

As is the case in the sub-Saharan Africa, radio has remained the most popular means of information dissemination in Tanzania since its first introduction in the country by the colonial government in 1951. As the latest figures show the Tanzania Communications Regulatory Authority (TCRA) has licensed dozens of radio stations that are national, regional and community-based. Some are state-run while others are privately owned and commercially driven. However, according to TCRA⁴², while there has been sharp growth in the number of radios in Tanzania, most are based in the country's districts. As of 2012 for instance, only five radio stations had national coverage, 21 regional coverage while 57 radio stations broadcasted in various districts of the country. Radio stations with national reach are the state-owned TBC Taifa (also known as RTD) and TBC FM. Private stations that are national include Radio Free Africa, Radio One and Clouds FM, with Radio Free Africa being the most popular station in Tanzania⁴³.

Out of the 80 radio stations operating in Tanzania, 45 radio stations were commercial and 35 non-commercial (community radios).

Table 3: List of Radio Stations in Tanzania

S/N	NAME	Language	Ownership	Reach	ORIENTATION
1.	Radio One	Kiswahili/English	National (COMMERCIAL)	National	General
2.	Radio Free Africa (RFA)	Kiswahili/English	National (COMMERCIAL)	National	General
3.	Radio East Africa FM	Kiswahili/English	National (COMMERCIAL)	National	General
4.	Clouds Entertainment	Kiswahili/English	National (COMMERCIAL)	National	General
5.	TBC Taifa	Kiswahili/English	National (COMMERCIAL)	National	General

⁴²<https://www.tcra.go.tz> (accessed on 22 October, 2014.)

⁴³ Ibid.

6.	PRT Radio Tanzania	Kiswahili/English	National (COMMERCIAL)	National	General
7.	Radio Kwizera	Kiswahili/English	Regional (COMMUNITY)	Regional	General
8.	Radio Tumaini	Kiswahili/English	Regional (COMMUNITY)	Regional	General/Religious
9.	Passion FM	Kiswahili/English	Regional (COMMERCIAL)	Regional	General
10.	Radio Kiss FM	Kiswahili/English	Regional (COMMERCIAL)	Regional	General
11.	Radio Sauti ya Injili	Kiswahili/English	Regional (COMMUNITY)	Regional	Religious
12.	Radio Maria	Kiswahili/English English	Regional (COMMUNITY)	Regional	Religious
13.	Radio Uhuru FM	Kiswahili/English	Regional (COMMERCIAL)	Regional	General
14.	Radio Mwangaza FM	Kiswahi/English	Regional (COMMUNITY)	Regional	General
15.	Radio Imaan FM	Kiswahi/English	Regional (COMMUNITY)	Regional	General
16.	Capital Radio	Kiswahi/English	Regional (COMMERCIAL)	Regional	General
17.	Times Radio FM	Kiswahi/English	Regional (COMMERCIAL)	Regional	General
18.	Safina Radio FM	Kiswahi/English	Regional (COMMUNITY)	Regional	Religious
19.	Sibuka FM Radio	Kiswahi/English	Regional (COMMERCIAL)	Regional	General
20.	Radio 5 Arusha	Kiswahi/English	Regional (COMMERCIAL)	Regional	General
21.	Radio Ebony FM	Kiswahi/English	Regional (COMMERCIAL)	Regional	General
22.	Radio Kili FM	Kiswahi/English	Regional (COMMERCIAL)	Regional	General
23.	Country FM	Kiswahi/English	Regional (COMMERCIAL)	Regional	General
24.	Classic FM Radio	Kiswahi/English	District (COMMERCIAL)	District	General

25.	Magic FM Radio	Kiswahi/English	District (COMMERCIAL)	District	General
26.	Radio Chemchemi	Kiswahi/English	District (NON-COMMERCIAL)	District	General
27.	Radio Saut FM Stereo	Kiswahi/English	District (NON-COMMERCIAL)	District	General
28.	Abood Radio	Kiswahi/English	District (COMMERCIAL)	District	General
29.	Radio Faraja	Kiswahi/English	District (NON-COMMERCIAL)	District	General/religious
30.	Wapo Radio	Kiswahi/English	District (NON-COMMERCIAL)	District	General
31.	Sunrise FM Radio	Kiswahi/English	District (COMMERCIAL)	District	General
32.	Triple 'A' FM Radio	Kiswahi/English	District (COMMERCIAL)	District	General
33.	Victoria FM Radio	Kiswahi/English	District (COMMERCIAL)	District	General
34.	Praise Power Radio	Kiswahi/English	District (NON-COMMERCIAL)	District	General/Religious
35.	Choice FM Radio	Kiswahi/English	District (NON-COMMERCIAL)	District	General
36.	Radio Upendo	Kiswahi/English	District (NON-COMMERCIAL)	District	General/Religious
37.	Radio Tumaini International	Kiswahi/English	District (NON-COMMERCIAL)	District	General
38.	Mlimani FM Radio	Kiswahi/English	District (NON-COMMERCIAL)	District	General
39.	Morning Star FM	Kiswahi/English	District (NON-COMMERCIAL)	District	General
40.	Radio Sauti ya Quran	Kiswahi/English	District (COMMERCIAL)	District	General
41.	C.G. FM Radio	Kiswahi/English	District (COMMERCIAL)	District	General
42.	Voice of Tabora	Kiswahi/English	District (COMMERCIAL)	District	General
43.	Kasibante FM Radio	Kiswahi/English	District (COMMERCIAL)	District	General

44.	Living Water FM	Kiswahi/English	District (NON-COMMERCIAL)	District	General
45.	Boma Hai Radio	Kiswahi/English	District (NON-COMMERCIAL)	District	General
46.	Kitulo Radio	Kiswahi/English	District (NON-COMMERCIAL)	District	General
47.	Radio Uzima	Kiswahi/English	District (NON-COMMERCIAL)	District	General/Religious
48.	Uplands FM Radio	Kiswahi/English	District (COMMERCIAL)	District	General
49.	Qiblatain FM Radio	Kiswahi/English	District (NON-COMMERCIAL)	District	General
50.	Moshi FM Radio	Kiswahi/English	District (COMMERCIAL)	District	General
51.	Pambazuko FM Radio	Kiswahi/English	District (COMMERCIAL)	District	General
52.	Radio Habari Njema	Kiswahi/English	District (COMMUNITY)	District	General
53.	Mbeya Highlands FM Radio	Kiswahili/English	District (COMMERCIAL)	District	General
54.	Radio Furaha	Kiswahili/English	District (COMMUNITY)	District	General
55.	Bomba FM Radio Station	Kiswahili/English	District (COMMERCIAL)	District	General
56.	Kahama FM Stereo Radio	Kiswahili/English	District (COMMERCIAL)	District	General
57.	Kifimbo Radio Station	Kiswahili/English	District (COMMERCIAL)	District	General
58.	Baraka FM Radio	Kiswahi/English	District (COMMUNITY)	District	General
59.	Generations FM Radio	Kiswahili/English	District (COMMERCIAL)	District	General
60.	Hot FM Radio	Kiswahili/English	District (COMMERCIAL)	District	General
61.	Radio Vision FM	Kiswahi/English	District (COMMERCIAL)		General

62.	Nuru FM Radio	Kiswahi/English	District (COMMUNITY)	District	General
63.	Radio Huruma (HR)	Kiswahi/English	District (COMMUNITY)	District	General
64.	Pride FM Radio	Kiswahi/English	District (COMMUNITY)	District	General
65.	Safari Radio	Kiswahili/English	District (COMMERCIAL)	District	General
66.	Radio Ushindi FM Stereo	Kiswahili/English	District (COMMUNITY)	District	General
67.	Jogoo FM	Kiswahili/English	District (COMMERCIAL)	District	General
68.	HHC Radio Station	Kiswahili/English	District (COMMUNITY)	District	General
69.	Sport FM Radio	Kiswahili/English	District (COMMERCIAL)	District	General
70.	Afya Radio FM	Kiswahili/English	District (COMMUNITY)	District	General
71.	Kwa Neema FM Radio	Kiswahili/English	District (COMMUNITY)	District	General
72.	Info Radio FM	Kiswahili/English	District (COMMERCIAL)	District	General
73.	Planet FM	Kiswahili/English	District (COMMERCIAL)	District	General
74.	MUM FM Radio	Kiswahili/English	District (COMMUNITY)	District	General
75.	Ulanga Radio FM	Kiswahili/English	District (COMMUNITY)	District	General

76.	Top Radio FM	Kiswahili/English	District (COMMUNITY)	District	General
77.	Radio Metro FM Stereo	Kiswahili/English	District (COMMERCIAL)	District	General
78.	Radio Best FM	Kiswahili/English	District (COMMERCIAL)	District	General
79.	Dodoma FM	Kiswahili/English	District (COMMERCIAL)	District	General
80.	Nyemo FM Radio	Kiswahili/English	District (COMMERCIAL)	District	General
81.	Ngurumo ya Upako	Kiswahili/English	District (COMMERCIAL)	District	General
82.	Radio Sengerema	Kiswahili/English	District (COMMUNITY)	District	General
83.	Orkonerei FM Radio,	Kiswahili/English	District (COMMUNITY)	District	General
84.	Fadeco Community Radio	Kiswahili/English	District (COMMUNITY)	District	General

Source: <https://www.tcra.go.tz> (accessed on 22 October, 2014) (save for orientation which is based on observation).

Television

According to the Media Council of Tanzania, there are 26 TV stations in the country. Of these, five had national reach, one was regional while 20 were district-based. Out of the 26 TV stations, 11 were commercial, one public and 14 community based. Television stations,

like radios are mandated under the Tanzania Communication Regulatory Authority regulations to devote 60 percent of their broadcasting time to local content⁴⁴.

Table 4: List of Television stations in Tanzania

Use above to Filter the List				
S/N	NAME OF LICENSEE	LANGUAGE	AUTHORIZED SERVICE AREA AND LOCATION OF BASE STATION	AUTHORIZED SERVICE AREA
1.	Independent Television (ITV)	English/Kiswahili	National (COMMERCIAL) Dar es Salaam	National
2.	Star TV	English/Kiswahili	National (COMMERCIAL) Mwanza	National
3.	Channel Ten Television	English/Kiswahili	National (COMMERCIAL) Dar es Salaam	National
4.	TBC 1	English/Kiswahili	National (COMMERCIAL) Dar es Salaam	National
5.	East Africa Television (EATV)	English/Kiswahili	National (COMMERCIAL) Dar es Salaam	National
6.	Agape Television (ATV)	English/Kiswahili	Regional (COMMUNITY)	Regional
7.	C2C Television	English/Kiswahili	District (COMMERCIAL) Dar es Salaam	District
8.	Dar Es Salaam Television (DTV)	English/Kiswahili	District (COMMERCIAL) Dar es Salaam	District
9.	Abood Television	English/Kiswahili	District (COMMERCIAL) Morogoro	District
10.	Sokoine University of Agriculture Television (SUATV)	English/Kiswahili	District (COMMUNITY) Morogoro	District
11.	CTN Television	English/Kiswahili	District (COMMERCIAL) Dar es Salaam	District
12.	Capital Television	English/Kiswahili	District (COMMERCIAL) Dar es Salaam	District

⁴⁴<https://www.tcra.go.tz> (accessed on 22 October, 2014).

13.	Tumaini Television	English/Kiswahili	District (COMMUNITY) Dar es Salaam	District
14.	Mlimani Television	English/Kiswahili	District (COMMUNITY) Dar es Salaam	District
15.	C G TV Transmission Centre	English/Kiswahili	District (COMMERCIAL) Tabora	District
16.	Tanga City Council Television	English/Kiswahili	District (COMMUNITY) Tanga	District
17.	Mbeya City Council Television	English/Kiswahili	District (COMMUNITY) Mbeya	District
18.	Rungwe District Council Television	English/Kiswahili	District (COMMUNITY)	District
19.	Sumbawanga Town Council Television	English/Kiswahili	District (COMMUNITY) Sumbawanga	District
21.	Radio 5 Arusha	English/Kiswahili	Regional (COMMERCIAL) Arusha	Regional
22.	Radio 5 Arusha	English/Kiswahili	Regional (COMMERCIAL) Arusha	Regional
23.	Radio 5 Arusha	English/Kiswahili	Regional (COMMERCIAL) Arusha	Regional
24.	Radio 5 Arusha	English/Kiswahili	Regional (COMMERCIAL) Arusha	Regional
25.	Tunduru District Council Television	English/Kiswahili	District (COMMUNITY) Tunduru	District
26.	Iringa Municipal Council Television	English/Kiswahili	District (COMMUNITY) Iringa	District
27.	Mbozi District Council Television	English/Kiswahili	District (COMMUNITY) Mbozi	District
28.	Masasi District Council	English/Kiswahili	District (COMMUNITY) Masasii	District

	Television			
29.	Njombe District Council Television	English/Kiswahili	District (COMMUNITY) Njombe	District
30.	Songea Town Council Television	English/Kiswahili	District (COMMUNITY) Songea	District
31.	Iramba District Council TV	English/Kiswahili	District (COMMUNITY) Iramba	District

1.2.2 Internet access

Internet is regarded in Tanzania as a new media.⁴⁵ However, there has been a steady rise in the use of this media which is spurred by TCRA's efforts to enhance access to the Internet in Tanzania. These efforts include TCRA hosting of the National Internet Governance Forum (NIGF) at its headquarters in Dar es Salaam in July, 2012⁴⁶. The Forum was financially supported by TCRA, the Union of Tanzania Press Clubs (UTPC) and Sahara Media Group. The objectives of the Forum were aimed at providing a platform to discuss various issues relating to Internet resource utilization for the benefit of the country. This includes coordinating and regulating Internet usage⁴⁷. Notably, the NIGF is affiliated to the wider East African Internet Governance⁴⁸.

According to statistics, by mid-2012, there were over 5,400 registered **dot tz website domain** names and 24 accredited Internet service providers in the country⁴⁹.

As of December 2013, a total of 17,000,000 mobile phone users were registered with the TCRA and 28,000,000 SIM cards had been sold to users of mobile phone services in Tanzania.⁵⁰ The main telecom operators in the country are Vodacom with 10,023,206 total mobile subscribers, Airtel (8,772, 2'85), Tigo (6, 217, 214), Zantel (1,798,379), TTCL (153,864) and Benson (528).⁵¹

1.2.3 Media Standards/Codes of ethics

Tanzania is one of the leading countries in the region when it comes to matters of media self regulation. In fact, the regulatory mechanism has been regarded as a model for a number of countries that are battling with rolling back state control and regulation of the media. This has been done through the MCT, which is a self media regulatory body. Its mandate according to its constitution includes:

⁴⁵ State of the Media Report, MCT 2012, 8.

⁴⁶ State of the Media Report, MCT 2012, 8.

⁴⁷ State of the Media Report, MCT 2012, 8.

⁴⁸ State of the Media Report, MCT 2012, 8.

⁴⁹ State of the Media Report, MCT 2012, 8.

⁵⁰ TCRA Quarterly Telecom Statistics: Quarter 2 (December 2013) Report.

⁵¹ N. 43 above.

- (a) To promote, assist, safeguard and defend freedom of the media and allied forms of public communication in the United Republic of Tanzania;
- (b) To oversee that journalists, editors, broadcasters, producers, directors, proprietors and all those involved in the media industry in Tanzania adhere to the highest professional and ethical standards;
- (c) To receive and conciliate, mediate and or arbitrate upon complaints from the public, governmental and other bodies and amongst the media inter se against alleged infringements of the Code of Ethics;

Through the MCT, there is a number of codes of ethics which regulate the media industry. According to the MCT website the following codes of ethics are applicable: Code of Ethics for Media professionals (Code of Ethical Practice for Media Managers and Editors)⁵². The compilation of the Code of ethics for media professionals include: Code of Ethics for Media Managers/Editors Code of Ethics for Public Relations Officers & Media Advertising Agents; Code of Ethics for Broadcasters; Code of Ethics for Photographers & Video producers; Code of Ethics for Reporters and the Guidelines for Media Owners/Publishers. In particular, the Code of Ethical Practice for Media Managers and Editors provides as follows:⁵³

⁵²Tanzania Code: Code of Ethical Practice for Media Managers and Editors - at: <http://www.rjionline.org/MAS-Codes-Tanzania-Managers-Editors> accessed on 10 November, 2014).

⁵³See Code of Ethics for Professionals: MCT Code of Ethics at <http://www.mct.or.tz/index.php/tutorials/code-of-ethics-for-professionals> (accessed up to 10 December, 2014).

CODE OF ETHICS FOR MEDIA MANAGERS/EDITORS

MEDIA MANAGERS/EDITORS

Media industry exists to serve the public. To provide this service effectively, managers/editors must maintain editorial excellence and the trust of the audience. Journalistic principles should be observed: accuracy, fairness, balance, full attribution to sources, clear separation of news from analysis, news and analysis from opinion and editorial from advertising content. Editorial independence is the cornerstone of independent and pluralistic media and must be respected in all media. The Managers/Editors should:

1.1 Conflict of Interests

- (a) Remain free of associations and activities that compromise personal integrity or undermines the reputation of the profession.
- (b) Leave the editorial staff to make final decisions regarding any editorial work. In all ways, editorial coverage must be based solely on readers', viewers' and listeners' needs in the view of the editors.

1.2 Professional Competence

Encourage employees to enhance their professional competency through training and further studies. Moreover, the managers/editors should ensure that their staff are updated with new innovations in the communication.

1.3 Salaries and Remunerations

Encourage the media owners to pay their staff well. Hence, there should be a scheme of service. Remunerations and other incentives should be promoted in media houses.

1.4 Gifts

The media managers/editors should refuse gifts, awards, favours, and special treatment from sources, subjects, advertisers or others trying to buy influence.

1.5 Statement of Principles/Standards for Editorial Operations

(a) Editorial function

Constantly pay attention to the editors to make sure that the entire editorial functions, from preparing material for publication to offering a chance for readers and others to respond after the fact is presented fairly and in the readers' best interest.

(b) Comment and Fact

Make proper distinction between reporting facts and conjecture, giving opinions and comments.

(c) Confidentiality

Have a strong obligation to protect against disclosure of the identity of confidential sources. They have also a duty to take reasonable steps to satisfy themselves that such sources are well informed and the information they provide is reliable.

(d) Accuracy and Corrections

- (i) Make sure their publications are guided at all times by accuracy, fairness and balance and should not deliberately mislead or misinform readers by commission or omission.
- (ii) Make sure their publications do not indulge in unfair comment, falsification, distortion or misrepresentation of facts.
- (iii) Whenever it is recognised that an inaccurate, misleading or distorted story has been published; it shall be corrected or clarified promptly, without waiting for a complaint to be raised first.
- (iv) Ensure that corrections are clear and carry an apology to the affected parties. For purpose of clarity, corrections shall apply to errors of fact and inaccuracies while clarifications shall apply to misleading or distorted information.
- (v) Make sure headlines, sub-headings and captions accurately and fairly convey substance of the report they are designed to cover.
- (vi) Do not publish photographs or images which have been manipulated without informing readers of the fact and, where significant, the nature and purpose of manipulation. Those involving situations of grief or shock are to be handled with special consideration for sensibility of those affected

(e) Privacy

- (i) Ensure that publications of information, including pictures, about the private lives or concerns of individuals without their consent is acceptable only if a serious legitimate public interest outweighs their normal human right to privacy.
- (ii) Publishing such material or making inquiries about the private lives or concern of individuals without their consent is only justified where the material concerned ought to be published in the public interest, outweighing the normal right of privacy.
- (iii) 'In the public interest' is not synonymous with 'of interest to the public. Public interest that justifies intrusion must be of serious nature and should not be confused with mere public curiosity. Entry into the public life does not disqualify individuals from the right to conceal their private affairs except where the circumstances of these are likely to affect their performance of, or fitness for the public roles they seek to hold.
- (iv) The overriding public interest relied upon in this and other clauses of the code of ethics include: Detection or exposure of the crime; Protection of the public health and safety; Preventing the public from being seriously misled on an important matter by public statement or action of an individual or instruction.

1.6 Shocking or Emotionally Painful Social Issues

In dealing with social issues of a particularly shocking or emotionally painful nature such as atrocity, violence, drug abuse, brutality, sadism, sexual salacity and obscenity, a special care is needed to present facts, opinions, photographs and graphics with due sensitivity and discretion, subject to its duty to publish in the public interest.

1.7 Plagiarism

(a) Refrain from engaging in plagiarism. Plagiarism consists of making use of another person's material or ideas without proper acknowledgement and attribution of the source of those ideas or material.

(b) Words directly quoted from sources other than the writer's own reporting shall be attributed. In general, when other work is used as the source of ideas for stylistic inspiration the final report shall be clearly different from the original work.

(c) The editor shall take final responsibility to ensure that published contents do not contain plagiarized material and that any borrowed materials are properly attributed to the rightful author.

1.8 Feedback Mechanism

Ensure that their publications are accessible to readers, and should arrange for appropriate feedback, which is treated responsibly if published. The standards apply to contact information, letters to the editor, corrections and internal complaints.

1.9 Discrimination

Ensure publications do not place gratuitous emphasis on gender, religion, minority groups, sexual orientation, age, race, colour or physical or mental disability. Nevertheless, where it is relevant and in the public interest, publication may report and express opinion on these.

1.10 Subterfuge

Make sure their journalists use straightforward means of obtaining information and pictures, normally identifying themselves when doing so. Subterfuge can be justified only in rare circumstances when the material sought to be published in the public interest but could not be obtained in any other way.

1.11 Crime

(a) Do not glamourize crime and anti-social behaviour, especially involving violence. They shall not report, portray or detail crime in a manner which on reasonable judgment would likely be able to encourage or incite imitation or experiment. Editors should pay particular regard to the context, probable effect and the likely readership of such item.

(b) Publications shall not, unless it is both legally permitted and in the public interest name victims of sex crimes; knowingly name any young person accused of a criminal offence who is below the age of 18 and who has no previous convictions; identify without consent relatives of a person accused or convicted of a crime.

1.12 Defamation

(a) Ensure that libel is avoided, and that the honour of the person is respected.

(b) Ensure that the organ reports fairly and accurately the outcome of an action of defamation to which it has been a party.

1.13 Religion

Approach and refer to religious bodies in a balanced, fair and seemly manner, recognising the respect and reverence in which they, their representatives and their beliefs are likely to be held adherents.

Appendix

Definition of Concepts

1. Media Managers: Are persons who realise the corporate purpose as defined by the owners or publishers.

2. Media Editors: Persons who deal with the process of selecting or preparing language, images, sound, video or film through the process of corrections, condensation, organisation and other modifications in various media. The chief editor is responsible for the content of publication. He/She sets the publication standards for performance as well as for motivating and developing the staff.

The MCT uses its code in regulating and mediating disputes between parties on media related disputes. The appropriate complaint mechanism and adjudication process as well as sanctions of the MCT are contained in the Media Council of Tanzania (Complaint Hearing Procedure) Regulations of 2009 along with the Media Council of Tanzania (Complaints Handling) Procedure, 2009. These Regulations came into operation on February 9, 2010 after being adopted by the Governing Board.

Part 5(1) of the MCT (Complaint Handling Procedure of 2009 provide for the method of making complaint in elaborate terms as follows:

5-(1) Every complaint under these Rules shall be made in writing.

(2) The complaint, shall be addressed to the office of the Secretariat or to the Chairman and shall be signed or thumb printed by the complainant or his/ her agent.

(3) Where the complaint is made orally, or the complainant cannot read or write, the complaint shall be reduced into writing by a designated officer of the Secretariat to whom the complaint is made or by any other person chosen by the complainant, and that person shall reduce the fact in **MCT Form No 1**.

(4) A person who reduces into writing the oral complaint of any person shall:-

(a) read over and explain the contents to the complainant;

(b) declare on the document that the complainant has fully understood or appeared to understand and appreciate the contents;

(c) cause the complainant to append his/her signature or thumbprint to the bottom of each page of the document.

According to regulation 8 of MCT (Complaints Handling) Procedure, 2009 Regulation there is a set minimum period within which the complaint should be lodged to the Ethics Committee as established by article 12(a) of the Media Council of Tanzania Constitution. Regulation 8(1) provides thus:

8(1) A complaint shall be lodged with the Committee within 6 months from the date when the complainant had knowledge of the alleged misconduct or breach of the Code of Ethics and professional conduct.

(2) The Council may still upon application by the complainant accept a complaint which is not lodged with the Council within the time stipulated in sub-regulation(1) if-

(a) for the purposes of ensuring that the ends of justice are met, it is otherwise desirable to deal with the complaint than rejecting it; or

(b) the complaint is of social/public importance; or considering the nature of the complaint and circumstances surrounding the complaint, the Committee is satisfied that it should deal with such complaint.

Moreover regulation 9 provides for lapse of complaint in cases where the complainant does not pursue his complaint and indicates to lose interest in the matter either expressly or by conduct. Therefore regulation 9 provides that:

(1) Where a complainant fails or neglects to respond to communication from the Council within one month from the date of such communication, the Committee may consider the complaint to have lapsed.

(2) Where a complaint has lapsed under sub-regulation (1), the Council upon good cause shown on application, may restore the complaint.

However, as is the case on ordinary courts of justice a lapsed complaint may still be revived should good cause be shown by an interested party that the party is still interested in the matter despite lack of communication as required.

This is taken care of by regulation of 10 of the Complaints Handling Procedure Regulations. The regulation provides as follows:

(2) Where a complaint has lapsed under sub-regulation (1), the Council upon good cause shown on application, may restore the complaint.

During the dispute resolution process the Committee observed rules of natural justice for instance when taking evidence but shall not be bound by any legal or technical rules or evidence applicable to proceedings before the courts; and all proceedings shall be conducted informally and expeditiously.⁵⁴

The remedies that the MCT may provide include publishing a statement of apology by the offender and a right of reply by the complainant. About 18-25 cases per year are reported to the MCT and that compliance rate is over 90%.⁵⁵ For any defendant who ignores attending mediation at MCT, the MCT then advises the complainant to proceed to the court, where MCT also attends as *amicus curie*. However, if the defendants attend and in cases where there is breach of ethics by media personnel the MCT tries to mediate by explaining to the complainant the level of media professionalism in the country and the level of professional growth of the media industry and the need for tolerance in addition to the remedies .

Many people find the MCT dispute resolution procedure beneficial because it takes only three months compared to the court process which normally takes a very long time to be finalised.⁵⁶ The court route is also disadvantageous in that the cost is high and while the matter is being dealt with the reputation of the complainant will remain at stake for the whole period of the court process.

⁵⁴ See Regulation 23 of the MCT (Complaint Hearing Procedure) Regulations, 2009.

⁵⁵ Interview with the Manager of Regulations at MCT.

⁵⁶ Interview with the MCT Manager of Regulations at the MCT headquarters in Dar es Salaam.

Further, regulations 23 to 27 of the MCT (*Complaint Hearing Procedure*) Regulations 2009 provide for further provisions in respect of regulating the dispute resolution mechanism as follows:

24. The Committee may permit the parties to submit oral or written arguments for the purpose of justice within such time limits as the Committee may determine.

25(1) After the conclusion of the enquiry, the parties may make oral or written submissions, after which the Committee shall fix a reasonable date for its decision.(2) All rulings and decisions of the Committee shall be by majority vote.

26. The proceedings of the enquiry shall be open to the public unless otherwise directed by the Committee; and the reason for the direction shall be recorded in writing.

Apart from the MCT's Code of Ethics, there have been efforts to adopt a gender specific code of conduct for media in the last two years. This code was developed by the Gender Media in Southern Africa Tanzania Network (GEMSAT). This will be basically an elaboration of some of the gender specific provisions contained in the MCT Code.

Further on May 3, 2012, the Media Owners Association of Tanzania (MOAT) agreed on its own code of conduct and that there must be a separation between owners and journalists, with owners not interfering in editorial matters⁵⁷. This is a separate code from the MCT code.

Section Two: Overview of legislation that criminalises expression

2.1 Overview of laws in place

There are several laws that negatively impact on freedom of expression in Tanzania. Some of the laws are specifically targeted at the media while others indirectly impact on the media and the right to free expression. These include:

2.1.1 The Newspaper Act of 1976

The Act has a number of sections that erode freedom of expression in Tanzania. They include:

Sedition

The Newspaper Act limits freedom of the media by containing the law of sedition under Sections 31 to 35 which makes it an offence to cause disaffection among people or to raise discontent against the state or relevant authority. Under the law, every person shall be deemed to intend the consequences, which would naturally follow from his conduct.

Publication of false news which is likely to cause fear and alarm to the public

The Newspaper Act 1976 also allows the Minister to prohibit publication of any newspaper if he is of the "opinion that it is in the public interest or in the interest of peace and good order so to do"⁵⁸. The law also grants a minister powers to ban or suspend newspapers for public interest, peace and good order⁵⁹. Conviction under this provision of the Newspaper Act attracts a criminal liability.

⁵⁷ Africa Media Barometer, 9. Considering the newness of the code no information could be obtained on its effectiveness at the time of writing.

⁵⁸ Newspaper Act 3 of 1976 sec 25

⁵⁹ Newspaper Act 3 of 1976 sec 25

Libel and criminal defamation to dignitary

The Newspapers Act contains provisions of criminal defamation in Sections 38 to 47. It criminalises publication of material that is deemed defamatory to an individual/person. The law also provides for redress to victims of defamation. The law essentially relates or covers natural persons as opposed to institutions like the government or corporations.

Incitement to violence

Another offence under the Newspaper Act of 1976 is incitement to violence, which essentially means that the publication of an article may be found illegal if its deemed to be inciting people into violence.

Other laws

2.1.2 Prevention and Combating of Corruption Bureau Act 21, 2007

Prevention and combating of corruption is one of the pieces of legislation which limit freedom of expression by criminalizing any discussion, reporting or debate on any corruption matter which is under investigation including disclosure of identity.⁶⁰

2.1.3 National Security Act 3 1970

The National Security Act was enacted to control security matters in the country but now stands as a threat to the enjoyment of freedom of expression through its various provisions such as those relating to espionage, which attracts life sentence.

2.1.4 Prevention of Terrorism Act 21 2002

Following the 9/11 attack on Twin Towers, the global perception of terrorism took a new dimension whereby states under the pressure of international community embarked on a legislative processes apparently aimed at combating terrorism. Tanzania is one of the countries that enacted the Prevention of Terrorism law. The said law⁶¹ provides the widest possible definition of the presumed acts of terrorism, which impact negatively on freedom of expression and the work of the media.

2.1.5 Penal Code Cap 16 of 1945

It is a general law establishing a code of criminal law. It provides for several offences and associated sentences. The law has sections that impact on freedom of expression in Tanzania.

Section 390 of the Penal Code provides for the offence of solicitation or inciting another to commit an offence. The provision states as follows:

390. Any person who solicits or incites another to commit an offence is guilty of a misdemeanour notwithstanding that the solicitation or incitement has no effect.

This provision is likely to be used by the police against unpopular speeches and statements.

⁶⁰ Mireny JP Media Role in Fighting Corruption, 2009.

⁶¹ Prevention of Terrorism Act 21 2002 sec 4

2.1.6 Section 83 of the Prisons Act, 34 of 1967

The law seeks to prohibit publication of material that is deemed to cast the prison services in bad light by imposing criminal sentences.

2.1.7 The Regional Administration Act (Act No. 19 of 1997)

Sections 7 and 15 have been used by regional commissioners and district commissioners to infringe the rights and freedoms of journalists. Such provisions were also included in the report of the late Nyalali, CJ (as he then was) as the laws that infringe human rights.

2.1.8 The Public Leadership Code of Ethics Act, (Cap. 398, R.E. 2002)

The Act among others contains section 13(1) which guarantees the breach of the principles of natural justice “ nemo Judex in causa sua” meaning no” one shall stand a judge on his own cause”. Moreover, section 17(1)(c) contradicts the right to freedom of expression which is guaranteed by article 18 of the Constitution of the United Republic of Tanzania, 1977 and promotes secrecy in the government, hence limiting freedom of expression. Media practitioners find it difficult to report on governance issues such as public fund spending and salaries since all government information is termed confidential.

2.1.9 The Police Force and Auxiliary Police Act, Cap. 322, R.E. 2002

Sections 43, 44, 45 and 46 provide too much subjective discretionary powers to police officers and do not lay down objective criteria for issuing stop orders by the police. Such powers may be arbitrarily exercised.

Section 43 provides:

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 forty eight 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) the place and time at which the meeting is to take place; (b) the purpose in general of the meeting; and (c) such other particulars as the Minister may from time to time, by notice published in the *Gazette*, specify.

(2) Where a person submits a notification in accordance with subsection (1), he may proceed to convene, collect, form or organise the assembly or procession in question as scheduled unless and until he receives an order from the Police Officer in charge of the area directing that the assembly or procession shall not be held as notified.

(3) A Police Officer to whom a notification has been submitted pursuant to subsection (1), shall not give a stop order under subsection (2) in relation to the notification unless he is satisfied that the assembly or procession is likely to cause a breach of the peace or to prejudice the public safety or the maintenance of public order or to be used for any unlawful purpose.

(4) The officer in charge of Police may stop or prevent the holding or continuance of any assembly or procession in a public place which has been convened, collected, formed or organised otherwise than in accordance with the notification under subsection (1) or in regard to which any particular specified by the Minister under paragraph (c) of subsection (1) has been or is being contravened and may, for any of the purposes aforesaid, give or issue such orders as he may consider necessary or expedient, including orders for the dispersal of any such assembly or procession as aforesaid.

(5) The Minister may by order declare that the provisions of this section shall not apply to any assembly or procession convened, collected, formed or organised exclusively for one or more of or a combination of one or more such purposes as may be specified in such order.

(6) Any person who is aggrieved by the terms of a stop order issued under subsection (3) or, any order given by a police officer under subsection (4), may appeal to the Minister whose decision on the matter shall be final.

44. The officer in charge of Police may stop or prevent the holding or continuance of any assembly or procession in any place whatsoever if, in the opinion of such officer the holding or continuance, as the case may be, of such assembly or procession breaches the peace or prejudices the public safety or the maintenance of peace and order and may, for any of the purposes aforesaid, give or issue such orders as he may consider necessary or expedient, including orders for the dispersal of any such assembly or procession as aforesaid.

45. Any assembly or procession in which three or more persons attending or taking part neglect or refuse to obey any order for dispersal given under the provisions of subsection (4) of section 43 or section 44, shall be deemed to be an unlawful assembly, within the meaning of section 74 of the Penal Code.

46(1) Any person who—

(a) neglects or refuses to obey any order given or issued under the provisions of subsection (4) of section 43 or section 44; or

(b) contravenes any particular specified by the Minister in accordance with paragraph (c) of subsection (1) of section 43, commits an offence and may be arrested without a warrant and shall be liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

(2) Subject to the provisions of any order made under subsection (5) of section 43, where any assembly or procession in a public place has been convened, collected, formed or organised otherwise than in accordance with subsection (1) of section 43—

(a) every person taking part in convening, collecting, forming or organising such assembly or procession commits an offence and may be arrested without a warrant and shall be liable on conviction to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment;

(b) every person attending such assembly or taking part in such procession, who knows or has reasons to believe that such assembly or procession has been convened, collected, formed or organised otherwise than in accordance with the provisions of subsection (1) of section 43, commits an offence and may be arrested without a warrant and shall be liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

2.2 Detailed Description of each law and whether and how they have been used

2.2.1 Newspaper Act

The law is one of the most vicious acts that curtail freedom of expression in Tanzania as it contains several sections that threaten the exercise to this constitutionally guaranteed freedom.

2.2.1(A) Ministers' Power

Besides the bureaucratic and administrative nightmares imposed under the Act's Sections 7 to 10 and the empowerment of police to seize newspapers that violate the administrative and operational requirements under Section 22, the law also provides for discretionary powers to the responsible Minister to ban or suspend the newspaper under the guise of public interest and order. Section 25 states:

25(1) Where the Minister is of the opinion that it is in the public interest or in the interest of peace and good order so to do, he may, by order in the Gazette, direct that the newspaper named in the order shall cease publication as from the date (hereinafter referred to as "the effective date") specified in the order.

(2) Every order made under subsection (1) shall specify-

(a) the title or name of the newspaper in respect of which it is made;

(b) the names of the proprietor, printer and publisher of such newspaper:

Provided that no such order under subsection (1) shall be invalid by reason of non-description or misdescription of the proprietor, printer or publisher or any of them.

(3) Where an order under subsection (1) is made in respect of any newspaper-

(a) any person who, on or after the effective date, prints or publishes or causes to be printed or published the newspaper named in the order shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding twenty thousand shillings or to be imprisonment for a term not exceeding four years or to both such fine and imprisonment;

(b) any person who, on or after the effective date, sells, offers for sale or exposes for sale, distributes or exhibits, or causes to be exhibited in any public place any copy or part of a copy of the newspaper named in the order, whether or not such copy or part was printed or published prior to the effective date, be guilty of offence and shall be liable upon conviction to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

The law also grants the President similar discretionary powers under Sections 27 and 28. They stipulate:

27(l) If the President is of the opinion that the importation of any publication would be contrary to the public interest he may, in his absolute discretion, by order, prohibit the importation of such publication, and in the case of a periodical publication may, by the same or a subsequent order, prohibit the importation of any part or future issue thereof.

(2) If the President is of the opinion that the importation of the publications of any specified person would be contrary to the public interest, he may, in his absolute discretion, by order, prohibit, either absolutely, or subject to specified exceptions or conditions. the importation of the future publications of such person.

28 (1) Any person who imports, publishes, sells, -offers for sale, distributes or produces any publication, the importation of which has been prohibited under section 27 or any extract therefrom, shall be guilty of an offence and shall be liable upon conviction for the first offence to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment and for a subsequent offence to a fine not exceeding fifteen thousand shillings or to imprisonment for a term not exceeding three years; and such publication or extract therefrom shall be forfeited to the Republic.

(2) Any person who, without lawful excuse, has in his possession any publication the importation of which has been prohibited under section 27 or any extract therefrom, shall be guilty of an offence and shall be liable upon conviction for the first offence to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment, and for a subsequent offence to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding two years; and such publication or extract therefrom shall be forfeited to the Republic.

By giving wide discretionary powers to a minister and the President to determine what is suitable for publication, without any checks and balances or any judicial oversight, makes the responsible minister a complainant, prosecutor and a judge of his own case, which is against the well established rules of natural justice. The fact that there is no clear definition on what constitutes public order or interest makes the application of the law susceptible to abuse grounded on subjective interpretation of published newspaper content. While it is imperative for newspapers to be ethical and avoid inciting language, barring their operations based on a subjective individual judgment is not unreasonable in a democratic society but antithetical to the basic tenets of promoting and protecting freedom of expression through diverse and secure communication platforms.

2.2.1(B) Sedition

Sections 31 and 32 lists offences relating to seditious practices and penalties for persons that commit the offences uttering of seditious words, and printing, publishing, selling, distributing, importing and reproducing seditious publications.

They provide as follows:

31(1) A "seditious intention" is an intention-

(a) to bring into hatred or contempt or to excite disaffection against the lawful authority of the United Republic or the government thereof; or

(b) to excite any of the inhabitants of the United Republic to attempt to procure the alteration, otherwise than by lawful means, of any other matter in the United Republic as by law established; or

(c) to bring into hatred or contempt or to excite disaffection against the administration of justice in the United Republic; or

(d) to raise discontent or disaffection amongst any of the inhabitants of the United Republic; or

(e) to promote feelings of ill-will and hostility between categories of the population of the United Republic.

(2) An act, speech or publication is not seditious by reason only that it intends-

(a) to show that the government has been misled or mistaken in any of its measures; or

(b) to point out errors or defects in the government or constitution of the United Republic as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or

(c) to persuade any inhabitants of the United Republic to attempt to procure by lawful means the alteration of any matter in the United Republic as by law established; or

(d) to point out, with a view to their removal, any matters which are producing, or have a tendency to produce feelings of ill-will and enmity between different categories of the population of the United Republic.

(3) In determining whether the intention with which any act was done, any words were spoken or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and in the circumstances in which he so conducted himself.

32(1) Any Person who-

(a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;

(b) utters any words with a seditious intention;

(c) prints, publishes, sells, offers for sale. distributes or reproduces any seditious publication;

(d) imports any seditious publication, unless he has no reason to believe that it is seditious,

shall be guilty of an offence and shall be liable upon conviction for the first offence to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment, and for a subsequent offence to a fine no exceeding fifteen thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; and such publication shall be forfeited to the Republic.

(2) Any person who, without lawful excuse, has in his possession any seditious publication shall be guilty of an offence and shall be liable upon conviction for the first offence to a fine exceeding five thousand shillings or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment, and for a subsequent offence to a fine not exceeding ten thousand shilling or to imprisonment for a term not exceeding two year or to both such fine and imprisonment.

(4) A printing machine which has been, or is reasonably suspected of being, used for or in connection with the printing or reproduction of a seditious publication may be seized or otherwise secured by a police officer pending the trial and conviction or discharge or acquittal of any person accused of printing or reproducing any seditious publication; and, when any person is convicted of printing or reproducing a seditious publication, the court may, in addition to any other penalty which it may impose, order that the printing machine on which the publication was printed or reproduced shall be either confiscated for a period not exceeding twelve months, or forfeited to the Republic, and may make such order whether or not the person convicted is, or was at the time when the publication was printed or reproduced, the owner of the printing machine.

(5) A printing machine forfeited under subsection (4) shall be sold, and the proceeds less expenses shall be paid into the Treasury.

(6) When the proprietor, publisher, printer or editor of a newspaper is convicted of printing or publishing a seditious publication in a newspaper, the court may, in addition to any other penalty it may impose, and whether or not it has made any order under subsection (4) make an order prohibiting any further publication of the newspaper for a period not exceeding twelve months.

(7) The court may, at any time, on the application of the Attorney General and on taking such security, if any, for good behaviour as the court may see fit to order, revoke any order made by it for forfeiting or confiscating a printing machine or prohibiting further publication of a newspaper.

(8) A court before ordering the forfeiture or confiscation of a printing machine under this section shall be satisfied that the printing machine was the printing machine upon which the seditious publication was printed or reproduced.

(9) In any case in which a printing machine has been secured or confiscated under this section, the Inspector General of police may, in his discretion, cause-

- (a) the printing machine or any part of it to be removed; or
- (b) any part of the machine to be sealed so as to prevent its use:

provided that the owner of the printing machine or his agents shall be entitled to reasonable access to it to keep it in working order.

(10) The Inspector General of Police or any police officer in pursuance of the powers conferred by this section shall not be liable for any damage caused to a printing machine, whether by neglect or otherwise, not being damage wilfully caused to the machine

(11) Any person who uses or attempts to use a printing machine secured or confiscated under subsection (4) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding fifteen thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment,

(12) Any Person who prints or publishes a newspaper in contravention of an order made under subsection (6) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding fifteen thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(13) In this section the expression "Printing machine" includes a printing Press, copying press, type-setting machine, photographic, duplicating or engraving apparatus, or other machine or apparatus used for or in connection with printing or reproducing publications, and the type, appurtenances and equipment thereof.

As the clauses above show, whether statements uttered are truthful is not a defence. What matters is whether there was a seditious intention. This is a blatant violation of citizens' right and freedom of expression. Raising disaffection against those in office is part of a democratic conduct. The enjoyment of freedom of expression in modern democracy includes the right to question, challenge or express dissenting views on all matters of the state. It is through such free expression that citizens can formulate informed opinion about the affairs of their country. It is for these reasons that the law like other acts cited in this report is an archaic piece of legislation that does not belong to a democratic society which subscribes to international standards on the promotion of civil liberties. This is because the law blurs the line between sedition and criticism simply to insulate those in office from criticism. It is unjustifiable in a modern democracy to try and stifle citizenry criticism for it is every citizen right to challenge their government's structures and administration of their country's affairs in order to hold it to account. The Tanzanian constitution, the African Charter on Human and People's Rights as well as the ICCPR, among other instruments to which Tanzania is state party, protect these liberties.

2.2.1(C) Publication of false statement likely to cause fear and alarm in public

This is one of the offences contained in the Newspaper Act of 1976, which also causes chilling effects in the exercise of freedom of expression in Tanzania. Section 36 criminalises publication of false statements that may be deemed to cause public alarm as thus:

Any person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding fifteen thousand shillings Or to imprisonment or a term not exceeding three years or to both such fine and imprisonment.

This is one of the laws where a citizen can be punished for not causing any harm but the possibility that they may cause harm. The prosecution simply needs to establish that a publication may likely cause perceived consequences and not the causal effect of the publication.

2.2.1(D) Incitement to Violence

Section 37 proscribes publication of and making a statement which appear to be intended to cause death, physical; injury to person, certain community of persons which is likely to lead to destruction or damage of any property.

It states:

- (1) Any person who, without lawful excuse, prints, published or to any assembly makes any statement indicating or implying that it would be incumbent or desirable to do without lawful authority any act calculated to-
 - (a) bring death or physical injury to any person or to any category or community of persons; or
 - (b) lead to destruction or damage of any property, shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding fifteen thousand shillings or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.
- (2) For the purposes of this section "an assembly" means a gathering of three or more persons.
- (3) A person shall not be prosecuted for an offence under this section without the written consent of the Director of Public Prosecutions.

While it is incumbent on the State to protect and secure lives of its citizens from any harm that may be caused by peaceful conduct, this provision is broadly formulated that it can be used to criminalise even a harmless statement so long as it is narrowly interpreted otherwise especially in a heated political context where those in office feel under pressure.

2.2.1(E) Libel and Criminal Defamation

Sections 38 to 47 of the Newspaper Act provide for libel and criminal defamation thereby imposing criminal liabilities for merely expressing oneself. They stipulate:

38. Any person who, by print, writing, painting, effigy or by any means otherwise than solely by gestures, spoken words or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, shall be guilty of the offence termed "libel".
 39. Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation, and it is immaterial whether at the time of the publication of the defamatory matter the person concerning whom such matter is published is living or dead: Provided that no prosecution for the publication of defamatory matter concerning a dead person shall be instituted without the written consent of the Director of public prosecutions.
 - 40(l) A person publishes a libel if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed, to be dealt with, either by exhibition, reading, recitation, description, delivery or otherwise, so that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.
- (2) It is not necessary for libel that the defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person alleged to be defamed can

be collected either from the alleged libel itself or from any extrinsic circumstances or partly from the one and partly from the other means.

46. Any person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt any foreign sovereign ruler, ambassador or other foreign dignitary with intent to disturb peace and friendship between the United Republic and the country to which such ruler, ambassador or dignitary belongs, shall be guilty of the offence of libel.

47. Any person convicted of the offence of libel under this Act shall be liable to a fine not exceeding ten thousand Shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

These provisions cast a wide net of criminal liability on citizens and the media for defamation, which can be best addressed through civil remedies. Many civilized and democratic societies have repealed criminal defamation laws in line with international instruments on freedom of expression. This is because one main problem with the law is that its breach may result in harsh sentences such as jail terms, heavy fines or both for simply exercising one's right to express their opinion. While sentences may be suspended as is the case in many instances, that also sends a chilling effect on the accused as any violation within the prescribed time period may result in the imposition of the sanction. With such heavy consequences for exercising the right to freedom of expression the media is bound to self-censor and abdicate their watchdog role. As Article 19 argued;

The clear view of both international jurisprudence and of the international bodies that have considered the matter is that the imposition of custodial sanctions through criminal defamation laws is disproportionate and unnecessary to protect individual reputations, particularly when alternative measures – including apologies, corrections and the use of the right of reply – can effectively address any harm to reputation without exerting a chilling effect on freedom of expression⁶².

Other laws

2.2.2 National Security Act

Publishing Classified Information

This is an Act that relates to issues to do with state security such as espionage, sabotage and other activities prejudicial to the interests of Tanzania. The Act also contains a provision that relates to freedom of expression. This is section 5, which prohibits the communication or leaking of classified information.

The section states:

(1) Any person who communicates any classified matter or causes the leakage of such classified matter to any person other than a person to whom he is authorised to communicate it or to whom it is in the interests of the United Republic his duty to communicate it commits an offence and shall be liable on conviction to imprisonment for a term not exceeding twenty years.

(2) In a prosecution for a contravention of subsection (1) it shall be no defence for the accused person to prove that when he communicated the matter he did not know and could not reasonably have known that it was classified matter.

⁶² Article 19 report 'Briefing note on Criminal Defamation', 2009

Classified matter is defined under Section 2 of the National Security Act to include any information or material that the authorized officer declares as classified. The Act provides:

Considering the fact that the Act does not state any criteria upon which the authorized officer may base the classification of any matter, makes the application of the provision subject to abuse. For example, as noted by the interviewees for the research who included media practitioners, editors, news broadcasters, government often uses this provision to embargo almost all documents as confidential.

2.2.3 Prevention and Combating of Corruption Act, No. 21 of 2001

The current legislation for preventing and combating corruption in Tanzania replaced the old Prevention of Corruption Act of 2002 and came into force on July 1, 2007 after President Jakaya Kikwete assented to it, as announced in Government Notice No. 153 of 2007. However the media stakeholders have accused to the law as not delivering to the expectations of the public and particularly media reporters in respect to creating conducive environment necessary for dealing with the menace of corruption. One of the cited provisions in this regard is section 37 which creates an offence in respect of revealing to the person who is the subject of corruption offence related investigation of that fact or to the public the identity of such a person or any detail of such investigation. The section further provides for a penalty for commission of an offence relating to revealing of identity of a person subject to investigation or any detail of such investigation whereas the said penalty is Tanzanian shillings one hundred thousand shillings or to imprisonment for one year or to both.

The section is quoted below as follows:

37(1) Any person who knowing or suspecting that an investigation in respect of an offence alleged or suspected to have been committed under this Act or any other law relating to corruption is taking place, without lawful authority or reasonable excuse, discloses to the-

- (a) person who is the subject of investigation the fact that he is so subject or any detailed of such investigation; or
- (b) public, section of the public or any particular person the identify of the subject person or the fact that the subject

person is so subject or any details of such investigation, commits an offence and shall be liable on conviction to a fine of one hundred thousand shillings or to imprisonment for one year or to both.

(2) Subsection (1) shall not apply to the disclosure of investigation where-

- (a) a warrant has been issued for the arrest of the subject person;
- (b) the subject person has been arrested whether with or without warrant;
- (c) the subject person has been required to furnish a statement in writing by a notice served on him under this Act; and
- (d) the subject person has been summoned and or his statement recorded.

(3) Without prejudice to the generality of the expression "reasonable excuse" referred to in subsection (1), a person referred to shall have a reasonable excuse as regards to disclosure of any of the descriptions mentioned in that subsection (1) if, but only to the extent that, the disclosure reveals-

- (a) unlawful activity, abuse of power, serious neglect of duty, or other serious misconduct by the Director General, a Director or any officer of the Bureau; or (b) a serious threat to public order or to the security of the United Republic or to the health or safety of members of the public.

2.2.4 Prevention of Terrorism Act 21 2002

Following the rise in world terrorism, states have come under immense pressure and embarked on legislative processes apparently aimed at combating terrorism. Tanzania is one of the countries that have been hit by incidences of terrorism and hence, in a bid to address the menace. Thus, the country enacted the Prevention of Terrorism law. The law provides the widest possible definition of acts of terrorism, which impacts negatively on freedom of expression and by extension the work of the media. For example, by banning participation in a meeting that could be perceived to have been arranged for terrorism purposes can inhibit a journalist work to uncover stories for their readers. For instance, a journalist could fall foul to the law if attends a press conference of gathering that may be addressed by a terrorist group. Further, Section 9 of the Act proscribed possession of unauthorized articles or information. Freedom of expression cannot be fully enjoyed without information. Thus, criminalising possession of information under the fight against terrorism ultimately impacts negatively on the right to exercising the right to free expression.

Section 9 of the Prevention of Terrorism Act No. 21 of 2002 provides as follows:

S.9(1) A person shall commit an offence under this section if who is in possession of any code, password, sketch, pin, model, note or other document, article or information which relates to or is used in a protected place or anything in that place, in contravention of this Act or the Protected Places and Areas Act, 1969 'or which has been entrusted to that person in confidence by any person holding office, or he had access to office from or which he has obtained 'or to which that person had access owing to the position or office held by him or as a person who is or was party to a contract with the Government.

(2) A person who is in possession of anything specified under sub-section (1), and which uses it for a terrorist intention or for any purpose prejudicial to the safety or interest of the United Republic; or communicates such information to any person other than a person to whom there exist an authority to communicate it or to whom it is in the interest of the United Republic to communicate it; or fails to take proper care of, or so conducts himself as to endanger the safety of that information; or retains the sketch, plan, model, note, document or article when he has no right or when it is contrary to his duty so to do, or fails to comply with any lawful directions with regard to the return or disposal of such things; or (e) uses anything described in paragraphs (a) 3 (b), (c) or (d) for terrorist purposes, commits an offence against this Act.

(3) Any person who receives any code, password, sketch, plan, model, note or other document, article or information, knowingly or having reasonable grounds to believe at the time when receives it that the same is communicated to him in furtherance of or rendering support to terrorist act in contravention of the provisions of this Act unless a proof exist that such communication was against his wish, commits an offence.

Such a wider definition may inhibit any innocent citizen, leave alone media stakeholders. It is argued that with such laws, with wider definition of the acts of terrorism, it makes any reasonable person be cautious on what he says or writes in order to avoid the consequences of the law.

Further the said law⁶³ talks about arranging or participating on the terrorist meeting as an offence but we all know that meetings are part and parcel of freedom of expression. In some incidences, journalists depend much on the meetings in form of press conferences or otherwise without necessarily knowing that the organizer of the said meeting is a terrorist or belong to the terrorist

⁶³ Prevention of Terrorism Act 21, 2002 sections 5 & 26

group. Even offering moral support to terrorist group may be an act of terrorism⁶⁴. But the challenge may be what do we mean by moral support? Can an article in newspaper be described as moral support? If the answer is on affirmative, then the criminal liability net is casted very wide here.

Section nine of the Prevention of Terrorism Act 2002 deals with possession of unauthorized articles or information. Freedom of expression is not complete unless someone collect or possess information and process it ready for dissemination but here we meet another hurdle of which, possessing such information is criminalized at the expense of the freedom of expression.

2.1.5 Penal Code Cap 16 1945

Although the law generally establishes a code of criminal law and provides for several criminal offenses and related sanctions, it also contains provisions that negatively affect the exercise of freedom of expression. These relate to raising discontent, intimidation and inciting the commission of a crime. But one element of the Code that is broadly formulated and susceptible to abuse to erode freedom of expression in that which relates to religion. The law prohibits the utterance of words that may be deemed to injure the religious feelings of others.

Like the other above mentioned laws, it was not made purposely for controlling the media professionals but its chilling effects is well known now on freedom of expression, particularly in areas such as; raising discontent and ill-will among different classes in the community⁶⁵; Intimidation⁶⁶ which is punishable by one year imprisonment; and solicitation or inciting the commission.

The most notorious of all is contempt of the court⁶⁷, which has caused lots of draw back to the freedom of expression for its profound chilling effects associated thereto. The said provision may be used to compel a disclosure of a source before a court of law or control the publication of the court proceeding which may be very important in informing the public what is going on in that particular matter. The violation of this provision attract a fine of Tshs500/=⁶⁸ or an imprisonment of six months.

Recently, religion has been used as one of the mechanism to limit freedom of expression. Such a limitation, in most cases is supported by the law. The Penal Code⁶⁹, establishes an offence of uttering words with intent of wounding the religious feelings of others, which is punishable by one year imprisonment. The said provision was tested in the case of *Hamis Rajabu Dibagula vs. Republic*⁷⁰, where the court of Appeal of Tanzania, Samatta, CJ allowed the appeal on the basis that the words uttered by the appellant that "Jesus is not son of God, is just a name like any other name" is what the appellant believed according to his religion and there is no any proof that those words injured the feelings of any person. The learned judge also ruled that there were no reasons in the trial court judgment when he insisted that "reasons introduce clarity and minimize chances of arbitrariness".

Section 390 of the Penal Code provides that:

⁶⁴ Prevention of Terrorism Act 21 2001. sections 7 (2) (c)

⁶⁵ Penal Code, Cap 16 of the Laws of Tanzania 1945, sec 63B attract a fine of Tshs100,000 (Approximately US\$62.5) or one year imprisonment or both

⁶⁶ Penal Code, Cap 16 of the Laws of Tanzania, 1945 sec 390

⁶⁷ Penal Code, Cap 16 of the Laws of Tanzania, 1945 secs 114 (1) (b), (d) & (e),

⁶⁸ Approximately US\$0.31

⁶⁹ Penal Code, Cap 16 of the Laws of Tanzania, 1945 sec 129,

⁷⁰ Criminal Appeal 53 2001 www.saflii.org/tz/cases

390. Any person who solicits or incites another to commit an offence is guilty of a misdemeanor [minor offence] notwithstanding that the solicitation or incitement has no effect.

2.1.6 Section 83 of the Prisons Act

Although the Prisons Act largely deals with the operations and administration of Prisons, it also contains provisions that prohibit publication of material that is deemed to cast the prison services in bad light. Criminal sanctions are imposed on those that are found to have violated the respective provisions.

Section 83 states:

83. Any person who-

(b) without lawful authority holds or attempts to hold any communication

with any prisoner; or

(e) without the authority in writing of the Commissioner-

(i) sketches or photographs any prison, portion of a prison, prisoner or group of prisoners, whether within or outside any prison;

(ii) causes any sketch or photograph of any prison, portion of a prison, prisoner or group of prisoners to be published in any manner; Or

(f) publishes any false information concerning the behaviour or experience in prison of any prisoner or ex-prisoner or concerning the administration of any prison, knowing the same to be false, or without taking reasonable steps to verify such information, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment and the court convicting any person of an offence under sub-paragraph (i) of paragraph (e) may, if it thinks fit, declare the sketches or photographs and the negatives from which such photographs were taken to be forfeited to the Government.

As it can be observed from the above provision, the law limits freedom of expression. The said section 83 prohibits certain acts which can be used by any person who wants to exercise his or her right to freedom of expression in that it prohibits and imposes penalty for doing certain acts including by way of sketches or photograph of any prison, prisoner or group of prisoners, whether within or outside any prison. This means where one is in need of reporting certain information relating to the prison which may include sketching or photographing facilities and living conditions of the prison and prisoners respectively, he will have to obtain permission. In practice such an assumption is a night mare because ordinarily it will be difficult for the commissioner of Prison to permit in writing as required by law any person to portray the (poor) conditions of the prison or prisoners by way of sketches or photograph.

2.1.7 The Regional Administration Act

Section 7 of the above Act confers wide powers to the regional commissioners to arrest persons whom they allegedly suspect to breach public peace or disturb public tranquility. Section 7(1) and (2) provides as follows:

7(1) For the purposes of the effective and better exercise of his functions and duties under this Act, a Regional Commissioner shall have power to cause to be arrested any person who in his presence commits or to his knowledge has committed, any offence for which a person may be arrested and tried.

(2) Notwithstanding subsection (1), where a Regional Commissioner has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquility, or to do any act that may probably occasion a breach of the peace or disturb the public tranquility, and that breach cannot be prevented in any way other than detaining that person in custody, he may order a police officer verbally or in writing to arrest that person.

In similar terms, section 15 of the same Act confers similar powers as section 7 to district commissioners and provides thus:

15(1) For the purpose of the effective and better exercise of his functions and duties under this Act, a District Commissioner shall have power to order or cause to be arrested any person who in his presence commits, or to his knowledge has committed, any offence for which a person may be arrested and tried.

(2) Notwithstanding subsection (1), where a District Commissioner has reason to believe that any person is likely to commit a breach of the peace or disturb the public tranquility, or to do any act that may probably occasion a breach of the peace or disturb the public tranquility and that that breach cannot be prevented in any way other than by detaining that person in custody, he may order a police officer verbally or in writing to arrest that person.

Sections 7 and 15 have been used by regional commissioners and district commissioners to infringe the rights and freedoms of journalists. Such provisions were also included in the report of the late Nyalali, CJ (as he then was) as the laws that infringe human rights.

2.1.8 The Public Leadership Code of Ethics Act

Section 13(1) of the above mentioned Act provides as follows:

13(1) A public leader shall not speak in the Cabinet, National Assembly, in a local government council or a committee thereof, or in or at any other official forum or part of it, on any matter in which he has an interest direct pecuniary interest unless he first disclosed the nature of that interest to the Cabinet, the Assembly, the Council, Committee or such other forum or part of it.

The Act among others contains section 13(1) which guarantees the breach of the principles of natural justice “*nemo Judex in causa sua*” meaning no “one shall stand a judge on his own cause”. Moreover, sect 17(1)(c) contradicts the right to freedom of expression which is guaranteed by article 18 of the Constitution of the United Republic of Tanzania, 1977 and promotes secrecy in the government, hence limiting freedom of expression. Media practitioners find it difficult to report on governance issues such as public fund spending and salaries since all government information is termed confidential.

2.3 Use of laws

As highlighted above, the most infamous law that has been used to erode freedom of expression in Tanzania is the Newspaper Act. Media stakeholders have on a number of occasions complained about this law noting its negative effects on freedom of expression and Press.

In connection to the National Security Act, for instance, the MCT manager for regulations informed the researcher that sometimes government institutions submit complaints against MCT members stamped as confidential whereby the dispute resolution procedures require MCT to inform the alleged offender about the allegations leveled against him/her or it.

Media practitioners explained further that this Act limits them when for instance they want to report about government expenditures, increase of salaries among others. For instance, Mr. Rodgers

Luhwago the Acting managing editor for the Guardian on Sunday explained the limitations relating to this aspect of the law that, for instance, there has been complaints in the public domain concerning frequent travels of the President of the United Republic of Tanzania but such government expenditure related information is classified and hence the media cannot report on it to provide information to the public as seems to be required.

Although there are not as many cases recorded in the rampant use of the laws in the last five years, which period the research will look at in discussing the implementation of the laws, the few reported cases have sown the seed of fear among media practitioner. This was affirmed in interviews conducted with media practitioners such as Pili Mutambalike⁷¹ and another senior editor who preferred anonymity.⁷² They both concurred that the laws are used mainly as a threat to the media and others who need to exercise their right to freedom of expression. They cited as an example the unsettling effect of the Minister's use of discretionary powers conferred under the Newspaper Act to ban papers in recent past as an example. It is such incidents that confirmed the Newspaper Act as the most repressive law that the State favours in curtailing freedom of expression in Tanzania. In many of the cases this law has been used on the basis that the media house would have threatened matters of public interest. Such cases include the closure of *Mwanahalisi*, *Mwananchi* and *Mtanzania* Newspapers. In addition, there have been cases involving the prosecution of media practitioners for allegedly publishing seditious news, news considered to be inciting members of the public and the police to rebel against state organs or cause disharmony in the country.

The following section describes the way the laws have been implemented.

2.3.1 The Newspaper Act of 1976

2.3.1(a) Sedition (sections 31 to 35 of the Newspaper Act)

Mr. Absalom Kibanda who is a managing editor of Mwananchi newspaper expressed that he has been directly affected by the above mentioned laws. He was arrested and charged at Kisutu resident Magistrate Court for publishing seditious information as an editor but later on he was acquitted on 29th January 2014. The respondent mentioned other incidents he is aware of in which the laws were implemented against the freedom of expression including prosecution of media personnel to include the prosecution of Mr. Jerry Muro (discussed below) and Mr. Samson Mwigamba, the latter who was charged together with the respondent.

Elaborating on the charge that he went through, he said that the writer Mr. Mwigamba wrote something about police, and he as editor (Mr. Kibanda) was the editor. They were charged for spreading seditious information against the government. He stayed under detention for one day but Mwigamba for 7 days. The article which was reported by Mwigamba, he explained was titled: "*Waraka Maalum kwa Askari wote*" (a Special Letter to all Police Officers-direct translation from Kiswahili) in the column called *Kalamu ya Mwigamba* (a Pen of Mwigamba-direct translation from Kiswahili) in 2011. The writer was wondering about the force used by the police in Arusha in respect of Chama Cha Demokrasia na Maendeleo (CHADEMA) meeting.⁷³ It was argued that Mwigamba and Kibanda (the editor) are motivating rebellion in the police force.

⁷¹ N. 15 above. Interview on 2 June, 2014.

⁷² This Senior and Chief Editor of a Daily English Newspaper works for one of a leading private news media in Tanzania. Interview was conducted on 3 June, 2014.

⁷³ CHADEMA is currently a major opposition political party in Tanzania.

He explained the period between the threat and actual prosecution to be four years from 30/1/2011 to Jan 2014. During the trial he faced restriction of freedom of movement. Travelling documents were taken away. The criminal charges made him fail to participate in some other different duties such as acting as chairman of MISA because he did not have travel documents. Due to nature of his job travelling is essential therefore this affected him. He was acquitted in January this year, 2014.

Another incident that was reported by Mr. Harod Sungusia is that in 1990s one Kamara Kusupa was writing articles in *Motomoto /Cheche* magazines and he was criticizing the government. He recalled the story that was written by Kamara Kusupa to be about “something relating to counterfeit money” and that Kamara Kusupa was charged and convicted for 1888 days. Mr Sungusia elaborate further that the said Kamara Kusupa even wrote a book called “Maisha Yangu Gerezani : Simulizi la Siku 1888 za Mateso” (meaning My Life in Prison: The Story of 1888 days of tribulations) which narrates his story in depth. Based on an interview between *The Express*⁷⁴ and Rev. Kusupa Kamara⁷⁵ the interview excerpts unveil some more details on Rev. Kusupa’s story referred to by Harod Sungusia as follows:

3 Oun: What went wrong and what were your initial feelings when you were imprisoned for five years plus? All troubles started after I had presented to the UN a paper where I claimed that some small miners had been buried alive in Bulyang’ulu Shinyanga due to some investors major mining plans, things were never the same for me again. So I was sentenced for having being an accomplice in fraudulent money⁷⁶, my term started in 2001 and finished in 2007. My initial feelings were fear and hopelessness, but I regained confidence after having joined other inmates.⁷⁷

2.3.1(b) Publication of false news which is likely to cause fear and alarm to the public (sec. 25 of the Newspaper Act)

One respondent informed the researcher that the Mwanahalisi Newspaper, was first banned for a period of three months (13.10.2008 to 12th January, 2009) and finally indefinitely. Other negative incidents include closure of *Mwananchi* newspaper for two weeks and *Dira* newspaper which was banned indefinitely.

2.3.1(c) Libel and Criminal Defamation (Sections 38 to 47 of the Newspaper Act)

2.3.1(c) Unlawful Assembly (Sections 43, 44, 45, and 46 of the Police Force and Auxiliary Police Act, Cap. 322, R.E. 2002)

In the past there have been incidents which featured in reported cases. In the case of *Mtikila and 3 Others v Republic* (1992)⁷⁸ laws criminalizing freedom of expression apart from the Newspapers Act was used. In this case Rev. Mtikila and 3 others who were Mtikila’s followers as an opposition political leader were charged first with, refusal to desist from convening a meeting or assembly

⁷⁴ Elias Mhegera.

⁷⁵ Who is claimed to be one of the founding members of political pluralism in Tanzania and the NCCR-Mageuzi party, here are the excerpts.

⁷⁶ Possibly under section 173B (1) of the Penal Code which reads as follows: “173B—(1) Any person who sends or causes to be sent any chain letter Old. or who sends or receives any money or money’s worth in connection with any chain letter is guilty of a misdemeanour and is liable to a fine of four thousand shillings or to imprisonment for term not exceeding six months or to both such fine and imprisonment”.

⁷⁷ “Prisons in Tanzania more of a hell than reforming centres” at <http://mhegeraelias.blogspot.com/2011/09/prisons-in-tanzania-more-of-hell-than.html> (accessed on 17 December, 2014).

⁷⁸ High Court of Tanzania at Dodoma, Appellate Jurisdiction, Appealate Criminal Appeal No. 90 of 1992.

despite having been warned not to do so by the police contrary to sections 43- 46 of the Police Force and Auxiliary Police Act), second, holding an unlawful assembly, and thirdly, use of abusive and insulting language in such a manner that was likely to cause a breach of the peace. Acquitting the appellants, Mwalusanya (as he then was) held and stated as follows:

No reasonable man who was in the audience could have taken the words spoken at their face value or in their literal meaning. The words were a figurative speech-that the President was a thief because he has bankrupted the country to Zanzibar, that the Father of the Nation had sold Tanzania or that the C.C.M was a party of thugs. Any reasonable man knows that this country is not bankrupt and that it has not been sold all; and that C.C.M has a lot of respected members.⁷⁹

Following victory in a criminal charge Rev Mtikila instituted a constitutional case against the laws and provisions he had been charged with in the above discussed criminal trial. This was (as discussed earlier) in *Rev. Christopher Mtikila v Attorney General* (1995) TLR 31 in this case the petitioner, a human rights campaigner and political activist sought many reliefs among them being a declaration that amendments made to the constitution were not validly made as they appeared to infringe an individual's right to participation in public affairs and freedom of association as guaranteed by the constitution; to declare a number of statutory as unconstitutional as they infringe rights and freedoms guaranteed under the constitution. Such provisions included, as alleged by the petitioner: provisions under the political parties Act, 1992; some provisions in the News Papers Act, 1976 that were said to be arbitrary and liable to abuse (including section 25 of the Newspapers Act) as well as an infringement on freedom of expression and certain provisions of the Police Force Ordinance (i.e section 40). The latter two Acts (Police Force Ordinance and the Political Parties Act, 1992) were allegedly in infringement of the right to peaceful assembly and public expression by requiring a permit before holding a public meeting or assembly. The High Court seating as a constitutional court struck out or modified some provisions of the Political Parties Act and the Police Force Ordinance. In particular, in respect to the Police Force Ordinance, the High Court struck out a provision (section 40) requiring obtaining a permit before holding a meeting or assembly and instead directed that a party in need of holding a public meeting or assembly should only notify the police in order to enable the police to ensure security arrangements/plans. Thus in essence the court held that people have freedom to peacefully assemble to express their views publicly and that in order to enjoy this right one has to only NOTIFY the **police** and not to request the permission.

2.3.1(d) Publishing or being found in possession of government classified matter (section 5 of the National Security Act)

In respect to publishing or being found in possession of government classified matter, in *Adam Mwaibabile v Republic*⁸⁰ a Journalist one Adam Mwaibabile was alleged to have been in possession of a government classified document. The said document was a directive from a regional commissioner addressed to the Regional Trade Officer to arbitrarily deny the renewal of the journalist license in respect of the Journalists' shop. The High Court held that such a document was not a government document as defined in the National Security Act for it is not the duty of the government (the court held) to refuse granting business license to its citizens. Thus, the Court condemned the tendency of senior government officers misusing powers conferred upon them.

2.4 Analysis of proportionality of sentences/fines

⁷⁹ In Rachel L. Ellet, *Pathways to Judicial Power in Transitional States: Perspectives From African Courts*, Routledge94

⁸⁰ the High Court of Songea Criminal Appeal No. 13 of 1997 (Originating from Songea District Court Criminal Case No. 17 of 1996).

For the recent cases such as the prosecution of the managing editor of Mwananchi Newspaper and others the accused persons were acquitted and hence did not reach to a stage of sentencing. The editors expressed their views that company owners issue them demand notes within awkward times when they cannot manage to even consult the relevant media company lawyer before they are required to apologise for publishing “false” news or stand to be dragged to court. Most editors expressed their views that considering the fact that the judiciary has no mercy on the media, it becomes difficult for the editor to publish or refuse issuing an apology statement because should it be decided by the court that the media company is guilty the owner of the media outlet/publisher will blame the editor. It was in that context where some editors expressed their views that sometimes they receive orders from publishers not to run certain news which appear capable of either being accused of defamation, false information, prejudicial to the publisher or publisher’s potential clients.

It was not possible to ascertain the revenues of media houses in comparison with awards given against offending media companies. However, editors informed the researcher that it is true that newspaper industry is lucrative business and that people know about this fact and hence make very high claims in terms of compensation. Even where fines (which have not been revised as per statutes and hence literally misleading until practically awarded by court to enable a meaningful analysis) it will be the publishers that usually pay since the employees as agents are likely to commit such offences in course of and out of their employments. Thus such employees will enjoy the right to indemnity by the employer.

In respect to banning, closure, suspending media outlets as well as seizure of media houses, such sentences seem to be highly problematic and disproportionate. This is because the defaulting media company is neither entitled to be given any right to be heard. Hence, once closed the media company cannot be in a position to know when it is likely to be allowed to resume business if at all. Thus the law in this case is unlikely to be predicted and hence infringes rule of law. Moreover, taking into account the fact the Minister responsible for information is not required to give reasons for his/her action it becomes difficult to maintain consistency as expected in a common law system. Thus the law becomes subject to abuse depending on the wisdom of the Minister in office.

In addition, the seizure of media houses can arguably be said to be undemocratic and capable of resulting to the collapse of the media house. Thus looked at in this context the sentence appears to be disproportional to the crime because once seized the media house is crippled from dispensing its duties and leave the owner/publisher in serious trouble. It is equivalent to seizing one’s business investments with no compensation whatsoever for simply exercising their right to freedom of expression.

For instance section 32(5) and (6) which deals with the offences of sedition, provides as follows:

(5) A printing machine forfeited under subsection (4) shall be sold, and the proceeds less expenses shall be paid into the Treasury.

(6) When the proprietor, publisher, printer or editor of a newspaper is convicted of printing or publishing a seditious publication in a newspaper, the court may, in addition to any other penalty it may impose, and whether or not it has made any order under subsection (4) make an order prohibiting any further publication of the newspaper for a period not exceeding twelve months.

Thus the spirit of the law appears to be to completely remove the publisher in the business of publishing or rather exercising the right to freedom of expression. In this context, section 32(13) defines "Printing machine" to include ‘a Printing Press, Copying press, type-setting machine, photographic, duplicating or engraving apparatus, or other machine or apparatus used for or in

connection with printing or reproducing publications, and the type, appurtenances and equipment thereof.'

Table 5: Highlight of sentences and fines as stipulated under the Newspapers Act and others

Charge	Fine	Maximum Prison Term	Additional Option
Importing, publishing, selling, offering for sale, distributing or producing any publication, the importation of which has been prohibited under section 27 or any extract therefrom of the News Papers Act	For the first offence Tsh. 10,000 (\$ 5.8)and for subsequent offence Tsh. 15,000 (\$8.8) -Forfeiture of offending publication or extract	2 Years if its the first offence and 3 years for subsequent offence	Both
Without lawful excuse, being in possession of any publication the importation of which has been prohibited under section 27 or any extract therefrom,	For the first offence Tsh. 5,000 (\$ 2.9)and for a subsequent offence Tsh. 10,000 (\$5.8) -Forfeited of offending materials to the Republic	12 Months for the first offence and 2 Years for a subsequent offence	Both Both
Delivery of prohibited publication to administrative officer or to police station	Tsh. 5000 (\$2.9) Forfeiture of offending publication or extract thereof	12 Months	Both
Committing Seditious offences	for thefirst offence Tsh. 10,000(\$5.8) and For a subsequent offence Tsh. 15,000 (\$8.8) -Forfeiture of such publication to the Republic-	2 Years 3 Years	Both Both
Without lawful excuse, being in possession of any seditious publication	For the first offence Tsh. 5000 (\$2.9) For a subsequent offence Tsh. 10,000 (\$5.8)	12 Months 2 Years	Both Both
A printing machine suspected of being, used for or in connection with the printing or reproduction of a seditious publication	Seizure of machine or secured by a police officer pending the trial and conviction or discharge or acquittal of any Person accused of printing or reproducing any seditious publication;	Upon conviction of the accused person –printing machine confiscated for 12 Months,	-Forfeited to the Republic and finally sold -Order prohibiting any further publication of the newspaper for 12 Months
Publication of false news likely to cause fear and alarm to the public	Tsh. 15,000 (\$ 8.8)	3 Years	Both
Incitement to violence	Tsh. 15,000 (\$ 8.8)	3 Years	Both

Committing libel	Tsh. 10,000 (\$. 8.8)	2 Years	Both
Revealing the identify of a person subject to; or any description of details of investigation in relation to corruption related offence	Tsh. 100,000 (\$.60)	1 Year	Both

2.5 Conclusion

From the foregoing it can clearly be observed that there are more laws criminalizing freedom of expression either directly or indirectly than the economy of time in this study and space in this report could allow. This is an unfortunate fact in a country which has signed a myriad of international Conventions and Declaration, committed to promote freedom of expression and other basic rights and actually hosting the African Human Rights Court. Notable is the News Papers Act, 1976 which actually contains all of the basic offences which limit freedom of expression such as the offence of sedition and libel among others. Also the generalization of classified information under the National Security Act of 1970 is big blow to the media industry and freedom of expression in particular. Taking into account the provision of article 8 read together with article 18 d of the constitution of the United Republic of Tanzania which can be interpreted to include the right of the people to know how the government governs their affairs, this cannot be fulfilled without the freedom of the media to expression opinion of the media, political parties and human rights activists on various aspects of governance.

It has however been noted, and this is the feeling of media practitioners that the laws in these statute books serve mostly as threat rather than being implemented against the media people. Of course as it will be observed shortly, respondents from political parties may have different views in that they feel the impugning laws though were enacted before the multiparty era, are implemented with biasness against opposition political party members.

Section Three: Qualitative Research into Impact of laws on expression

This section captures the actual impact of the laws as experienced by individuals selected for this research. It also provides insight into the campaigns that have been launched in Tanzania to try and influence the democratisation of media legislative environment in order to de-criminalise freedom of expression. The interviews were conducted with selected media practitioners, academics and civil society leaders.

3.1 Interviews with key political , advocacy and civil society leaders

The researcher interviewed different categories of stakeholders such as political leaders and civil society practitioners. Politicians included three Members of Parliament (MPs) from Zanzibar including one female MP; eight MPs from Tanganyika/Tanzania Mainland who included three female MPs and a Parliamentary Committee clerk. In total 11 MPs and one parliamentary staff member were interviewed. Of these out of which four were females. MPs from the ruling party preferred anonymity whereas those from the opposition such as Honourable Tundu Lisu,⁸¹ Joseph Mbilinyi,⁸² popularly known as Mr. Sugu (CHADEMA) and Hon. Mnyaa⁸³ (CUF) had even shown interest in taking

⁸¹ Member of Parliament for CHADEMA, Singida constituency. Interview on 8 April, 2014.

⁸² CHADEMA member of Parliament for Mbeya Constituency. Interview on 8 April, 2014.

⁸³ Member of Parliament for the Civic united Front political party (CUF) hailing from Zanzibar. Interview on 8 April, 2014.

pictures with the interviewer. Thus, the information relevant to this category is presented in groups or rather general terms in order to observe and take into account the respondents' interests.

The majority of MPs expressed ignorance on the laws that criminalise expression, with many of them only vaguely citing the Parliamentary Standing Orders as the law that granted powers to Speaker of the Parliament to silence legislators.

When asked whether they have personally been charged/threatened with prosecution under the laws criminalizing freedom of expression, the MPs had diverse responses. Three of them were charged for allegedly abusing their right to freedom of expression through what they had said. The politicians provided information regarding other persons or organisations that have faced sanctions. Four of the interviewees cited Haki Elimu, a national organization advocating rights to education, as the organization they could remember as having been threatened by government for excising its right to freedom of expression. Haki Elimu was temporarily closed in 2007 for criticizing the government for failing to properly run education system in the country.

The MPs also cited Medical Association of Tanzania (MAT), which led a Doctors strike in 2012 demanding improved environments for medical practices. MAT Chairman, Dr. Steven Ulimboka was abducted, tortured and thrown into Mabwepande forest in the midst of the strike by what most of the interviewed MPs believed was a government move to stop the strike.

Eight of the MPs felt that state organs purposefully targets opposition parties, especially CUF and CHADEMA, in a bid to stop their country-wide campaigns of raising people's awareness on national issues of interest including misuse of public resources. The following part discusses the specific responses of individual MPs:

3.1.1 Hon. Suzan Kiwanga⁸⁴

MP Suzan Kiwanga has been a victim of some of the country's repressive laws that curtail civil activism. Although she has not been a victim of laws that criminalise expression per se, it is her unpleasant experiences with the police that have impacted on her right to freedom of expression. Initially she was arrested in 1999 together with her colleagues when she was a leader in the Tanzania Labour Party (TLP). They were charged for conducting a party general meeting that was not sanctioned by the police under section 43-46 of the Police Force and Auxiliary Services Act. They were however acquitted 18 months later. Between 2008 and 2010, Kiwanga was warned several times by the police against speaking ill of government in various public meetings that she addressed. She notes that this experience has forced her to temper her speeches in order not to offend the police.

She also bemoaned the selective application of the law arguing that politicians from the ruling party were allowed to express views that would ordinarily land any member of the opposition in trouble. To illustrate her view, she cited the case of CCM MP John Komba who sang "...wapinzani, tuwalete, tuwachanechane, tuwatupe!" (literally meaning: lets take the opposition people, thrash them into pieces and throw them away). He was not reprimanded let alone arrested for such incitement, which could have resulted in an immediate arrest were the words uttered by an opposition member.

3.1.6 MP from the ruling party C.C.M⁸⁵

⁸⁴ CHADEMA Member of Parliament (Special seat), Morogoro Constituency. The interviewee has had unpleasant experience with the police including arrest while she was a political leader and hence she has on a number of occasions altered her statement in fear of what would be the outcome of her statement. Interview on April 8, 2014.

An MP from the ruling party said that they usually take precautions on what to say to avoid getting into trouble. However, the legislator confided that they could speak the same things in internal meetings of supporters when the Police Force is absent. Moreover, the MP cited instances where they believe that the media excluded them from commenting on an issue or excluded certain comments they had made due to the laws criminalising freedom of expression being in place.

3.1.7 Honorable Said Msuhya⁸⁶

Honourable Msuhya noted that there are several laws that hinder free expression in Tanzania, citing the Penal Code as one of them. Hon. Msuhya contended that the Penal Code, for example, restricted media practitioners such as journalists to report court sessions in some instances and if media practitioners do so it amounts to contempt of court. The interviewee did not give much elaboration on this point.

Hon. Msuhya explained that there are many incidents of infringement of the right to freedom of expression and usually this is done by the government, adding that although citizens could seek redress from the courts the process of suing government over rights violations was cumbersome resulting in few cases being prosecuted. Another concern mentioned by the respondent is the fact that disclosure of information relating to government was restricted by law on vague and broad grounds of protecting public interest. On campaigns to decriminalise freedom of expression, Msuhya pointed at efforts by MOAT, TAMWA on the newspapers Act and MISA's interventions in influencing law reforms.

3.2 Interviews with law enforcement agencies

3.2.1 Police Officer X⁸⁷

The police officer interviewed was aware of the existence of legislation such as the Newspapers Act and the Police Force and Auxiliary Services Act, which criminalise freedom of expression. The officer said the above mentioned laws provide room for the arrest and prosecution of people who for instance disobey orders preventing them from demonstrating where the police force is of the opinion that the rally or demonstrations may endanger security in the country or a particular area. He noted that the laws criminalizing freedom of expression are draconian and that human rights organizations have on a number of occasions expressed the need to repeal or amend these laws. Some of these organizations, according to the police officer, have been directly affected especially when they participated in demonstrations expressing or condemning various actions of the state. For instance, the Amnesty International Report on the state of Human Rights for Tanzania states that: 'In February, police arrested 16 human rights defenders, including 14 women, for holding an unlawful assembly. They were released the same day. The defenders were part of a group of around 200 activists taking part in a public demonstration in the capital, Dar-es-Salaam, calling for the government to resolve the doctors' dispute'.⁸⁸ The law enforcement agent interviewed had not been affected by the laws that criminalise expression.

3.3 Interviews with media practitioners

⁸⁵ This was a C.C.M MP from Tabora Region. Interview on April 8, 2014.

⁸⁶ Resident Magistrate, Kisutu Resident Magistrate Court, Dar es Salaam, Tanzania. Interview on April 5, 2014.

⁸⁷ Police Officer X interviewed on April, 8 2014, requesting anonymity.

⁸⁸ Amnesty International, *the State of the World's Human Rights (Tanzania): Freedom of assembly and excessive use of force*, Annual Report, 2013. Available at <http://www.amnesty.org/en/region/tanzania/report-2013> (accessed on 21 November, 2013.)

3.3.1 Journalist from Zanzibar⁸⁹

One photo journalist, news reporter and radio presenter based in Zanzibar who preferred anonymity said he has no knowledge of any law concerning freedom of expression. He explained that in Zanzibar media outlets are mainly owned by the government. The few that are privately owned belong to politicians.

He revealed that it is the political linkages in media ownership that has affected his work more. For instance in 1999 he received a warning letter from his employer following his report that angered one politician. His story was on the misappropriation of aid from donors. Resultantly, the Regional/District Administrative Secretary approached the journalist's boss complaining about the report. The boss in the end wrote a warning letter to the journalist against writing things which were anti government. Despite the fact that the journalist's editor acknowledged there was nothing wrong that the journalist did, he still had to be seen to be acting in favour of the politician.

In another incident in 2007, the journalist was forced by politicians to report on a false story. When he refused, the politicians reported him to his editor.

Such pressures, the journalists added, were more pronounced for those working in the government owned media. At those media houses, failure to comply with government orders or reporting matters that were critical of government could cause serious repercussions such as denial of workers' incentives or open intimidation against the journalist. He himself has been denied tuition fees for his studies and he ended up doing it from his own pocket.

3.1.9 Mr Absalom Kibanda⁹⁰

Mr. Kibanda believes that the laws in place in Tanzania in a way affect how media personnel cover the news or provide information. He noted that they make journalists self censor themselves in their coverage of news thereby suffocating critical stories.

On being asked whether he was aware of any instances where their (the editors) publication/station/channel has not reported on an issue in view of such laws, Mr. Kibanda responded that there are many such instances. However, he did not mention them. Nevertheless he contended that owners tend to protect their own interests first and foremost. On being asked whether as an editor he has ever been threatened with such laws, he recalled his arrest and charging for allegedly publishing seditious information. This followed a story they had published about the police. The article published in 2011 titled, "*Waraka maalum kwa askari wote*" (a special letter to all police officers-direct translation from Kiswahili) in the column called *kalamu ya mwigamba* (a pen of Mwigamba-direct translation from Kiswahili), was critical of the police's use of force at a meeting held by Chama Cha Democrasia na Maendeleo (CHADEMA)⁹¹. The state argued that Kibanda (the editor) and his journalist were inciting public rebellion against the police.

Kibanda and the journalist were finally acquitted in January 2014 after almost three years on remand. He pointed out that during trial he faced restrictions on his freedom of movement as his travelling documents were taken away. The criminal charges made him fail to participate in some

⁸⁹ The journalist interviewee works for the public media house. Interview conducted on 20 May, 2014.

⁹⁰ The interviewee is the chief editor of Mwananchi Newspaper. He has been himself a victim of the laws criminalizing freedom of expression by being arrested and charged of publishing seditious news. The interview was conducted on April 10, 2014.

⁹¹ CHADEMA is currently a major opposition political party in Tanzania.

other different duties such as acting as chairman of MISA because he did not have travel documents. Due to the nature of his job travelling is essential therefore this affected him.

He also lamented the cost of the case on his income as he had to foot some of the legal bills with some support from his former employer.

Mr. Kibanda is aware of efforts by civil society organisations such as the Media Council of Tanzania (MCT), Tanzania Editors Forum (TEF), MISA to push for the decriminalisation of freedom of expression and democratisation of media laws.

3.4 Interview with other stakeholders

3.4.1 Mr. Harod Sungusia⁹²

Mr. Sungusia who is an active human rights activist⁹³ in the country informed the researcher that he has never been directly affected by these laws at a personal level. The respondent however admitted that he was aware of incidents where these laws have been used. He mentioned incidents such as the closure of different newspapers such as *Mwanahalisi* and *Mwananchi* under the country's laws.

Explaining on how these laws have impacted on freedom of expression Mr. Harold Sungusia cited the 1990s case of Kamala Kusupa, who wrote articles in *Motomoto /Cheche* magazines criticizing government. He wrote a story relating to counterfeit money and was charged for being an accomplice in fraudulent money under the Penal Code and sentenced to 800 days in jail. He even wrote a book called *Maisha siku 800 gerezani* which narrates his story in depth. Mr. Sungusia believes expression laws in Tanzania have impacted on how news and information is reported and on freedom of expression generally. Even though he did not specify any specific group that he considers being mostly vulnerable or specifically targeted; Mr. Sungusia referred the researcher to some legal precedents regarding the implementation of these laws which have a bearing on how they are being implemented. Such legal precedents include the Hamisi Dibagulas case⁹⁴ which was more religious but it involved an aspect of freedom to expression. Another legal precedent referred

⁹²The Interview was conducted on 26 February, 2014.

⁹³Mr. Harod Sungusia is the Director of Advocacy and Reforms at the Legal and Human Rights Centre (LHRC). Among the human rights work done by Mr. Harod Sungusia, includes serving as a Counsel in a recently ended case against the Prime Minister of the United Republic of Tanzania and the Attorney General of the United Republic of Tanzania (*LHRC & Tanganyika Law Society v the Prime Minister Peter Kayanza Pinda and the Attorney General Hon.Fredrick Werema*, High Court of Tanzania, Petition No 24 of 2013. The case concerned requiring the government through the prime Minister to publicly withdraw what is alleged to be an order made by the Prime Minister ordering the police to use force against anyone who disobeyed official order of the police force. The petitioners prayed, among other things, that the court should order the Prime Minister to publicly denounce his statement on the argument that it is deemed to infringe human rights enshrined in the country's Constitution, thus violating the principles of rule of law and accountability. They challenged as unconstitutional, the statement, directive and order uttered in Parliament by the Prime Minister that the law enforcement officials should use force against civilians. The order made by the Prime Minister was perceived generally, given the time and context, to refer to those who hold "unlawful rallies" especially political ones (prayer and argument available at <http://www.salan.org/legal-and-human-rights-cente-tanzania-case-on-prime-minister-takes-an-interesting-turn/> (accessed up to 21 May 2013). The interviewee has also taken a lead in the advocacy initiatives through the Media Council of Tanzania pushing for the repeal of freedom oppressing laws.

⁹⁴*Hamisi Rajabu Dibagula v Republic* (Criminal Appeal No. 53 of 2001) [2003] TZCA 1 (14 March 2003). In this case the appellant had been convicted with the offence of 'uttering words with the intent to wound religious feelings' against section 129 of the Penal Code by the District Court of Morogoro and sentenced to 18 months imprisonment. The appellant had uttered words at a religious public rally saying "*Yesu si Mwana wa Mungu, ni jina la mtu kama mtu mwingine tu.*" Meaning (Jesus is not the Son of God, it is a name of a person like any other ordinary person). The appeal was allowed by the Court of Appeal and sentence quashed on ground of the then article 19 of the Constitution of the United Republic of Tanzania which guaranteed freedom of expression and exhorted people to religious tolerance.

to by the respondent was the case of Christopher Mtikila and Augustine Mremas case.⁹⁵ In his view these precedents have given general awareness of the concept of freedom of expression. It was elaborated in these precedents that freedom of expression includes right to receive information, right to share information and lastly right to seek or research for information. These precedents have also impacted on the implementation of the laws in Tanzania. For instance, the Mtikilas case resulted in the repeal of a provision that required citizens to obtain police permits for them to gather or assemble.

The respondent also noted that he is aware of some African or international treaties/agreements that Tanzania is party to, that may impact on the implementation of the laws relating to freedom of expression in Tanzania. Such international instruments mentioned by the respondent were the ICCPR, ACHPR. He considered these instruments to be relevant as they contain provisions, which provide for the rights relating to freedom of expression. However, he noted that they are only applicable if Tanzania becomes a party to those instrument i.e if it ratifies and domesticates it.

3.4.2 Rodgers Luhwago⁹⁶

Mr Luhwago mentioned the Newspapers Act, as the most draconian of all laws affecting freedom of expression in Tanzania. He explained that the law empowers the Minister responsible to ban the media house or newspapers from operating. This is done at the discretion of the Minister responsible. In his view this law limits freedom of expression because journalists operate under fear knowing that if they do anything likely to be regarded as offensive by the minister their media houses would be closed. On being asked whether he knew any instances where such laws limiting freedom of expression had been used, the respondent mentioned the closure of *Mwanahalisi*.

On being asked whether he thought that the laws in any way affect how media practitioners cover the news or provide information, he responded in the affirmative, adding that when one works as a media practitioner they become overly careful or cautious not to cross certain borders. He pointed to the closures of *Mwananchi* and *Mtanzania* Newspaper, arguing that the information published by those banned newspaper was not false but, was from reliable sources and credible. He argued the two papers were simply closed because government found the information unpalatable.

The responded noted that there are instances where as an editor he did not provide certain information, covered certain stories, left things off the news diary, or avoided certain sources/columnists in fear of being charged under laws criminalizing freedom of expression.

He observed:

“But we just censor information. You act with high level of professionalism.”

In addition, the respondent explained that there are many instances where journalists censor and edit information before considering to publish it. He gave several examples including several news involving the government where one has to be overly cautious. For instance, he noted that if the news had something to do with the police force, one had to be extra careful. Coverage of elections was another area that caused problems for journalists, according to Luhwago. To illustrate the point, he gave an example of Zanzibar *Channel Ten* TV Station in 1995. It announced that the CUF

⁹⁵ (1993) TLR 60. See also *Poland v. Purr*[1927] 1KB 236; *Limpus v. London General Omnibus Company* (1862)1H&C526; *Century Insurance Co. Ltd v. Northern Ireland Transport Board*[1942]AC509; *Rose v. Plenty* [1976]1WLR141. In this case, the plaintiff sued the defendants in defamation for words uttered by the second defendant, then, a government Minister and published by the first defendant. However this case concerned civil defamation which is outside the purview of this study.

⁹⁶ Chief Editor, the Guardian on Sunday, a privately owned Newspaper by the Guardia Ltd. Interview on 3rd June, 2014.

candidate had won the presidential election and it was banned because according to the Election Act, it is the National Election Committee only (NEC), which is authorized to announce the results even though media representatives can be around election posts monitoring and observing the process including the counting of votes.

Moreover, as an editor Luhwago also faces external pressures from owners, advertisers and politicians not to cover certain stories. He contended that sometimes editors just get instruction; “do not run that story”, it is detrimental to the owner or the institution. Giving his own example he narrated about an incident where he ran a story concerning a certain big South African-owned company. The story was about the company's plans to fire Tanzanians and replace them with South Africans. When he ran the story he received undue pressure and had to apologise. He noted that this was the experience of other media houses in Tanzania.

3.4.3 Mr. Jerry Murro⁹⁷

Mr. Jerry Muro identified the National Security Act and the Newspapers Act as laws that criminalise expression in Tanzania. According to him the most problematic law that mostly impacts on the right to freedom of expression is the National Security Act. This law provides for categories of information to be protected for national interests/security issues. However, the law does not precisely define 'national interests' or what amounts to national interest. Therefore, according to Murro the law is vague giving powers to the authorities to abuse the law to infringe the right of freedom of expression.

Mr. Murro argued that this law has hindered him and other reporters in the conduct of duty. For instance, Mr Murro noted, he once reported on members of police force taking bribes and published pictures of 45 traffic police officers taking bribes on roads. That landed him in trouble. Mr. Murro was arrested and charged with an offence of corruption and was later acquitted on 30 November 2011.⁹⁸

Elaborating further on his own case, Mr. Murro explained that the charge affected both his personal and professional life. For instance, he was arrested and required to report to the police station and the court around the period of his wedding and hence at times he had to leave his newly wedded wife at the hotel to make follow ups with prosecution. He married on Sunday while the

⁹⁷ Jerry Murro was employed as a news reporter for Tanzania Broadcasting Corporation (TBC) (the public owned TV Station) and alleged victim of the laws criminalizing freedom of expression (as per interview on 5 March, 2014.) He was arrested and prosecuted shortly following his broadcast of news clips which covered the member of the police force being involved in corrupt practices. Mr Jerry Murro and 2 others were charged as follows: “Conspiracy c/s 32 of the prevention and combating of corruption Act, 2007, the particulars of this offence is that Jerry s/o Muro, Edmund s/o Kapama @ Doctor and Deogratias s/o Mgasa @ Musa in January 2010 within the city and region of Dar es Salaam, conspire together and with other persons unknown to commit the offence of corrupt transactions contrary to section 15(1)(a) of the prevention and combating of Corruption Act, 2007. The second count is corrupt transaction, contrary to section 15(1)(a) of the prevention and combating of corruption Act, 2007, and the particulars of this offence is that the accused persons Jerry s/o Muro, Edmund s/o Kapama @ Doctor and Deogratias s/o Mgasa @ Musa, on 29th day of January, 2010 at Sea Cliff Hotel within the City and Region of Dar es Salaam the first accused person being employed by Tanzania Broadcasting Corporation as a reporter, corruptly solicited TSh 10,000,000/= from Michael Wage @ Karoli as an inducement for them to forebear from broadcasting news relating to allegations of misuse of public funds by the said Michael s/o Wage @ Karoli who was an accountant of Bagamoyo District Council a fact which was in relation to their principal’s affairs”, IN THE RESIDENT MAGISTRATE’S COURT OF D’SALAAM AT KISUTU; as CRIMINAL CASE NO. 22 OF 2010 REPUBLIC VERSUS 1. JERRY MURO 2. EDMUND KAPAMA @ DOCTOR 3. DEOGRATIAS MGASA @ MUSSA

⁹⁸ The judgment reads in part as follows: “Under all these circumstances and the reasons aforesaid I am of the settled view that this count of corrupt transaction c/s 15(1)(a) of the prevention and combating of Corruption Act, 2007 has not been proved beyond reasonable doubt against all accused persons and for that matter I hereby acquit them all for the offence charged.”

following Wednesday he was going to hear the judgment of his case. The prosecution continued for about three years. He spent two months reporting to the police prior to charges being formally laid and prosecuted in court. In those months he was reporting to the police. During the period of prosecution he was restricted from travelling outside the country. His travel documents were confiscated. As the result of the prosecution, Tanzania Broadcasting Corporation(TBC) terminated his employment and he was not paid his salaries. After his acquittal, he lost different opportunities because people no longer trusted him. In one such case, he passed an the interview for a job opportunity but was denied the job because of the case. He also believes that some of the people still perceive him as a criminal. He paid the legal fees himself which affected his economic stability.

Because of pressures from political and business interests, the media in Tanzania is often forced to ignore certain critical stories, Murro noted using his experience as an example. He revealed that when he published his story about the police, his boss prevented him from doing a follow report on the matter because of pressure exerted on the media house over the matter. Media owners fear having their media houses closed under the Newspapers Act and so they easily succumb to pressure. Murro also noted that owners were also mindful of the fact that 70% of advertising revenue for newspapers was mostly from government and antagonizing it would be detrimental to the survival of the media in Tanzania. This is why in some cases, Murro alleged, some editors have to first consult their directors before they can run a story. It is even worse because, according to Murro, many media owners are linked to the government and the ruling party which made it difficult for the media to be genuinely independent and critical in their coverage of issues.

Therefore, in his view the National Security Act largely cripples investigative journalism especially on issues related to government officials. This is because, in his opinion, that is when the phrase “protection of national interest” will be brought into play to prevent the media from uncovering issues.

While the National Security Act was used to embargo publication of issues of national importance on the pretext of protecting national interests, Mr Murro noted that the Newspaper Act also granted government powers to simply ban newspapers they did not like. Like other respondents he cited the banning of *Mwanahalisi* as an example of the arbitrary abuse of the law.

Mr. Murro described the media laws as draconian and outdated as they were inherited from colonial government. These laws, he asserted, are not relevant in multiparty democratic system. With these laws in place, Murro observed, journalists are having to self-censor themselves as they fear being arrested or offending the authorities and having their media houses closed as a result.

Besides the media laws, Murro contended, journalists in Tanzania also face flimsy charges preferred against them under different legislation as well as extra-legal dangers such as beatings as happened to journalist Absalom Kibanda. This is done to silence journalists and deter them from covering critical matters.

Like other respondents Mr. Murro is aware of efforts being undertaken by civil society organisations such as MCT to influence the de-criminalisation of expression in Tanzania.

3.4.4 Tikel Mwambipile⁹⁹

⁹⁹ Executive Director, Tanzania Women Lawyers Association (TAWLA). TAWLA is a Non Governmental Organisation, Non partisan professional Body advocating for the rights of women and children in Tanzania. It organized various sessions

Ms. Tikel Mwambipile said that she has never tempered her speech due to the laws in place. The candidate further explained that the constitution of the United Republic of Tanzania provides for the right of freedom of expression in article 18, but when you go further you will find out that there are certain laws such as Newspapers Act which makes it difficult to exercise the right.

The respondent pointed out to instances such as those in which Organizations like (Tanzania Gender Networking Programme (TGNP), LHRC and TAWMA whose directors (according to the informant) were arrested as they had participated in demonstrations. According to the respondent, the civil society leaders had good reasons to demonstrate. They tried to follow procedures, she said but yet they were arrested. Another example she mentioned was the incident of the murder of Daudi Mwangosi (journalist who was killed in controversial circumstances while covering the opposition political party's rally) and the "torture" of Dr. Ulimboka (who was a leader of the doctors' strike), which resulted in demonstrations by civil society.

When asked whether she believes the laws criminalizing freedom of expression have impacted in any way on how news and information is reported in Tanzania Ms Tikel answered:

Based on the constitution, the media has the right to freedom of expression but claw backs limit the freedom. Also, the Newspapers Act can be used to ban them from operating in the country.

3.4.5 Laurean Mussa¹⁰⁰

Mr. Laurean Mussa mentioned identified laws that criminalise freedom of expression in (Tanzania) as follows:

- (i) The Constitution of the United Republic of Tanzania 1977
- (ii) The Electronic and Postal Communications Act, Act No 3 of 2010.
- (iii) The National Security Act, Cap 47, R.E., 2002
- (iv) The Newspapers Act, Cap 229, R.E., 2002.
- (v) The Parliamentary Immunities Powers and Privileges Act Cap 296, R.E., 2002.
- (vi) The Penal Code, Cap 16, R.E., 2002.
- (vii) The Prevention of Terrorism Act, Cap 19, R.E., 2002.
- (viii) The Prisons Act, Cap 58, R.E., 2002.
- (ix) The Tanzania Communications Regulatory Authority Act 2003, Act No 12 of 2003.
- (x) The Universal Communications Services Access Act 2006, Act No 11 of 2006.

Mr. Mussa believes the Newspapers Act and the National Security Act are the most draconian. He argued that the *Newspapers Act*, among other things, empowers government authorities to ban

involving a wide range of stakeholders during the land reform process in the 1990's and recently in 2012-2014 for constitutional review process and also did massive work in advocating for the enactment of the law of the child among others.

¹⁰⁰ Assistant Lecturer in Law and Ph D Candidate, Department of Private Law, University of Dar es Salaam School of Law. The respondent has also conducted a commissioned research by the Media Council of Tanzania titled: Tanzania Media Research Papers "*Freedom of Expression and Media Laws in Tanzania: A Critical Appraisal*" see pp. 101 – 155. Interview on 13 December, 2014.

publication of newspapers even on unjustifiable reasons and sometimes indefinitely thereby eroding the right of citizens to express themselves and receive information. *The National Security Act*, on the other hand, makes it impossible for the public to access information which is deemed 'confidential'

Although Mussa has not been directly affected by the laws, he is aware of incidents the Acts have been used such as the banning of *Mwana Halisi* newspaper under the *Newspapers Act*. The respondent is also aware of campaigns which are underway to pressurize the government to enact a new media law which will also amend/ repeal oppressive legal provisions passed. He was not sure however as to whether his organization (the University of Dar es salaam) was involved in such campaign and was not aware of concrete stages or milestones achieved or specific challenges faced in the course of such campaigns.

3.4.6 Magdalena K. Rwebangira¹⁰¹

The respondent mentioned the Penal Code and the Constitution as laws that infringed on freedom of expression. On the Penal Code, the respondent explained that it contains provisions that makes it an offence to be part of the gathering which is termed as 'unlawful assembly'. On the other hand, the constitution guarantees freedom of expression subject to law, which makes other Acts of parliament to be used to limit freedom of expression. Moreover, the respondent noted that criminalising statements that are viewed as inciting members of the public to rebel against government was a threat to freedom of expression. She cited the example of the arrest of the CHADEMA Women Wing chairperson and Member of Parliament for CHADEMA Ms. Halima Mdee who was charged as a result of holding a Party' Women rally to pressurize that the proposed constitution should not be adopted.¹⁰² Even though as discussed elsewhere the Police Force and Auxiliary Services Act was amended to remove the requirement for permit to assemble, the police still require to be informed before any gathering takes place on grounds that it needs to make prior assessment of the security environment. In practice the notice has served or operated to ask for permission because if, upon notice the police order that there should not be such assembly the violation of such order results to unlawful assembly. It was thus the view of the respondent that the requirement to request for permission limits freedom of expression. Expanding on this, the respondent explained that such laws limit mass mobilization as people are afraid of use of force by the police.¹⁰³ She said, during the opposition parties' mobilization of the public to reject the draft constitution proposed by the Constituent Assembly through demonstrations, people in Zanzibar argued that they did not want their legs to be injured again. Thus, she said such laws lead to self censorship and lack of participation by citizens. She also argued that the most people affected by the

¹⁰¹ The respondent is a senior private advocate practicing law in Tanzania since 1991 as the advocate of the High Court of Tanzania and courts subordinate thereto except the primary court, and advocate of the Court of Appeal since 1997. She is the founder of Tanzania Women Lawyers Association (TAWLA) and once a chairperson. She has also been one of the appointed members (from the civil society) group to the just ended constituent Assembly having been a chairperson of the Gender Forum on the Constitution, a coalition which was formed on 2011 after the President Jakaya Mrisho Kikwete announced that Tanzania was going to embark of the constitutional review followed by the Constitutional Review Act, 2011.

¹⁰² The opposition political party coalition popularly known as UMOJA WA KATIBA YA WANANCHI (UKAWA) (meaning the Unity of Peoples' Constitution) boycotted the Constituent Assembly arguing that they were not ready to be part of the Constituent assembly while the peoples' views as reflected in the draft Constitution (the Warioba's draft Constitution) had been disregarded by the Constituent Assembly.

¹⁰³ This also explains the case cited above involving the Prime Minister and the attorney General where the Primary made a statement ordering the police to use force against rally's which there was disobedience of the law.

laws that criminalise expression were members of the opposition and journalists. She cited cases of Halima Mdee (MP) and Absalom Kibanda as examples.

On being asked whether she has ever tempered with speech as the result of her knowledge of the existence of such laws, she pointed out that this was the case if one were in civil society adding that the practice was more pronounced during the constitution review process. She said those that were aware of the ramifications of violating the law internalise it and it becomes part of their psyche. One would automatically know what to say or not to say in public.

Like other respondents, Ms Rwebangira is aware of civil society campaigns to influence media law reforms spearheaded by civil society. She also added that it was fundamental that the reforms should be benchmarked against international instruments on freedom of expression such as the UNDHR.

3.4.7 Dr Lilian Mihayo Mongella¹⁰⁴

Dr Lilia mentioned the laws that limit or criminalise freedom of expression as follows:

- (i) National Security Act
- (ii) Newspapers Act
- (iii) Newspaper Registration Act

She contended that although she has never been directly affected by the laws, the National Security Act and the Newspaper Registration Act most impacts on the right to freedom of expression in Tanzania. These laws, she said, encroach and impinge the rights which are guaranteed by the Constitution and other international human rights instruments. The laws are used against the media and citizens who are punished, arrested, prosecuted or banned (in case of media houses) as a result of exercising their constitutional right.

Expanding on her views, Dr. Mongella noted that she has witnessed a number of cases/incidences where the government agencies have arrested/prosecuted and punished various people including journalists on the basis of the laws and “unlawful abuse” of the government or public officials.

The respondent further said that she knows some political figures, especially from opposition parties, such as CHADEMA who have been attacked in the course of exercising freedom of expression. Media houses such as “Mwanahalisi Newspaper” have also been banned. The respondent informed the researcher that she knows of a campaign/advocacy that is done by the Media Council of Tanzania (MCT) and the Editors Forum. However, she has not actively been involved in such initiatives individually or at organizational level.

Dr. Lillian was of a strong view that the right to freedom of expression is one of the vital rights to ensure responsibility of the government, citizens and different stakeholders in the country. The limitations which are posed against this right impact negatively on the enjoyment of this right since they make it difficult to exercise it and put threats to people due to the consequences that they may face. She thus called on government to accelerate the enactment of the freedom of information Act that she believes will help in a great way to protect and enforce the right of freedom of expression in Tanzania.

¹⁰⁴ Law lecturer and Dean of the Faculty of Law, Ruaha University based in Iringa region in Tanzania. The respondent teaches human rights law at the faculty. Interview on 16 December, 2014.

Conclusion

The Newspaper Act was mentioned by all interviewees in the mainland who were interviewed on the oppressive laws. Mr. Harold Sungusia (advocate) and Director of Human Rights at Legal and Human Rights Centre (LHRC), which is a Non Governmental Organisation situated in Dar es Salaam mentioned the Newspapers Act, 1976, the National Security Act and others as problematic laws which criminalises freedom of expression in Tanzania. Mr. Sungusia however emphasized that of all the laws mentioned, the Newspapers Act, 1976 impacts most on the right to freedom of expression in Tanzania. The respondent explained that the Newspapers Act creates restrictions to different media outlets. Also the law is vague in some instances. It has some provisions which are not self explanatory for instance the minister in public interest may suspend or cancel any newspaper but the law does not specify the grounds/reasons which the minister can use/ rely on to apply such powers. Also the respondent explained further that the National Security Act creates offence for possession of National secrets.

Mr Sungusia's observations mirrored other civil society activists and human rights defenders' position on laws that criminalise freedom of expression. In fact, of all the interviewees it is mainly civil society activists that appeared to have knowledge of laws that criminalize freedom of expression in Tanzania. As highlighted above other respondents had vague understanding of the laws and could hardly argue on why they were undemocratic. However, it was clear from those that had knowledge of the laws that their ramifications on the enjoyment of freedom of expression were not in doubt. They all concurred that although the laws were not commonly used against citizens and the media, they still caused a chilling effect in the exercise of freedom of expression in Tanzania through the disproportionate sanctions/sentences imposed for violating them.

3.5 Description of campaigns to reform laws

There have been a number of campaigns that have been initiated to influence the adoption of the democratic media and expression laws in Tanzania. Some of such activities have been spearheaded by the MCT.

As highlighted above, the most infamous law that has been used to erode freedom of expression in Tanzania is the Newspaper Act. Media stakeholders have on a number of occasions complained about this law noting its negative effects on freedom of expression and Press. On 8th July 2013 the Guardian Newspaper carried the following news which describes the nature of the impugning provisions, how they have been implemented and efforts that have been made by media stakeholders from time to time in order to advocate change of the law and promote freedom of expression in Tanzania as follows:

Media stakeholders are urging the government to heed advice issued by the Legal and Human Rights Centre (LHRC) when it recently called on the government to scrap out the Newspaper Act of 1976 on account that it suppresses freedom of media and kills democracy. "The said law gives too much power to an individual (Minister) to, based on their own opinion, decide on the so called 'public interest' to act as a 'Chief Editor' over all media products while allowing them to be complainant, prosecutor and judge. This is against the rules of natural justice and the rule of fair laws," reads part of the LHRC report. The media stakeholders are pushing for the government to adhere and scrap out the said law noting that it has occasioned the banning of various media outlets in the country including newspapers and radios and even a recent suggestion to ban social media who have been cautioned to observe the profession's ethics and codes. Speaking on behalf of other stakeholders, Kajubi Mukajanga Secretary General for the Media Council of Tanzania (MCT) made the assertion to that effect via a televised live programme noting the following. "The media is a mouthpiece for the public...banning its outlets is equal to denying the public their constitutional right to information," He urged on the need for the public to

utilize the MCT saying the organisation was established to reconcile and mediate between journalists or media institutions on the one hand, and members of the general public and other institutions on the other. "...let anyone with grievances report to the MCT or even the court if they are not happy..." urged Ndimara Tegambwage, a veteran journalist in the country who seconded the view that banning media outlets does no good to the public, Tanzania's Newspaper Act of 1976 is said to infringe the freedom of the press and the ¹⁰⁵LHRC stresses that it finds the Act and associated laws are outdated and in need review to serve the best interest of Tanzanians' basic rights and fundamental freedoms.

In addition to the above, Mr. Harod Sungusia informed the researcher that there have been advocacy campaigns which have been launched advocating for change. Pointing to such campaigns the respondent explained that for instance MCT is working and propagating the enactment of laws to guard freedom of expression. The respondent (Mr. Harold Sungusia) is part of that team. Thus, the respondent's organization the Legal and Human Right Center is aware and involved in these initiatives of making/ enacting the new laws which do not infringe freedom of expression. LHRC is part of the Task force involved together with MCT in this process. For instance it issued a statement condemning the government for closure of Mwanahalisi.

The respondent further informed the researcher that there is a research conducted by HAKI ELIMU¹⁰⁶ 2004/2005 on freedom of information.¹⁰⁷

According to this informant, the government does not appear to have concrete plans to change the media landscape in Tanzania. The informant emphasizing this point stated that, even though the law has been there for years there are no clear efforts to ensure freedom of expression. This is because there was an attempt in 2013 to modify the Newspapers Act which imposed more punishment to the extent of 5 million.

In view of this Mr. Kibanda explained that there has been some advocacy or campaigns that have been launched/initiated regarding change of these laws. For instance the Media Council of Tanzania (MCT) in the year 2000 made a move proposing removing these draconian laws. He stressed however that MCT is a mere NGO having no legal capacity. In addition Mr. Kibanda pointed out to other efforts such as the Nyalali Commission report which identified these laws as being among the draconian laws hence proposed for changes.

He cited the Ph D Thesis by one Ryoba as one of the research that has been conducted into these laws and their effects/impact.¹⁰⁸

According to information obtained from the Media Council of Tanzania (MCT) in 2001, a Media Law Reform project was established by media stakeholders whose aim was to lobby for changes in the Constitution precisely the claw back clause in article 18, review of the 1993 Information and Broadcasting policy which was incongruent with the existing reality in the media scene and the restrictive media laws which hinder press freedom and access to information.

One of the landmark campaigns to influence media law reforms followed government drafting of an information Bill in December 2006 as a step towards responding to the Nyalali report that identified about 40 laws that required review, including freedom of expression. The government initiative met with stiff resistance from media stakeholders and civil society activists led by the MCT.

105 Rose Mwalongo, The Guardian, 8th July, 2013.

107 Report annexed to this report.

The stakeholders observed some shortcomings in the government's Freedom of Information Bill. Key were that:

- That the Bill has combined issues of access to information, freedom of information, freedom of the management of mass media organizations and issues of protection of children in one legislation which is essentially about freedom and access to information;
- The Bill fell far short on international standards of freedom of expression which calls for Maximum Disclosure and Minimum Exemptions;
- The proposed Media Standards Board was considered to have a potential of undermining the functions of a long existing and efficient Media Council of Tanzania¹⁰⁹ which came up as a result of stakeholders' initiatives and which is recognized in the policy document;
- The draft Bill restricts access to public records by approving the thirty years rule as contained in Section 16 of the Records and Archives Management Act (Cap. 309, R.E. 2002).
- Seditious offences are purely political thus need to be removed from statutory laws of Tanzania. In addition, the definition of national security is too broad thus permitting abuse.
- Media stakeholders also observed that most of the provisions contained in the Draft Bill were irrelevant and inherited from the colonial masters and they were not relevant to the current standards and market trends. Further that the bill has included restrictive legal provisions while ignoring key issues concerning free market economy that call for transparency and good governance.
- The draft bill reproduced sections from the Newspapers Act 1976, which is regarded as one of the most draconian piece of legislation in Tanzania that need to be repealed.

Consequently, media stakeholders resolved not to accept the draft Freedom of Information Bill. as it fell far short of protecting freedom of expression as guaranteed in the Tanzanian Constitution. The stakeholders also made a decision to conduct a nationwide consultative process to gather views and opinions from various stakeholders and input in government's efforts to improve its Bill. Government agreed to the media coalition's request to provide more time for consultations and public input.

From December 2006 to January 2007 a vigorous consultative process began with the objective of enhancing the general knowledge of various stakeholders regarding their constitutional right to information and also to elicit from them their views and recommendations on a law which would translate this right into reality.

The coalition representatives organized and held stakeholders' workshops, seminars and press events in Dar es Salaam, Mwanza, Arusha and Mbeya regions. Other events were organized in Zanzibar. The participants to the events included journalists, representatives from community based organizations, faith based organizations, youth, politicians, human rights groups among others.

One major proposal which emerged from the consultations with the various stakeholders was that there was a need to have two separate laws, one which would deal essentially with issues of right to information, access to information and freedom of expression. The other law would deal mostly with the administration and regulation of the media and media practitioners.

Government also conceded to the coalition's request that the draft Bill be split into two to separate issues to do with freedom of information and regulating the media.

¹⁰⁹ Media Council of Tanzania (MCT) was found in 1995 by stakeholders to stop government move to establish a statutory media regulatory body.

Although there is still no tangible evidence of government's substantive action on the proposals, the Coalition has continued to engage legislatures and other key government players on the bills.

The campaigners have also taken advantage of the on-going constitution making process by submitting their positions on the media and freedom expression to the Constitutional Review Commission.

Supplementary to the efforts are also campaigns by organisations such as the Tanzania Editors Forum (TEF) and MISA-Tanzania who have also produced position papers on the need for media law reforms and made submissions to the constitutional commission on their positions.

Even though government has not positively responded to the broad demands of civil society on the need for comprehensive media law reforms, the civil society coalition has registered some success in some areas. For example, in 2003 the Media Law Reform Project contributed to the development of the Information and Broadcasting Policy, the Information, Communication and Technology Policy, and the Tanzania Communications Regulatory Authority Act.

Section Four: Conclusion and recommendations

As the above discussion has shown, while Tanzania is credited as a stable and democratic member of the international community that provided for constitutional guarantees for the fundamental right to freedom of expression as shown in the first section of this study, its media and expression laws are in total conflict with its constitution. This is clearly shown in section 2 of the report, which identified the laws and provided an analysis of their adverse implications on citizens' right to freedom of expression and access to information, which could help them formulate informed opinion. But of all the repressive media and expression laws that the country has, the Newspaper Act, is the most vicious as it contains a gamut of provisions that do not only severely erode Tanzanian's right to free expression but also perforates the veneer of democracy that the country is often vanished with. The law's undemocratic tentacles were confirmed by several people who were interviewed for this research. As highlighted in this research, although the country has recorded few cases of arrests and intimidation of journalists under the country's media and expression laws, the authorities still have at their disposal an arsenal of laws such as the Newspaper Act, which they can use with devastating effect. This notwithstanding, the few cases in which the law has been implemented has sent chilling effects among journalists who now have to tread with caution for fear of experiencing what their colleagues have gone through in exercise of duty.

It appears however that the advocacy for law reform has not focused mainly on freedom of expression but rather on access to information. There is therefore a need to adopt a more sustained and robust campaign for comprehensive reforms that will adequately promote and protect freedom of expression including access to information through free and multiple media platforms.. For this to be attained the research proposes the following:

4.2 Recommendations

4.2.1 Repeal of repressive laws

It is recommended that there be a legislative overhaul of laws that govern the enjoyment of freedom of expression and the conduct of the media in Tanzania in order to repeal all obnoxious acts and replace them with democratic legislation that is in tandem with the constitution and international instruments on freedom of expression. These include the following:

1. *The Newspaper Act*

This law has caused havoc in the exercise of freedom of expression in Tanzania as witnessed by closure of papers and arrests of journalists on various charges contained under the law. It is imperative that government revisits this act and repeal all provisions that are antithetical to the full enjoyment of freedom of expression in Tanzania. Those provisions comprise:

a. *Sedition*

It should be repealed in order to allow citizens to freely criticize government structures and processes. It is every citizens' right to criticize all public servants, including the President for they are public figures who they have entrusted to administer the affairs of their country. It is only when citizens are allowed to subject their government to scrutiny and pinpoint its shortcomings that Tanzanians can actively participate in the governance of their country and hold those in office accountable.

b. *Publication of false news which is likely to cause fear and alarm to the public*

This provision must be repealed. As it stands it is so vague in its definition of terms so as to allow for abuse in its implementation. While it is the prerogative of every state to maintain public order, there should be precise definition of what that constitutes so as to balance the need to prevent public harm and protect citizens' right to freedom of expression.

c. *Libel and Criminal Defamation to dignitary*

Criminal defamation is an archaic law that does not belong to modern democracies. There are many ways of addressing defamation cases and those include resort to civil remedies. There can never be a reasonable justification for imposing a criminal sentence on individuals who are merely exercising their universally recognized right to freedom of expression, however unpalatable their speech may be. d.

d. *Incitement to Violence*

Another offence under the Newspaper Act is incitement to violence, which seeks to criminalise any publication of an article authorities may interpret to be inciteful. This unnecessarily attracts a criminal liability. It has to be repealed in order to foster the freedom of expression.

2. *National Security Act*

The National Security Act was enacted to control security matters in the country but contains provisions that sendchilling effects in the exercise of freedom of expression. There is need to amend the law so that its provisions do not impinge on the enjoyment of free expression in Tanzania.

3. *Prevention of Terrorism Act*

This piece of legislation provides a wide definition of what constitutes terrorism. The definition is so wide as to erode the right to freedom of expression thereby making it a strong candidate for legislative review.

4. *Penal Code*

The law contains provisions that have lots of drawbacks to exercising freedom of expression in Tanzania. Like those mentioned above, there is need for the authorities to revoke all provisions that erode citizens' right to freedom of expression.

5. *Prison Act*

While there is need to secure prisons, there is need to ensure that matters that are of public interest such as prison conditions, treatment of prisoners, among other related matters, should be made public. Trying to embargo almost all matters related to prisons as this act seeks to do is undemocratic and a blatant violation of Tanzanian's right to free expression and access to information on a publicly funded institution. It is for this reason that Section 83 of this law should be amended to allow the media to report on the goings on in prisons for the public benefit.

4.2.2 Proposed Right to Information and Media Services bills

It is imperative that government tables the two bills, which have been ready since 2007. The enactment of these bills will greatly improve the state of freedom of expression in Tanzania and go a long way in ensuring that the country gives its citizens what is constitutionally due to them: full enjoyment of freedom of expression. This is because the two bills will comprehensively address problems that have plagued the right to free expression in Tanzania for a long time.

4.2.3 AU intervention

This research also recommends that the African Union's special rapporteur on freedom of expression and access to information, Commissioner, uses her regional influence to exert pressure on the Tanzanian government to repeal all undemocratic laws that curtail freedom of expression and replaces them with those that are in accordance with the regional and international instruments, some of which Tanzania is state party. In this regard, it would be recommended that as a start, a round table discussion on the state of freedom of expression in Tanzania be conducted where Commissioner Tlakula is invited to get submissions from the media, civil society and government.

4.2.4 Constitutional reform

It is also recommended that Tanzanians take the opportunity provided by the ongoing constitutional reform to ensure that the new constitution sufficiently provides for and adequately protect freedom of expression and the media and guarantees access to information. Such provisions will provide a basis upon which supporting democratic legislation will be anchored.

4.2.5 Strategic Litigation

It is also recommended that Tanzanians should approach the courts to seek the judicial intervention and protection of their freedoms guaranteed under the country's constitution. Previous constitutional challenges have shown to be effective in protecting the citizenry's right and this route is one key platform available to Tanzanians to leverage to compel the state to protect their liberties.

4.2.6 Strengthening media regulatory mechanism

Although Tanzania has a self-regulatory mechanism that has worked well in the past, there is need to strengthen it to ensure greater accountability and responsibility among the media. This will ensure quality journalism that will benefit Tanzanians and ensure there is a reduction in cases of journalists or media houses facing defamation.

4.2.7 Domestication of international instruments

Finally, the government should always be mindful of the fact that it has legal obligation under international law (both regionally and internationally) to abide by its legal obligations. This should include honouring the right to freedom of expression, promoting the right to all actors, and creating conducive environment for this right to flourish. This can be made a reality if government urgently domesticates the protocols of which it is state party and avoid the enjoyment of liberties contained therein at the mercy of constitutional court's rulings as has been the case in the past. It is therefore imperative that there be advocacy campaigns around the domestication of treaties to influence the adoption of internationally acceptable standards and principles on freedom of expression in Tanzania.