

TANZANIA MEDIA LAWS:

A Handbook for Practitioners



Development Practitioner Series

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About Boresha Habari

Boresha Habari ("Better News") is a program funded by the United States Agency for International Development (USAID) Mission to Tanzania via an Associate Award under the Strengthening Civil Society Globally (SCS Global) Leader with Associates (LWA) Cooperative agreement. Boresha Habari aims to support an open, inclusive environment in which Tanzanian media and civil society provide accurate and impartial information that promotes participation, inclusion, and accountability.

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LIST OF ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
AU	African Union
CSO	Civil Society Organization
DNS	Domain Name Service
EAC	East African Community
HRD	Human Rights Defender
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and Communication Technologies
LHRC	Legal and Human Rights Centre
NBS	National Bureau of Statistics
NGO	Non-Governmental Organization
NSS	National Statistics System
OAS	Organization of American States
OSCE	Organization for Security and Co-operation in Europe
TBC	Tanzania Broadcasting Corporation
TCRA	Tanzania Communications Regulatory Authority
TISS	Tanzania Intelligence and Security Service
UDHR	Universal Declaration of Human Rights
UN	United Nations
UPR	Universal Periodic Review
VPN	Virtual Private Network

PART I

INTRODUCTION AND CONTEXTUAL BACKGROUND



This Handbook is intended to help media practitioners, human rights defenders (HRDs) and civil society organizations (CSOs) in Tanzania to understand the legal and policy framework that affects their daily work.

The media in Tanzania face various challenges that impact directly on their role in promoting democracy, good governance and accountability. In the past three years Tanzania has enacted several laws that impede press freedom and freedom of expression and reinforce existing laws that restrict unfettered reporting. Together, these laws criminalize legitimate in-depth and investigative journalism.

Press freedom violations have recently escalated, including threats, intimidation, assaults and kidnapping of journalists, and destruction, vandalism and arson on media property. A number of media outlets have been fined, suspended or banned for violating content regulations, with 2016 recording a high number of such punitive actions. A number of newspapers such as Mawio, Mwanahalisi, and Raia Mwema have been banned for publishing articles critical of past and present Governments, and journalists charged with sedition and publishing false news. In 2017 the Government ended a twenty-year tradition of live broadcasts of Parliamentary sessions on the pretext that the State broadcaster, the



Tanzania Broadcasting Corporation (TBC), could no longer afford to meet the costs. Government later extended this ban to private radio and television stations even though they had no funding constraints.

Restrictions have extended to online media publishers, with the founder of the country's most popular website for whistle-blowers, Jamii Forums, being prosecuted for refusing to disclose its sources. Media outlets have been heavily fined for publicizing an election observation report prepared by the Legal and Human Rights Centre (LHRC), which expressed concerns about alleged election malpractice by the police and certain electoral candidates. The chilling effect of such actions deprives civil society organizations (CSOs) of media coverage of such important activities, and their stakeholders and the public of alternative information.

A climate of fear within media circles is also perpetuated by political pronouncements warning media outlets against reportage that is said to undermine efforts to develop the country.

Tanzania has among the highest number of media outlets in the region, but most are small, under-resourced entities whose stability is precarious, and whose journalists face daunting challenges in maintaining professionalism and objectivity. The Government's decision to centralize and issue its advertising contracts and those of its agencies and parastatals to Government-owned media outlets and those that are not critical of it, negatively impacts the viability of the ignored media outlets.

However, Tanzania is not exceptional; the current trend in



the global political context reflects a general narrowing of democratic space, particularly for free and independent media and press. Media practitioners, HRDs and CSOs must be aware of the legal context that governs the media environment and the strategies that can help them to navigate these restrictions.

This Handbook aims to:

- Clarify the role and responsibility of media practitioners from a human rights perspective;
- Explain the legal and policy framework that guides media work in Tanzania; and
- Provide practical suggestions on how to navigate the pitfalls in the legal environment.

THE INTERPLAY BETWEEN MEDIA AND HUMAN RIGHTS

A healthy democracy depends on free and independent media that can act in the public interest. Principally, the rights to freedom of opinion and expression guarantee that people can hold opinions without interference, seek, receive and impart information and ideas of all kinds, subject only to very narrow restrictions, defined in international law. Free and independent media are essential to ensure these rights and freedoms.

The role of journalists is more than just a job; it is a profession that can shape a nation's views and opinions. Media provide avenues for people to be informed and to develop and express opinions. A credible press enables advocacy for new agendas and change and is critical in



keeping authorities accountable to the people through their watchdog role. Journalists depend on information held by public bodies and institutions, and on credible sources (including whistle-blowers) to access such information. Laws that facilitate (rather than hinder) these efforts are critical.

On their part, journalists and other media practitioners have a responsibility to maintain professional and ethical standards in executing their roles. This includes credible reporting, following ethical guidelines, and ensuring journalistic independence.

PART II

THE INTERNATIONAL LEGAL AND POLICY FRAMEWORK AFFECTING THE MEDIA



Several international treaties at the global, continental and regional levels protect the media, journalists and HRDs from undue Government interference. The treaties create binding obligations that the Government must follow to promote and protect the freedom of opinion and expression.

GLOBAL

Universal Declaration of Human Rights (UDHR)

Article 19 of the UDHR states that: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.

International Covenant on Civil and Political Rights (ICCPR)

Tanzania ratified the ICCPR in 1976 and is therefore legally bound to uphold its provisions. Article 19 guarantees the right to freedom of expression:

- 1. Everyone shall have the right to hold opinions without interference.*
- 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*



3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

(a) For respect of the rights and reputations of others;

(b) For the protection of national security or of public order, or of public health or morals.

The right to freedom of expression includes the right to scrutinize, debate openly, make statements that offend, shock and disturb, and criticize.

Restrictions: The Three-Part Test

Restrictions to the speech and expression guaranteed in Article 19 are lawful only when such restrictions pass a three-part, cumulative test as outlined in Article 19(3). According to the test:

1. The restriction must be provided by law, which is clear and accessible to everyone (*principles of predictability and transparency*);
2. The restriction must pursue one of the purposes in Article 19(3), namely:
 - a. to protect the rights or reputations of others;
 - b. to protect national security or public order, or public health or morals (*principle of legitimacy*); and
3. The restriction must be proven as necessary and the least restrictive means required to achieve the purported aim (*principles of necessity and proportionality*).



The principles of predictability and transparency: any restriction to speech must be made by a properly enacted law or regulation. That law must be precise, so that individuals and Government authorities know what speech is permitted and what speech is prohibited. Individuals must be able to regulate their conduct to comply with the law.

The principles of necessity and proportionality: any restriction to speech must be as minimal as possible, and any punishment for violating the law must be reasonable and proportionate to the injury suffered. For example, under international law, a prison term for defamation is a disproportionate penalty and thus does not satisfy this prong of the three-part test.

Independent Mechanisms of the United Nations (UN) and the African Commission on Human and Peoples' Rights (ACHPR)

The *UN Human Rights Committee* established by the ICCPR to monitor implementation of the Treaty has, in its General Comment No. 34, elaborated on the content of the right to freedom of expression and opinion and State obligations to ensure realization of the right. Each State must report to this Committee on how it has met its international obligations. The Committee then provides Concluding Observations to assist States to fulfil their obligations.

Special Rapporteurs of both the UN and ACHPR report and advise on specific human rights from a thematic or country-specific perspective and contribute to the development of international human rights standards. They do this by conducting country visits, producing reports from



these visits as well as issuing thematic reports. Special Rapporteurs' reports are useful in documenting trends, developments and challenges relating to rights and recommending how to promote and protect the rights.

Special Rapporteurs on the rights to freedom of opinion and expression have elaborated principles and standards relevant to some of the challenges posed by the restrictive legal environment for the media in Tanzania. Four such independent experts, namely (i) the UN Human Rights Council Special Rapporteur on Freedom of Opinion and Expression, (ii) the ACHPR's Special Rapporteur on Freedom of Expression and Access to Information, (iii) the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media; and (iv) the Organization of American States (OAS) Special Rapporteur on Freedom of Expression, have issued several joint declarations on freedom of expression. Some principles are set out below:

- States must create a general enabling environment for seeking, receiving and imparting information and ideas including by enacting legislation on the right to access information, protection to whistle-blowers, and civil rather than criminal defamation laws that do not provide excessive damage awards. (Declaration of 2 May 2018).
- In regulating online content, States must prohibit only certain exceptional types of expression, namely child pornography and direct and public incitement to commit



genocide, hate speech and incitement to terrorism.

- General prohibitions on disseminating information based on vague and ambiguous ideas such as “false news” or “non-objective information” should be abolished (Declaration of 3 March 2017).
- Criminal defamation laws are unduly restrictive and should be abolished (Declaration of 3 March 2017).
- On the internet, intermediaries (including journalists and media organizations) should never be liable for any third-party content unless they specifically intervene in that content, refuse to obey a valid court order to remove content, and have the technical capacity to do so. (Declaration of 3 March 2017).
- Licensing or registration systems for individual journalists are incompatible with the right to freedom of expression and are appropriate only where necessary to provide them with privileged access to certain places or events. An independent body should oversee such schemes and accreditation should proceed through fair and transparent processes based on clear and non-discriminatory criteria published in advance. (Declaration of 18 December 2003)



- Public media regulatory bodies should be protected from political or economic interference, including in the members' appointment process, which should allow for public input and should not be controlled by any particular political party. (Declaration of 18 December 2003).

CONTINENTAL

African Charter on Human and Peoples' Rights (African Charter)

The African Charter protects, in Article 9, the right to freedom of expression and opinion:

- 1. Every individual shall have the right to receive information.*
- 2. Every individual shall have the right to express and disseminate his opinions within the law.*

The ACHPR is responsible for interpreting the Charter. It has done so in various ways, including through the adoption of Resolutions and Declarations.

Key Resolutions and Declarations of the ACHPR:

The Resolution on the Right to Freedom of Information and Expression on the Internet in Africa (adopted 4 November 2016): State Parties to the African Charter must take legislative and other measures to guarantee, respect and protect citizens' rights to freedom of information and expression through access to internet services.

The Resolution on the Safety of Journalists and Media Practitioners in Africa (adopted 12 May 2011): State Parties and concerned authorities must fulfil



their obligation to prevent and investigate all crimes allegedly committed against journalists and media practitioners and bring perpetrators to justice. All parties involved in situations of armed conflicts must respect the independence and freedom of journalists and media practitioners to exercise their profession and guarantee their safety and security under international humanitarian law.

The Resolution on the Deteriorating Situation of Freedom of Expression and Access to Information in Africa (adopted 26 May 2010): State Parties must adopt legislation that promotes and protects the rights to freedom of expression and access to information. They must be guided by international and regional standards, which curtail undue violations of these rights. States must investigate alleged violations, particularly death of detained journalists, and bring perpetrators to justice.

The Declaration of Principles on Freedom of Expression in Africa (adopted in 2002): State Parties must guarantee freedom of expression and information, which includes the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers. The Declaration sets out a number of relevant principles, including:

- A diverse, independent private broadcasting sector rather than a State monopoly, which is not compatible with the right to freedom of expression.
- Accountability of public service broadcasters



to the public through the legislature, rather than the executive.

- Independent regulatory bodies for broadcast and telecommunications, which are adequately protected against political and economic interference.
- A registration system for print media that does not impose substantive restrictions on expression.
- Defamation laws that do not inhibit the dissemination of information of public interest.
- Protection of confidential sources of information except in very narrowly defined circumstances.

REGIONAL – EAST AFRICA

Treaty for the Establishment of the East African Community

This Treaty establishes the East African Community. State Parties must uphold the fundamental principles of the Community in Article 6(d), being “good governance including the adherence to democracy, the rule of law, accountability, transparency as well as the recognition, promotion and protection of human and peoples’ rights.”

PART III

THE NATIONAL LEGAL AND POLICY FRAMEWORK AFFECTING THE MEDIA



CONSTITUTION OF TANZANIA

The Constitution of Tanzania protects freedom of expression in Article 18, but does not specifically provide for media freedom:

Every person -

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

(b) has a right to seek, receive and, or disseminate information regardless of national boundaries;

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

(d) 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.

Limitations

The rights in the Constitution, including Article 18, shall not be exercised in a manner that interferes with or curtails the rights and freedoms of other persons, or of the public interest (Art. 30(1)). Rights can be limited for a number of reasons:

- To ensure the defence, public safety, public peace, public morality, public health, rural and urban development planning, the exploitation and utilization of minerals or the increase and



development of any other interests for the purposes of enhancing the public benefit; or

- To protect the reputation, rights and freedoms of others or the privacy of persons involved in any court proceedings, to prohibit the disclosure of confidential information, or to safeguard the dignity, authority and independence of courts.

Note: These grounds are significantly broader than those provided in the ICCPR. The principles of necessity and proportionality are not prescribed as a consideration when limiting rights.

NATIONAL LAWS REGULATING THE MEDIA

Media Services Act, 2016

The Media Services Act promotes media industry professionalism, and establishes the Journalists Accreditation Board, the Independent Media Council and other regulatory frameworks for media services.

Key provisions and implications for the media include:

Registration and Accreditation:

- It is mandatory for print media to obtain a license from the Director of the Information Services Department. Sections 8-10 provide for licensing and rejection or cancellation of an application. Appeals against such decisions lie with the Minister responsible for content and should be lodged within thirty days of the decision.



- It is also mandatory to accredit to practice as a journalist [Section 19]. The Board may cancel a journalist's accreditation for gross professional misconduct as prescribed in the code of ethics and, in the case of a foreign journalist, for failure to pursue the purpose for which accreditation was granted. The Board maintains a roll with names and particulars of existing accredited journalists.
- A journalist whose name is expunged from the roll or is suspended from practicing shall not practice for at least three months. Appeals of these decisions lie with the Minister and to the High Court. [Section 21]

Implication: Mandatory licensing and accreditation to practice journalism is highly problematic, as it is a barrier to entry into the profession. The criteria for accreditation are not provided for in the Act; this creates opportunities for the Government to arbitrarily exclude critical journalists from the profession, especially since the Minister determines membership of the Journalists Accreditation Board.

The Journalists' Accreditation Board and Independent Media Council

- A Journalists' Accreditation Board (seven members appointed by the Minister) accredits and issues press cards to journalists, enforces the professional code of ethics, and upholds standards of professional conduct. The Board can suspend or expunge journalists from the



roll of accredited journalists, impose fines for non-compliance, and set fees and charges for accreditation. [Sections 11-14]

- Every accredited journalist shall be a member of the Independent Media Council, established through Section 24. In consultation with the Board, the Council sets a code of ethics and promotes professional standards among journalists and media enterprises. It also conducts performance reviews of the media sector, determines print media complaints, and promotes media accountability. [Section 26]

Rights and Obligations of Journalists

- Both public and privately-owned media houses can collect information from different sources; process and edit information according to their professional ethics; and publish or broadcast news. The Government retains significant control over private media houses by directing that they publish issues of national importance. [Sections 6-7]
- Media houses must not: undermine national security and lawful investigations by law enforcement agents; impede due process or endanger the safety of life of any person; engage in unwarranted invasion of an individual's privacy; infringe lawful commercial interests including intellectual property rights; or hinder or cause substantial harm to the Government to manage the economy;



- A person aggrieved by content published by print media can complain to the Council's complaints committee within three months; an appeal against an award by the Council lies to the High Court [Sections 28-29).

Implications: Authorities are given inordinate power to control the content and operations of media houses. Especially for private media outlets, such powers infringe on their independence to determine editorial policy and thus their rights to media freedom, opinion and expression. Further, the public is denied the right to access information from a wide range of sources and varied shades of opinion.

Police Powers

- Police officers are granted broad search and seizure powers in respect of a media house that is established, installed, maintained, operated or provided in contravention of the Act. [Section 60]

Offences under the Act

- Section 50 defines offences and penalties for actions involving the use of media services to publish any statements which intentionally, recklessly, maliciously, fraudulently or otherwise contain false information, malicious and fraudulently fabricated information; or prohibited information which threaten a range of public interests and the reputation, rights and freedoms of others. Other offences cover the operation of a media



outlet without a license, practicing journalism without accreditation or disseminating false information without justification.

- Offences of defamation and libel are defined in the Act. The publication of defamatory matter is unlawful unless the matter is true and was published for a public benefit or is privileged. The Act details a number of situations where publication of a defamatory matter is absolutely privileged, and for which a person cannot be punished - mainly where the matter is published by Government authorities. Publication of a defamatory matter is conditionally privileged in a number of cases, largely premised on good faith. [Sections 35-39]

Implications: The criminalization of defamation violates the freedom of expression, and penalties such as imprisonment are not a permissible limitation to freedom of expression in order to protect the rights and reputations of others. Such criminalization is likely to lead to self-censorship. The absolute immunity granted to the authorities is also likely to silence critical voices. Privileged information is not required to be true or published in good faith. This gives wide discretion to authorities to knowingly publish defamatory and false information without repercussion, liability or punishment.

Prohibited Materials

- The importation, publication, sale, offer for sale, distribution or production of prohibited



publications are seditious offences in terms of section 53. The Minister has absolute discretion under section 58 to prohibit the importation of publications that in his/her opinion would be contrary to public interest. The Minister may also prohibit or otherwise sanction the publication of content that affects national security or public safety. [Section 59]

Implications: The unrestricted discretion given to the Minister is problematic. The discretion could be used to restrict the importation and publication of critical material or information that the Government finds undesirable. Also, the Act does not provide guidance as to what kinds of materials might fall within these categories, so media practitioners would be unable to regulate their behaviour accordingly and would find themselves in contravention of the Act.

Further, seditious acts are over-broadly defined in the Act and raise concerns that the actions are too vaguely described to enable individuals to adapt their speech to conform to the Act. Despite the severe penalties, it is not clear how one is expected to identify seditious publications or who determines that a publication is seditious. A journalist might unknowingly publish content considered to be seditious, or content considered undesirable by authorities might be declared seditious after publication by the media. Provisions allowing for confiscation of equipment associated with seditious publications have the potential to cripple media houses from carrying on their work, if they are unable to continue publication.



Access to Information Act, 2016

The purpose of this law is primarily to provide for access to information; define what information the public has the right to access; and promote transparency and accountability of information holders.

Key provisions and implications for the media include:

Application of the Act

- The Act applies to “information holders” – namely, public authorities and private bodies registered under any written law which (i) utilize public funds or (ii) are in possession of information which is of significant public interest. [Section 2(2)]
- Only citizens of Tanzania have the right to access to information, and this is subject to limitations that may be contained in other written laws. [Section 5]

Implications: Private media outlets are subject to the Act because they may be in possession of information that is of significant public interest. As such, they may be required to disclose information under their control. The term ‘public interest’ is not defined and could potentially lead to the disclosure of a broad range of information including private and personal information.

Foreign journalists may not enjoy the right of access to information as it applies only to citizens.



Requests for Information and when Information can be Withheld

- Sections 10-17 establish processes to deal with requests for information.
- Information holders may withhold information if such information is exempted, and if such disclosure is not justified in the public interest. Scenarios include if the information is likely to undermine defence, national security and international relations; hinder or cause substantial harm to the Government to manage the economy; and undermine Cabinet records and those of its committees. Penalties are imposed for disclosing exempt information. [Section 6]
- An appeal against decisions of the information holder can be made to the head of the institution within 30 days of receipt of application. Further appeal lies to the Minister, unless the information holder is under the Minister, in which case an application for review may be made to the High Court. [Section 19]

Implications: Provisions of other laws may affect the disclosure or non-disclosure of information under this Act. The Act contains broad exemptions as to what information may be withheld, grants wide discretion to information holders to determine what information is or is not justified in the public interest, and contains vague and undefined language that could prevent disclosure of a wide range of documents. Journalists would find it difficult to predict with certainty what information they can access or disclose.



Wrongful disclosure of exempt information attracts severe criminal sanctions, with no protection from prosecution for disclosures made in good faith.

Offences under the Act

- The Act sets out a variety of offences, including distortion of information (penalty of imprisonment of between two and five years – section 18); and altering, defacing, blocking, erasing, destroying or concealing information with the aim of preventing disclosure (section 22).
- A person in the service or employment of any information holder who in good faith releases information on a wrongdoing (such as commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, maladministration regarding the information holder) or information disclosing a serious threat to health, safety or the environment, shall not be subject to any legal, administrative, or employment sanctions. [Section 23]
- Officers in the service or employment of any information holder are not subject to civil or criminal liability for actions done or omitted in good faith. [Section 24]

Implications: Persons who are aggrieved by access to information decisions cannot generally refer their case to a court for review of the decisions. The lack of an independent tribunal to decide cases means that arbitrary



application of the law including where journalists are affected might not be appropriately resolved.

Electronic and Postal Communications Act, 2010

The Act provides for:

- the regulation of electronic and postal communications service providers;
- the registration of SIM cards;
- the issuance of communications and postal licenses;
- the regulation of licensees, agents and customers, content, competition and practices;
- offences relating to electronic and postal communications.

Key provisions and implications for the media include:

Licensing

Sections 4–22 provides for the powers of the licensing authority, namely the Tanzania Communications Regulatory Authority (the Authority/TCRA), the types of licenses to be issued, processes to be followed, and conditions for renewal, suspension and cancellation of licences.

Issues relating to Postal Services/Correspondence

- Sections 36–40 cover the regulation of postal services and issuance of postal licences.
- Section 42 protects the privacy of correspondence and lists the exceptions to



this principle. Liability for loss, misplacing, delivery or failure to guarantee the integrity of correspondence or postal items, compensation is elaborated in section 43.

- Sections 46 and 52 set out prohibited correspondence or postal items and articles that the postal licensee may refuse to accept.
- Section 53 prohibits the transmission by post of indecent articles. These include: indecent or obscene printing, painting, photograph, lithograph, engraving, book or card, or any other indecent or obscene article; any postal article having or on the cover, any words, marks or designs of any indecent, obscene, seditious, scurrilous, threatening or grossly offensive character.

Radio and Mobile Communication

- Sections 71-72-The Authority is granted powers to manage and control all radio communication frequencies spectrum or frequency channels through licenses, including allocation, reallocation, suspension, cancellation or other modification of frequency distribution. The Authority classifies radio stations, prescribes the nature of services they will render, and assigns frequency bands and times during which they may operate. The provisions describe procedures to be followed when the Authority investigates or enquires into the use of radio communication frequencies.



- Sections 85 – 102 provide for the registration of SIM cards and mobile phones, confidentiality of the information and the blacklisting of stolen, lost, or damaged mobile phones.

Implications: Mandatory SIM card registration would make it difficult for journalists to protect their sources' identities and ensure confidentiality of the information they provide.

The requirement for journalists to broadcast a counter-version of a program is set at a low threshold. This could result in substantial demands for broadcast of counter-versions thus compromising media houses editorial independence and have a chilling effect on media houses' willingness to cover sensitive stories that are in the public interest.

Content Issues

- Section 103-4 contemplates a binding code of conduct, and prohibits the provision of content that is indecent, obscene, false, menacing or otherwise offensive in character. The code of conduct aims to protect children; discourage criminality; present comprehensive, accurate and impartial news; present religious content in a balanced and responsible manner; and protect the public against offensive and harmful content.
- The Authority can issue regulations to ensure that content service licensees provide news and information on current affairs on a regular basis, in an accurate, balanced, impartial and fair manner. [Section 106]



- Section 107 regulates independent and original local content and prevents excessive provision of content that is not relevant to or conducive to the development of Tanzanian society. It also specifies the extent to which local, independent and original content shall be included as well as times of day and week when such content shall be provided.
- Provision of content of a political nature is not prohibited, but the Minister may regulate it in a manner consistent with the fundamental objectives, directives and principles, basic rights and duties set out in the Constitution. [Section 112]
- A content service licensee must broadcast a counter-version by a person that claims that the facts in a program are false, except where the person or organization concerned has no direct interest in the transmission of the counter-version, or the counter-version is not of reasonable length. [Section 113]

Implications: The Authority has overly broad powers to regulate content based on vague and undefined terms such as “obscene”, “indecent”, “menacing”, and “offensive.” Journalists and media outlets would find it difficult to anticipate which content might contravene the Act. The Government would also have unfettered powers to arbitrarily prohibit critical and undesirable content. The Minister has wide discretion to direct how political content is covered, compromising independent editorial policy.



Police powers

- Police officers or employees authorized by the Authority can enter, inspect and seize communications equipment from any premises if there are reasonable grounds to believe that the Act or regulations have been contravened. [Section 163]

Implications: Media outlets may be subjected to search and seizure by law enforcement without a warrant or other judicial oversight. This would compromise their operations and undermine the confidence of sources to provide information.

Electronic and Postal Communications (Online Content) Regulations, 2018

Key provisions and implications for the media include:

Registration Requirements and Responsibility for Published Content

- Regulation 4 - The Authority (TCRA) has regulatory powers to register bloggers, online forums, online radio and online television; to take action against non-compliance with the regulations; and to conduct public awareness on safe use of online content.

Implications: The mandatory registration scheme covers bloggers and online fora, necessarily including journalists and other social media users. The TCRA's power to refuse registration means that the Authority can effectively choose whose voices and opinions can be shared. It may thus choose to silence journalists who play watchdog and oversight roles on behalf of the public and other critical voices.



Content Licensing, Responsibility for Content, and Rules on Prohibited Content

- Regulations 14-15 - Content services providers are required to apply for a license, and the Authority can cancel this where the terms and conditions are breached.
- Regulation 10 - Social media users are responsible and accountable for the information they publish on social media.
- Regulation 5 - Online content providers must ensure that online content is safe, secure and complies with written laws. They must filter prohibited content; take corrective measures for objectionable or prohibited content; and ensure that prohibited content is removed within twelve hours of being notified of its existence.
- Regulation 7 - Licensees of online radio and television must abide by broadcasting services regulations, journalism ethics and professionalism and local content requirements.
- Regulation 6 - Application services licensees (holder of an application service license limited to the provision of online content or facilitation of online content producers) must enforce subscriber compliance with the regulations, including by informing the subscriber to remove prohibited content. Failure to do so will result in the licensee



suspending or terminating the subscribers' access account.

- Regulation 12 - Describes prohibited online content as including obscene content, hate speech, pornography, content that causes annoyance, threatens harm or evil, encourages or incites crime or leads to public disorder; content that may threaten national security or public health and safety such as disturbances in a specific part of the country; content that uses bad language such as disparaging and abusive words calculated to offend an individual or group of persons and false content which is likely to mislead or deceive the public unless it is declared to be satire, parody, fiction or not factual.
- The Regulations provide a process by which any person may file a complaint to the online content provider in relation to prohibited content.

Implications: The term “Online content provider” is not defined, and so may include online radio, online television, social media, blogs or other electronic media. Any person can file a complaint against an online content provider in relation to prohibited content. As services and content providers as well as internet users, journalists would be obligated to remove content deemed offensive or prohibited or otherwise resolve a matter if any person or the Authority complains, within twelve hours. There are no avenues to challenge the legitimacy of complaints and the process can be used to censor online content. Failure



or refusal to resolve complaints attracts criminal sanction. Journalists who post or allow prohibited content to be published despite complaints could face severe fines and imprisonment sentences.

Vague terms like “obscene”, “indecent”, “bad language” and “false” are open to subjective interpretation where a clear, objective and precise definition is not provided in the law. Authorities may use broad discretion in interpreting these terms to pursue criminal actions against individuals including journalists who publish critical information.

The prohibited categories of expression are overly broad and ambiguous and could potentially restrict the broadcast of legitimate news and information by journalists. For example, news regarding violent crime or campaigns highlighting the dangers of domestic violence or sexual trafficking could contravene these Regulations.

Tanzania Communications Regulatory Authority Act, 2003

The Act establishes the TCRA as a regulator of telecommunications, broadcasting and postal services and provides for allocation and management of radio spectrum, electronic technologies and other Information and Communication Technologies (ICT) applications.

Key provisions and implications for the media include:

Duties and Functions of the TCRA and its Board

- The TCRA's duties and functions are set out in sections 5 and 6 and include the issue, renewal and cancellation of licences, and standard setting in relation to goods and services.



- The Board's establishment and functions are set out in sections 7-12. It is the TCRA's governing body consisting of seven members appointed by the President and the Minister responsible for Communications (except in relation to content regulation and broadcasting services).
- Section 26 establishes a Content Committee and its membership. The Minister appoints the Committee in consultation with the Chair of the Board. Functions include advising the sector Minister on broadcasting policy, monitoring and regulating broadcast content, handling complaints from operators and consumers and monitoring broadcasting ethics compliance. [Section 27]
- Complaints against decisions of the Authority may be referred to the Review Panel, established under section 33 of the Act. Further appeals against decisions of the Authority or any other decision in connection with the purposes of the Act, may be made to the Fair Competition Tribunal. [Section 36]

Implication: The TCRA's lack of independence, particularly in the appointment of its membership raises concerns that the President and Minister who are the appointing authorities can potentially exercise control over the direction and policies adopted by the TCRA.



Powers of the TCRA

- The TCRA may issue a compliance order where satisfied that a person has committed or is likely to commit an offence under the Act or a sector legislation (legislation related to the media sector or services). Such an order may require a person to refrain from conduct that is in contravention of the Act or take actions to comply with the Act or sector legislation. A compliance order shall be enforceable as an order of the High Court. [Section 45]

Implications: The TCRA has broad enforcement powers to regulate the establishment of media and other communications outlets, their operations, and the content or information published or broadcast.

The legislation regulating the media sector contains various weaknesses, of which TCRA can take advantage, such as:

- mandatory licensing and registration requirements;
- broad and vague language to describe prohibited actions and content;
- intermediary liability and responsibility to take-down content and report prohibited content, criminalization of defamation and libel as well as sedition;
- lack of judicial oversight of intrusive procedures such as search and seizure of equipment.



Broadcasting Services (Content) Regulations, 2005

Key Provisions

- Regulation 5 - All licensees must ensure that their programs and presentations:
 - uphold national sovereignty, national unity, national interest, national security and Tanzania's economic interests;
 - project Tanzanian national values and national points of view;
 - observe good taste and decency;
 - uphold public morality;
 - avoid intrusive conduct into private lives;
 - do not injure the reputation of individuals;
 - protect children from negative influences;
 - do not incite or perpetuate hatred against or vilify any group or persons on the basis of ethnicity, race, gender, religion or disability.
- Licensees must broadcast at least one and a half hours of news daily. Regulation 6 specifies the nature of the news – local regional, national and international - as well as accurate, fair, objective and balanced reporting.
- Regulation 9 - To protect privacy, a licensee is prohibited from using a person's personal or private affairs except where there is a compelling public interest. The identity of



victims of rape and other sexual offences shall not be divulged without written consent of the victims. The identity of minors who are victims of similar offences shall not be divulged at all.

- Regulation 15 - This prohibits use of non-official language without specific authorization and cautions against use of language meant to mislead or unnecessarily cause alarm or despondency. Particular care is to be taken to avoid blasphemy and take into account cultural and religious sensitivities.
- Regulation 16 describes the portrayal of sexual activity and Regulation 18 the airing of violence. Regulation 20 seeks to prevent the promotion of stereotypes and discrimination on the various prohibited grounds, including gender and disability.
- The Regulations contain several justifiable restrictions to the freedom of expression and media rights with the purpose of limiting the influence of sponsors in certain situations, ensuring balanced coverage during election periods and urging fair reporting of news [Regulations 7, 8 II].

Implications

- Mandatory broadcasting requirements infringe on the independence of the media and editorial choice, particularly for private media companies who may not wish, for example, to air news or current affairs programs.



- The Regulations contain instances of broad and vague language that is open to misinterpretation. They do not provide clear guidance to broadcasters and journalists to enable them to regulate their conduct accordingly. For example, the requirement to broadcast programs that uphold national sovereignty, unity, national interests and national security, or the requirement to observe good taste and decency are not necessarily objective standards on which everyone can agree. As such, media practitioners are likely to self-censor out of abundance of caution and to avoid sanction.

LAWS THAT RESTRICT MEDIA FREEDOMS

Cybercrimes Act, 2015

The Act criminalizes offences related to computer systems and information communication technologies (ICT); and the investigation, collection and use of electronic evidence and related matters.

Key provisions and implications for the media include:

Offence and Penalties

- Sections 4-29 define offences and penalties relating to computer systems [a computer system is defined as a device or devices which contain computer programs, electronic instructions, input and output data that perform logic, arithmetic data



storage and retrieval] and information and communication technology (ICT). Offences include unlawful and intentional access, interception, possession, circumvention, and interference of a computer system or data.

- Sections 13 and 14 prohibit child pornography and pornography generally.
- Section 16 prohibits intentional publication of information or data that is false, deceptive, misleading or inaccurate with intent to defame, threaten, abuse, insult or otherwise deceive or mislead the public.
- Section 20 criminalizes initiating transmission of, relaying or retransmitting unsolicited messages as well as falsifying header information in unsolicited messages.
- Section 23 prohibits cyber bullying [sending any electronic communication using a computer system to a person with intent to coerce, intimidate, harass or cause emotional distress].

Implications: Provisions that define offences could be used to punish journalists, whistle-blowers, watchdog and other monitoring organisations. These provisions impose liability for actions, even where there is no criminal intent or no serious harm. Thus, legitimate and innocent use of computer data is criminalized. Individuals such as journalists, who rely on the exchange of information for their work, may be found liable for innocent actions such



as receiving or transmitting unauthorized computer data in the belief that they are authorized to use the data or without knowing the circumstances by which the data has been transmitted.

Journalists who publish criticism against individuals or the authorities could be deemed to have ‘insulted’ them or published ‘deceptive’, ‘misleading’ or ‘inaccurate’ information. These terms are vague and undefined and do not enable individuals to predict with clarity what actions are criminalized. This can result in arbitrary targeting of journalists, or self-censorship for fear of being arrested. By being labelled untruthful or spreading ‘fake news’, public trust in journalists and their role as the public watchdog is also undermined.

Police Powers

- Section 31 authorizes police or law enforcement officers in charge of a police station or of similar rank to issue orders authorizing entry, search or seizure of devices and computer systems, and to secure accessed computer data, if they are satisfied that there are reasonable grounds to suspect the computer system may be used as evidence of an offence or is the result of an offence.
- According to section 32, a law enforcement officer can compel a person in possession of data required for criminal investigation or the prosecution of an offence to disclose such data.
- Section 34 empowers police or law enforcement officers to order a person in possession of



computer data required for investigation to disclose, collect or record traffic data associated with a specified communication or to permit and assist the law enforcement officer to collect or record that data. This data is information that shows a communication's origin, destination, route, and time.

- The police may, under section 35, issue an order to collect, record, permit or assist the relevant authority to collect or record content data that identifies a particular communication including by use of technical means. Section 37 allows the police to use, upon authorization by court order, a forensic tool to collect data, initially for a period of fourteen days but subsequently extendable as a court deems necessary. Proceedings for hearing of such applications are heard in the presence of the applicant only and are not open to the public.

Implications: The Act permits entry, search and seizure of information, data and devices. Law enforcement officers can also compel disclosure of information. In many cases, these actions are authorized without judicial oversight. Where judicial oversight is provided for, hearings are held in the presence of the applicant only, are not open to the public, and affected individuals do not have the opportunity to be heard. Journalists and other media practitioners may possess or have access to information that might be of interest to law enforcement agents. The lack of judicial oversight removes vital protections, which allow journalists to effectively exercise their media freedoms and protect their sources.



Obligations of Service Providers

- Section 39 prohibits service providers from monitoring data that the provider transmits or stores, or actively seeking indicators of unlawful activity. The Minister (responsible for Information and Communication Technology) may require service providers to inform authorities of alleged illegal activities or avail authorities at their request with information to identify service users. A service provider who has knowledge of illegal information is obliged to remove the information in the computer system within their control, suspend or terminate services in respect of that information or activity and notify law enforcement authorities, and provide them with relevant facts and identity of related users.
- Access providers and hosting services providers are exempt from liability for information transmitted or hosted at the request of users of the services. In the case of hosting service providers, the exemption is conditioned on the provider removing or disabling access to specific illegal information stored when ordered by any competent authority or court. Upon becoming aware of illegal information stored, the provider should immediately inform the relevant authority. Similarly, caching providers (persons who provide electronic data transmission services by storing information in



order to efficiently transmit the information to other users on request) and hyperlink providers (persons who provide electronic pathways which when executed, display documents or information) are required to immediately remove or disable access to information after receiving orders to do so from relevant authorities. [Sections 40-43]

Take-Down Notifications

Section 45 provides that a person may, through a take-down notification, inform the service provider of data or activity infringing the rights of the recipient or third party, any unlawful material or activity, or any matter conducted or provided contrary to provisions of the law. The service provider is obliged to take action on the take-down notification.

Implication: Journalists and media outlets may be subjected to surveillance and also be required to comply with take-down notifications for online information deemed illegal. This may have a chilling effect on the publication of sensitive information in the public interest.

Cybercrimes (General) Regulations, 2016

Privacy

- Regulation 4 obliges Service Providers upon request to provide “the competent authority” with a significant amount of its users’ information.

Implication: Users’ privacy is compromised where service providers are mandated to disclose information without independent judicial oversight. Individuals who post critical material including journalists, whistle-



blowers and others who may wish to remain anonymous are at risk of exposure, surveillance, targeting and other infringements of their rights.

Take-Down Notifications

- Regulations 6 and 7 provide rules for take-down notifications. Any individual can file a take-down notification once he/she becomes aware of data or activity that infringes the rights of the recipient or of a third party, any unlawful material or activity or any other matter conducted contrary to the law. Notably, take-down notices can be issued by anyone regardless of whether they have a specific interest or linkage to the allegedly offensive material or not.

Implication: Service providers are required within 24 hours to comply with a take-down notification or provide reasons why the material should not be taken down. Shifting the burdens of proof to service providers will likely result in censorship, as service providers opt to comply with the take-down request rather than assess and justify whether users have engaged in illegal activity. Where a service provider is a media outlet, or carries journalistic material, it is foreseeable that critical material would be subject to take-down notices.

Statistics Act, 2015 (including amendments introduced by The Written Laws (Miscellaneous Amendments) (No.3) Act, 2018

The Act establishes the National Bureau of Statistics and the Statistics Governing Board (SGB) and provides for the coordination of the National Statistics System (NSS).



Key provisions include:

Role and Functions of the National Bureau of Statistics (NBS/the Bureau)

- The Bureau is an autonomous public office under the Ministry responsible for statistics. It produces, coordinates, supervises and disseminates official statistics, and is their custodian. [Sections 4-6]
- The Bureau coordinates the NSS by issuing a code of practice for official statistics. This sets out professional standards that guide production of official statistics and collection, analysis and publication of statistics to ensure uniformity in quality, adequacy in coverage and reliability of statistical information. The Bureau also provides guidance and other assistance to users or providers of statistics and promotes cooperation and rationalization among users or producers of statistics so as to avoid duplication of efforts and ensure optimal use of scarce resources. [Section 17]

Collection and Publication of Official Statistics

- Official statistics refers to “statistics produced, validated, compiled or disseminated by or under the authority of the Bureau.” The Bureau determines when and how all ministries and government entities collect and publish data.
- Official statistics are collected only after the Bureau authorizes such collection to take place and such collection can only be carried out by



certain individuals who must be approved by the Bureau.

- However, the new section 24.A(1) requires the Bureau to approve of all official statistics prior to publication. Section 24.A(2) prevents any person from communicating any other information that contradicts official statistics.
- According to section 18, only the Director General may commence, vary or discontinue any official statistical collection. The Bureau must authorize publication or communication of all official statistical information to the public.
- Sections 25-27 deal with the protection of information from disclosure, providing restrictions on disclosure, exemption from disclosure, outlining information records that may be disclosed without identifying details and how this disclosed information should be used.

Implications: This new narrower definition of “official statistics” appears to enshrine the fact that statistics and data produced by non-governmental entities are not subject to the same approval processes as those produced by government entities. While “official statistics” remain subject to oversight by the Bureau, non-governmental bodies, including universities, NGOs, etc., are free to produce statistics without approval or oversight from the Bureau. However, these cannot be “communicated” if they contradict official statistics, which restricts freedom of expression and creates a mechanism of near total control even over information not produced by government. First,



Bureau approval is now needed prior to the publication of official statistics. This creates a real threat of censoring statistics that are unfavorable to the Bureau or other branches of the government, without consideration of the truth, accuracy and newsworthiness of those statistics. Second, it prevents individuals from communicating any information that contradicts or challenges official statistics, placing individuals at risk of significant prison time for merely debating official statistics.

The requirement of prior authorization before disseminating official statistics and the prohibition against disseminating statistical information that would contradict official statistics will stifle academic and other research, public debate and analyses, by restricting the flow of information and presenting a single unchallenged source of information.

The Act require persons to provide full and complete answers for all returns, forms or other documents left with or sent to them. Further, persons are required to answer any question or inquiry put to them. This may affect the right to privacy as it may force businesses and organisations to disclose proprietary information, and individuals to disclose information that may lead to self-incrimination. For journalists, protection of sources may be threatened.

Offence and Penalties

- Offences and penalties are defined in Part V of the Act. They include possession and use, for personal gain, of information which might influence or affect the markets; publication or communication of information without lawful authority otherwise than in the ordinary



course of employment; the compilation of any false statistics or information; and obtaining or seeking to obtain information that one is not duly authorized to obtain. Publication or communication of official statistical information, which may result in the distortion of facts, constitutes an offence.

- Wilful failure to complete and supply the details of any return is penalized, as is destroying, defacing or mutilating returns or other documents containing particulars collected in the Act without lawful authority.
- Communication media (including radio and television stations, newspapers magazines, websites and other media) that publish false official statistical information or broadcast any program about data collection activity that results in a person(s) abstaining from participating or cooperating in the data collection activity commits an offence.
- The 2018 amendment also introduces a new offence for publishing or communicating any official statistics without Bureau approval. This can result in a three year term of imprisonment.

Implications: Criminalization of certain actions casts a chill on the production and use of statistical information.

The criminalization of publication or communication of information acquired in the course of lawful employment



without lawful authority targets whistle-blowers, journalists and other monitoring organisations. Being in possession of such leaked information is similarly penalized. The absence of a public interest defence places both those persons involved in leaking the information as well as publishing it, at risk of conviction.

A catch-all offence prohibiting individuals from doing anything they are not entitled to do also presents risks of prosecution for a broad range of undefined and vague actions. These provisions cast a chilling effect on freedom of speech and dissent.

In general, the penalties are potentially very severe, particularly with the prescription of minimum imprisonment sentences and fines that do not take account any mitigating circumstances.

Penal Code, Cap. 16 R.E., 2002

Criminal Defamation

- Section 46 describes the offence of defamation, thus criminalizing defamation.

Implication: As noted previously, criminalization of defamation is generally considered an unjustifiable restriction of the right to freedom of opinion and expression.

Vaguely Defined Crimes of 'Disharmony'

- Section 123 describes the offence of promoting enmity between different groups, by criminalizing actions or words that promote or attempt to promote disharmony, or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups



or communities, or which disturbs or is likely to disturb public tranquillity.

Implication: The use of vague terms such as ‘disharmony’, ‘hatred’, ‘ill-will’ are undefined and could be used to selectively and arbitrarily target journalists and publications that raise critical or contentious matters in society.

NATIONAL SECURITY LAWS RESTRICTING FREEDOM OF OPINION, EXPRESSION AND MEDIA, AND ACCESS TO INFORMATION

National Security Act

The Act provides for state security and deals with espionage, sabotage and other activities prejudicial to the interests of Tanzania.

Key Provisions

- Section 3 criminalizes obtaining, collecting, recording, publishing or communicating documents, articles or information which might be directly or indirectly useful to a foreign power or disaffected person and prejudice the safety or interests of Tanzania.
- Section 5 penalizes the communication or leakage of any classified matter to any person other than to an authorised person, or one to whom it is in the country’s interest to communicate to. It is no defence that the accused person did not know or could



not have reasonably known that the matter communicated was classified.

- According to section 13, a magistrate may grant a search warrant to enter any premises, search and seize anything that may be evidence of an offence under the Act. In urgent situations, a senior police officer may provide a written order to any police officer with the same authority as would be granted by a magistrate.
- Section 15 empowers the Director of Public Prosecutions to summon a person who is believed to hold information about an offence under the Act, to provide such information to a police officer. Failure to comply attracts a prison term of not more than five years.

Prevention of Terrorism Act, 2002

The Act sets out comprehensive measures to deal with terrorism, and to prevent and co-operate with other States in the suppression of terrorism.

Key Provisions

- The Act defines and prohibits terrorism in section 4.
- According to section 28, any police officer may arrest without a warrant any person who has committed, is committing or is reasonably suspected of committing an offence under the Act. Section 29 allows a police officer of designated rank to conduct search and seizure operations in an urgent case without



obtaining a warrant - where this would cause delay that may prejudice the maintenance of public safety or public order.

- Section 30 empowers the Minister, for purposes of prevention or detection of offences or prosecution of offenders, to give general or specific directions as he may consider necessary, to communication service providers. A direction shall specify the maximum period for which a communication service provider may be required to retain communications data.
- In terms of section 31, a police officer may apply, ex parte, to court for an order to intercept communications to obtain evidence of the commission of an offence under the Act. The court may order the communications service provider to intercept and retain specific communication or may authorize the police officer to enter any premises and to install any interception device and to remove and retain such device, subject to the written consent of the Attorney General and reasonable grounds to believe that the required information is contained in the communications.
- Section 33 authorizes the Police to seize property reasonably suspected to have been used to commit a terrorism offence, whether or not proceedings have been instituted for an offence under the Act in respect of that property.



Tanzania Intelligence & Security Services Act, 1996

The Act establishes the Tanzania Intelligence and Security Service (TISS) and provides for related matters.

Key Provisions

- The TISS is established as a department of Government within the Office of the President. [Section 4] The Director General has command, control, direction, general superintendence and management of the TISS in all matters subject to the powers of the President and directions of the Minister. [Section 10]
- Functions of TISS include gathering and evaluating intelligence relevant to security and communicating such intelligence to relevant persons. The law explicitly states that TISS cannot institute surveillance of any person(s) only because they are involved in lawful protest or dissent in respect to matters affecting the laws or Government of Tanzania.
- According to section 14, TISS is mandated to collect by investigation or otherwise, to the extent that is strictly necessary, and to analyze and retain, information and intelligence on activities suspected of constituting a threat to the security of Tanzania. Section 15 enables TISS to investigate any person or body of persons whom it has reasonable cause to consider a risk or source of risk of a threat to state security.
- Section 16 restricts publication or broadcast, without written consent of the Minister responsible for intelligence and security (and



if none appointed, the President), of any person other than the Director-General's membership or connection to TISS. It also prohibits disclosure of information from which the identity of confidential sources or persons employed in covert operations can be revealed or inferred. [Section 20]

Implication of Security Laws on Media

- The laws on national security generally prohibit the publication and communication of certain kinds of information and provide broad powers for law enforcement officers to intercept, search and seize information, data, devices, etc. that they consider contravene the law. Often this is done without judicial oversight or sufficiently strict procedures for issuing such orders.
- Journalists and media practitioners, particularly in their efforts to hold Government to account, face enormous risks of coming under surveillance, and having their equipment and information seized. They or third parties (such as communications service providers) can be compelled to disclose information and confidential sources, which can jeopardize the effective carrying out of their journalistic work, all in the name of national security.
- Further, journalists and social media users' personal information may be released by communications service providers where authorities compel them to do so.

PART IV

NAVIGATING THE LEGAL FRAMEWORK - PRACTICAL PROTECTION STRATEGIES



LITIGATION/LEGAL REDRESS

Journalists and other media practitioners must make themselves aware of all laws that might affect them, their publications and operations, both online and offline. They should also be aware of the protections offered by the Constitution and various regional and international treaties, norms and standards. As had been indicated, many provisions of the various laws discussed in this Handbook potentially violate the fundamental right to free expression, exercise of opinion and dissemination and access to information. In such instances, one must apply the three-step cumulative test to assess whether the limitation is justifiable. Where it is not, an affected individual or organization is entitled to approach the courts to seek protection and/or legal redress. Lawyers, media organizations and human rights defenders in Tanzania have approached both the national courts and regional and continental judicial mechanisms to challenge restrictive provisions of various laws. Below are some important cases, which the courts have considered:

National

Read more about the cases filed in national and regional courts at the following links:

East African Court of Justice library: <http://eacj.org/>

Tanzania Court of Appeal cases: <http://www.saflii.org/tz/cases/TZCA/>



Tanzania High Court cases: <http://www.saflii.org/tz/cases/TZHC/>

Media Council of Tanzania website: <https://mct.or.tz/index.php/media-bills>

Regional and International Redress

Recourse to regional and international mechanisms is, with a few exceptions, available only where local remedies - such as national judicial systems - have been exhausted, or where one can demonstrate that there are no local remedies available.

- At the regional level, any person can bring a complaint against a State Party alleging violations of their rights to the attention of the **African Commission on Human and Peoples' Rights**. The African Charter sets out the procedure for lodging complaints (communications) with the Commission, including the admissibility criteria to be applied to complaints. Once the Commission considers a complaint on its merits, it issues its final decision (recommendations). The Commission's decisions are not legally binding on States concerned until they are adopted by the African Union Assembly of Heads of State and Government. The Commission can request (on its own initiative or upon request) States alleged to be violating rights to adopt provisional measures to prevent irreparable harm to victims, following receipt of a communication relating to individual



complaints. The provisional measures procedure requires that respondent States report back on the steps they have taken to implement the measures requested within fifteen days of receiving the request.

- Individuals can also lodge formal complaints with the **Special Mechanisms of the African Commission and United Nations Human Rights Council** (primarily, but not exclusively, the Special Rapporteurs on Freedom of Expression and on Human Rights Defenders) alleging violations of their rights by the State. The Special Rapporteurs submit communications containing the allegations to States, who should ideally respond to these allegations.
- The **African Court on Human and Peoples' Rights** has jurisdiction to deal with all cases and disputes submitted to it regarding the interpretation and application of the African Charter. Individuals may submit cases to the Court if the State Party complained against has ratified the Protocol establishing the Court and made the declaration recognizing the Court's competence to receive cases from NGOs and individuals, as Tanzania has done. Judgments of the African Court are binding on State Parties.
- The **East African Court of Justice** has jurisdiction over the interpretation and



application of the East African Community Treaty. The Court currently does not have jurisdiction to hear and determine human rights issues, but this jurisdiction may be extended upon determination by the Council of Ministers.

FOLLOWING PROFESSIONAL ETHICS

As previously discussed, whilst journalists and other media practitioners have a right to freely express themselves and access and disseminate diverse information, they also have certain obligations, including a responsibility to maintain professional and ethical standards in executing their roles. This includes credible, truthful and accurate reporting, following ethical guidelines, and ensuring journalistic independence and moral integrity. If they report responsibly, are accountable trustees, and ensure that their professionalism is not tainted by negligence or wilful behaviour, it will be more difficult for them to be targeted, and public support will increase in the event that they face arbitrary charges. The Media Council of Tanzania has produced a Code of Ethics for Media Professions. Some of the key principles are outlined below:

- **Truth and Accuracy:** Avoid bias, and always ensure that all sides are presented fairly. Distinguish between comment, conjecture and fact. Where inaccurate, misleading or distorted facts are reported, promptly correct and apologize.



- **Right of Reply:** Subjects of a report should always be given an opportunity to reply to what has been reported about them before publication.
- **Privacy:** Seek consent before putting out information on anyone's private life, unless there is a compelling public interest reason to do otherwise. Even those holding public office are entitled to privacy rights unless the information is likely to affect their performance or fitness for the public role they hold or seek to hold.
- **Harassment:** Seek information through conventional methods whenever possible. Doing so by intimidation, blackmail, deception, eavesdropping or any other form of harassment is inappropriate and can lead to criminal liability.
- **Discrimination:** Avoid discriminatory, derogatory stereotyping or depiction by race, creed, gender, ethnicity, age, disability, geography, physical endowment or social status. Use gender-sensitive language and always be respectful of the rights and dignity of the people you report on without any distinction.
- **Children:** Obtain consent from parents or guardians if you have to interview or photograph children under the age of 16. Names of children, even those of juveniles



involved in court proceedings, should never be revealed. Explicit depiction of sexual conduct between adults and children is inappropriate.

- **Victims of sexual assault:** The anonymity of victims of sexual assault should be strictly observed, including taking measures to avoid putting information that can contribute to their identification.
- **Portraying sexual activity:** Avoid nudity and explicit sex, so as not to offend public decency.
- **Crime:** When reporting on criminal incidents, do not glorify crime or violent behaviour. Avoid implicating families of those accused of crimes by implication.
- **Grief and bereavement:** Sensitivity and discretion are key – when covering disasters and tragic events, do not add to the distress of those affected and avoid pressuring them for interviews.
- **Personal interest and influence:** Avoid undue influence from outside sources at all costs. Do not allow personal or family interests to interfere with professional duties. Be wary of, and avoid, conflicts of interest.
- **Confidential sources:** Journalists have a moral obligation to protect confidential sources of information.



- **Withholding information:** Do not suppress useful information or a story unless there is a compelling public interest to do so.
- **Freedom of the press:** At all times, act in defence of freedom of the press, and be wary of those who exploit the press for their parochial interests.

CAPACITY BUILDING ON LAWS, PROFESSIONAL ETHICS AND PERSONAL AND INSTITUTIONAL SECURITY

Media practitioners in many countries are often one of the groups considered to be most at risk of attack by State (and sometimes) non-State actors. As such, it is critical that they understand and address issues of security and protection, so as to develop and implement effective security strategies. There are various steps to take in addressing personal and institutional security and managing risk:

- i. **Analyze your context:** Key factors to consider are the political environment, the socio-cultural environment, technological aspects, legal frameworks, and other environmental factors.
- ii. **Develop a security policy:** This is a set of general rules, principles and guidelines to meet the needs of proper security management.
- iii. **Develop a security plan:** This is a document that includes preventive and reactive protection mechanisms to improve personal



and institutional safety and security. It is a means of implementing your security policy. Steps to follow in developing a security plan include:

- a. List all threats
- b. Explore vulnerabilities related to each threat
- c. Identify required capacities to prevent threat from materializing
- d. Identify required resources to implement the plan
- e. Allocate time-frames and responsibilities for each action
- f. Build in time to review, reflect and update security plan

Digital security is an essential component to addressing personal and institutional security in the 21st Century. Much of the work media does is performed electronically using computers and other electronic devices. Technology poses certain vulnerabilities that can be exploited to the detriment of users. It is important for media practitioners understand how to increase the security of their devices, data, networks, and accounts.

- i. **Understand the threats:** This requires an assessment of what is to be protected, from what, the likelihood of attack, the



consequences if not protected and the level of effort available to prevent attacks. Understanding the nature of the threat helps determine the appropriate solution to adopt.

- ii. Basic device security practices:** These include using regularly updated anti-virus software, avoiding downloading suspicious material, check for indicators of compromise, obtain software from safe sources - directly from the publisher as much as possible.
- iii. Data security on devices:** Encrypting data in the device makes it harder for an attacker to access the information if the device is stolen.
- iv. Data security on the Internet:** Use secure protocols (language used by computers to communicate information) such as those with end-to-end encryption. Avoid internet censorship by using web-based proxies that are able to access blocked websites, set up different Domain Name Service (DNS) such as those offered by Google to prevent blacklisting of personal DNS, use a Virtual Private Network (VPN) to encrypt and protect data from interception.
- v. Account security:** Enhance account security by creating strong passwords, avoid reuse of passwords, use two-step verification processes.
- vi. Mobile phone security:** Use a screen lock, keep phone up to date, do not install Apps



from unofficial markets, disable Bluetooth discovery mode. Follow the above suggestions for data security on the phone, download apps that enhance security such as ‘Panic Button’, ‘CameraV’, and others.

REPORTING AND DOCUMENTING VIOLATIONS

Human rights monitoring is a term used to describe the collection, verification and use of information to address human rights problems. Monitoring is a way of improving the protection of human rights and aims to reinforce the State’s responsibility to protect human rights. Monitoring requires the careful collection of accurate and precise information, through inquiries, follow-up and analysis, the observation of developments, and identification of patterns of conduct. Gathering complete, accurate and unbiased information is very important as this enables problems to be accurately identified, a process of diagnosing the causes and devising potential solutions. Verifiable information and evidence also assists in engagement with state actors and supporting advocacy for reform of policies, laws and practices.

Three principles guide the verification of information once it is collected:

- i. the reliability of the source,
- ii. consistency with information collected from independent sources, and
- iii. how the information fits in the context.



Verified information is used to produce reports of various types and also as a basis for intervention with or by relevant authorities to remedy the situation.

Press Freedom Violations Register (PFVR)

In early 2012, MCT established a national register to record press freedom violations in Tanzania, called the Press Freedom Violations Register (PFVR). This monitors press freedom and freedom of expression violations in Tanzania. The PFVR:

- Generates useful statistical information to promote, safeguard and defend freedom of the media and allied forms of expression and public communication;
- Provides tangible evidence of the level of freedom in terms of which the media operate in Tanzania;
- Assists media practitioners and other stakeholders to understand trends in violations;
- Provides a platform for the recording and investigation of serious violations; and
- Serves as a useful tool for advocacy on media, expression and right to information law reforms.

The PFVR can be accessed online at <https://pressviolations.or.tz/#/views/map>

Other

Alternative avenues for redress include writing or calling the Media Council of Tanzania directly to report violations for further action.



ADVOCACY AND ENGAGEMENT FOR REFORM

Where possible, it is useful for media practitioners, lawyers and human rights defenders to engage Government to discuss their concerns and advocate for positive reforms and institutional strengthening. In relation to legislative framework reform, the most important targets are:

- Policymakers (including the President, relevant Ministers and their technical staff)
- Legislators/parliamentarians
- Law Reform Commission
- Attorney General's Office, including policy and drafting departments
- National Human Rights Institutions

Strong civil society networks strengthen the impact of advocacy, particularly if they are representative of a wide range of interests and expertise. Consider including:

- National and community-based organizations
- Media stakeholders
- Professional organizations, such as Law Societies and Bar Associations
- Labour/trade unions
- Faith-based organizations
- Corporate entities



- Universities and academics
- Regional organizations
- International development community

Using regional and international mechanisms

Media practitioners may carry out advocacy engagements at the regional and international levels, by informing the human rights mechanisms about the situation of press freedom and the right to freedom of opinion and expression in Tanzania.

- **UN Universal Periodic Review:** This is a mechanism used by the UN Human Rights Council to review the human rights situation in each of the 193 UN Member States every 5 years. The results of the review are reflected in a final report of the Working Group and include a list of recommendations that the State is required to implement before the next review. Although this is a State-driven process, CSOs can take part in five ways: (i) participate in national consultations held by the State, (ii) send information on the human rights situation in the country, (iii) lobby members of the Working Group who facilitate the review process, (iv) submit a Stakeholder (shadow) Report to the Human Rights Council, and (v) monitor and participate in the implementation of the review recommendations.



- **Shadow Reporting to the African Commission on Human and People's Rights:** States submit reports every two years, a process that enables the Commission to monitor the implementation of the Charter, and to identify challenges to the realization of Charter rights. States are able to take stock of their achievements and failures in realizing the rights. Civil society organisations can submit parallel reports that provide their perspectives of what the challenges are, and what measures States should adopt to remedy the identified problems. Media practitioners in Tanzania can submit reports that elaborate the legal challenges they are facing and possible solutions to these challenges.

SUPPORT MECHANISMS

Legal Support

- Investigations
- Legal Defence
- Media Legal Support Fund

Psychosocial Support

- Counselling
- Evacuations

PART V

USEFUL RESOURCES



Universal Declaration of Human Rights

<http://www.un.org/en/universal-declaration-human-rights/>

International Covenant on Civil and Political Rights

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

UN Human Rights Council, General Comment No. 34

<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

<https://www.ohchr.org/en/issues/freedomopinion/pages/opinionindex.aspx>

Universal Periodic Review (UPR)

<https://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>

African Commission on Human and Peoples' Rights

<http://www.achpr.org>

ACHPR Special Rapporteur on Freedom of Expression

<http://www.achpr.org/mechanisms/freedom-of-expression/>



African Court on Human and Peoples' Rights

<http://www.african-court.org/en/>

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<https://mct.or.tz/index.php/tutorials/code-of-ethics-for-professionals>

East African Court of Justice: Court Users' Guide (September 2013)

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<http://www.corteidh.or.cr/tablas/31712.pdf>

Stand Up! Security guide for human rights defenders in Africa, DefendDefenders, 2017

<https://www.defenddefenders.org/wp-content/uploads/2017/09/StandUpfeb.pdf>

Don't Shoot the Messenger! Journalists as human rights defenders in the East and Horn of Africa, DefendDefenders, 2017

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[http://www.defenddefenders.org/wp-content/
uploads/2011/07/EHAHRPD_Resource_book_ENG.pdf](http://www.defenddefenders.org/wp-content/uploads/2011/07/EHAHRPD_Resource_book_ENG.pdf)

**Professional Training Series No. 7: Training
Manual on Human Rights Monitoring, OHCHR
2001**

[https://www.ohchr.org/Documents/Publications/
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**Manual on Human Rights Monitoring: An
introduction for Human Rights Field Officers,
Norwegian Centre for Human Rights, 2008**

[https://www.jus.uio.no/smr/english/about/programmes/
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