

**Tanzania's 3<sup>rd</sup> Universal Periodic Review  
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**Submission by:**

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The Southern Africa Litigation Centre (SALC) is a regional non-governmental organisation which was established in 2009. SALC promotes and advances human rights and the rule of law in Southern Africa, primarily through strategic litigation support.

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## Introduction

Tanzania's late President, John Magufuli, was elected to office in 2015, and it was under his tenure that the country's human rights record severely deteriorated. Even though Tanzania's constitution guarantees amongst others, the right to access to justice, the right to freedom of expression, the right to freedom of assembly and association, the Tanzanian authorities continue to restrict these rights creating an extremely volatile situation for human rights defenders (HRDs), opposition parties, journalists and lawyers who defend HRDs.

## Rule of Law

The international community has noted with concern the deteriorating human rights situation in Tanzania. On 14 September 2020, Michelle Bachelet, the UN High Commissioner for Human Rights, issued a statement at the 45<sup>th</sup> session of the Human Rights Council. She raised concerns over the infringements on democratic and civic space in Tanzania.<sup>1</sup>

There are serious concerns over the misuse of the criminal justice system and the rule of law where the state continues to use existing legislation to deny human rights defenders bail or bond; or subjecting them to baseless endless court appearances<sup>2</sup>. Recent legislative reforms have further made it extremely difficult for NGOs and journalists to operate without constant scrutiny from the government. A few of these laws have the potential to stifle freedom of expression, freedom of association, and the rule of law and are highlighted in this submission.

## Political Parties

<sup>1</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26226&LangID=E> (last accessed 18 February 2021)

<sup>2</sup> <https://www.bbc.com/news/world-africa-51619618> (last accessed 20 February 2021)

The Political Parties Act<sup>3</sup> (cap. 258) was amended by the Political Parties (Amendment) Act<sup>4</sup> No. 1 of 2019. The Act extended the powers of the Registrar of Political Parties, including to monitor intra-party elections, demand information from political parties, require registers of the membership of political parties, suspend members from political parties, and monitor the finances of political parties. A political party will not qualify for provisional registration if it "allows its leaders and members to utter or use obscene language, vindictive, defamatory or inciting words which are likely to cause or lead to the disruption of peace". This provision is so broad that it can easily be used to curtail freedom of expression and association. Section 11E of the amended Act further allows the Registrar to suspend any member of a political party who has contravened any provision of the Act. The political party member is then prohibited from conducting political activities and participating in elections during the suspension.<sup>5</sup>

## Elections

The 2020 election was the first election since 1995 without the assistance of UNDP since the state did not extend an invitation to the UN body. Few international observers were allowed to watch the vote. Local civil society groups were banned from monitoring the vote. There were reports that journalists and human rights defenders were also targeted and silenced. The opposition were harassed, and independent media houses shut down after publishing news critical of the sitting president.<sup>6</sup> Tanzania Elections Watch, a group of regional experts, said in an assessment that noted a heavy deployment of military and police whose conduct created a "climate of fear", they stated further that "*The electoral process, so far, falls way below the acceptable international standards*" for holding free and fair elections.<sup>7</sup> Several reports of systematic interference in the democratic process were noted, with allegations of the use of force against unarmed civilians. The election was marred by allegations of arrests of candidates and protesters, restrictions on agents of political parties to access polling stations, multiple voting, pre-ticking of ballots, and widespread blocking of social media.<sup>8</sup>

## Recommendations

1. The government should conduct investigations into reports of election-related fraud and intimidation.
2. The government should ensure that future elections are held in a free and fair manner in line with international standards.
3. The government should ensure that authorities do not misuse the criminal justice system by arresting and detaining individuals without bail or bond or subjecting them to lengthy trials.
4. The government should review the Political Parties Act

<sup>3</sup> <https://tanzlii.org/tz/legislation/act/2019-37>

<sup>4</sup> Political Parties (Amendment) Act

<sup>5</sup> <https://www.reuters.com/article/us-tanzania-politics-idUSKCN1P00IA> (last accessed on 22 March 2021)

<sup>6</sup> <https://crd.org/2020/10/28/no-expectations-of-a-free-and-fair-election-as-tanzania-heads-to-the-polls/>

<sup>7</sup> <https://www.aljazeera.com/news/2020/10/30/magufuli-wins-re-election-in-tanzania-says-electoral-commission>

<sup>8</sup> <https://www.aljazeera.com/news/2020/10/30/magufuli-wins-re-election-in-tanzania-says-electoral-commission>

## Freedom of Expression

During its 2nd Universal Periodic Review Cycle, the Tanzanian government accepted recommendations to improve its national laws and regulations for the protection and promotion of human rights.<sup>9</sup> Nonetheless, four years after its review and ahead of its 3rd UPR Cycle in 2021, there has been minimal progress. Instead, the government has implemented a myriad of new laws which hinder the operation of civil society and the media and which continue to limit civic space in the country. Many of these laws were passed under certificates of urgency, avoiding public participation and adequate time for parliamentary discussion. A few of these new laws are highlighted below.

In March 2021, at least one man was arrested for allegedly spreading false reports that Magufuli was seriously ill in the Kinondoni area of Dar es Salaam; regional police commissioner for Kinondoni, Ramadhani Kingai, stated that: "*There are a lot more who have been spreading false statements. We will arrest them all,*"<sup>10</sup> Tanzania's minister of constitutional and legal affairs threatened to prosecute anyone who relayed "inane" rumors about the president's health but stopped short of answering questions about his condition. A few days later, the government made an official report of the president's passing.

The cybercrime law is one of several laws discussed below that the government has used to suppress freedom of expression.

### 1. Cybercrimes Act of 2015<sup>11</sup>

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

The Cybercrimes Act has been used to clamp down on active citizenry. For example, in the 2015 Tanzania elections, the Act was used to detain and interrogate 36 members of the Tanzania Civil Society Election Consortium<sup>12</sup>; reporter Sebastian Atilio was arrested in September 2019 over posts he shared in a WhatsApp chat group<sup>13</sup>; and in May 2020, Tanzanian comedian Idris Sultan was arrested and placed in police custody for alleged cyberbullying of President John Magufuli. Sultan's arrest came after a video of him laughing at an old photograph of President Magufuli was shared on social media.<sup>14</sup>

### 2. The Media Services Act No. 12 of 2016<sup>15</sup>

The Media Services Act has been used to inhibit press freedom. In 2019, the East African Court of Justice (EACJ), in the case of Media Council of Tanzania and Others v Attorney General of the United Republic of Tanzania<sup>16</sup>, held that several provisions of the Act violated

<sup>9</sup>[https://www.upr-info.org/sites/default/files/document/tanzania\\_united\\_republic\\_of/session\\_25\\_-\\_may\\_2016/a\\_hrc\\_33\\_12\\_add.1\\_tanz\\_e.pdf](https://www.upr-info.org/sites/default/files/document/tanzania_united_republic_of/session_25_-_may_2016/a_hrc_33_12_add.1_tanz_e.pdf) (last accessed 22 March 2021)

<sup>10</sup><https://www.africanews.com/2021/03/15/man-arrested-in-tanzania-for-reporting-that-president-magufuli-is-ill/>

<sup>11</sup><http://breakthroughattorneys.co.tz/cybercrimes-act-2015-tanzania/>

<sup>12</sup><https://www.frontlinedefenders.org/en/case/case-history-imelda-urio>

<sup>13</sup><https://cpj.org/2019/09/tanzanian-authorities-charge-sebastian-atilio-with/>

<sup>14</sup><https://www.okayafrica.com/idris-sultan-tanzania-arrested-for-bullying-president/>

<sup>15</sup><https://tanzlii.org/tz/legislation/act/2016/12-0>

<sup>16</sup><https://www.eacj.org/?cases=reference-no-2-of-2017-media-council-of-tanzania-legal-and-human-rights-centre-tanzania-human-rights-defenders-coalition-vs-the-attorney-general-of-the-united-republic-of-tanzania>

the right to freedom of expression. The state's appeal of this decision was dismissed on procedural grounds.<sup>17</sup>

Section 19 of the Act states that a person shall not practice as a journalist unless accredited by the Board. A journalist who is not a citizen or permanent resident of Tanzania may only be accredited for a limited period of 90 days and is limited to the purpose for which accreditation was granted. The EACJ held that the definition of journalist is too broad and that the accreditation requirement was an unnecessary restriction on the practice of journalism.

### 3. Electronic and Postal Communications (Online Content) Regulations of 2018<sup>18</sup>

In March 2018, Tanzania published the Electronic and Postal Communications (Online Content) Regulations. The Regulations apply to online content, including bloggers, online content hosts, online forums, online radio or television, and social media. The Regulations empower the authorities to keep a register of bloggers, online forums, online radio, and online television and to take action against non-compliance to the Regulations, including to order the removal of prohibited content. The Regulations are useful to the extent that they prohibit hate speech, including based on gender and sexual orientation. However, some of the other regulatory measures inhibit freedom of expression.<sup>19</sup>

### 4. The Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations of 2018<sup>20</sup>

In March 2018, the state published the Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations. Although the regulations contain some positive provisions, other provisions are overly broad and could be used against persons who are critical of the state. For example, licensees may not broadcast programs "likely to promote civil or public disorder" or that promote "immoral activities." The Regulations stipulate that content must uphold "national sovereignty, national unity, national interest, national security and Tanzania's economic interests, Tanzania's cultural values and identity" and uphold "public morality." All these phrases are so vague and subjective that the provisions do not pass the test of legality.

## Recommendations

1. The government should review the above-mentioned pieces of legislation in so far as they infringe on the rights of freedom of expression and prevent active citizenry.
2. The government should not misuse the rule of law to restrict journalists from operating freely without fear of arrest or fines.
3. The government should not arrest and detain people who are critical of the state or the ruling government.
4. The government should put measures in place to uphold the decision of the EACJ.

## Freedom of Association

On 12 August 2020, the Tanzanian Human Rights Defenders Coalition (THRDC) was officially notified by CRDB Bank Tanzania that its bank accounts had been frozen. As a result, THRDC opted to suspend all institutional operations pending the resolution of the issue. Additionally, THRDC coordinator, Onesmo Ole Ngurumwa, was summoned by police

<sup>17</sup> <https://www.eacj.org/?cases=reference-no-2-of-2017-media-council-of-tanzania-legal-and-human-rights-centre-tanzania-human-rights-defenders-coalition-vs-the-attorney-general-of-the-united-republic-of-tanzania>

<sup>18</sup> <https://tanzlii.org/content/electronic-and-postal-communications-online-content-regulations2018-made-under-section>

<sup>19</sup> <https://www.southernafricalitigationcentre.org/2020/10/26/policy-brief-rule-by-law-and-the-attack-on-civic-freedoms-in-tanzania/>

<sup>20</sup> <https://tanzlii.org/content/electronic-and-postal-communications-radio-and-television-broadcastingcontent>

to explain why THRDC failed to heed the government's call to submit its contractual agreements with donors to the State Treasury, as required by law. He was later released on police bond, with two sureties, each guaranteeing 200 million Tanzania shillings.<sup>21</sup> This action was a clear act of reprisals on the work of civil society organizations and an infringement of the rights to association.

On 24 June 2020, in another incident, two employees of THRDC, were taken to Oysterbay Police Station in Dar es Salaam for interrogation for allegedly contravening the "laws of the land." The arrest was in response to a three-day capacity-building workshop organized by THRDC, which was eventually cancelled by the authorities. The members were finally released without charge.<sup>22</sup>

The following laws further highlight the infringement of the right to freedom of association:

#### 1. [The Written Laws \(Miscellaneous Amendments\) Act of 2019](#)<sup>23</sup>

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

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

### Recommendations

1. The government should review all laws that prevent active citizenry and that are misused to prevent civil society from engaging in their work.
2. The government should provide adequate time for civil society and other interested parties to make submissions to amendments of laws within a reasonable period of time to ensure public participation when laws are amended.

### Access to justice and regulation of the legal profession

Tanzania's judiciary suffers from underfunding and corruption. Judges are political appointees, and the judiciary does not have an independent budget, which makes it vulnerable to political pressure. The results of such pressures are particularly evident in cases involving

<sup>21</sup> <https://defenddefenders.org/tanzania-respect-the-right-to-freedom-of-association/>

<sup>22</sup> [https://defenddefenders.org/tanzania-respect-the-right-to-freedom-of-association/#\\_ftn1](https://defenddefenders.org/tanzania-respect-the-right-to-freedom-of-association/#_ftn1)

<sup>23</sup> <https://tanzlii.org/tz/legislation/act/2019/9-0>





opposition figures and other critics of the government.<sup>24</sup>

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

On 23 September 2020, Tanzanian lawyer, and former president of the mainland bar association, Fatma Karume, was removed from the roll of advocates. The decision to disbar her was announced by the Tanganyika Law Society (TLS) Ethics Committee sitting at the High Court, which found her to have breached the code of ethics. The decision of the Committee was announced following a year-long suspension by the High Court of Tanzania after allegations of misconduct were made against Ms Karume concerning the language used in her written submissions in a constitutional case which challenged President Magufuli's appointment of the Attorney General of Tanzania.<sup>25</sup>

In February 2020, the Hon. Attorney General of the United Republic of Tanzania lodged a Complaint against two Advocates, Jebra Kambole, Advocate and Mr. Edson Kilatu, known to be very active in human rights advocacy, based on comments that they allegedly made in their social media pages, being Twitter and Facebook. The hearing was held on Friday 19 March 2021 and we are awaiting the outcome.

The following laws highlight the undermining of the judiciary as well as the regulation of the legal profession:

#### 1. **Basic Rights and Duties Enforcement Act**<sup>26</sup>(BRADEA)

The amendment to section 4 of the BRADEA requires that all applications made to the High Court challenging violations of the Bill of Rights, be accompanied by an affidavit made by a person who is personally affected by the alleged violation. This amendment creates a barrier to access to justice, especially for the most vulnerable who are unable to represent themselves. By limiting legal standing in constitutional matters, the Act removes a critical mechanism for ensuring good governance, accountability, and the rule of law. Sections 26(2), 21(2), and 18(d) of the constitution indicate that what was envisioned is an active citizenry, which promotes the public interest and holds the government accountable. It is contrary to the rule of law for a subsidiary piece of legislation to prescribe an interpretation of a constitutional provision which is contrary to the rules of constitutional interpretation and the broader vision of the constitution.<sup>27</sup>

The amendment to section 4 of BRADEA further provides that any suit against the President, Vice President, Prime Minister, Chief Justice and Speaker under any application brought in court under the Act, be brought against the Attorney General. In effect, this amendment relieves the president and others of their obligations under their oaths of office to uphold and

<sup>24</sup> <https://freedomhouse.org/country/tanzania/freedom-world/2020>

<sup>25</sup> <https://www.southernafricalitigationcentre.org/wp-content/uploads/2020/10/Policy-Brief-Rule-By-Law-and-Attack-on-Civic-Freedoms-in-Tanzania.pdf>

<sup>26</sup> <https://www.humanrights.or.tz/assets/attachments/1591354289.pdf>

<sup>27</sup> <https://www.southernafricalitigationcentre.org/wp-content/uploads/2020/10/Policy-Brief-Rule-By-Law-and-Attack-on-Civic-Freedoms-in-Tanzania.pdf>

defend the constitution. This amendment is also in contravention of section 13 of the constitution which provides for equality before the law.

### Recommendations

1. The government needs to review the ethical rules for lawyers that aspire to constrain Advocates, as officers of the court, on what they are able say in the general public.
2. The government needs to amend the section of BRADEA that limits the rights of citizens to access justice.