

TANZANIA (MAINLAND): INTRODUCTION

Established in 1964, the Republic of Tanzania is a union of Tanganyika (the mainland) and Zanzibar.¹ It is one of the largest and the richest in terms of natural resources of all East African countries though it is ranked among the least developed countries. It shares its northern borders with Uganda and Kenya; Burundi, Rwanda, and Congo to the west; and to the south, Mozambique, Zambia, and Malawi.²

Tanzania is an electoral democracy, but it wasn't until the early 1990s, almost two decades after independence, that Tanzania began a political, economic and social transformation. This transformation saw important changes take place in the constitution of the country, including the ushering in of political pluralism.³ Chama Cha Mapinduzi (CCM) has dominated the country's political life, despite the introduction of political pluralism in 1992.⁴ Executive power in the Republic of Tanzania rests with the president, who is elected by popular vote for a maximum of two five-year terms while legislative power is held by a National Assembly appointed by the president. The National Assembly currently has 357 members serving five-year terms.⁵ Zanzibar

¹ The mainland of Tanzania became a German colony called Tanganyika in 1884; in 1918 it became a British Mandated Territory and gained independence in 1961. The Sultanate of Zanzibar became a British Protectorate in 1890 and achieved independence in 1963. See 'East African Independence-African History' available at <http://africanhistory.about.com/library/bl/bl-Independence-EA2.htm> (accessed 3rd June 2014).

² Info Please 'Tanzania: Maps, History, Geography, Government, Culture, Facts, Guide & Travel/Holidays/Cities' available at <http://www.infoplease.com/country/tanzania.html?pageno=2#ixzz35T860mIG> (accessed 3rd June 2014).

³ Rioba A Media in Tanzania's Transition to Multiparty Democracy: An assessment of Policy and Ethical Issues (Licentiate's Thesis Department of Journalism and Mass Communication, University of Tampere, 2008) available at <http://tampub.uta.fi/bitstream/handle/10024/76505/lisuri00097.pdf?sequence=1> (accessed 3rd June 2014).

⁴ It is reported that the Constitution of Tanzania 'prohibits political coalitions, which has impeded efforts by other parties to seriously contest the CCM's dominance. Opposition politics have also tended to be highly fractious. To register in Tanzania, political parties must not be formed on religious, ethnic, or regional bases, and cannot oppose the union of Zanzibar and the mainland'. See Freedom House 'Tanzania: 2013' available at <http://www.freedomhouse.org/report/freedom-world/2013/tanzania#.U6lBfUBhvTo> (accessed on 3rd June 2014).

⁵ '239 are directly elected in single-seat constituencies; 102 are women chosen by the political parties according to their representation in the Bunge; 10 are appointed by the president; 1 is awarded to the Attorney General; and 5 are members of the Zanzibar legislature, whose 50 deputies are elected to five-year terms'. See Freedom House 'Tanzania:2013' available at <http://www.freedomhouse.org/report/freedom-world/2013/tanzania#.U6lBfUBhvTo> (accessed on 3rd June 2014).

has its own separate president, legislature and cabinet with largely independent jurisdiction over the islands internal affairs.⁶

Political pluralism was not the only major change in Tanzania during the early 90's. The political, social and economic transformation that occurred in the country also meant that after 27 years of centralised planning and control of media in the country, private and independent media outlets (that were non-existent during the one party era) were allowed to flourish.⁷

The media in Tanzania became a fundamental part of economic and political reforms in the country.⁸ At the same time clear efforts were made (and continue to be made) by the government to try and silence the media sector in the country.⁹ The constitution of Tanzania provides for freedom of speech, but it does not specifically guarantee freedom of the press. Laws in the country give those in power wide-ranging authority to restrict media on the basis of national security or public interest.

The following research study was launched by the regional secretariat of the Media Institute of Southern Africa (MISA) in February 2012 and partially conducted by a Tanzanian Researcher in the same year. It is concerned with the laws that criminalise freedom of expression, namely criminal Defamation laws (incl. libel), insult laws, sedition and false news as they appear in Mainland Tanzania specifically.¹⁰

⁶ See Freedom House 'Tanzania:2013' available at <http://www.freedomhouse.org/report/freedom-world/2013/tanzania#.UGlBfUBhvTo> (accessed on 3rd June 2014).

⁷ Rioba A *Media in Tanzania's Transition to Multiparty Democracy: An assessment of Policy and Ethical Issues* (Licentiate's Thesis Department of Journalism and Mass Communication, University of Tampere, 2008) 1.

⁸ Rioba A *Media in Tanzania's Transition to Multiparty Democracy: An assessment of Policy and Ethical Issues* (Licentiate's Thesis Department of Journalism and Mass Communication, University of Tampere, 2008) 1.

⁹ Rioba A *Media in Tanzania's Transition to Multiparty Democracy: An assessment of Policy and Ethical Issues* (Licentiate's Thesis Department of Journalism and Mass Communication, University of Tampere, 2008) 3.

¹⁰ There are different laws that apply to Zanzibar, these are not covered in this Research Study.

2. Freedom of Expression: Tanzania (Mainland)

Freedom of expression is an important human right, as it plays an essential role in reinforcing principles of democracy.¹¹ As such Tanzania has ratified various international and regional laws that enshrine the right to freedom of expression.

Article 19 of the *Universal Declaration on Human Rights* (UDHR)¹², for instance reads that:

‘Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.’ Similarly worded, Article 19 of The *International Covenant on Civil and Political Rights* (ICCPR)¹³ reads that:

‘1. Everyone shall have the right to freedom of opinion.

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.’

Regionally, Article 9 of the *African Charter on Human and Peoples’ Rights*¹⁴ holds that:

‘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.’

¹¹“Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated.” - 1946, the UN General Assembly Resolution 59(I) available at <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/10/IMG/NR003310.pdf?OpenElement> (accessed on 4th June 2014) see also Mendel T ‘International Standards’ available at http://www.unesco.org/webworld/publications/mendel/inter_standards.html (accessed 4th June 2014).

¹² Universal Declaration of Human Rights, 10 December 1948. The Universal Declaration of Human Rights is not being directly binding on States, but it is generally regarded as having attained some legal force ‘as customary international law since its adoption in 1948’ see Article 19 ‘Note on the United Republic of Tanzania Information Broadcasting Policy’ (2004) available at <http://www.article19.org/data/files/pdfs/analysis/tanzania-information-and-broadcasting-policy-f.pdf> (accessed 4th June).

¹³ The ICCPR is a treaty ratified by over 145 States, including Tanzania. The ICCPR obligates state-parties to comply with formal legal obligations in respect of its provisions and in addition elaborates on many of the rights included in the UDHR. See Article 19 ‘Note on the United Republic of Tanzania Information Broadcasting Policy’ (2004) available at <http://www.article19.org/data/files/pdfs/analysis/tanzania-information-and-broadcasting-policy-f.pdf> (accessed 4th June).

¹⁴ African Charter on Human and Peoples Rights (‘Banjul Charter’), 27 June 1981.

Nationally, there are two constitutions in Tanzania namely, the constitution of the United Republic of Tanzania, 1977 and constitution of Zanzibar.¹⁵ It must be noted that even though in terms of Tanzanian law Zanzibar is termed an independent unit within the United Republic of Tanzania; the laws within Zanzibar are on the whole presided over by the Tanzanian constitution.¹⁶

With this in mind, the most important section that protects the media and enshrines the right to freedom of expression in Tanzania is article 18 which holds that:

“Every person –

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

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

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

(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”.

Essentially, Article 18 of the Tanzanian Constitutions enshrines the idea that the right to freedom of expression applies to everyone in Tanzania that the basic right to freedom of expression is not limited to oral or written speech but extends to non-verbal and written expression such as physical expression like as mime and dance, photography or art.¹⁷ In addition article 18 includes the right to receive and impart information.

2.1 Freedom of Information

While article 18 of the Tanzanian Constitution includes the right to receive and impart information, the constitutional right itself is not supported by detailed legislation which compels

¹⁵ African Media Barometer ‘Tanzania 2012’ available at <http://library.fes.de/pdf-files/bueros/africa-media/09818.pdf> (accessed on 4th June 2014).

¹⁶ African Media Barometer ‘Tanzania 2012’ pg7

¹⁷ Limpitlaw J *Media Law Handbook for Southern Africa* vol1. (2012) 543.

the government to make all state-held information available to its people on a regular basis or when it is requested to.¹⁸

In 2006 the Tanzanian government published on its website a draft Bill for the Freedom of Information.¹⁹ This Freedom of Information Bill (2006) packaged together with a Right to Access of Information and Media Services Bill brought different stakeholders together to begin a national debate around the issue of freedom of information.²⁰ Ultimately the bill was rejected due to a number of irregularities as found by various experts, who after bearing in mind professional and ethical standards for such a Law in the eyes of international best practice, found that the Bill went against foundational principles of the Freedom of Information.²¹

Following the rejection of the 2006 Freedom of Information Bill, the stakeholders managed to produce a substitute Freedom of Information bill, which contained a number of changes which was submitted to government for deliberation in 2007.

Despite this, it is evident that there has been no tangible draft freedom of information bills or recommendations since 2007.²²

2.2 Freedom of the Press

While the Tanzanian Constitution guarantees the right to freedom of expression, it does not unequivocally provide for the freedom of the press.

¹⁸ African Media Barometer 'Tanzania 2012' pg18.

¹⁹Gideon, M 'Efforts in search for Right to Information Laws must not be neglected by the government of Tanzania' (2010) available at http://www.tz.misa.org/index.php?option=com_content&view=article&id=66:efforts-in-search-for-right-to-information-must-not-be-neglected-by-the-government-of-tanzania (accessed on 6th June 2014).

²⁰ Uhuru Blog 'History of Information Legislation in Tanzania' available at <http://uhuruyamawazo.blogspot.com/2012/05/history-of-freedom-of-information.html> (accessed 6th June 2014).

²¹Gideon, M 'Efforts in search for Right to Information Laws must not be neglected by the government of Tanzania' (2010) available at http://www.tz.misa.org/index.php?option=com_content&view=article&id=66:efforts-in-search-for-right-to-information-must-not-be-neglected-by-the-government-of-tanzania (accessed on 6th June 2014).

See also Uhuru Blog 'History of Information Legislation in Tanzania' available at <http://uhuruyamawazo.blogspot.com/2012/05/history-of-freedom-of-information.html> (accessed 6th June 2014).

²² Uhuru Blog 'History of Information Legislation in Tanzania' available at <http://uhuruyamawazo.blogspot.com/2012/05/history-of-freedom-of-information.html> (accessed 6th June 2014).

2.3 Constitutional Limitations on Freedom of Expression

Freedom of expression is not an absolute right in Tanzania, and as such it is constitutionally limited. In terms of provisions under Article 30 of the Tanzanian constitution it is possible for the Tanzanian government to make ineffective citizens' rights to freedom of expression when it comes to matters of 'public interest', privacy and defense of the nation, among others'.²³

Article 30 reads as follows: '30.-(1) *The human rights and freedoms, the principles of which are set out in this Constitution, shall not be exercised by a person in a manner that causes interference with or curtailment of the rights and freedoms of other persons or of the public interest.*

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

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

(b) *ensuring 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 property of any other interests for the purposes of enhancing the public benefit;*

(c) *ensuring the execution of a judgment or order of a court given or made in any civil or criminal matter;*

(d) *protecting the reputation, rights and freedoms of others or the privacy of persons involved in any court proceedings, prohibiting the disclosure of confidential information, or safeguarding the dignity, authority and independence of the courts;*

(e) *imposing restrictions, supervising and controlling the formation, management and activities of private societies and organizations in the country; or*

(f) *enabling any other thing to be done which promotes, or preserves the national interest in general.'*

²³ African Media Barometer 'Tanzania 2012' pg7

2.4 Conclusion

While the constitution of Tanzania protects the right to freedom of expression, it is argued that Article 30 which places limitations on the constitutional right to freedom of expression is broadly worded and may possibly be construed subjectively and used to override basic rights.

It is also noted that there are no requirements such as ‘proportionality, justifiability, reasonableness’, or least restrictive means placed on the limitations in Article 30, making it easier to justify limiting rights as contained in the constitution.²⁴

It is further argued that the general limitations as they appear in Article 30 of the Tanzanian Constitution make the implementation of any kind of Freedom of Information (FOI) legislation challenging.²⁵

²⁴ Limpitlaw (2012) 542.

²⁵ African Media Barometer ‘Tanzania 2012’ p12.

3. LAWS CRIMINALISING FREEDOM OF EXPRESSION

Internationally, it is accepted that defamation laws may have a legitimate purpose, in that they protect an individual's reputation from unprovoked attacks. In fact many countries around the world have some form of legal protection against attacks to a persons' reputation, and these laws have different names such as 'libel, calumny, slander, insult, *desacato*, *lese majeste* and so on'.²⁶

In the same vein, it is important to note that many countries around the world treat defamation as both a civil wrong and a criminal offence, meaning that an individual can either be sued for damages by an affected person or can be criminally prosecuted by the state.²⁷ From the point of view of the right to freedom of expression, criminal defamation and insult laws are challenging in that they are often contradictory to the right to freedom of expression.

While it is said that Tanzania has one of the most lively media environments in East and Southern Africa, at least in terms of diversity and plurality²⁸, Tanzania has different laws that criminalise media freedom and the right to freedom of expression.

Below is a summary of individual laws and provisions that criminalise free speech in Tanzania and their effects.

3.1.1 A summary of Criminal Defamation and Insult Laws in Tanzania

Statute:	Newspapers Act 1976
Offence:	Offences in Relation to publications
Section:	Section: 27.-(1) <i>If the President is of the opinion that the importation of any publication would be contrary to the</i>

²⁶ ARTICLE 19 'Defamation' available at <http://www.article19.org/pages/en/defamation-more.html> (accessed 6th June 2014).

²⁷ ARTICLE 19 'Defamation' available at <http://www.article19.org/pages/en/defamation-more.html> (accessed 6th June 2014).

²⁸ ARTICLE 19 and Media Institute of Southern Africa-Tanzania 'Submission to The Office of Human Rights on The Occasion of The Universal Periodic Review) available at <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/TZ/JS6-JointSubmission6-eng.pdf> (accessed 6th June 2014).

	<p><i>public interest he may, in his absolute discretion, by order, prohibit the importation of such publication, and in the case of a periodical publication may, by the same or a subsequent order, prohibit the importation of any part or future issue thereof.</i></p> <p><i>(2) If the President is of the opinion that the importation of the publications of any specified person would be contrary to the public interest he may, in his absolute discretion, by order prohibit, either absolutely or subject to specified exceptions or conditions, the importation of the future publications of such person.</i></p> <p><i>28.-(1) Any person who imports, publishes, sells, offers for sale, distributes or produces any publication, the importation of which has been prohibited under section 27 or any extract therefrom, commits an offence and shall be liable upon conviction for the first offence to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding two years or to both and for a subsequent offence to a fine not exceeding fifteen thousand shillings or to imprisonment for a term not exceeding three years; and such publication or extract therefrom shall be forfeited to the Government.</i></p>
Effect:	Section 27 of the Newspapers Act effectively gives the President of Tanzania the power to prohibit publications which are in his opinion against public interests. This means that the President need not explain his actions, thereby making s.27 open to abuse and the media an easy target.
Statute:	Newspapers Act 1976
Offence:	Seditious Intention
Section:	<p>Section: S31.-(1) A "seditious intention" is an intention—</p> <p><i>(a) to bring into hatred or contempt or to excite disaffection against the lawful authority of the United Republic or the Government thereof; or</i></p> <p><i>(b) to excite any of the inhabitants of the United Republic</i></p>

	<p><i>to attempt to procure the alteration, otherwise than by lawful means, of any other matter in the United Republic as by law established; or</i></p> <p><i>(c) to bring into hatred or contempt or to excite disaffection against the administration of justice in the United Republic; or</i></p> <p><i>(d) to raise discontent or disaffection amongst any of the inhabitants of the United Republic; or</i></p> <p><i>(e) to promote feelings of ill-will and hostility between different categories of the population of the United Republic</i></p>
Effect:	S31 (1) of the Newspapers Act defines ‘seditious intention’ and is linked to S.32. The scope of what amounts to a seditious intention is so broad making it open to interpretation and abuse.
Statute:	Newspapers Act 1976
Offence:	Sedition
Section:	<p>32.-(1) Any person who–</p> <p>(a) does or attempts to do, or makes any preparation to do, or conspires, with any person to do, any act with a seditious intention;</p> <p>(b) utters any words with a seditious intention;</p> <p>(c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;</p> <p>(d) imports any seditious publication, unless he has no reason to believe that it is seditious, commits an offence and shall be liable upon conviction for the first offence to a fine not exceeding ten hundred thousand shillings or to imprisonment for a term not exceeding two years or to both; and for a subsequent offence to a fine not exceeding fifteen hundred thousand shillings or to imprisonment for a term not exceeding three years or to both; and such publication shall be forfeited to the Government.</p>

Effect:	S32 of the newspapers act is identical to many sedition laws on the continent. This section is linked to s31 and it fails to concretely explain exactly what conduct is prohibited and as a result the provision has the effect of being contradictory to Article 18 of the Tanzanian Constitution which guarantees Freedom of Expression,
Statute:	Newspapers Act 1976
Offence:	Publication of False News
Section:	<p>36.(1) Any person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding fifteen hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.</p> <p>(2) It shall be a defence to a charge under subsection (1) if the accused proves that, prior to publication, he took such measures to verify the accuracy of such statement, rumour or report as to lead him reasonably to believe that it was true.</p>
Effect:	S36 of Newspapers Act is worded in an unclear manner making this provision contradictory with international standards concerning freedom of the press.
Statute:	Newspapers Act 1976 (PART VI)
Offence:	Defamation
Section:	S38. <i>“Any person who, by print, writing, printing, effigy or by any means otherwise than solely by gestures, spoken words or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, shall be guilty of the offence termed “libel””.</i>

	<p>S39. <i>“Defamatory matter is matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule, or likely to damage any person in his profession or trade by an injury to his reputation; and it is immaterial whether at the time of the publication of the defamatory matter the person concerning whom such matter is published is living or dead: Provided that no prosecution for the publication of defamatory matter concerning a dead person shall be instituted without the written consent of the Director of Public Prosecutions.”</i></p> <p>40. <i>“(1) A person publishes a libel if he causes the print, writing, painting, effigy or other means by which the defamatory matter is conveyed, to be dealt with, either by exhibition, reading, recitation, description, delivery or otherwise, so that the defamatory meaning thereof becomes known or is likely to become known to either the person defamed or any other person.</i></p> <p><i>(2) It is not necessary in a case of libel that the defamatory meaning should be directly or completely expressed; and it suffices if such meaning and its application to the person alleged to be defamed can be collected either from the alleged libel itself or from any extrinsic circumstances or partly from the one and partly from the other means.”</i></p> <p>41. <i>Any publication of defamatory matter concerning a person is unlawful within the meaning of this Part, unless–</i></p> <p><i>(a) the matter is true and it was for the public benefit that it should be published; or</i></p> <p><i>(b) it is privileged on one of the grounds hereafter mentioned in this Part.</i></p> <p>42. <i>(1) The publication of defamatory matter is absolutely privileged, and no person shall under any circumstances be liable to punishment under this Act in respect thereof, in any of the following cases, namely if–</i></p> <p><i>(a) the matter is published by the President, the Government or the National Assembly, in any official document or proceedings;</i></p> <p><i>(b) the matter is published in the National Assembly, by</i></p>
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	<p><i>the President, the Government or by any member of the National Assembly or the Speaker;</i></p> <p><i>(c) the matter is published by order of the President or the Government;</i></p> <p><i>(d) the matter is published concerning a person subject to military or naval discipline for the time being, and relates to his conduct as a person subject to such discipline, and is published by some person having authority over him in respect of such conduct;</i></p> <p><i>(e) the matter is published in the course of any judicial proceedings by a person taking part therein as a judge or magistrate or commissioner or advocate or assessor or witness or party thereto;</i></p> <p><i>(f) the matter published is in fact a fair report of anything said, done or published in the National Assembly;</i></p> <p><i>(g) the person publishing the matter is legally bound to publish it.</i></p> <p><i>(2) Where a publication is absolutely privileged, it is immaterial for the purposes of this Part whether the matter be true or false, and whether it be known or be not known or believed to be false, and whether it be or not published in good faith:</i></p> <p><i>Provided that nothing in this section shall exempt any person from any liability to punishment under any other Part of this Act or under any other written law in force within Tanzania.</i></p> <p>43. <i>A publication of defamatory matter is privileged on condition that it was published in good faith, if the relation between the parties by or to whom the publication is made is such that the person publishing the matter is under some legal, moral or social duty to publish it to the person to whom the publication is made or has a legitimate personal interest in publishing it, provided that the publication does not exceed either in extent or matter what is reasonably sufficient for the occasion, and in any of the following cases, namely if–</i></p> <p><i>(a) the matter published is in fact a fair report of</i></p>
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	<p><i>anything said, done or shown in a civil or criminal inquiry or proceeding before any court:</i></p> <p><i>Provided that if the court prohibits the publication of anything said or shown before it, on the ground that it is seditious, immoral or blasphemous, the publication thereof shall not be privileged;</i></p> <p><i>(b) the matter published is a copy or reproduction, or in fact a fair abstract, of any matter which has been previously published, and the previous publication of which was or would have been privileged under section 42;</i></p> <p><i>(c) the matter is an expression of opinion in good faith as to the conduct of any person in a judicial, official or other public capacity, or as to his personal character so far as it appears in such conduct;</i></p> <p><i>(d) the matter is an expression of opinion in good faith as to the conduct of a person in relation to any public question or matter, or as to his personal character so far as it appears in such conduct;</i></p> <p><i>(e) the matter is an expression of opinion in good faith as to the conduct of any person disclosed by evidence given in a public legal proceeding, whether civil or criminal, as to the conduct of any person as a party, witness or otherwise in any such proceeding, or as to the character of any person so far as it appears in any such conduct as in this paragraph mentioned;</i></p> <p><i>(f) the matter is an expression of opinion in good faith as to the merits of any book, writing, painting, speech or other work, performance or act published or publicly done or made or submitted by a person to the judgment of the public, or as to the character of the person so far as it appears therein; or</i></p> <p><i>(g) the matter is a censure passed by a person in good faith on the conduct of another person in any matter in respect of which he has authority, by contract or otherwise, over the person, or on the character of the other person, so far as it appears in such conduct;</i></p> <p><i>(h) the matter is a complaint or accusation made by a person in good faith against another person in respect of his conduct in any matter, or in respect of his character</i></p>
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	<p><i>so far as it appears in such conduct, to any person having authority, by contract or otherwise, over that other person in respect of such conduct or matter, or having authority by law to inquire into or receive complaints respecting such conduct or matter; or</i></p> <p><i>(i) the matter is published in good faith for the protection of the rights or interests of the person who publishes it, or of the person to whom it is published or of some person in whom the person to whom it is published is interested.'</i></p> <p>44. <i>A publication of defamatory matter shall not be deemed to have been made in good faith by a person, within the meaning of section 43, if it is made to appear either that—</i></p> <p><i>(a) the matter was untrue, and that he did not believe it to be true;</i></p> <p><i>(b) the matter was untrue, and that he published it without having taken reasonable care to ascertain whether it was true or false; or</i></p> <p><i>(c) in publishing the matter, he acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise than was reasonably necessary for the interest of the public or for the protection of the private right or interest in respect of which he claims to be privileged.</i></p> <p>45.' <i>If it is proved, on behalf of the accused person, that the defamatory matter was published under such circumstances that the publication would have been justified if made in good faith, the publication shall be presumed to have been made in good faith until the contrary is made to appear, either from the libel itself, or from the evidence given on the part of the prosecution.'</i></p> <p>46. <i>“Any person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt any foreign sovereign ruler, ambassador or other foreign dignitary with intent to</i></p>
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	<p><i>disturb peace and friendship between the United Republic and the country to which such ruler, ambassador or dignitary belongs, commits the offence of libel.”</i></p> <p><i>47. Any person convicted of the offence of libel under this Act shall be liable to a fine not exceeding ten hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.</i></p>
<p>Effect:</p>	<p>In Tanzania, s38 of the Newspapers Act defines libel which under s47 is punishable by imprisonment. S38 makes reference to a ‘defamatory matter’ which is defined under S39 in broad and vague terms making use of words such as ‘ridicule’, ‘contempt’. S40 and S41 (a) makes publishing a libel and a defamatory matter an offence. S41 (b)-S45 deal with publication of privileged matters. These sections are so strictly construed that they leave very little room for journalists to do their work.</p> <p>S46 deals with defaming foreign princes and it is worded in unclear and broad terms.</p> <p>Generally, when a country has criminal defamation laws in place, such as the ones found in Part VI of the Newspapers Act it means that a country’s citizens face the very real possibility of ‘being arrested, held in pre-trial detention, subjected to expensive criminal trials, and then saddled with a criminal record, fines and imprisonment, and the social stigma associated with this’.²⁹ In this sense, it is argued that criminal defamation laws are essentially unreasonable and have a chilling effect on the right to freedom of expression.³⁰</p> <p>Essentially, the effect of such laws is inconsistent sanctions and the threat of such sanctions which prevents the free flow of information and ideas.³¹</p>

²⁹ ARTICLE 19 ‘Briefing Note on International and Comparative Defamation Standards’ (2004) available at <http://www.article19.org/data/files/pdfs/analysis/defamation-standards.pdf> (accessed 9th June 2014).

³⁰ ARTICLE 19 ‘Defamation’ available at <http://www.article19.org/pages/en/defamation-more.html> (accessed 6th June 2014).

³¹ ARTICLE 19 ‘Briefing Note on International and Comparative Defamation Standards’ (2004) available at <http://www.article19.org/data/files/pdfs/analysis/defamation-standards.pdf> (accessed 9th June 2014).

Statute:	Penal Code
Offence:	Seditious Intention
Section:	<p>S55.—(1) A "seditious intention" is an intention—</p> <p>(a) to bring into hatred or contempt or to excite disaffection against the lawful authority of the United Republic or the Government thereof; or</p> <p>(b) to excite any of the inhabitants of the United Republic to attempt to procure the alteration, otherwise than by lawful means, of any other matter in the United Republic as by law established; or</p> <p>(c) to bring into hatred or contempt or to excite disaffection against the administration of justice in the United Republic or</p> <p>(d) to raise discontent or disaffection amongst any of the inhabitants of the United Republic; or</p> <p>(e) to promote feelings of ill-will and hostility between difference classes of the population of the United Republic.</p>
Effect:	S55 of the Penal code is identical to s31 of the Newspapers Act and as such has the same effect of being open to abuse because of the very broad wording.

3.2 Conclusion

In accordance with international law and indeed enshrined in many national constitutions, the right to freedom of expression may be restricted.³² However it is important to note that while this is the case, in terms of international human rights theory any restrictions on the right to freedom

³² Article 29 of the *Universal Declaration of Human Rights* provides: 'In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society'

of expression must always be understood narrowly.³³ As such any restriction on the right to freedom of expression must meet a strict three-part test, namely:

- That the restriction should be provided by law, and it should ‘be accessible, unambiguous and narrowly and precisely’ interpreted, thereby providing legal certainty.³⁴
- The restriction should be legitimate, for instance if the restriction purports to protect the reputations of others, it must have that genuine and clear purpose.³⁵
- The restriction should be necessary in a democratic society³⁶

Although provided by law, the laws criminalising free speech in Tanzania are broadly worded and unclear. The restrictions have no clear purpose. And ultimately these laws seem unnecessary because their mere existence outweighs the right to freedom of expression.

4. DUE PROCESS LAWS IN TANZANIA

In the past and indeed in many nations today, governments have employed unwarranted control over matters such as speech, association and religion.

It is evident then that as powerful institutions governments have an impact on the lives of persons in a given country because they amongst other things are able to limit individual conduct.³⁷ In fact it is suggested that throughout history where governments are left unchecked ‘they can and have killed, tortured, imprisoned, and enslaved their people’.³⁸

³³ ARTICLE 19 ‘Briefing Note on International and Comparative Defamation Standards’ (2004) available at <http://www.article19.org/data/files/pdfs/analysis/defamation-standards.pdf> (accessed 9th June 2014).

³⁴ ARTICLE 19 ‘Briefing Note on International and Comparative Defamation Standards’ (2004) available at <http://www.article19.org/data/files/pdfs/analysis/defamation-standards.pdf> (accessed 9th June 2014).

³⁵ ARTICLE 19 ‘Briefing Note on International and Comparative Defamation Standards’ (2004) available at <http://www.article19.org/data/files/pdfs/analysis/defamation-standards.pdf> (accessed 9th June 2014).

³⁶ ARTICLE 19 ‘Briefing Note on International and Comparative Defamation Standards’ (2004) available at <http://www.article19.org/data/files/pdfs/analysis/defamation-standards.pdf> (accessed 9th June 2014).

³⁷ Timothy Griffy ‘The Importance of Due Process rights’ available at <http://timothygriffy.hubpages.com/hub/The-Importance-of-Due-Process-Rights> (accessed 9th June 2014).

³⁸ Timothy Griffy ‘The Importance of Due Process rights’ available at <http://timothygriffy.hubpages.com/hub/The-Importance-of-Due-Process-Rights> (accessed 9th June 2014).

The recognition of human rights including the freedom of speech then can be said to be a reaction to abuse of power exercised by many governments the world over.³⁹ And while human rights are generally enshrined in the Bill of rights of given constitutions, it is important to recognise that in order for their protection to be correctly applied and respected, there needs to be a proper and fair administration of justice.

Accordingly, the right to due process can be understood as the right to be ‘treated fairly, efficiently and effectively by the administration of justice’.⁴⁰ The right to due process relates to amongst others, ones right to be free from arbitrary arrests, detentions, and exile⁴¹ and can be found in international and regional human rights documents.⁴²

The following section of this research concentrates on the due process right protected by Tanzanian Law. It also looks at incidents in which journalists find their right to due process violated as a result of laws that criminalise free speech.

4.1 Laws Protecting Detained Persons in Tanzania

³⁹ Timothy Griffy ‘The Importance of Due Process rights’ available at <http://timothygriffy.hubpages.com/hub/The-Importance-of-Due-Process-Rights> (accessed 9th June 2014).

⁴⁰ Icelandic Human Rights Centre ‘The Right to Due Process’ available at <http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/humanrightsconceptsideasandfora/substantivehumanrights/therighttodueprocess/> (accessed 10 June 2014).

⁴¹ Timothy Griffy ‘The Importance of Due Process rights’ available at <http://timothygriffy.hubpages.com/hub/The-Importance-of-Due-Process-Rights> (accessed 9th June 2014).

⁴² See for instance Articles 7 and 26 African Charter on Human Peoples’ Rights, Articles 14 and 15 International Covenant on Civil and Political Rights, Article 10 Universal Declaration on Human Rights, Articles 22-33 and 62-67 Rome Statute of the International Criminal Court, Basic Principles on the Independence of the Judiciary, adopted at the Seventh UN Congress on the Prevention of Crime and the Treatment of offenders on 26 August-6 September 1985 at Milan and the General Comment 13 on Fair Trial, adopted by the Human Rights Committee, Twenty-first session, 1984.

The Tanzanian Constitution, in line with international and regional human rights law guarantees equal protection under the law, and due process rights. Under article 13 of the Tanzanian Constitution:

13.-(1) *All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law.*

(2) *No law enacted by any authority in the United Republic shall make any provision that is discriminatory either of itself or in its effect.*

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

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

(5) *For the purposes of this Article the expression “discriminate” means to satisfy the needs, rights or other requirements of different persons on the basis of their nationality, tribe, place of origin, political opinion, colour, religion, sex or station in life such that certain categories of people are regarded as weak or inferior and are subjected to restrictions or conditions whereas persons of other categories are treated differently or are accorded opportunities or advantage outside the specified conditions or the prescribed necessary qualifications except that the word “discrimination” shall not be construed in a manner that will prohibit the Government from taking purposeful steps aimed at rectifying disabilities in the society.*

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

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

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

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

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

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

In terms of the law in Tanzania, people have to be openly arrested with warrants based on sufficient evidence.⁴³ In addition, under Tanzanian law any person arrested for a crime, other than a national security detainee, must be charged before a magistrate within 24 hours of arrest and promptly informed of the charges against him/her.⁴⁴ Accused persons are also given the right to contact a lawyer or talk with family members.⁴⁵ Persons who have been arrested have the right to bail, in terms of Tanzanian law.⁴⁶

4.2 Incidents and Cases of Detained Journalists

"Detention, as a negative sanction for the peaceful expression of opinion, is one of the most reprehensible practices employed to silence people and accordingly constitutes a serious violation of human rights."-The United Nations Commission on Human Rights.⁴⁷

The following is a table of summarised incidents in which journalists were arrested in terms of the criminal defamation and insult laws in Tanzania. It should be noted that there are most likely a good number of decided cases that relate directly to the topic at hand but which cannot be accessed due to the fact that they have not yet been reported in the Tanzanian Law Reports or because they are difficult to obtain from the courts where they were decided. Consequently this study has been restricted to a few incidents and cases that the researcher was able to access.

⁴³ S52 The Tanzania Criminal Procedure Act 375 of 1985.

⁴⁴ S23 The Tanzania Criminal Procedure Act 375 of 1985.

⁴⁵ S54 The Tanzania Criminal Procedure Act 375 of 1985.

⁴⁶ The law does not allow bail for suspects in cases involving charges of murder, treason, drugs, armed robbery, human trafficking, or other violent offenses where the accused might pose a public safety risk. See US State Department of State '2012 Human Rights Reports Tanzania' available at <http://www.state.gov/j/drl/rls/hrrpt/2012/af/204176.htm> (accessed 11 June 2014).

⁴⁷ IPI Public Statements 'Resolutions passed by the 53rd IPI General Assembly' available at http://service.cms.apa.at/cms/ipi/statements_detail.html?ctxid=CH0055&docid=CMS1144239487915 (accessed on 11 June 2014).

Journalist/s	INCIDENT	OUTCOME
Maxence Mello and Mike Mushi	On 18 th February 2008, two young editors and hosts of the popular Jambo Forums ⁴⁸ , Maxence Mello and Mike Mushi, aged 21 and 18 respectively, were detained and interrogated for 24 hours for the “dissemination of wrong information” about a government corruption scandal.	According to Mello’s defence Lawyer, no official charges were laid against the duo. But police did confiscate three computers used to host their web site, shutting down the site for five days. ⁴⁹
Absalom Kibanda and Samson Mwingamba	In 2011, Tanzanian authorities arrested and charged a columnist Samson Mwingamba, and an editor Absalom Kibanda with ‘inciting the police force to subordinate in connection with an editorial critical of the government’. Mr. Mwingamba was initially charged with sedition and spent five days in custody for failing to satisfy bail conditions. The charges of sedition were later changed to incitement, a charge under the penal code that	Still pending

⁴⁸ Jambo Forums, is a site that covers topics ranging from politics, culture to entertainment. Tanzania detains popular website editors’ available at <http://cpj.org/2008/02/tanzania-detains-popular-web-site-editors.php> (accessed 12 June 2014).

⁴⁹See Legal Brief Today ‘CPJ Slams arrest of online editors’ available at <http://www.legalbrief.co.za/article.php?story=20080312082119818> (accessed 12 June 2014), see also Committee to Protect Journalists ‘Tanzania detains popular website editors’ available at <http://cpj.org/2008/02/tanzania-detains-popular-web-site-editors.php> (accessed 12 June 2014).

	can result in a year and a half imprisonment. ⁵⁰	
George Maziku	George Maziku was briefly detained by police in April 2002. He was accused of libelling and insulting the national assembly in a report claiming that the ruling party had manipulated the reform of the electoral law in order to enhance its chances in the next elections. ⁵¹	Released on bail
Abduel Kenge	Abdul Kenge, a journalist with the independent weekly <i>The Express</i> , was detained for four hours on 21 May after trying to ask Vice-president Ali Mohammed Shein a question during a conference at Dar Es Salaam university.	Kenge was finally released after four hours without any charges being pressed. ⁵²

4.3 Conclusion

While Tanzania has ratified several major international treaties such as the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights that guarantee the Right to Freedom of Expression and that place an obligation on Tanzania to ensure that its laws and practices are in conformity, it is not uncommon to hear of journalists in Tanzania who are critical of the government or public bodies finding themselves charged with criminal defamation cases. It isn't uncommon either as evidenced above to find that journalists in Tanzania are merely arrested and kept in custody for hours without charge. In addition, it is

⁵⁰ Committee to Protect Journalists 'In Tanzania two journalists, charged with incitement' available at <http://cpi.org/2011/12/in-tanzania-two-journalists-charged-with-incitemen.php> (accessed 12th June 2014).

⁵¹ Media Institute of Southern Africa *So this is democracy* (2002)

⁵² IFEX 'Journalist harassed by bodyguards, arrested' available at http://www.ifex.org/tanzania/2002/05/31/journalist_harassed_by_bodyguards/ (accessed 12 June 2014).

documented that many times, journalists have been subject to physical attack, harassment, and intimidation at the hands of law enforcement authorities and crowds in Tanzania.⁵³

Little or no action is taken against police or other officials for their involvement in arbitrary arrests and mistreatment of journalists.⁵⁴ It is evident that journalists are subject to arbitrary arrests because of the work they do, and this threatens the free-flow of information in a democratic society.

5. OBSERVATIONS FROM QUESTIONNAIRES

A questionnaire was administered to a small group of respondents. The respondents of the specifically designed research questionnaires, who contributed to the study, were selected randomly from a pool of lawyers, journalists and media managers.

In general the questionnaires indicate that although there are different degrees of knowledge in respect of the actual application of defamation and insult laws in Tanzania, all of the respondents were in agreement that media practitioners in the country were aware of such laws but not necessarily aware of their implications. It's interesting to note that many of the respondents spoke most frequently about the Newspapers Act in Tanzania, when it came to giving their viewpoints.

The respondents generally agreed that criminal defamation and insult laws predominantly affect journalists in Tanzania and contribute extensively to preventing the free flow of information in the country and results in many journalists in the country exercising self-censorship. At least one

⁵³ For example on September 2nd 2011, Daudi Mwangosi, television journalist and chairman of the Iringa Press Club, was killed in a confrontation with police while covering a rally held by the opposition Chadema (see section 1.a.). In September another television reporter, Munir Zakaria, was reportedly beaten and had his equipment destroyed in a confrontation with CCM political party supporters during the Bububu by-election (see section 3). Zakaria was filming a group of young men who had gathered at the CCM branch office. The group attacked Zakaria and destroyed his video camera before police could arrive and assist him. By year's end none of the perpetrators was arrested. Media Institute of Southern Africa *So this is democracy* (2012)145 See also Freedomhouse 'Tanzania:2013' available at <http://www.freedomhouse.org/report/freedom-world/2013/tanzania#.U6lBfUBhvTo> (accessed on 3rd June 2014).

⁵⁴ US State Department of State '2012 Human Rights Reports Tanzania' available at <http://www.state.gov/j/drl/rls/hrrpt/2012/af/204176.htm> (accessed 11 June 2014).

participant mentioned how criminal and defamation laws also deny citizens in Tanzania the right to access information.

All the respondents agreed that for many journalists and media practitioners in Tanzania, legal sanctions are a reality and many cannot afford legal representation. It was noted by at least three respondents that there are a number of cases which have been brought before courts of law in Tanzania by the Government under the guise of defamation or matters threatening government security.

One respondent did mention that there are number of journalists in the country who are also trained as lawyers and that they have been appearing before the court of law to help their fellow journalists. In addition it appears that there are some private initiatives which are still ongoing to form Media Lawyers Association of Tanzania. It is hoped that this body will be used to defend lawyers who are facing criminal charges as a results of their work.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1 Conclusions

"Criminal defamation laws constitute a serious interference with freedom of expression and impede the role of the media as a watchdog, preventing journalists and media practitioners [from] practising their profession without fear and in good faith".- The African Commission on Human and Peoples' Rights.⁵⁵

The profession of journalism not only informs citizens but provides citizens the platform to have their voices heard and it allows citizens to monitor those in power.⁵⁶ The past few decades has

⁵⁵ African Commission on Human and Peoples Rights 'Rights 169: Resolution on Repeal Criminal Defamation Laws in Africa' available at <http://www.achpr.org/sessions/48th/resolutions/169/> (accessed 16th June 2014) see also Bhardway v, Winks B 'The Dangers of Criminalising Defamation' *Mail and Guardian* 1 November 2013 available at <http://mg.co.za/article/2013-10-31-the-dangers-of-criminalising-defamation> (accessed on 16th June 2014).

⁵⁶ PewResearch quotes James D. Wolfensohn, president of the World Bank as emphasising the importance of Journalism by saying that "A free press is absolutely vital to that objective. Freedom of the press is not a luxury. It is not an extra. It is absolutely at the core of equitable development." Pew Research Center's Journalism Project Staff 'A New Journalism for Democracy in a New Age' PewResearch Journalism Project 'A New Journalism for Democracy in a New Age' available at <http://www.journalism.org/2005/02/01/a-new-journalism-for-democracy-in-a-new-age/> (accessed 16th June 2014).

seen the work and responsibilities of journalists globally become even more important and at the same time even more difficult. Freedom of the press is directly linked to freedom of expression and it has been stressed in this research study, that the right to freedom of expression is an important constitutionally enshrined cornerstone of democracy. So while it may be argued that in some cases, criminal defamation and insult laws are applied in moderation, the fact that these laws continue to exist means there is a real possibility of being arrested by the police, held in detention and possibly being subjected to a criminal trial because one has exercised their right to freedom of expression.⁵⁷

By criminalising freedom of expression, the State not only tries to exercise some control over an action but the criminalisation itself comes with permanent consequences such as a criminal record which brands an individual a criminal, who must disclose this information every time s/he applies for a 'job, a visa or even a bank account'.⁵⁸ It is argued that the very existence of a crime 'creates the risk of wrongful accusation, investigation, prosecution and even conviction, consequences of which are hard to correct on appeal'.⁵⁹ It seems evident that in many instances the underlying goal of criminalising freedom of expression is to intimidate and prevent journalists from doing their work.

Tanzania, it is recorded has 706 weekly and daily newspapers and according to the Tanzania Communication and Regulatory Authority (TCRA) 59 licensed radio stations and 29 licensed TV stations.⁶⁰ Despite this Tanzania's press is said to be partly free largely because there are numerous laws on the Tanzanian statute books that limit the ability of the press to function effectively and in effect encourage self censorship because the sanctions that come with these laws will most likely be in the back of the mind of a journalist when he or she doing their job.

⁵⁷ Bhardway v, Winks B 'The Dangers of Criminalising Defamation' *Mail and Guardian* 1 November 2013 available at <http://mg.co.za/article/2013-10-31-the-dangers-of-criminalising-defamation> (accessed on 16th June 2014).

⁵⁸ Bhardway v, Winks B 'The Dangers of Criminalising Defamation' *Mail and Guardian* 1 November 2013 available at <http://mg.co.za/article/2013-10-31-the-dangers-of-criminalising-defamation> (accessed on 16th June 2014).

⁵⁹ Bhardway v, Winks B 'The Dangers of Criminalising Defamation' *Mail and Guardian* 1 November 2013 available at <http://mg.co.za/article/2013-10-31-the-dangers-of-criminalising-defamation> (accessed on 16th June 2014).

⁶⁰ Media Institute of Southern Africa (2012) 145.

It has been illustrated in this study that laws that criminalise free speech in Tanzania allow those in power to take action against any piece of investigative journalism that coincides with what it considers classified information, highlighting one of the greatest concerns with laws that criminalise freedom of expression in Tanzania, namely that they are worded too broadly and are open to abuse, in addition these laws carry with them punishment that is arguably too harsh and unfair. As such the existence of laws that criminalise free speech cannot be reconciled with the right to freedom of expression especially when other remedies (namely civil law) exist to cure personal injury.

6.2 Recommendations

Journalists, media workers and experts in Tanzania are aware of the existence of criminal defamation and insult laws in the country. It is clear that these laws to some degree affect the operations of the media in the country. Realising the need to protect the media and members of the public from criminal defamation and insult laws, media bodies such as MISA-Tanzania in partnership with human rights groups, have played a pivotal role in advocating for law reforms in order to foster media freedom and freedom of expression in Tanzania. These bodies will continue to campaign for the repeal of criminal defamation and insult laws. Here's what is required, in order to further support the cause:

- MISA Tanzania in partnership with other like-minded bodies should continue campaigning for the repeal of criminal defamation and insult laws. This should go hand in hand with making concrete efforts to provide publications and other relevant documents on criminal defamation and insult laws to media houses across the country.
- The Tanzanian Legislature should repeal laws that unfairly limit freedom of expression; in particular the provisions of the Newspapers Act and the Penal Code mentioned above and they should fully acknowledge the principle that 'public figures must tolerate a greater degree of criticism than ordinary citizens'.⁶¹

⁶¹ Article 19's Submission to the UN Universal Periodic Review of the Republic of Zambia available at <http://www.artilce19.org/data/files/medialibrary/3055/article-19-individual-UPR-submission-Zambia-April-2012> (accessed 22 May 2013).

- The Tanzanian government should not delay any longer the passing of a freedom of information bill.
- The Tanzanian government should establish a Media Law enshrining freedom of the press.
- Put an end to direct and indirect restrictions on freedom of expression and adopt appropriate measures, including legislative measures, to prevent intimidation of journalists.