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1 INTRODUCTION

The United Republic of Tanzania was created from the union of two former colonial territories, Tanganyika and Zanzibar, in 1964. It consists of mainland Tanzania, which is predominantly Christian, and the island of Zanzibar, which is predominantly Muslim.

Tanzania has a population of approximately 42 million people. The country has had multiparty elections since 1992, and has been ruled by the Chama Cha Mapinduzi (CCM) party since 1977. Lately, violence has marred election campaigning.

Tanzania has a federal system of government, and Zanzibar is given a great deal of autonomy to determine its own laws and legal institutions. Consequently, the media in Tanzania is governed by different laws depending on whether the media operates in mainland Tanzania or on the island of Zanzibar.

It is important to note that for the purposes of this chapter we deal with the laws and institutions applicable to mainland Tanzania only, and a reference to Tanzania is a reference to mainland Tanzania.

Freedom House ranks the media environment in Tanzania as only ‘partly free’.¹

In this chapter, working journalists and other media practitioners will be introduced to the legal environment governing media operations in Tanzania. The chapter is divided into four sections:

- Media and the constitution
- Media-related legislation
- Media-related regulations
- Media self-regulation

The aim of this chapter is to equip the reader with an understanding of the main laws governing the media in Tanzania. Key weaknesses and deficiencies in these laws will also be identified. The hope is to encourage media law reform in Tanzania, to better enable the media to fulfil its role of providing the public with relevant news and information, and to serve as a vehicle for government–citizen debate and discussion.

2 THE MEDIA AND THE CONSTITUTION

In this section you will learn:

- The definition of a constitution
- What is meant by constitutional supremacy
- How a limitations clause operates
- Which constitutional provisions protect the media
- Which constitutional provisions might require caution from the media or might conflict with media interests
- What key institutions relevant to the media are established under the Constitution of Tanzania
- How rights are enforced under the Constitution
- What is meant by the ‘three branches of government’ and ‘separation of powers’
- Whether there are any clear weaknesses in the Constitution of Tanzania that ought to be strengthened to protect the media

2.1 Definition of a constitution

A constitution is a set of rules that are foundational to the country, institution or organisation to which they relate. For example, you can have a constitution for a soccer club or a professional association, such as a press council.

Such constitutions set out the rules by which members of the organisation agree to operate. However, constitutions can also govern much larger entities, indeed, entire nations.

The Constitution of Tanzania (CAP.2) of 1977, as amended, sets out the country’s

founding values and principles in its preamble and in other provisions. For the purposes of the media, the following values and principles on which Tanzania is said to be founded are particularly important and are summarised below:

- *From the Preamble:* ‘... freedom, justice ... [and] a democratic society in which the Executive is accountable to the Legislature composed of elected members and representatives of the people, and also a Judiciary which is independent and which dispenses justice without fear or favour, thereby ensuring that all human rights are preserved and protected’
- *Article 8, The Government and the People:* Article 8(1) – ‘The United Republic of Tanzania is a state which adheres to the principles of democracy and social justice and accordingly’ –
 - Sovereignty resides in the people
 - The primary objective of the government shall be the welfare of the people
 - Government shall be accountable to the people
 - The people shall participate in the affairs of government in accordance with the Constitution
- *Article 9, Object of the Constitution:* ‘The object of this Constitution is to facilitate the building of the United Republic as a nation of equal and free individuals enjoying freedom, justice, fraternity and accord, through the pursuit of the policy of Socialism and Self-Reliance ... Therefore, the state authority and all its agencies are obliged to direct their policies and programmes towards ensuring ...’. What follows is a list of 11 laudable objectives, including respecting dignity, human rights, the rule of law and equality, and eradicating injustice, corruption, and discrimination, and avoiding wealth concentration.
- However, it is important to note that both articles 8 and 9 are in Part II of Chapter One, headed ‘Fundamental objectives and directive principles of state policy’. Article 7(2) of the Constitution specifically provides that the provisions of this Part are not enforceable by a court, and no court may determine whether any act or omission by any person complied with the provisions of this Part. The effect of this is that no one can be held to account for failure to comply with the founding principles enunciated in Part II of Chapter One.

2.2 Definition of constitutional supremacy

Constitutional supremacy means that the constitution takes precedence over all other law in a particular country, for example, legislation or case law in a particular

country. It is important to ensure that a constitution has legal supremacy: if a government passed a law that violated the constitution – was not in accordance with or conflicted with a constitutional provision – such law could be challenged in a court of law and could be overturned on the ground that it is ‘unconstitutional’.

The Tanzania Constitution makes provision for constitutional supremacy rather obliquely. Article 4 deals with the exercise of state authority by various organs. It is important to note that article 4(4) provides that each organ specified in article 4 ‘shall be established and shall discharge its functions in accordance with the other provisions of this Constitution’. The effect of this is that legislative, executive and judicial organs of state are bound by the Constitution.

2.3 Definition of a limitations clause

It is clear that rights are not absolute as society would not be able to function. For example, if the right to freedom of movement were absolute, society would not be able to imprison convicted criminals. Similarly, if the right to freedom of expression were absolute, the state would not be able to protect its citizens from hate speech or false defamatory statements made with reckless disregard for the truth. Clearly, governments require the ability to limit rights in order to serve important societal interests; however, owing to the supremacy of the constitution this can only be done in accordance with the constitution.

The Constitution of Tanzania makes provision for three types of legal limitations on the exercise and protection of rights contained in Part III of Chapter One, ‘Basic rights and duties’, namely, state of emergency limitations, general limitations and internal limitations.

2.3.1 State of emergency limitations

Article 32 of the Tanzania Constitution, read with article 31, makes it clear that the basic rights set out in Part III of Chapter One of the Constitution may be limited by a presidential proclamation of a state of emergency. Note that these even include the right to life (article 14), although this is limited to deaths resulting from acts of war – article 31(3). Note in terms of article 32(2) of the Constitution, a state of emergency can be declared only in the following cases:

- War
- Danger of invasion or state of war
- Breakdown of public order
- Imminent occurrence of danger, disaster or environmental calamity

- Danger which clearly constitutes a threat to the state

Note further that in terms of article 32(5), a proclamation of a state of emergency ceases to have effect:

- If revoked by the president
- Within 14 days, if Parliament has not resolved to support the presidential proclamation, which resolution requires a two-thirds majority vote
- After six months, if Parliament has not extended the operation of the proclamation for further periods of six months by a resolution with a two-thirds majority vote
- If revoked by Parliament by a resolution with a two-thirds majority vote

2.3.2 General limitations

The second type of limitation is a general limitations provision. General limitations provisions apply to the provisions of a bill of rights or other statement setting out fundamental rights. These types of clauses allow a government to pass laws limiting rights, generally provided this is done in accordance with the constitution.

One can find the general limitations clause applicable to Part III of Chapter One, 'Basic rights and duties', in article 30 of the Tanzania Constitution, headed 'Limitations upon, and enforcement and preservation of basic rights, freedoms and duties'.

Article 30(2) is drafted in a very legalistic fashion, but essentially it provides that rights can be limited by legislation that has one or more of the following extremely broad purposes:

- To ensure that the rights of others are not prejudiced.
- To ensure the defence, public safety, public peace, public morality, public health, rural and urban development planning, the exploitation and utilisation of minerals, property development or any other interests for enhancing the public benefit.
- To ensure the execution of a court order.
- To protect the reputation, rights and freedom of others, privacy of persons in

court proceedings, prohibiting the disclosure of confidential information or safeguarding the dignity, authority and independence of the courts.

- To impose restrictions on or supervise or control the formation, management and activities of private societies and organisations.
- To enable any other thing to be done which promotes or preserves the national interest.

Further, article 30(1) specifically states that human rights ‘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’.

These provisions need some detailed explanation.

The general limitations clause is extremely problematic because of the very wide grounds upon which rights can be limited and, more problematically, because there are no requirements such as proportionality, justifiability, reasonableness or least restrictive means. This means that once a ground of justification has been provided – and these are extremely wide and include grounds such as furthering the national interest or supervising the activities of private organisations – basic rights can be limited.

The effect of this is that, in many instances, rights will be able to be limited very easily. All too often legislation will, in effect, trump basic rights, despite the provisions of the supremacy clause of the Constitution.

2.3.3 Internal limitations

The Tanzania Constitution also has a number of so-called ‘internal limitations’; these are limitations to specific rights. These are dealt with below in relation to the specific rights to which they apply.

2.4 Constitutional provisions that protect the media

The Tanzania Constitution contains a number of important provisions in Part III of Chapter One, ‘Basic rights and freedoms’, which directly protect the media, including publishers, broadcasters, journalists, editors and producers.

There are also provisions elsewhere in the Constitution that assist the media as it goes about its work of reporting on issues in the public interest. These are included in this section too.

2.4.1 Rights that protect the media

FREEDOM OF EXPRESSION

The most important section that protects the media is article 18, which sets out a number of detailed and important provisions protecting freedom of expression.

Article 18 provides that:

Every person –

- (a) has a freedom of opinion and expression of his ideas;
- (b) has the 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 society.

These provisions need some explanation.

- The rights and freedoms apply to ‘every person’ and not just to certain people, such as citizens. Hence, all persons, everybody, enjoys these rights and freedoms.
- The basic freedom is not limited to speech (oral or written) but extends to non-verbal or non-written expression. There are many examples of this, including physical expression (such as mime or dance), photography or art.
- The right in article 18 specifically enshrines the freedom ‘to seek, receive and, or disseminate information regardless of national boundaries’. This right of everyone’s to receive information is a fundamental aspect of freedom of expression, and this article enshrines the right to the free flow of information. Thus, the information rights of media audiences, for example, are protected. This right is important because it also protects organisations which foster media development. These organisations facilitate public access to different sources and types of information, particularly in rural areas that traditionally have little access to the media.

Note, however, that nowhere in this article is freedom of the media and/or the press specifically mentioned, although it is implied in the right to freedom of expression.

PRIVACY AND PERSONAL SECURITY

A second protection is contained in article 16, headed ‘Right to privacy and personal

security’. Article 16 specifies that every person ‘is entitled to respect and protection of his person, the privacy of his own person, his family and of his matrimonial life, and respect and protection of his residence and private communications’.

Note that this protection of private communications (which would include emails, SMSes, mail and telephone conversations) is an important right for working journalists.

Note further, however, that this right is subject to an internal limitation. This is dealt with in the section 2.5 of this chapter, ‘Constitutional provisions that might require caution from the media or might conflict with media interests’.

FREEDOM OF ASSOCIATION

A third protection is provided for in article 20(1), which grants every person the

freedom to freely and peaceably assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organisations formed for purposes of preserving or furthering his beliefs or interests or any other interests.

Clearly, the right provides protection for journalists to form organisations, including trade unions. It also provides protection of people to form media houses and for media houses to form self-regulatory bodies, press associations and the like.

It is important to note that article 20 is a right which is subject to an internal limitation. However, the internal limitation in article 20(2) pertains to grounds upon which political parties can be refused registration and does not have direct implications for journalists or the media.

FREEDOM TO PARTICIPATE IN PUBLIC AFFAIRS

A fairly uncommon right is provided for in article 21(2) of the Tanzania Constitution. This article provides that every citizen has the right and the freedom to participate fully in the process leading to the decision on matters affecting him/her, his/her well-being and the nation. This requires some discussion.

First, this is a right that is available only to citizens. Second, the right is a right to participation. This is important because it provides for a right to be heard on key matters. Furthermore, it can be argued that participation is meaningful when it is informed. Taken together, these indicate that citizens have a right to be informed

about key issues and to be heard thereon. Such rights are meaningless without a free press, which is essential for providing information to the citizenry. Consequently, this right is one which, we submit, is premised on a free press.

2.4.2 Provisions regarding the functioning of Parliament

There are provisions of the Tanzania Constitution, apart from the rights discussed above, which are important and which assist the media in performing its functions. Article 100 of the Tanzania Constitution is headed 'Freedom and immunity from proceedings'. In brief, article 100(1) provides for freedom of opinion and debate in the National Assembly. Article 100(2) essentially provides that a member of Parliament (MP) shall not be prosecuted and no civil proceedings may be instituted against him or her in a court in relation to anything which he or she has said or done in the National Assembly.

These provisions assist the media by protecting parliamentarians; they allow MPs to speak freely without facing arrest or charges for what they say.

2.5 Constitutional provisions that might require caution from the media or might conflict with media interests

Just as there are certain rights or freedoms that protect the media, other rights or freedoms can protect individuals and institutions *from* the media. It is important for journalists to understand which provisions in the Constitution of Tanzania can be used against the media. A number of these exist.

2.5.1 Right to dignity

The right to dignity is provided for in article 12(2), which states that: 'Every person is entitled to recognition and respect for his dignity.' Note that in the Tanzania Constitution the right to dignity falls under the general right to equality (article 12). Dignity is a right that is often raised in defamation cases because defamation, by definition, undermines the dignity of the person being defamed. This right is often set up against the right to freedom of the press, requiring a balancing of constitutional rights.

2.5.2 Right to privacy

Similarly, the right to privacy in article 16 (discussed above) is often raised in litigation involving the media, with the subjects of press attention asserting their rights not to be photographed, written about, followed in public, etc. The media has

to be careful in this regard and should be aware that there are always ‘boundaries’ in respect of privacy that need to be respected and which are dependent on the particular circumstances, including whether or not the person is a public figure or holds public office, and the nature of the issue being dealt with by the media.

It is also critical to note that article 16 is subject to a limitation clause. This may well be used against journalists by denying them their rights to privacy, particularly in respect of the privacy of their communications. Article 16(2) entitles the state to:

lay down legal procedures regarding the circumstances, manner and extent to which the right to privacy, security of his person, his property and residence may be encroached upon without prejudice to the provisions of this Article.

Ostensibly, this is to ‘preserve the person’s right in accordance with this Article’; in reality, however, the wording gives the state a limitless discretion when encroaching upon the right to privacy and personal security. The effect of this provision is that the constitutional right becomes subordinate to legislation and other legal mechanisms limiting the right.

2.5.3 States of emergency provisions

These have already been noted above in the discussion on limitations clauses.

2.5.4 Fundamental duties

The Tanzania Constitution contains a number of ‘duties’, which are not commonly found in constitutional provisions and which could arguably be used against journalists and media houses when reporting. For example, article 29(5) provides that ‘every person has the duty to conduct himself and his affairs in a manner that does not infringe upon the rights and freedoms of others or the public interest’.

This provision is echoed in article 30(1), which provides that ‘human rights and freedoms ... 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’.

2.6 Key institutions relevant to the media established under the Constitution of Tanzania

There are a number of important institutions in relation to the media that are established under the Tanzania Constitution, namely, the judiciary, the Judicial Service Commission, and the Commission for Human Rights and Good Governance.

2.6.1 The judiciary

In terms of article 107A(1) of the Tanzania Constitution, the judiciary is the ‘authority with final decision in dispensation of justice in the United Republic of Tanzania’. Judicial authority of the Republic vests in the courts, which are required to observe the following principles, in terms of article 107A(2):

- (a) impartiality to all without due regard to one’s social or economic status;
- (b) not to delay dispensation of justice without reasonable grounds;
- (c) to award reasonable compensation to victims of wrong doings committed by other persons, in accordance with laws enacted by Parliament;
- (d) to promote and enhance dispute resolution among persons involved in the disputes;
- (e) to dispense justice without being tied up with technicalities which may obstruct the dispensation of justice.

The general apex court in Tanzania is the Court of Appeal of the United Republic – article 117(3). Note that article 125 establishes a Special Constitutional Court of the United Republic, whose sole function, in terms of article 126(1), is:

to hear and give a conciliatory opinion on the interpretation or application of the Constitution where such interpretation or application is in dispute between the Government of the United Republic and the Revolutionary Government of Zanzibar.

Other courts include the High Court and such other courts as are established by legislation.

The judiciary is an important institution for the media because the two rely on each other to support and strengthen democratic practices in a country. The judiciary needs the media to inform the public about its judgments and its role as one of the branches of government, and the media is essential to building public trust and respect for the judiciary, which is the foundation of the rule of law in a society. The media needs the judiciary because of the courts’ ability to protect the media from unlawful action by the state and from unfair damages claims by litigants.

Key judicial appointment procedures are as follows:

- In terms of article 112(1) of the Tanzania Constitution, the Judicial Service Commission (JSC) is an appointments advisory commission for High Court judges and magistrates.

- Half of the judges of the Special Constitutional Court are appointed by the Government of the United Republic and the other half by the Revolutionary Government of Zanzibar – article. 127(1). Note that decisions of this court must be taken by two-thirds of the members appointed by the Government of the United Republic and by two-thirds of the members appointed by the Revolutionary Government of Zanzibar – article 128(3).
- Judges of the Court of Appeal are appointed by the president after consultation with the chief justice, in terms of article 118(3). Note that the JSC is not involved.
- Judges of the High Court are appointed by the president after consultation with the JSC, in terms of article 109(1).
- Note that judges are removed by the president acting on the advice of a tribunal appointed by the president – article 110A and see article 120A(2). Grounds for removal are inability to perform the functions of the office, behaviour inconsistent with the ethics of office of a judge or with the law concerning the ethics of office of public leaders – articles 110A(2) and 120A(2).
- In terms of article 113(4), magistrates are appointed, disciplined and removed by the JSC.

It is critical to note that the Tanzania Constitution recognises the right of Zanzibar to establish its own court structures with their own jurisdictions under the 1984 Constitution of Zanzibar – See Part IV ‘High Court of Zanzibar’ of Chapter Five of the Tanzania Constitution.

2.6.2 The Judicial Service Commission

The JSC is a constitutional body established in terms of article 112 of the Tanzania Constitution. Article 113(1) sets out the functions of the JSC. These include:

- Advising the president on appointments of judges of the High Court
- Advising the president on matters relating to discipline of judges
- Advising the president in respect of the appointment and discipline of registrars of the High Court and Court of Appeal
- Appointing and disciplining magistrates
- Establishing committees to implement its functions

The JSC is relevant to the media because of its critical role in the judiciary, the proper functioning and independence of which are essential for democracy.

In terms of article 112(1), the JSC is made up of the chief justice of the Court of Appeal (chairman of the JSC), the attorney general, a justice of appeal appointed by the president after consultation with the chief justice, the principal judge of the High Court and two members appointed by the president.

2.6.3 Commission for Human Rights and Good Governance

The Commission for Human Rights and Good Governance (HRGG Commission) is an important organisation in respect of the media. In terms of article 130(1) of the Tanzania Constitution, its brief is extremely wide and includes:

- Sensitising the public about the preservation of human rights and duties
- Receiving complaints in relation to violations of human rights in general
- Conducting enquiries on matters relating to the infringement of human rights and violations of principles of good governance
- Conducting research and disseminating the results thereof on the infringement of human rights and violations of principles of good governance
- Enquiring into the conduct of any person or institution in relation to the ordinary performance of functions or abuses of office
- Advising government, other public institutions and the private sector on human rights and good governance
- Taking the necessary action in order to promote and enhance conciliation, reconciliation among persons and various institutions appearing before the HRGG Commission

It is important to note, however, that in terms of article 130(6), the HRGG Commission may not undertake activity in relation to the president or leader of the Revolutionary Government of Zanzibar. Further, the HRGG Commission may not enquire into:

- Matters before a court or tribunal
- Matters concerning the relationship between the government and a foreign government or international organisation
- Matters concerning the presidential power to award remissions
- Any other matter mentioned in law

This last provision is troubling as it completely undermines the ability of the HRGG Commission to act in the face of countermanding legislation.

Unfortunately there are contradictory statements regarding the independence of the HRGG Commission. In Article 130(2) of the Constitution, the HRGG Commission is said to be:

an autonomous department ... in exercising its powers ... the Commission shall not be bound to comply with directives or orders of any person or department of government, or any opinion of any political party or of any public or private sector institution.

However, the very next sub-article (article 130(3)) provides that the above provisions:

shall not be construed as restricting the President from giving directives or orders to the Commission, nor are they conferring a right to the Commission of not complying with directives or orders, if the President is satisfied that in respect of any matter or any state of affairs, public interest so requires.

The effect of this is that the president can give directives or orders to the HRGG Commission, which it is bound to comply with. This obviously undermines the independence of the HRGG Commission.

Article 129(2) provides that the HRGG Commission comprises:

- A chairman, who must possess qualifications for appointment as a judge
- A vice-chairman, who is appointed on the basis that if the chairman is from the mainland, the vice-chairman is to be from Zanzibar, and vice versa
- Up to five other commissioners, who are appointed from among persons who possess skills, experience and wide knowledge in matters relating to human rights, law, administration, political or social affairs
- Assistant commissioners

In terms of article 129(3), commissioners and assistant commissioners are appointed by the president after consultation with the Nominations Committee, which consists of the chief justice of the Court of Appeal, the speaker of the National Assembly, the chief justice of Zanzibar, the speaker of the House of Representatives and the deputy-attorney general, who is the secretary of the Nominations Committee.

In terms of article 129(7), a member of the HRGG Commission or a deputy commissioner can be removed only on the grounds of inability to perform the functions of his or her office, or misconduct.

2.7 Enforcing rights under the Constitution

A right is only as effective as its enforcement. All too often rights are enshrined in documents such as a constitution or a bill of rights, and yet remain empty of substance because they cannot be enforced. Article 30(3) of the Tanzania Constitution provides that:

any person claiming that any provision of this Part of this Chapter (that is, Part III dealing with Basic Rights and Duties) ... concerning his right or duty owed to him has been, is being or is likely to be violated by any person anywhere in the United Republic, may institute proceedings for redress in the High Court.

2.8 The three branches of government and separation of powers

All too often, politicians, commentators and journalists use political terms such as ‘branches of government’ and ‘separation of powers’, yet working journalists may not have a clear idea what these terms mean.

2.8.1 Branches of government

It is generally recognised that governmental power is exercised by three branches of government, namely: the executive; the legislature; and the judiciary.

THE EXECUTIVE

It is important to bear in mind that the Constitution of Tanzania makes provision for two executives: the Executive of the United Republic (Chapter 2) and the Executive of the Revolutionary Government of Zanzibar (Chapter Four). For the purposes of this chapter, only the Executive of the United Republic of Tanzania is discussed as focus here is on mainland Tanzania.

Article 35(1) specifies that all executive functions of the government of the United Republic discharged by officers of the government are done on behalf of the president. Also, article 34(3) provides that subject to the Constitution:

[a]ll the authority of the Government of the United Republic over all Union Matters [a list of 22 of these is set out in the First Schedule to the Constitution

and they include constitutional matters, foreign affairs, defence and security] in the United Republic and also over all other matters concerning mainland Tanzania shall vest in the President.

Clearly then, executive authority vests in the president.

It is important to note, however, that Tanzania also has a prime minister who, in terms of article 52(1), has authority over the control, supervision and execution over the day to day functions and affairs of the government of the United Republic; but he does so under the direction of the president, in terms of article 52(3).

The Cabinet of Tanzania is made up of the president, the vice-president, the prime minister and ministers appointed by the president – see article 54. Note that article 54(3) provides that Cabinet is the principal organ for advising the president regarding all matters concerning the exercise of his powers.

Essentially, the role of the executive is to administer or enforce laws, to make governmental policy and to propose new laws.

THE LEGISLATURE

Legislative power in relation to all Union Matters (a list of 22 of these is set out in the First Schedule to the Constitution and they include: constitutional matters, foreign affairs, defence and security) and also in relation to all other matters concerning mainland Tanzania vests in Parliament, in terms of article 64(1) of the Tanzania Constitution.

In terms of article 62(1), the Parliament of the United Republic consists of the president and the National Assembly. Importantly, key functions of the National Assembly include:

- Asking ‘any question to any Minister concerning public affairs in the United Republic which are within his responsibility’ – article 63(3)(a)
- Debating ‘the performance of each Ministry during the annual budget session of the National Assembly’ – article 63(3)(b)
- Enacting law ‘where implementation requires legislation’ – article 63(3)(d).

In terms of article 66(1), the National Assembly shall consist of the following categories of members:

- Members elected to represent constituencies, which constituencies are determined by the Electoral Commission.
- Women members proposed by political parties on the basis of proportional representation, making up at least 30% of the members of the National Assembly.
- Five members elected by the House of Representatives of Zanzibar from among its members.
- The attorney-general.
- Up to ten members appointed by the president, at least five of whom shall be women.
- The speaker, if not elected from among the members.

THE JUDICIARY

Judicial power, as already discussed in this chapter, vests in the courts. The role of the judiciary is to interpret the law and to adjudicate legal disputes in accordance with the law.

2.8.2 Separation of powers

It is important in a functioning democracy to divide governmental power between different organs of the state in order to guard against the centralisation of power, which may lead to abuses of power. This is known as the separation of powers doctrine. The aim is to separate the functions of the three branches of government – the executive, the legislature and the judiciary – so that no single branch is able to operate alone, assume complete state control and amass centralised power. While each branch performs a number of different functions, each also plays a ‘watchdog’ role in respect of the other. This helps to ensure that public power is exercised in a manner that is accountable to the general public and in accordance with the constitution

2.9 Weaknesses in the Constitution that ought to be strengthened to protect the media

There are a number of significant weaknesses in the Tanzania Constitution, which, if improved, would create a more conducive environment for, among other things, media freedom.

2.9.1 Remove internal constitutional limitation on the right to privacy

Concern has already been expressed about the fact that article 16, the right to privacy, is subject to a limitation clause. This may well be used against journalists by denying them their rights to privacy, particularly in respect of the privacy of their communications. Article 16(2) entitles the state to:

lay down legal procedures regarding the circumstances, manner and extent to which the right to privacy, security of his person, his property and residence may be encroached upon without prejudice to the provisions of this Article.

Ostensibly, this is to ‘preserve the person’s right in accordance with this Article’; but in reality the wording gives the state limitless discretion when encroaching upon the right to privacy and personal security. The effect of this provision is that the constitutional right becomes subordinate to legislation and other legal mechanisms limiting the right.

2.9.2 Improve the general limitations clause

As already set out above, the general limitations clause is extremely problematic owing to the very wide grounds upon which rights can be limited, and, more problematically, because there are no requirements such as proportionality, justifiability, reasonableness, or least restrictive means.

This means that once a ground of justification has been provided (and these are extremely wide and include grounds such as furthering the national interest or supervising the activities of private organisations) basic rights can be limited. The effect of this is that, in many instances, rights could be easily limited. All too often then, legislation will trump basic rights, despite the provisions of the Constitution’s supremacy clause.

2.9.3 Improve independence of the HRGG Commission

As already pointed out, there are contradictory constitutional provisions regarding the independence of the HRGG Commission. In article 130(2) of the Constitution, the HRGG Commission is said to be:

an autonomous department ... in exercising its powers ... the Commission shall not be bound to comply with directives or orders of any person or department of government, or any opinion of any political party or of any public or private sector institution.

However, the very next sub-article, article 130(3), provides that the above provisions:

shall not be construed as restricting the President from giving directives or orders to the Commission, nor are they conferring a right to the Commission of not complying with directives or orders, if the President is satisfied that in respect of any matter or any state of affairs, public interest so requires.

The effect of this is that the president can give directives or orders to the HRGG Commission, which it is bound to comply with. This obviously undermines the independence and, potentially, the effectiveness of the HRGG Commission.

2.9.4 Provide constitutional protection for the broadcasting regulator

The broadcasting environment in Tanzania would be greatly improved if an independent authority to regulate broadcasting in the public interest was required to be established by law in the Tanzania Constitution itself.

2.9.5 Provide constitutional protection for the public broadcaster

The broadcasting environment in Tanzania would be greatly improved if constitutional provisions required the establishment of a public broadcaster with a public interest mandate and an independent board to provide public broadcasting services.

3 THE MEDIA AND LEGISLATION

In this section you will learn:

- What legislation is and how it comes into being
- Key legislative provisions governing the publication of print media
- Key legislative provisions governing films
- Key legislative provisions governing the broadcasting media in general
- Key legislative provisions governing the public broadcasting sector
- Key legislative provisions governing broadcasting signal distribution
- Generally applicable statutes that threaten a journalist's duty to protect sources
- Generally applicable statutes that prohibit the publication of certain kinds of information
- Generally applicable statutes that specifically assist the media in performing its functions

3.1 Legislation: An introduction

3.1.1 What is legislation?

Legislation is a body of law consisting of acts properly passed by Parliament, that is, the president and National Assembly. It is important to note that legislation passed by Parliament does not, as a general rule, apply to Zanzibar.

Chapter Three of the Tanzania Constitution deals with the legislature of the United Republic, and Part III thereof deals with its procedure, powers and privileges. In respect of legislation, articles 97–99 are particularly important.

There are detailed rules in articles 98–99 of the Tanzania Constitution which set out the different law-making processes that apply to different types of legislation. It is important for journalists and others in the media to be aware that the Constitution requires different types of legislation to be passed in accordance with particular procedures. The procedures are complicated and need not be explained here. Journalists should, however, be aware that, in terms of the Constitution of Tanzania, there are three kinds of legislation, each of which has particular procedures and/or rules applicable to it. These are:

- Legislation that amends the Constitution – the procedures and/or applicable rules are set out in article 98 of the Tanzania Constitution
- Ordinary legislation – the procedures and/or applicable rules are set out in article 94 of the Constitution. Essentially, decisions (including the decision to pass legislation) are to be taken by majority vote, with the presiding officer having a casting vote
- Legislation that deals with taxation or national debt issues – the procedures and/or applicable rules are set out in article 99 of the Tanzania Constitution.

3.1.2 The difference between a bill and an act

A bill is a piece of draft legislation that is debated and usually amended by the National Assembly during the law-making process. If a bill is passed by the Parliament in accordance with the various applicable procedures required for different types of bills, it becomes an act (and therefore law) once it has been assented to by the president, in terms of article 97(1) of the Tanzania Constitution.

If the president withholds his consent he may refer a bill back to the National Assembly, together with a statement of his reasons for withholding consent, for

reconsideration, in terms of article 97(2) of the Constitution. The bill cannot be presented to the president again by the National Assembly until six months have elapsed, unless the bill has been passed by at least two-thirds of all the members of the National Assembly, in which case the president must assent to it within 21 days – article 97(4).

3.2 Statutes governing print media

The law governing the print media in Tanzania is archaic and is not in accordance with international norms and standards. Besides requiring the registration of newspapers, newspapers are also required to post bonds or sureties in certain circumstances. The Newspapers Act, 1976, governs newspapers on mainland Tanzania. There are several key provisions of the Newspapers Act which impact upon the media and the practise of journalism in Tanzania.

3.2.1 Registration of newspapers

- Section 6 prohibits the printing or publishing of a newspaper (which is defined extremely broadly in section 2 as ‘any paper containing news, or intelligence, or reports of occurrences of interest to the public or any section thereof, or any views, comments or observations thereon, printed for sale or distribution and published in Tanzania periodically or in parts or numbers’) unless each of the proprietor, printer and publisher has registered an affidavit (sworn to before a magistrate) with the registrar of newspapers, which affidavit must contain the following information:
 - Correct title of the newspaper.
 - A true description of the house or building wherein such newspaper is intended to be printed.
 - The real and true names and places of residence of the persons intended to be proprietor, printer and publisher of the newspaper.
- In terms of section 7, new affidavits must be registered with the registrar in the event of any change in details.
- The registrar is appointed by the minister responsible for newspapers, in terms of section 3 of the Newspapers Act.
- In terms of section 9 of the Newspapers Act, the printer and publisher of every newspaper published in Tanzania shall deliver or send by registered post (at his or her own expense) to the registrar, a copy of every newspaper published and every supplement thereto.

- Failure to comply with, among others, sections 6, 7 or 9 is an offence, and upon conviction a person would be liable to a fine, imprisonment or both – section 12.

3.2.2 Bonds to be paid by newspapers

- In terms of section 13(1) of the Newspapers Act, the minister may, by written notice, require any newspaper publisher to execute and register a bond with the registrar in the amount specified in the notice with one or more sureties as may be required by the minister.
- In terms of section 13(2), such a bond may be used for the payment of:
 - Any monetary penalty imposed upon the publisher upon his or her conviction for an offence relating to the publication of the newspaper
 - Damages and costs awarded in any proceeding in respect of matter published in the newspaper
- Failure to comply with section 13 is an offence, and upon conviction a person would be liable to a fine, imprisonment or both – section 17.

3.2.3 Information to be published in every newspaper and copies to be kept and produced

- In terms of section 20(1), each copy of every newspaper published in Tanzania shall have printed legibly on the first or last printed page the name and address of its printer and publisher, and the description of the place of printing and publication.
- Failure to comply with section 20(1) is an offence, and upon conviction a person would be liable to a fine, imprisonment or both – section 20(2).
- In terms of section 21(2), every person who prints a newspaper must keep a copy thereof for a period of six months and produce it on written demand to do so by the registrar or by a court, judge or magistrate.
- Failure to comply with section 20(1) is an offence, and upon conviction a person would be liable to a fine, imprisonment or both – section 21(2).

3.2.4 Seizures of newspapers, searches of premises and destruction of newspaper

- In terms of section 22(1) of the Newspapers Act, any police officer may seize any newspaper he or she reasonably suspects has been printed or published in contravention of this act.

- Further, in terms of section 22(2), a magistrate may, by warrant, authorise any police officer above the rank of inspector to enter and search any place where it is reasonably suspected that any newspaper published in contravention of the act is being kept and to seize such newspaper. Note that this can be done without a warrant, where the police officer has cause to think that the delay would defeat the purposes of the act – section 22(3).
- In terms of section 22(4), a magistrate may order the forfeiture or destruction of any newspaper or thing seized in terms of section 22 if he or she is satisfied that the newspaper was published in contravention of the act or that the thing was used in the commission of an offence under the act.

3.3 Statutes governing films

The Films and Stage Plays Act, 1976, governs, among other things, the making of films in Tanzania. This clearly has an impact on the film and video media in Tanzania.

- In terms of section 3 of the Films Act, no person may direct, take part in or assist in the making of a film (except for a film by an amateur for private exhibition to family or friends) except under and in accordance with a permit granted by the minister responsible for censorship of films and stage plays, unless the minister has exempted such film from the provisions of this part of the Films Act, in terms of section 8 of the Films Act.
- Failure to comply with section 3 is an offence, and upon conviction a person would be liable to a fine, imprisonment or both. Further, the film in question could be subject to court confiscation and destruction order – sections 7 and 34.
- Section 4 of the Films Act requires an application for a film permit to be made in writing to the minister. It is to be accompanied by a full description of the scenes in, and the full text of the spoken parts (if any) of, the entire film that is to be made (and if these are to be amended from time to time then fresh notifications are required).
- Section 5 of the Films Act empowers the minister to issue a film permit subject to conditions as he may impose, including that a bond be paid, the repayment of which is conditional upon the film being made in accordance with the conditions of the film permit. Indeed, the minister may even order a public officer to be present at the making of the film. Section 5(3) of the Films Act provides that any public officer required to be present at the making of a film has the authority to intervene and order the cessation of any scene which, in his opinion, is

objectionable, endangers any person or property (other than the film producer's property) or is cruel to animals.

3.4 Statutes governing the broadcast media generally

3.4.1 Statutes that regulate broadcasting generally

Broadcasting in Tanzania, that is mainland Tanzania, is regulated in terms of a number of different pieces of legislation, namely the:

- Tanzania Communications Regulatory Authority (TCRA) Act, 2003
- Electronic and Postal Communications Act (EPCA), 2010
- Universal Communications Service Access Act (UCSAA), 2006

3.4.2 Establishment of the TCRA, the Content Committee and the Council

The TCRA Act establishes a number of bodies which are relevant to the regulation of broadcasting.

THE TANZANIA COMMUNICATIONS REGULATORY AUTHORITY

The TCRA Act provides, in section 4, that the Tanzania Communications Regulatory Authority (TCRA) is established and that it is a body corporate with perpetual succession. It is important to note that the TCRA is an amalgamated body, bringing together the former Tanzania Communications Commission and the former Tanzania Broadcasting Commission – section 6(1)(e) of the TCRA Act.

THE CONTENT COMMITTEE

The TCRA Act provides, in sections 25 and 26, that a Content Committee is established, which is responsible for the regulation of broadcast content transmitted by any broadcasting station or any electronic communication media as a broadcasting service.

THE TCRA CONSUMER CONSULTATIVE COUNCIL

The TCRA Consumer Consultative Council is a body established by section 37 of the TCRA Act and whose primary function is to represent the interests of consumers.

3.4.3 Main functions of the TCRA, the Content Committee and the Council

THE TCRA

The TCRA Act distinguishes between ‘duties’ and ‘functions’ of the TCRA. In terms of section 5 of the TCRA Act, the duty of the TCRA is to strive to enhance the welfare of Tanzanian society in carrying out its functions by:

- Promoting effective competition and economic efficiency
- Protecting the interests of consumers
- Protecting the financial viability of efficient suppliers
- Promoting the availability of regulated services to all consumers, including low income, rural and disadvantaged consumers
- Enhancing public knowledge, awareness and understanding of regulated sectors including:
 - Rights and obligations of consumers and regulated suppliers
 - Ways in which complaints and disputes may be initiated and resolved
 - The duties, functions and activities of the TCRA
- Taking into account the need to protect and preserve the environment

Section 6 of the TCRA Act sets out the TCRA’s functions. These include:

- Performing the functions conferred on it by sector legislation – that is, legislation related to the ‘regulated sector’, which in turn is defined in section 3 as telecommunications, broadcasting, postal services, allocation and management of radio spectrum and converging electronic technologies, including the internet and other information and communication technology applications
- Issuing, renewing and cancelling licences
- Regulating rates and charges
- Making rules for carrying out the purposes and provisions of the TCRA Act and sector legislation
- Monitoring the performance of the regulated sectors, including:
 - Levels of investment

- Availability, quality and standards of service
 - Cost of services
 - Efficiency of production and distribution of services
 - Other matters relevant to the TCRA
-
- Establishing standards for regulated goods and services. These are defined as equipment produced, supplied or offered for use, or services supplied or offered for use, in a regulated sector
 - Facilitating the resolution of complaints and disputes
 - Taking over and continuing to carrying out the functions formerly of the Tanzania Communications Commission and the Tanzania Broadcasting Commission
 - Disseminating information about matters relevant to the functions of the TCRA
 - Consulting with other regulatory authorities or institutions discharging functions similar to those of the TCRA in Tanzania and elsewhere
 - Administering the TCRA Act
 - Performing such other functions as may be conferred by law

It is also important to note that, in terms of section 34 of the TCRA Act, the TCRA has specific functions with regard to the Tanzania Broadcasting Service, which are dealt with elsewhere in this chapter.

THE CONTENT COMMITTEE

In terms of section 27(1) of the TCRA Act, the Content Committee shall have such powers and functions as the TCRA may determine, and in particular shall:

- Advise the sector minister on broadcasting policy
- Monitor and regulate broadcast content
- Handle complaints from operators and consumers
- Monitor broadcasting ethics compliance

However, section 27(4) provides that in determining the Content Committee's powers, the TCRA must have regard to the desirability of ensuring that the Committee has at least a significant influence on decisions which relate, among other

things, to matters concerning the content of anything broadcast or otherwise transmitted by means of electronic communication networks.

THE TCRA CONSUMER CONSULTATIVE COUNCIL

The TCRA has the power to:

- Represent the interests of consumers by making submissions to and consulting with the TCRA, the minister responsible for communications and the sector ministers (that is, telecommunications, broadcasting and postal services, etc.)
- Disseminate information and views on matters of interest to consumers of regulated equipment and services
- Establish local, regional and sector consumer committees and to consult with them
- Consult with industry, government and other consumer groups on matters of interest to consumers of regulated equipment and services

3.4.4 Appointment of TCRA Board, Content Committee and Council members

THE TCRA BOARD

In terms of section 7 of the TCRA Act, the TCRA Board, which is the governing body of the TCRA, consists of seven members. A member must meet the sole criterion that he or she not hold an office which he or she could use to exert influence on the TCRA:

- A non-executive chairman and a non-executive vice-chairman. These are appointed by the president on the basis that if one hails from one part of the Union (for example, mainland Tanzania), the other shall hail from the other part of the Union (for example, Zanzibar).
- Four non-executive members. These are appointed:
 - By the minister responsible for communications, after consultation with sector ministers, that is the ministers responsible for the different sectors – telecommunications, broadcasting, postal services, etc.
 - From lists of short-listed candidates who apply for positions in response to public advertisements, which lists are submitted by the Nominations Committee, which itself comprises:

- The permanent secretary for the ministry responsible for communications, who shall be the chairman of the committee
 - the permanent secretary responsible for public broadcasting and content matters
 - two other persons representing the private sector: one nominated from a legally recognised body representative of the private sector and the other nominated by the Council
- A person representing the public sector nominated by the minister responsible for communications.
 - The director general of the TCRA, who is appointed by the minister responsible for communications from a list of names submitted by the Nominations Committee.

THE CONTENT COMMITTEE

In terms of section 26(2) of the TCRA Act, the Content Committee consists of not more than five members, namely:

- The vice-chairman of the TCRA Board, who shall be the Content Committee chairman
- Four members appointed by the minister for communications, upon consultation with the chairperson of the TCRA Board
- Other members co-opted by the Content Committee as an expert or as necessary

Note that it is not clear how many co-opted members can be appointed given the limit of five members provided for above.

THE TCRA CONSUMER CONSULTATIVE COUNCIL

In terms of section 37(2) of the TCRA Act, the Council consists of between seven and ten members appointed by the minister responsible for communications from a list of names provided by members of the business community or by organisation(s) legally recognised as being representative of private sector interests. The chairperson of the Council is appointed by the minister and the vice-chairman is elected by the Council members.

Importantly, the minister is required, in terms of section 37(4), to call for nominations and to publish the names of proposed members (after public

nominations) in the Gazette and in newspapers, and to invite written comments thereon. Further, in terms of section 37(5) of the TCRA Act, the minister has to have regard to the desirability of the Council, having knowledge and understanding of consumers and of the regulated industries, including:

- Low-income, rural and disadvantaged persons
- Industrial and business users
- Government and community organisations

3.4.5 Funding for the TCRA, the Content Committee and the Council

THE TCRA

In terms of section 49(1) of the TCRA Act, the TCRA's funds consist of:

- Fees collected by the TCRA, including for the granting and renewal of licences
- Levies collected from regulated suppliers (that is in the telecommunications, broadcasting and postal sectors)
- All payments or property due the TCRA in respect of its functions
- Any grants, donations, bequests or other contributions made to the TCRA

THE CONTENT COMMITTEE

Note that no specific funding mechanisms for the Content Committee are provided for in the TCRA Act, although section 29(3) provides that its members are to be paid such allowances and fees as the minister of communications shall determine, on the advice of the TCRA.

THE TCRA CONSUMER CONSULTATIVE COUNCIL

In terms of section 39(1) of the TCRA Act, the Council funds consist of:

- Such sums as may be appropriated by Parliament, that is, provided for in the national budget, for the purposes of the Council during the first three years of its existence
- Such sums as may be appropriated from the funds of the TCRA for the purposes of the Council

- Grants, donations, bequests or other contributions

3.4.6 Making broadcasting regulations

In terms of section 47(1), the minister responsible for communications is empowered to make regulations and/or rules which are not inconsistent with the TCRA Act or with sector legislation as he or she considers necessary or desirable to give effect to the provisions of this act.

However, it is important to note that, in terms of section 47(2) of the TCRA Act, the TCRA also has rule-making powers (provided these are made in consultation with the minister responsible for communications) with respect to:

- Code of conduct
- Records to be kept, including the form and content of accounting records, and information and documents to be supplied to the TCRA by regulated suppliers
- Standards of regulated equipment and services
- Terms and conditions of supply of regulated goods and services
- Conduct in connection with the production, distribution and supply of regulated goods and services
- Complaint handling procedures
- Rates and charges for regulated goods and services
- Levies and fees payable to the TCRA
- Circumstances in which, and the terms and conditions upon which, a supplier of regulated goods and services shall be able to gain access to facilities owned or controlled by another person
- Such other matters as the TCRA considers desirable or necessary to give effect to the TCRA Act.

Note that in terms of section 47(4), any person who contravenes a rule made under section 47 is guilty of an offence and is liable upon conviction to a fine.

Note further that section 103 of the EPCA provides that the minister may make content-related regulations and that the TCRA may make content-related rules upon the recommendation of the Content Committee.

3.4.7 Licensing regime for broadcasters in Tanzania

CATEGORIES OF BROADCASTING SERVICES

Section 13(3) of the Electronic and Postal Communications Act (EPCA) provides that there are seven categories of so-called ‘content services’, which are defined in section 3 of the EPCA as a ‘service offered for speech or other sound, test or images whether still or moving except where transmitted in private communications’. Although the EPCA does make reference to broadcasting services, it is clear that a content service includes a broadcasting service. The seven categories of content services are listed (without being defined in the EPCA) as follows:

- Public service
- Commercial service
- Community service
- Non-commercial service
- Subscription broadcasting service
- Support service for subscription content service
- Any other licence as may be determined by the TCRA

In terms of section 6(1) of the EPCA, a person wishing to operate a content service shall apply to the TCRA for a licence. Section 13(1) of the EPCA prohibits a person from providing a content service without a licence. The EPCA makes reference to content services being provided under an individual or a class licence, but is entirely unclear as to when a content service would require an individual as opposed to a class licence. Subsections 6(2) and (3) of the EPCA set out the application requirements for an individual licence and these include:

- Business plans
- Technical proposals
- Shareholder information
- Proof of financial capacity
- Previous experience
- Technical specifications where the licensee intends to use frequency bands that are competitive

Section 116(3)(b) makes it an offence to provide a content service without having

first obtained the necessary licence. The penalty upon conviction is a fine, imprisonment or both.

FREQUENCY SPECTRUM LICENSING

Section 71(1) of the EPCA provides that the TCRA has the powers to manage and control all radio communication frequencies spectrum or frequency channels, and to provide mechanisms governing the allocation and assignment to persons by issuing licences under conditions determined by the TCRA. Clearly, a broadcaster intending to make use of the radio frequency spectrum must have a spectrum licence in addition to a content service licence.

Indeed, section 117(1) makes it an offence to use radio frequency spectrum without obtaining an individual assignment. The penalty upon conviction is a fine, imprisonment or both.

3.4.8 Responsibilities of broadcasters in Tanzania

ADHERENCE TO LICENCE CONDITIONS

Section 152(3) of the EPCA provides that any person who contravenes or fails to comply with any licence condition ‘without lawful excuse’ is guilty of an offence and is liable upon conviction to a fine.

Furthermore, section 117(2) of the EPCA provides that if a person wilfully fails to adhere to the conditions of a spectrum licence, the licence will be cancelled.

ADHERENCE TO CONTENT REQUIREMENTS OR RESTRICTIONS

Although all broadcasters enjoy the constitutional right to freedom of expression, this right is not absolute. In fact, broadcasters are subject to a range of content regulations in relation to what they may or may not broadcast. These include:

Prohibitions against transmitting certain types of information communication

In terms of section 118(a) of the ECPA, a person who uses a content service to transmit any communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person is guilty of an offence. The penalty upon conviction is a fine, imprisonment or both.

Adherence to a code of conduct

Section 104 of the EPCA makes reference to a code of conduct which is to be binding

on all content service licensees and which is to prohibit the provision of content which is indecent, obscene, false, menacing or otherwise offensive in character. The code of conduct has to achieve a number of objectives. Briefly, these include:

- Protecting children
- Excluding material likely to incite the commission of a crime
- Comprehensive, accurate and impartial news
- Presenting religious material in a balanced and responsible manner
- Protecting the public against offensive and harmful content
- Regulating advertising and sponsorships appropriately
- Preventing subliminal messaging

Requirements regarding events of national interest

Section 105(1) of the EPCA requires that regulations on the provision of content relating to events of national interest (note that section 105(2) provides that events of national interest include, but are not restricted to, ‘significant sporting events that are of interest or importance to a substantial proportion of mainland Tanzanian society’) shall:

- Be designed to ensure that the content is reasonably accessible to members of the public simultaneously and without undue delay
- Clearly identify the nature of events that fall within the category of events of national interest. The effect of this is that the regulations must define what an event of national interest is
- Not interfere unduly with the commercial affairs of content service licensees

It is also important to note that subscription content service providers are prohibited from acquiring exclusive rights that prevent or hinder the public broadcaster from broadcasting sporting events that are of national interest.

Requirements regarding news and current affairs

Section 106(1) of the EPCA requires that regulations relating to news and current affairs shall be made to ensure that the content service licensee provides news and information on current affairs:

- Regularly
- That it is accurate, balanced, impartial and fair
- That it deals with international, regional, national and, where appropriate, local matters

Adherence to local content quotas

Section 107(1) of the EPCA deals with the original and independent production of local content, and requires that regulations dealing with local content and independent and original productions be made to:

- Stimulate the production of content in mainland Tanzania
- Prevent the excessive provision by content service licensees of:
 - Content that is not relevant or conducive to the development of mainland Tanzanian society
 - Content that has previously been made available to the public
- Specify:
 - The extent to which content service licensees shall include content produced in mainland Tanzania, and content produced by independent producers and original content
 - The times of the day or week when such content is to be provided

Official languages

Section 108 of the EPCA empowers the minister responsible for content and broadcasting services to make regulations on the use and promotion of official languages in content provided by a content service licensee.

Advertising and sponsorship

Although the TCRA is empowered to make rules regarding advertising and sponsorships, section 109 specifies that such rules may include:

- Prohibiting, restricting or regulating advertisements of specified goods, products, services and activities
- Prohibiting, restricting or regulating specified forms and methods of advertising or sponsorship
- Prohibiting, restricting or regulating political advertisements
- Restricting or otherwise regulating the extent of advertising and sponsorship a content licensee may have, including:
 - Maximum amount of time to be allocated to advertisements in any hour
 - Minimum interval which can elapse between any two periods allocated to advertising

- Number of such periods to be allowed in any hour or day
- Prominence that may be given to advertisements or sponsorships
- Exclusion of advertisements or sponsorships from a specified part of a licensed service

Educational content

Section 110 empowers the TCRA to make rules in relation to educational content that impose obligations on all or some content service licensees to ensure that a specified proportion of content provided by each one of them constitutes content of an educational nature and shall include:

- A definition of educational content
- The extent to which a content service licensee:
 - Shall be obliged to finance the production of educational content
 - May acquire and provide educational content produced by other persons
- Provisions to ensure that educational content is provided by a content service licensee
- Provisions to ensure that educational content provided is:
 - Of high quality
 - Suitable to meet the requirements of mainland Tanzanian society
- Different categories of educational content, and impose differential obligations of content service licensees, in relation to such categories

Content for the visually- and hearing-impaired

Section 111 of the EPCA empowers the minister, when making content regulations, or the TCRA, when making rules, to cater for the needs and interests of the visually- or hearing-impaired, including:

- The extent to which all or any content service licensees shall promote the understanding and enjoyment of content by persons who are hearing and/or visually impaired
- The means by which such understanding and enjoyment should be promoted, such as subtitling, audio-description for the blind, or the use of sign language
- Different classes of content to which such regulations apply

Political content

Section 112 of the EPCA requires the minister, when making content regulations in regard to the provision of political content (other than political advertising):

- Not to prohibit content service licensees from providing political content
- To regulate political content in a manner that is consistent with the Constitution

Counter-versions or right of reply

Section 113 of the EPCA requires a content services licensee to broadcast a counter-version presented by any person affected by an assertion of fact in any programme broadcast, if the person concerned claims that the assertion of fact is false. Note that the various subsections set out this requirement in some detail, including the circumstances in which a broadcaster is not required to broadcast a counter-version.

ADHERENCE TO OWNERSHIP AND CONTROL REQUIREMENTS

Section 26 of the EPCA was amended shortly after the promulgation of the EPCA by the Written Laws (Miscellaneous Amendments Act) No. 3, Act 17 of 2010. Section 26 now provides that the minister, in consultation with the TCRA, shall make regulations prescribing the minimum local shareholding requirement and procedure for the approval and transfer of shares in a company holding, among others, a content service licence.

ADHERENCE TO PRICING AND BILLING REQUIREMENTS

Section 31 of the EPCA provides that licensees may set and revise prices charged for content services provided to the public. This is clearly applicable only to subscription broadcasting and would not apply to free-to-air services. However, section 31(2) requires that in determining such prices, licensees must respect the following principles, namely:

- Be transparent, based on objective criteria, and non-discriminatory
- Not contain discounts that unreasonably prejudice competitive opportunities of other licensees
- Take account of regulations and recommendations of international organisations of which Tanzania is a member.

Section 31(3) requires licensees to:

- File price determinations with the TCRA two weeks prior to their introduction
- Publish its prices in the public media at its own expense at least one week prior to their introduction

Section 31(6) requires licensees to provide sufficiently detailed billing information to enable customers to determine if they are being billed correctly.

ADHERENCE TO DUTY OF CUSTOMER CONFIDENTIALITY

Section 97 of the EPCA prohibits the disclosure of any information of a customer, except where authorised by law.

PAYMENT OF UNIVERSAL SERVICE LEVY

Section 18(7) of the Universal Service Access Act makes it an offence for the holder of a communications licence to fail to pay the applicable universal service levy. The penalty, upon conviction, is a fine.

3.4.9 Is the TCRA an independent regulator?

It is clear that the TCRA does not meet international standards as an independent regulator. The TCRA Act does not even claim that the TCRA is an independent regulator. The minister has significant powers in respect of the process of appointing board members and also in terms of regulatory functions, including the power to make broadcasting-related content regulations.

3.4.10 Amending the legislation to strengthen the broadcast media generally

The single most significant problem is that the legislation ought to provide for the independence of the broadcasting regulator, that is the TCRA. In our view, the legislation ought to be amended such that the National Assembly is responsible for calling for public nominations of candidates to serve on the TCRA Board and for developing the short-list of suitably qualified candidates. In this regard, the TCRA Act ought to set out detailed provisions regarding the qualities, expertise and qualifications required of a TCRA board member. Thereafter, the president ought to formally appoint all TCRA board members.

Furthermore, the TCRA ought to have full powers in respect of regulating the broadcasting sector – that is, making rules and regulations, etc. – and the minister ought not to have regulation-making powers in respect of broadcasting matters.

In addition, the EPCA does not sufficiently clarify the differences between various categories of content – that is, broadcasting services. The legislation ought to set out in some detail what the differences are between the various categories and the requirements, for example, for community broadcasting services as opposed to commercial services.

3.5 Statutes that regulate the public broadcast media

3.5.1 Introduction

The Tanzania Broadcasting Corporation (TBC) is Tanzania's national broadcaster. It includes a national radio station, a national television station and an international radio station with a reach beyond the borders of Tanzania. It is important to note that the African Commission on Human and People's Rights has called upon Tanzania to transform the TBC into a public broadcaster.²

The main statutes governing the affairs of the TBC are the Public Corporations Act, 1992, the Public Corporation (The Tanzania Broadcasting Corporation – TBC) (Establishment) Order, 2007, and the Tanzania Communications Regulatory Authority Act, 2003.

3.5.2 Establishment of the TBC

The TBC was established under section 4 of the Public Corporations Act. Section 4 provides that the president may by order published in the Gazette establish a public corporation. The TBC was established in terms of the TBC Order.

3.5.3 The TBC's mandate

Section 4 of the TBC Order provides that the TBC's mandate is to encourage Tanzanian expression by offering a wide range of programmes that:

- Reflect Tanzanian attitudes, opinions, ideas, values and artistic creativity
- Display Tanzanian talent in educational and entertaining programmes
- Offer a plurality of views and a variety of news, information and analysis from a Tanzanian point of view
- Advance the national and public interest

Section 5 of the TBC Order sets out a list of functions of the TBC, and these include providing public service broadcasting through radio and television, and responding to audience needs.

Note that both section 7 of the TBC Order and section 32 of the TCRA Act require the TCRA to ensure that a charter is developed by the TBC and the minister responsible for broadcasting services, and that the charter ‘empowers the [TBC] to become a public service broadcaster’. It appears that such a charter has not in fact been developed yet.

In terms of section 32(2) of the TCRA Act, the TBC charter is to prescribe categories of services to be provided by the TBC. These can include public, commercial and community broadcasting services, as well as any other broadcasting service which the minister may determine. Presumably, these are not, strictly speaking, community or commercial services but public services provided to a localised community or on a commercial basis.

3.5.4 Appointment of the TBC Board

In terms of section 9 of the TBC Order, the TBC Board consists of nine members. The chairperson is appointed by the president and the minister responsible for broadcasting appoints the other eight board members.

Section 11 of the Public Corporations Act sets out the criteria for TBC Board appointments; board members must be of sound integrity, properly qualified and appropriately experienced in relation to the public corporation in question, or in public affairs.

Importantly, the TBC Board does not appoint the director-general of the TBC. In terms of section 8(1), the president appoints the director-general of the TBC. The director-general is the chief executive and the coordinating officer of the TBC. He or she is responsible to the TBC Board for the day to day functioning of the TBC, in terms of section 8(2) of the TBC Order.

3.5.5 Funding for the TBC

In terms of section 16(1) of the TBC Order, the funds of the TBC consist of:

- Sums appropriated by Parliament – that is, provided for in the national budget
- Fees and charges levied for goods and services provided
- Monies borrowed by or grants made available to the TBC
- Monies received for commercial activities, such as consulting, or leasing property or equipment
- Monies received from government levies
- Monies from government funds established for the functioning of the TBC

3.5.6 The TBC: Public or state broadcaster?

There is little doubt that the TBC remains a state broadcaster. From a legal perspective, the TBC remains an extension of the ministry responsible for broadcasting and content services. This is largely based on the role of the minister in appointing the TBC board members.

3.5.7 Weaknesses in the broadcasting legislation which should be addressed to strengthen the TBC

The government has clearly recognised the concept of public broadcasting and the need to transform the TBC into a genuine public broadcaster; however, it has failed to enact laws that would set the legal foundation for such transformation.

There are a number of weaknesses:

- The legislation ought to set out what the charter of the TBC is to be, rather than leaving this up to the TBC and the minister to develop.
- Legislation ought to be developed to provide for the independence of the TBC Board. The legislation ought to be amended such that the National Assembly is responsible for calling for public nominations of candidates to serve on the TBC Board and for developing the short-list of suitably qualified candidates.
- In this regard the legislation ought to set out detailed provisions regarding the qualities, expertise and qualifications required of a TBC board member. Thereafter, the president ought to formally appoint all TBC board members. The TBC Board ought to appoint the chief executive of the TBC and the Board ought to be solely responsible for regulating the activities of the TBC with no role for the minister. Lastly, the TBC ought to be accountable directly to the National Assembly and not through the minister.

3.6 Statutes governing broadcasting signal distribution

The key statute in respect of broadcasting signal distribution (the technical process of ensuring that the content-carrying signal of a broadcaster is distributed such that it can be heard and/or viewed by its intended audience) is the Electronic and Postal Communications Act (EPCA).

The EPCA makes it clear that broadcasting signal distribution is a form of network service, which is defined in section 3 as:

a service for the carrying of information in the form of speech or other sound, data, text or images, by means of guided or unguided electronic energy but does not include services provided solely on the customer side of the network boundary.

Consequently, all broadcasting signal distributors must have a network service licence to provide network service.

3.7 Statutes that undermine a journalist's duty to protect his or her sources

A journalist's sources are the lifeblood of his or her profession. Without trusted sources, a journalist cannot obtain information that is not already in the public domain. However, sources will often be prepared to provide critical information only if they are confident that their identities will remain confidential and will be respected and protected by a journalist. This is particularly true of so-called whistle-blowers – inside sources that are able to provide journalists with information regarding illegal activities, whether by company or government personnel. Consequently, democratic countries often provide special protection for journalists' sources. It is recognised that without such protection, information that the public needs to know would not be given to journalists.

3.7.1 Criminal Procedure Act [CAP 20 R.E. 2002]

Sections 142 and 195 of the Criminal Procedure Act (CPA) empower a court to issue a summons to compel any person who is likely to give material evidence to come before the court and to bring and produce all documents and writings in his possession, which are specified in the summons. Thus, if a court believes that a journalist knows something about a crime that could constitute material evidence, such a journalist might be ordered, in terms of sections 142 or 195 of the CPA, to reveal sources of information relating to that crime.

Note that failure to comply with a summons can result in the issuing of an arrest warrant and, in terms of section 199, in being detained until the person consents to do what is required of him or her.

3.7.2 Public Leadership Code of Ethics Act, Act 13 of 1995

Section 25 empowers the Ethics Tribunal established under the Public Leadership Code of Ethics Act to require any person who, in its opinion, is able to give any information relating to any enquiry being conducted by the Tribunal to attend before it to answer questions or to produce any document.

3.7.3 Penal Code [Cap 16]

Section 114(1)(b) of the Penal Code makes it an offence to refuse to answer a question in a judicial proceeding without lawful excuse. The penalty, upon conviction, is a fine or a period of imprisonment. In the absence of a recognised qualified privilege for journalists, this subsection might be used to force a journalist to reveal his/her sources of information.

However, it is important to note that whether or not requiring a journalist to reveal a source is in fact an unconstitutional violation of the right to freedom of expression will depend on the particular circumstances in each case, particularly on whether or not the information is available from any other source. Consequently, it is extremely difficult to state that these provisions are, by themselves, a violation of the right to freedom of expression under the Constitution.

3.8 Statutes that prohibit the publication of certain kinds of information

A number of statutes contain provisions which, looked at closely, undermine the public's right to receive information and the media's right to publish information.

These statutes are targeted and prohibit the publication of certain kinds of information, including:

- Information prejudicial to a child
- Certain kinds of information regarding legal proceedings
- Information regarding defence, security, prisons, breaches of the peace, and public order
- Publications which the president considers contrary to the public interest
- Publications which promote ill-will or hostility between classes of the population
- Obscene publications
- Incitement to violence
- Children and extreme violence
- Prohibition of false news

- Prohibition of misleading information regarding HIV and AIDS
- Information regarding the civil service
- Election-related information
- Criminal defamation

It is often difficult for journalists to find out how laws that would seem to have no direct relevance to the media can impact upon their work. The key provisions of such laws are therefore set out below.

3.8.1 Prohibition on the publication of information prejudicial to a child

Section 158 of the Law of the Child Act, Act 21 of 2009, makes it an offence to publish any information which is prejudicial to the best interests of a child. The penalty upon conviction is a fine, imprisonment or both.

3.8.2 Prohibition on the publication of certain kinds of information relating to legal proceedings

LAW OF THE CHILD ACT, ACT 21 OF 2009

Section 33 of the Law of the Child Act makes it an offence to publish, without the permission of the court, any information or a photograph that may lead to the identification of a child in any matter before the court. The penalty is a fine, imprisonment or both.

CRIMINAL PROCEDURE ACT [CAP 20 R.E. 2002]

- Section 186(3) of the CPA prohibits the publication in any newspaper or other media of the evidence of any person in a trial involving sexual offences. Note that the prohibition does not apply to law reports or to periodicals of a technical nature intended for circulation to lawyers or member of the medical profession.
- Section 188 of the CPA empowers a court to prohibit the publication of the names or identities of parties or of witnesses in the interests of the administration of justice.

PENAL CODE [CAP 16]

- Section 114(1)(d) of the Penal Code makes it an offence to publish writing capable

of prejudicing any person in favour of or against any party to the proceeding, or which lowers the authority of the court, that is, the presiding officer. This provision clearly includes both aspects of contempt of court – that is, the *sub-judice* rule and the rule against ‘scandalising’ the court.

- Further, section 55 of the Penal Code deals with ‘seditious intentions’. Section 55(1)(c) states that a seditious intention is an intention to, among other things, ‘bring into hatred or contempt or to excite disaffection against the administration of justice in the United Republic’. Note, however, that in terms of section 55(2)(b), an act, speech or publication is not seditious by reason only that it intends to point out errors or defects in the administration of justice with a view to the remedying of such errors or defects.

Note that in determining whether or not the intention with which any act was done, any words spoken or document published is seditious, every person is deemed to intend the consequences that would naturally follow from his or her conduct at the time and in the circumstances in which he or she so conducted him or herself – section 55(3).

NEWSPAPERS ACT, ACT 3 OF 1976

The Newspapers Act contains the same definition of seditious intention as is contained in the Penal Code, set out immediately above. It further provides in section 32 that any person who publishes or imports a seditious publication is guilty of an offence and liable, upon conviction, to a fine, imprisonment or both.

3.8.3 Prohibition on the publication of state security–related information

NATIONAL SECURITY ACT, 1970

Section 4 of the National Security Act contains a number of provisions relating to the disclosure of security-related information. The act makes it an offence to publish a range of security-related information, such as official codes or passwords, sketches, notes or other documents which relate to protected places (as determined by the president or in terms of the Protected Places and Areas Act, 1969), or munitions information, or confidential information that has been entrusted to a person by a public official. The penalty for such publication is imprisonment.

Section 5 of the National Security Act makes it an offence to communicate any classified matter to any unauthorised person who is guilty of an offence. The penalty is imprisonment.

TANZANIA INTELLIGENCE AND SECURITY SERVICE ACT, 1996

Section 16 of the Tanzania Intelligence and Security Service Act makes it an offence to publish in a newspaper or other document or to broadcast the fact that a person is a member of the Tanzania Intelligence Service (other than the director-general thereof) or is in any way connected with the Tanzania Intelligence Service, without the written consent of the minister for intelligence and security. The penalty upon conviction is a fine.

POLICE FORCE AND PRISONS COMMISSION ACT, ACT 8 OF 1990

Section 15(1) of the Police Force and Prisons (PFP) Commission Act makes it an offence for any person to publish the contents of any document, communication or information of any other kind which has come to his knowledge in the course of performing duties under the PFP Act. The penalty upon conviction is a fine, imprisonment or both.

Furthermore, section 15(2) makes it an offence to publish information which a person knows has been disclosed in contravention of the provisions of the PFP Act. The penalty upon conviction is a fine, imprisonment or both. These subsections severely hamper whistle-blowers and the media from reporting on information provided by whistle-blowers.

FILMS AND STAGE PLAYS ACT, 1976

Section 15 of the Films and Stage Plays Act makes it an offence to exhibit a film unless a certificate of approval from the Censorship Board has first been obtained.

Section 18(4) prohibits the Censorship Board from approving a film which, in its opinion, ‘tends to prejudice the maintenance of public order ... or the public exhibition ... of which would ... be undesirable in the public interest’.

PENAL CODE [CAP 16]

Section 55 of the Penal Code deals with ‘seditious intentions’. Section 55(1) sets out that a seditious intention is an intention to, among other things:

- Bring into hatred or contempt or to excite disaffection against the lawful authority of the Republic or its government
- Excite any of the inhabitants of the United Republic to attempt to procure the

alteration, other than by lawful means, of any other matter in the United Republic as by law established

- Raise discontent or disaffection among any of the inhabitants of the United Republic

Note, however, that in terms of section 55(2) an act, speech or publication is not seditious by reason only that it intends to:

- Show that the government has been misled or mistaken in any of its measures
- Point out errors or defects in the government or Constitution as established, or in legislation, or in the administration of justice with a view to the remedying of such errors or defects
- Persuade any inhabitants of the United Republic to attempt to procure by lawful means the alternation of any matter in the United Republic

Note that in determining whether or not the intention with which any act was done, any words spoken or document published is seditious, every person is deemed to intend the consequences that would naturally follow from his/her conduct at the time and in the circumstances in which he or she so conducted him or herself – section 55(3).

Section 89(1) of the Penal Code makes it an offence to use obscene, abusive or insulting language to any other person, in such a manner as is likely to cause a breach of the peace. The penalty is a period of imprisonment.

NEWSPAPERS ACT, ACT 3 OF 1976

The Newspapers Act contains the same definition of seditious intention as is contained in the Penal Code set out above. It further provides in section 32 that any person who publishes or imports a seditious publication is guilty of an offence and liable, upon conviction, to a fine, imprisonment or both.

3.8.4 Prohibition on publications which the president considers to be contrary to the public interest

Section 27 read with section 28 of the Newspapers Act, Act 3 of 1976, makes it an offence to publish a publication which the president has prohibited the importation of, on the basis that he is of the opinion that its importation would be contrary to the public interest. The penalty upon conviction is a fine, imprisonment or both.

3.8.5 Prohibition on publications which promote ill-will or hostility between classes of the population

Section 55 of the Penal Code [Cap.16] deals with ‘seditious intentions’. Section 55(1) states that a seditious intention is an intention to, among other things, promote feelings of ill-will and hostility between different classes of the population. Note, however, that, in terms of section 55(2), an act, speech or publication is not seditious by reason only that it intends to point out, with a view to their removal, any matters that are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of the Republic.

In determining whether or not the intention with which any act was done, any words spoken or document published is seditious, every person is deemed to intend the consequences that would naturally follow from his or her conduct at the time and in the circumstances in which he or she so conducted him or herself – section 55(3).

3.8.6 Prohibition on obscene publications

LAW OF THE CHILD ACT, ACT 21 OF 2009

Section 58(1)(b) of the Law of the Child Act makes it an offence to publish a photograph of a child or a dead child in a pornographic manner. The penalty is a fine, imprisonment or both.

PENAL CODE [CAP 16]

Section 175 of the Penal Code makes it an offence to distribute or even possess any obscene writing, drawing, photograph or cinematograph film. The penalty upon conviction is a fine or imprisonment.

FILMS AND STAGE PLAYS ACT, 1976

Section 15 of the Films and Stage Plays Act makes it an offence to exhibit a film unless a certificate of approval has first been obtained from the Censorship Board. Section 18(4) prohibits the Censorship Board from approving a film which, in its opinion, ‘tends to ... offend decency, or the public exhibition ... of which would ... be undesirable in the public interest’.

3.8.7 Prohibition on the publication of incitement to violence

Section 37 of the Newspapers Act, Act 3 of 1976, makes it an offence, without lawful

excuse, to publish a statement indicating or implying that it would be incumbent or desirable to, without lawful authority, do any act calculated to:

- Bring death or physical injury to any person or category or community of persons
- Lead to destruction or damage to property

The penalty, upon conviction, is a fine, imprisonment or both.

3.8.8 Prohibition on the publication of children and extreme violence

Section 58(1)(b) of the Law of the Child Act, Act 21 of 2009, makes it an offence to publish a photograph of a child or a dead child containing brutal violence. The penalty is a fine, imprisonment or both.

3.8.9 Prohibition on the publication of false news

Section 36(1) of the Newspapers Act, Act 3 of 1976, makes it an offence to publish any false statement, rumour or report that is likely to cause fear and alarm to the public or to disturb the public peace. The penalty, upon conviction, is a fine, imprisonment or both.

Note, however, that in terms of section 36(2), it is a defence if the accused proves that prior to publication he or she took reasonable steps to verify the accuracy of the statement, rumour or report as to lead him or her reasonably to believe that it was true.

3.8.10 Prohibition on the publication of misleading information regarding HIV and AIDS

Section 27(1) of the HIV and AIDS (Prevention and Control) Act, Act 28 of 2008, requires all information regarding the cure for HIV and AIDS to be subjected to scientific verification before being announced. Section 27(3) makes it an offence to publish misleading information regarding curing, preventing or controlling HIV and AIDS. The penalty is a fine, imprisonment or both.

3.8.11 Prohibition on the publication of information regarding the civil service

Section 16 of the Civil Service Act, Act 16 of 1989, makes it an offence for a person to publish information which, to his or her knowledge, has been disclosed in contravention of the requirement that no person may, without the written permission of the president, disclose information which has come to his or her knowledge in the course of the performance of his or her duties under the act, to an authorised person. The penalty is imprisonment.

These provisions are extremely draconian and run entirely counter to notion of a civil service that is transparent, accountable and responsive to public needs.

3.8.12 Prohibition on the publication of election-related information

Section 91A of the National Elections Act [CAP 343 R.E. 2010] makes it an offence knowingly to broadcast, print or publish a statement on the withdrawal of any candidate for the purposes of promoting the election of another candidate. The penalty upon conviction is imprisonment.

Note that this section is extremely poorly drafted and it is unclear whether the statement has to be false before such publication is an offence. It would seem ludicrous to have an effective blanket prohibition of the publication of news of the withdrawal of a candidate where this has indeed happened.

3.8.13 Prohibition on the publication of criminal defamation

Criminal defamation creates a criminal offence of defamation, which is normally a civil wrong in which damages are paid to repair the reputational damage suffered by the defamed person.

OFFENCE OF LIBEL

Section 38 of the Newspapers Act, Act 3 of 1976, provides for the offence of ‘libel’ – that is, where a person by means including print or writing, unlawfully publishes any defamatory matter concerning another person with the intent to defame that other person.

Section 40 provides that 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.

Section 41 provides that any publication of defamatory matter concerning a person will be unlawful unless:

- The matter is true and publication is in the public interest, or
- It is privileged

There are two types of privilege – absolute and conditional privilege.

In terms of section 42, the publication of defamatory material is absolutely privileged in certain cases. This means that it is immaterial whether or not the material was true or false, or whether or not it was published in good faith. In general, the grounds of absolute privilege are:

- The defamatory matter is published by or on the order of the president, the government, the National Assembly or the speaker of the National Assembly
- The defamatory matter is published in the course of a court martial
- The defamatory matter is published in a judicial proceeding by a person taking part therein, that is, as judge, assessor, magistrate, lawyer, witness or party
- The defamatory matter is a fair report of anything said, done or published in the National Assembly
- The defamatory matter is published by a person legally bound to publish it

In terms of section 43 of the Newspapers Act, the publication of defamatory material is privileged on condition that it was published in good faith, and if the relationship between the parties was such that the person publishing the matter is under some legal or moral duty to publish it to whom the publication was made or has a legitimate personal interest in publishing it, provided that the publication does not go further than what is reasonably sufficient for the occasion, and in any of the following cases:

- A fair report of court proceedings.
- A copy or fair abstract of any matter that has been previously published and which was absolutely privileged when first published.
- An expression of opinion in good faith as to the conduct or personal character of any person in a judicial, official or other public capacity.
- An expression of opinion in good faith as to the conduct of a person in relation to any public question.
- An expression of opinion in good faith as to the conduct of a person disclosed by evidence given in a public legal proceeding.
- An expression of opinion in good faith as to the merits of any book, art, speech, performance and the like.

- A censure passed in good faith on the conduct or character of another person in respect of whom he or she has authority by contract or otherwise.
- A complaint or accusation made by a person in good faith against another person in respect of his or her conduct or character to a person in authority.
- If the matter is published in good faith for the protection of the rights or interests of the publisher or of the person to whom it is published.

Note that while section 45 provides that good faith will be presumed in conditional privilege cases, section 44 sets out when the publication of defamatory matter will not be deemed to have been made in good faith, namely:

- If the matter was untrue and the publisher did not believe it to be true
- If the matter was untrue and the publisher did not take reasonable care to ascertain whether or not it was true or false
- If the publisher acted with intent to injure the person defamed in a substantially greater degree than was necessary for the public interest.

The penalty for the offence of libel is a fine, imprisonment or both, in terms of section 47.

DEFAMATION OF A FOREIGN DIGNITARY

Section 46 makes it an offence to publish anything intended to degrade, revile, expose to hatred or contempt, any foreign sovereign ruler, ambassador or other foreign dignitary with intent to disturb the peace and friendship between Tanzania and the country to which the ruler or dignitary belongs. The penalty for the offence is a fine, imprisonment or both, in terms of section 47.

3.9 Legislation that specifically assists the media in performing its functions

In countries that are committed to democracy, governments pass legislation which specifically promotes accountability and transparency of both public and private institutions. Such statutes, while not specifically designed for use by the media, can and often are used by the media to uncover and publicise information in the public interest.

Sadly, Tanzania has yet to pass this kind of legislation. In 2002 Tanzania did enact the Records and Archives Management Act, the aim of which was ‘to provide for the

proper administration and better management of public records and archives’. However, section 16, headed ‘Access to public records’, contains the rather astounding provision that public records shall be available for public inspection ‘after the expiration of a period of thirty years from their creation’. Exceptions to this – that is, longer or shorter periods – may be prescribed by the minister responsible for records and archives management. Clearly, allowing access to public records only after the expiry of 30 years does nothing for the media’s ability to report on public life and government activities.

4 REGULATIONS AFFECTING THE BROADCAST MEDIA

In this section you will learn:

- What regulations are
- Key regulatory provisions governing broadcasting content
- Other key broadcasting regulations

4.1 Definition of regulations

Regulations are a type of subordinate legislation. They are legal rules that are made in terms of a statute. Regulations are a legal mechanism for allowing ministers, or even organisations such as the TCRA, to make legally binding rules governing an industry or sector, without having Parliament having to pass a specific statute thereon. The empowering statute will empower the minister or a body such as the TCRA to make regulations and/or rules on particular matters within the scope of the functions and powers of that minister or body.

4.2 Key regulations governing broadcasting content

Although the Broadcasting Services (Content) Regulations, 2005, were made in terms of the now-repealed Broadcasting Services Act, 1993, they are still in force in terms of the EPCA. The Content Regulations apply to all broadcasters, and regulate both the technical aspects of content services as well as programme content. Part II of the Content Regulations, which deals with content services, requires:

- All broadcasting equipment to meet minimum technical standards set by the regulator, the TCRA
- Every transmitter to operate on the assigned frequency
- Every signal carrier (now called network service licensees) to ensure that every

broadcasting transmission is identified by transmitting signal or announcements periodically

Part III of the Content Regulations, which deals with programme content, contains the following provisions:

- *Programme presentation* – Section 5 requires every licensee to ensure that a programme:
 - Upholds national sovereignty, national unity, national interest, national security and Tanzania’s economic interests
 - Projects Tanzanian national values and national points of view
 - Observes good taste and decency
 - Upholds public morality
 - Avoids intrusive conduct into private lives
 - Does not injure the reputation of individuals
 - Protects children from negative influences
 - Does not incite or perpetuate hatred against or vilify any group or persons on the basis of ethnicity, race, gender, religion or disability.

- *News and current affairs* – Section 6 requires the licensee to:
 - Ensure that at least 1.30 hours of the daily programme output shall be for news
 - Provide news of local, regional, national and international nature
 - Report accurately and fairly
 - Report news in an objective and balanced manner, without intentional or negligent departure from the facts, whether by distortion, exaggeration, misrepresentation or material omission
 - Not accept sponsorship on news bulletins
 - Ensure that during the presentation of current affairs programmes, factual programmes and documentaries, where issues of public importance are discussed, reasonable effort is made and reasonable opportunity is given to present a fair, accurate, balanced and impartial view
 - Where the licensee allows the expression of personal views during the programmes, to inform the audience in advance and give them an opportunity to respond to such views
 - Advise the audience in advance of news items containing accounts of extraordinary violence, sexual conduct or gruesome accounts of death
 - Ensure that court and parliamentary proceedings are reported accurately and that the reporting does not contain premature

conclusions which may prejudice the outcome of the case or parliamentary proceedings

- *Political party broadcasts* – Section 7 requires the broadcaster to:
 - During election campaigns, give reasonable and equal opportunities for the broadcasting of election campaigns to all political parties contesting the election
 - Be guided by the code on political party election broadcasts issued by the authority

- *Investigation reporting* – Section 8 requires investigate reports to be balanced, accurate, fair and complete.

- *Privacy* – Section 9:
 - A licensee shall not use material relating to a person's personal or private affairs or which invades an individual's privacy other than where there is a compelling public interest for the material to be broadcast.
 - The identity of rape victims and victims of other sexual offences shall not be divulged on programme broadcasts without the prior written consent of the victim.
 - The identity of minors who are victims of rape or any other crime shall not be divulged.

- *Live programmes* – Section 10 requires licensees to:
 - Be technically equipped in handling live programmes so as to avoid broadcasting obscene and undesirable comments from participants, callers and audiences
 - Ensure that contributors and participants to a programme are treated fairly without discrimination or denigration
 - Ensure that they abide by the provisions of the Copyright and Neighbouring Rights Act, 1997

- *Sponsorship* – Section 11 requires every licensee to:
 - Develop a sponsorship policy which ensures that:
 - Any advertising material from the sponsor must be clearly distinct and separated from the programme
 - The content and format of the individual programmes are not influenced by the sponsors of the programme
 - The sponsorship of news and current affairs programmes shall not be allowed

- The provisions of the code on advertising and sponsorship are adhered to
- *Programme hook ups* – Section 12 provides that a licensee shall be free to undertake programme hook-ups subject to business agreements between them and to the Copyright and Neighbouring Rights Act, 1997.
- *Broadcasting of parliamentary sessions* – Section 13 entitles a licensee to cover parliamentary sessions subject to laid down parliamentary rules, regulations, procedures and on parliamentary broadcasting. However, a licensee shall not insert advertisements during a live parliamentary session or display sponsorship logos.
- *Unsuitable programmes* – Section 14 requires:
 - All licensees to have particular regard to the need to protect children from unsuitable programme material
 - That subscription broadcasting service programmes dealing with extreme violence, sexual conduct and disturbing social and domestic friction shall not be broadcast before the watershed period (05h30 to 21h00).
- *Language* – Section 15 requires every free-to-air licensee to:
 - Ensure that only official languages, namely Kiswahili and English, are used for all broadcasts, except where specific authorisation has been given to use non-official languages
 - Refrain from using language meant to mislead or unnecessarily cause alarm and despondency
 - Take particular care to avoid blasphemy and take into account cultural and religious sensitivities
- *Explicitness* – Section 16 requires:
 - Every licensee to ensure that sexual activity shall:
 - Only be suggested in discreet visual or verbal reference and never in graphic detail
 - Not be frequent and without any good reason
 - Broadcasters to take into account community values on exposure to unsolicited sexual material when broadcasting programmes that contain sexual aspects or conduct
 - That no licensee broadcasts any programme which depicts actual sexual activity
 - Nude scenes which show the genitals not to be broadcast, except for educational purposes

- News stories involving a sexual aspect to be presented as such without undue exploitation
- *Programme clarification labels or warnings* – Section 17 requires:
 - That during early hours of the adult listening and viewing period, the licensee shall provide audience advisories before the commencement of each programme
 - That, in addition to verbal warnings about the content, a visual warning shall be displayed on the screen at the start of the programme and on all promotional material
 - The following warning symbols to be displayed on television:
 - C – Content may offend
 - L – Language may offend
 - V – Contains violence
 - VL – Contains violence and strong language
 - S – Sexual content may offend
 - The following classifications on age restrictions:
 - FAM – General/family viewing
 - PGA – Parental guidance advised
 - 13+ – Approved for viewing by persons over 13 years
 - 16+ – Approved for viewing by persons over 16 years
 - 18+ – Approved for viewing by persons over 18 years
- *Violence* – Section 18 requires every free-to-air licensee to:
 - Have particular regard to protect children from any violent material
 - Have a responsibility to ensure that generally programmes broadcast do not:
 - Incite, encourage or glamorise violence and brutality
 - Contain gratuitous violence in any form – that is, violence which does not play a leading role in developing the plot or theme of the material as a whole
 - Epitomise violence as the only legitimate ingredient and main theme without clearly showing the negative consequences of violence to its victims and perpetrators
 - Show methods or devices of inflicting injury which are capable of easy imitation
 - Not portray conduct that encourages antisocial behaviour, abuse of alcohol or drugs
 - Not air programmes containing frightening and excessive special effects featuring violence not relevant to the story line

- Not air programmes containing a combination of violence and sexual conduct meant to titillate the viewers or listeners
 - Not air programmes that portray violence against women in drama so as to encourage the idea that women are to be exploited or degraded through violence or are willing victims of violence
 - Not air programmes that portray violence against women as an erotic experience
 - Justify any depiction where, in rare cases, there is a link between violence and sexual gratification that is explored as a serious theme in drama
- *Advertising content* – Section 19 requires every licensee to:
- Ensure that there is a clear separation of advertising content and programme, and shall:
 - Broadcast a maximum of five minutes of advertising material in any 30 minutes of broadcasting
 - Insert a maximum of two advertising breaks in a 30-minute programme
 - Ensure that every advertisement does not exceed a duration of 60 seconds
 - Be guided by the code of advertising and sponsorship issued by the authority
- *Portrayal* – Section 20 requires:
- Every free-to-air licensee to:
 - Avoid broadcasting material which promotes or glamorises discrimination based on race, national ethnic origin, colour, religion, gender, age, mental or physical disability
 - Portray women and men as having equal capabilities in performing societal functions
 - Every licensee to avoid:
 - Identifying people by their ethnic origin or colour
 - Using derogatory terms in speaking of men or women of a particular ethnic groups or race
 - The presentation of a group of people as an undifferentiated similar mass, rather than a collection of individuals with different interests and beliefs
 - Programmes which depict women as sexual objects
 - Licensees to:
 - Be sensitive to the rights and dignity of people who are mentally or physically challenged

- Ensure that programmes which patronise and promote myths about people with disabilities are avoided
 - Ensure that in portraying acts of violence, they are not always associated with people who are mentally challenged
- *Programme classification* – Section 21 requires subscription content licensees to:
- Visually display classification warning symbols throughout the viewing period
 - Not only display the symbols but to give reasons for the classifications as follows:
 - *FAM – Family viewing*
 - Violence – shall be discreetly implied but have very low scenes of threat or menace and is infrequent
 - Sexual activity – shall be only suggestive in visual or verbal reference
 - Coarse language – shall be mild
 - *PGA – Parent guidance advised*
 - Violence – shall be discreetly implied or styled
 - Sexual activity – shall be suggested, but discreet and infrequent
 - Language – coarse languages shall be very infrequent
 - *16+ – Recommended for over 16 years*
 - Violence – shall not contain a lot of detail and should not be prolonged
 - Sexual activity – verbal reference to sex may be slightly more detailed, but sexual activity not depicted
 - Coarse language – shall be used infrequently
 - Drug use – shall be shown only briefly if it enhances the story line
 - Nudity – shall be shown, but should not be detailed
 - *18+ – This category is legally restricted* (material classified under this category deals with issues or contains depictions which require mature perspective)
 - Violence – depiction of violence shall not have a high impact
 - Sexual activity – sexual activity may be implied but actual sexual activity shall not be shown. Verbal reference to sexual activity may be detailed. Depiction of nudity must not be detailed.
 - Drug use – may be shown but not promoted or encouraged

- *Programme schedules* – Section 22 requires a licensee to:
 - Publish programme schedules in a daily newspaper circulating widely in Tanzania at least one month in advance
 - Adhere to the programme schedules which have been provided in advance to the subscribers, unless it is obliged to broadcast spontaneous events of national or international significance live or through special news programmes.
 - Submit to the TCRA:
 - Advance quarterly programme schedules 14 days before each quarter
 - Transmission reports detailing programmes actually broadcast within seven days after the end of each calendar month
 - Music play-lists detailing all the music broadcast within seven days after the end of each calendar month
 - Maintain copies of all off-air transmission recordings for 90 days
- *Code on Community Broadcasting* – Section 23 requires a licensee holding a community broadcasting licence to comply with the Code on Community Broadcasting issued by the TCRA.
- *Subtitling for the deaf* – Section 24 requires a licensee to ensure that its content output is subtitled for the deaf and hard of hearing.
- *Children's programmes* – Section 25 requires licensees:
 - To provide high-quality programmes for children of:
 - Not less than 30 minutes of its daily programme on weekdays
 - Not less than one hour of its daily programme on weekends and public holidays
 - Not to provide content unsuitable for children at times when large numbers of children may be expected to be part of the audience
 - To exercise particular caution in, and as far as possible avoid, the depiction of violence in content directed at children
 - Not to use offensive language, including profanity, blasphemy and other religiously insensitive material in content specially designed for children
- *Watershed period* – Section 26 provides that:
 - Content which depicts or contains scenes of violence, sexually explicit conduct or offensive language intended for adult audiences shall not be transmitted between 05h30 to 21h00
 - No excessive and gross offensive language should be used in content

transmitted between 05h30 and 21h00, or at times when substantial numbers of children are likely to be part of the audience

- *Local content* – Section 27 specifies that:
 - A minimum of 60% of all content provided by the licensee, measured as a weekly average over the period of a year, must be content produced by:
 - A natural person who is a citizen of, and permanently resident in, the United Republic
 - A legal person, the majority of whose directors or shareholders are citizens and permanently residing in the United Republic, or
 - The licensee
 - The licensee shall ensure that 10% of local content aired by the licensee shall be produced and supplied to the licensee by independent local producers

Section 28 of Part IV of the Content Regulations provides that the penalty for non-compliance with the regulations is a fine.

Section 29 of Part IV of the Content Regulations contains detailed provisions regarding the process for an application to change a station's name.

Finally, section 30 of Part IV requires that a licensee must clearly identify itself by its station identification regularly every hour during the daily period when it provides content to the public.

4.3 Other key broadcasting-related regulations

The TCRA has passed regulations governing different non-content aspects of broadcasting, signal distribution and radio frequency spectrum management. For the purposes of this chapter it is not necessary to set out the rather technical details, but it is important to note the passage of the Tanzania Communications (Radio-communication and Frequency Spectrum) Regulations of 2005, which deal with licensing processes, types of licences and interference issues.

5 MEDIA SELF-REGULATION

A self-regulatory body, the Media Council of Tanzania, was established in 1995 and developed a Code of Ethics for Media Professionals and a Professional Code for Journalists, which it enforces.

5.1 Code of practice for media owners/publishers

The Code of Ethics provides that media owner and publishers should:

- Employ managers on professional merit only
- State the purpose for which the organ was established
- As a rule, not interfere with the decisions of managers in recruitment, management and disciplinary matters
- Spell out clearly professional and non-professional interests and ambitions in relation to the investment and the media organ
- Allow for the establishment of mechanisms that monitor and respond to public opinion and concern as regards the media output and service
- Avoid sell-out attitudes, such as summoning the manager before a disgruntled party for redress
- Consider with care gifts and offers that may compromise the policy, objectives and integrity of the enterprise
- Suggest without coercion or intimidation any feelings regarding certain issues to the manager

5.2 Code of ethical practice for media managers/editors:

The Code of Ethics provides that media managers and editors should:

- Ensure that all workers know clearly the organisation's objectives and how best to achieve them
- Motivate personnel and work out incentives for job satisfaction
- Remunerate fairly all work done by employees
- Ensure that all employees are given an opportunity to enhance their professional competence through further training
- Ensure that libel is avoided, and that the honour of a person is respected

- Ensure that media output is distinguishable between fact and commentary; that only proven and accurate stories are published and that rumours are discouraged
- Ensure that information published does not incite discrimination, sexism, racism or violence
- Ensure that all points of view are exposed by seeking out the main parties to a story. When a party refuses to cooperate, the organ should say so
- Inform all editorial staff of important decisions that may influence the life of the enterprise
- Ensure that the organ reports fairly and accurately the outcome of an action for defamation to which it has been a party
- Ensure that in times of grief or shock, enquiries are made with sympathy; and editing is carried out with discretion so that the concerned parties are not made to relive their agony
- Ensure that children and minors are not identified with any sexual or any other criminal offence
- Ensure that material that would identify victims of sexual assault is not published
- Ensure that derogative references to a person's creed or racial origin are not published
- Ensure that neither him or her, nor an employee takes gifts or bribes in cash or kind
- Examine offers, sponsorships and attractive contracts and agreements to ensure that they have no attachments that would compromise the organisation
- Not suppress useful information for any reason other than the public interest
- Not entertain favouritism and greed
- Ensure that the public is provided with unbiased, accurate, balanced and comprehensive information/news
- Avoid violations of individual privacy and human dignity unless necessitated by the public interest

- Not use plagiarised material without giving due credit to the source
- Not open to ridicule any underprivileged persons or communities
- Not, as a rule, disclose sources of information given in confidence

5.3 The Professional Code of Ethics for Journalists

The provisions of this Code include:

■ Truth and accuracy

- Seek to keep the good faith of readers by assuring them that the news is accurate, free from bias, and that all sides are presented fairly.
- Always provide a truthful and comprehensive account of events in a fair and honest manner.
- Seek subjects of news stories and allegations, and give them the opportunity to respond as a matter of right.
- Distinguish clearly comment, conjecture and fact.
- Where a significant inaccuracy, misleading or distorted statement is published, it must be corrected promptly with due prominence and, where appropriate, an apology.

■ Right of reply

Give a fair opportunity to reply to any individual or organisation which the newspaper or broadcasting organisation itself attacks editorially.

■ Privacy

- Publication or broadcasting of information, including pictures, about the private lives or concerns of individuals without consent is acceptable only if a serious legitimate public interest outweighs their normal human right of privacy, or where the material concerned ought to be published in the public interest, outweighing the normal human right of privacy.
- Entry into public life does not disqualify individuals from the right to privacy about their private affairs, except where the circumstances of these are likely to affect their performance of, or fitness for, the public roles they hold or seek.
- The overriding public interest relied upon in this and other clauses of the Code include:
 - Detection and expose of crime
 - Protection of public health and safety

- Preventing the public from being seriously misled on an important matter by a public statement or action of an individual or institution

■ Harassment and pursuit

- Avoid undercover and surreptitious methods to get information from sources, except where conventional means have failed, and the information is of a high public interest. When used, it has to be explained as part of the story.
- Avoid seeking interviews, information or pictures by intimidation, harassment or persistent pursuit. Do not invade individuals' privacy by deception, eavesdropping or covert technological means unless the material sought to be published is in the public interest and could not be obtained in any other way.

■ Discrimination

- Avoid discriminatory and derogatory stereotyping information or depiction by race, creed, gender, ethnicity, age, disability, geography, physical endowment or social status.
- Avoid comics and jokes about physical or mental disability and real life tragedy, which might be painful.
- Be extra careful when making jokes based on race, religion, sex or age.
- As a rule, use gender-sensitive language.
- Avoid identifying people by ethnicity or colour.
- Be sensitive to the rights and dignities of the disabled.
- Avoid bringing into the open someone's sexuality.

■ Children

- Avoid interviewing or photographing a child under the age of 16 in the absence of, or without the consent of, a parent or other adult responsible for the child, such as a teacher.
- Publication without consent of material about a child's private life cannot be justified solely by the fame, notoriety or position of his or her parents.
- Reports of proceedings in youth courts should leave out the names and addresses of children.
- Explicit sexual conduct between adults and children should not be depicted.

■ Victims in sexual cases

- Avoid identifying victims of sexual assaults.

- Avoid identifying children under the age of 16 as victims or witnesses in sexual assault cases.
 - Reports of cases alleging sexual offences against a child may identify an adult concerned but must avoid identifying the child.
- **Sexual relations and conduct**
- Avoid depictions of nudity and explicit sex.
- **Crime**
- Avoid glamorising crime and antisocial behaviour involving violence.
 - Issue warnings whenever a factual scene is to include violence.
- **Innocent relations**
- Avoid implicating families of criminals in wrongdoing or guilt by association.
 - Avoid identifying relations of criminals unless the connection is directly relevant to the matter being reported.
- **Religion**
- Avoid casual use of words considered holy by believers.
 - Journalists and broadcasters should approach and refer to religious bodies in a balanced, fair and seemly manner.
- **Grief and bereavement**
- Respect personal grief, taking care to make any necessary approaches and inquiries with sensitivity and discretion.
 - When covering disasters and tragic events, care must be taken not to add to the distress of people who are already at a loss, including pressurising them for interviews.
 - Treat the dead with respects; close-ups should be avoided.
- **Advertising**
- Advertisements should not promote social disharmony.
 - Advertisements and sponsored material must be clearly distinguishable from general editorial and programming matter, where necessary by being clearly labelled in print or on air as ‘advertisement’ or ‘advertising feature’.
- **Personal interest and influence**
- Resist undue influence from outside sources, including owners, advertisers, story subjects, powerful individuals and interest groups.

- Journalists should not allow personal or family interests to influence their professional duties.
 - Journalists must not be influenced by any consideration, gift or advantage offered to them, or by advertising or other commercial considerations.
 - Journalists should not belong to any organisation whose activities they cover.
- **Confidential sources**
- Never, as a rule, disclose sources of information given in confidence unless required to do so by a legal process.
 - Journalists of all media have a moral obligation to protect confidential sources of information, and to respect confidences knowingly and willingly accepted in the course of their occupation.
- **Withholding information**
- Never suppress useful information unless this is in the public interest.
 - Government may ask you to withhold publication of a story until it has investigated and acted upon it.
 - Exercise caution but do not hold back stories that protect the government as opposed to the country.
- **Deceitful identification**
- A journalist should never falsely identify him or herself to gain access to persons or places and then write stories on the experience.
- **Freedom of the press**
- Defend at all costs the freedom of the media.
 - Freedom belongs to all, and journalists must make sure that public business is conducted in public.
 - Journalists must be vigilant against those who exploit the press for their purposes.

NOTES

- 1 See, <http://www.freedomhouse.org/report/freedom-press/2012/tanzania> [accessed 16 June 2013].
- 2 Concluding Observations on the Consolidated 2nd to 10th Periodic Report of the United Republic of Tanzania, p. 6, para. 34. Available online: http://www.achpr.org/files/sessions/43rd/conc-obs/2to10-1992-2008/achpr43_conc_staterep2to10_tanzania_2008_eng.pdf [accessed 14 June 2013].