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Tanzania and Zanzibar

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. The country has had multiparty elections since 1992 and has been governed by the Chama Cha Mapinduzi (CCM) party since 1977.

Tanzania has a federal system of government, and Zanzibar is given a great deal of autonomy to determine its laws and legal institutions, including its constitution. Consequently, the media in Tanzania is governed by different laws, depending on whether it operates in mainland Tanzania or on the island of Zanzibar. This extends to constitutional provisions, and so this chapter is effectively two chapters in one, with corresponding provisions for mainland Tanzania and the island of Zanzibar.

Tanzania has a population of approximately 60 million people, the rural population of about 38 million people outnumbers the urban population of about 21 million people.¹ Roughly 38% of the people of Tanzania have access to electricity, but it is important to note the disparity between the urban and rural populations. Approximately 68% of the urban population has access to electricity against 18% of the rural population, highlighting vast inequalities in the country.²

Tanzania has completed its migration to Digital Terrestrial Television using the DVB-T2 standard for broadcasting,³ and roughly 10% of households in Tanzania have access to television.⁴ Internet access in Tanzania reaches approximately 38% of the population, but only 7% have a Facebook page.⁵ It is important to note that, for this chapter, we deal with the laws and institutions applicable to both mainland Tanzania and Zanzibar. The chapter is divided into parts with sections two to six addressing mainland Tanzania and sections seven to eleven addressing Zanzibar.

According to the self-regulatory Media Council of Tanzania, violations of press freedom were three times more prevalent in 2019 than in 2015.⁶ This indicates that the media environment in Tanzania has become more restrictive since President John Magufuli was inaugurated in 2015. He was re-elected in 2020.

In this chapter, working journalists and other media practitioners will be introduced to the legal environment governing media operations in mainland Tanzania, referred to as Tanzania and Zanzibar. Where there is mention of the United Republic, this refers to the United Republic of Tanzania which includes both Tanzania and Zanzibar. The chapter is divided into five sections for each of Tanzania and Zanzibar:

- ▶ Media and the constitution
- ▶ Media-related legislation
- ▶ Media-related regulations

- ▶ Media self-regulation
- ▶ Media-related case law

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

2 The media and the constitution — Tanzania

In this section, you will learn:

- ▷ the definition of a constitution
- ▷ definition of constitutional supremacy
- ▷ definition of a limitations clause
- ▷ constitutional provisions that protect the media
- ▷ constitutional provisions that might require caution from the media or might conflict with media interests
- ▷ key institutions relevant to the media
- ▷ how rights are enforced under the constitution
- ▷ the ‘three branches of government’ and ‘separation of powers’
- ▷ weaknesses in the constitution 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 other provisions. The following values and principles on which Tanzania is said to be founded are significant for the media, 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,
- ▶ the government shall be accountable to the people,
- ▶ the people shall participate in the affairs of government per 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 essential 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 specific country. It is vital 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 somewhat 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 the constitution binds legislative, executive and judicial organs of state.

2.3 Definition of a limitations clause

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. Governments require the ability to limit rights to serve vital societal interests; however, owing to the supremacy of the constitution, this can only be done following 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, general 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 fundamental 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
- ▶ the danger of invasion or state of war
- ▶ breakdown of public order
- ▶ the imminent occurrence of danger, disaster or environmental calamity
- ▶ a danger which 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 generally limiting rights, 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, the 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) states explicitly 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 problematic because of the very wide grounds on which rights can be limited and 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 can 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 several so-called internal limitations; these are limitations to specific rights. These are dealt with below concerning the respective rights to which they apply.

2.4 Constitutional provisions that protect the media

The Tanzania Constitution contains several 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 Freedom of expression

The most critical section that protects the media is article 18, which sets out several detailed and important provisions protecting freedom of expression. Article 18 provides that:

- ▶ Every person:
 - ▶ has freedom of opinion and expression of his ideas
 - ▶ has the right to seek, receive, disseminate, or both, information regardless of national boundaries
 - ▶ has the freedom to communicate and freedom with protection from interference from his communication
 - ▶ has a right to be informed of various important events of life and activities of the people and also of issues of importance to society at all times.

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 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 crucial 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, the press, or both specifically mentioned, although it is implied in the right to freedom of expression.

2.4.2 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, SMS, mail and telephone conversations) is a fundamental right for working journalists.

Note further, however, that this right is subject to an internal limitation. This is dealt with in section 2.5 of this chapter.

2.4.3 Freedom of association

A third protection is provided for in article 20(1), which grants every person the freedom to freely and peacefully 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.

The right provides protection for journalists to form organisations, including trade unions. It also protects 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 on which political parties can be refused registration and does not have direct implications for journalists or the media.

2.4.4 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 or her wellbeing and the nation; this requires some discussion.

First, this right 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 important 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 is premised on a free press.

2.4.5 Provisions regarding the functioning of parliament

Apart from the rights discussed above, there are provisions in the Tanzania Constitution which are important and 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 concerning 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 some certain rights or freedoms protect the media, other rights or freedoms can protect individuals and institutions from the media. Journalists need to understand which provisions in the Constitution of Tanzania can be used against the media. Several of these exist.

2.5.1 Right to dignity

The right to dignity provided for in article 12(2) states '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 and so on. The media has to be careful and should be aware that there are always boundaries of privacy, depending 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, that need to be respected.

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 right 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, the security of his person, property and residence may be infringed upon.

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 infringing on 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 several 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 several important institutions concerning 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’. The judicial authority of the Republic is vested in the courts, which are required to observe the following principles, in terms of article 107A(2):

- ▶ impartiality to all without due regard to one’s social or economic status
- ▶ not to delay dispensation of justice without reasonable grounds
- ▶ to award reasonable compensation to victims of wrongdoing committed by other persons, following laws enacted by parliament
- ▶ to promote and enhance dispute resolution among persons involved in the disputes
- ▶ 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. The media is essential to building public trust and respect for the judiciary, which is the foundation of the rule of law in society. The media needs the judiciary because of the courts’ ability to protect it from unlawful action by the state and unfair damages claims by litigants.

Important judicial appointment procedures are as follows:

- ▶ In terms of article 112(1) of the Tanzania Constitution, the Judicial Service Commission (JSC) is an appointed 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).

- ▶ In terms of article 118(3), Appeal Court judges are appointed by the president after consultation with the Chief Justice. 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.

The Tanzania Constitution recognises the right of Zanzibar to establish its court structures with their jurisdictions under the 1984 Constitution of Zanzibar, see Part IV, High Court of Zanzibar, of Chapter Five of the Tanzania Constitution; this is discussed in section 7 of this chapter.

2.6.2 The Judicial Service Commission

The JSC for Tanzania is a constitutional body established in terms of article 112 of the Tanzania Constitution which specifies that the JSC for Tanzania shall serve as an appointments advisory board for judges and magistrates in Tanzania. Article 113(1) sets out the functions of the JSC for Tanzania. 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 concerning 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 for Tanzania is relevant to the media because of its critical role in the judiciary of Tanzania, the proper functioning and independence of which are essential for democracy.

In terms of article 112(1), the JSC for Tanzania 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 The Commission on Human Rights and Good Governance

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

- ▶ sensitising the public about the preservation of human rights and duties
- ▶ receiving complaints concerning violations of human rights in general
- ▶ conducting enquiries on matters concerning 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 concerning 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 to promote and enhance conciliation, reconciliation among persons and various institutions appearing before the HRGG Commission.

It is important to note that, in terms of article 130(6) of the Constitution of Tanzania, the HRGG Commission applies to both the government of the United Republic and the Revolutionary Government of Zanzibar. However, the HRGG Commission may not undertake activity concerning the president or the 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 is that the president can give directives or orders to the HRGG Commission, with which it is bound to comply, and this 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 broad 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 misconduct or inability to perform the functions of his or her office.

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. 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.

2.7.1 Branches of government

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

The executive

It is essential 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 4). Provisions relating to Zanzibar are discussed in section 7 of this chapter. 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, all 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 Tanzania shall be vested in the president.

Clearly then, executive authority is vested 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. Still, he or she 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 the 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 concerning 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 concerning all other matters concerning Tanzania is vested 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, critical 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 determined by the Electoral Commission
- ▶ women members proposed by political parties based on 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, is vested in the courts. The role of the judiciary is to interpret the law and to adjudicate legal disputes in accordance with the law.

2.7.2 Separation of powers

In a functioning democracy, it is essential to divide government power between different organs of the state 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 can operate alone, assume complete state control and amass centralised power. While each branch performs several 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 following the constitution.

2.8 Weaknesses in the constitution that ought to be strengthened to protect the media

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

2.8.1 Remove internal constitutional limitations 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 to 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, the security of his person, his property and residence may be infringed 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 unlimited discretion when infringing on 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.

2.8.2 Improve the general limitations clause

As already set out above, the general limitations clause is extremely problematic owing to the very wide grounds on 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 legislation will trump basic rights, despite the provisions of the constitution's supremacy clause.

2.8.3 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, with which it is bound to comply; this obviously undermines the independence and, potentially, the effectiveness of the HRGG Commission.

2.8.4 Provide constitutional protection for the broadcasting regulator

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

2.8.5 Provide constitutional protection for the public broadcaster

The broadcasting environment in Tanzania would be significantly 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 — Tanzania

In this section, you will learn:

- ▷ what legislation is and how it comes into being
- ▷ legislation governing films
- ▷ legislation governing the media generally
- ▷ legislation governing the print media
- ▷ legislation governing the broadcasting media in general
- ▷ legislation governing the public broadcasting sector
- ▷ legislation governing broadcasting signal distribution

- ▷ legislation that threatens a journalist’s duty to protect sources
- ▷ legislation that prohibits the publication of certain kinds of information
- ▷ legislation that specifically assists the media in performing its functions

3.1 What is legislation and how it comes into being

3.1.1 What is legislation?

Legislation is a body of law consisting of acts properly passed by the Parliament of Tanzania, 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. Legislation that applies to Zanzibar is discussed below in section 8 of this chapter.

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. Articles 97-99 are particularly important in respect of legislation.

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. Journalists and others in the media need to be aware that the constitution requires different kinds of legislation to be passed following 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 applicable rules are set out in article 98 of the Tanzania Constitution
- ▶ ordinary legislation — the procedures and 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 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. In terms of article 97(1) of the Tanzania Constitution, if the parliament passes a bill following 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.

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 it 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 Legislation governing films

The Films and Stage Plays Act, 1976, governs, among other things, the making of films in Tanzania; this 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 he 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 on conviction, a person would be liable to a fine, imprisonment or both. Further, the film in question could be subject to a 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 and the full text of the spoken parts (if any) of the entire film that is to be made. If these are to be amended from time to time, new 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 is paid, the repayment of which is conditional on the film being made in accordance with the conditions of the film permit. The minister may 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.

3.3 Legislation governing the media generally

Two statutes govern the media in Tanzania:

- ▶ The Media Services Act, Act 12 of 2016 (Media Services Act)
- ▶ The Electronic and Postal Communications Act, Act 3 of 2010 (EPC Act)

3.3.1 The Media Services Act

The Media Services Act was enacted to govern the media in Tanzania by promoting professionalism in the media industry, providing provisions regarding the ownership, rights and obligations of media houses (which includes print media, radio and television broadcasters and online content providers) establish the Independent Media Council (IMC) and the Journalists Accreditation Board (JAB). Interestingly the Media Services Act provides for the licensing of the print media sector in Tanzania, separately from other forms of media, by the Information Services Department.

The Information Services Department

Section 4 of the Media Services Act provides that there shall be a Director of Information Services, who is appointed by the president. The Director of Information Services is the: principal advisor to the government on all matters related to strategic communication, the publication of news and the functioning of the media industry.

The Director of Information Services has numerous functions as set out in section 5 of the Media Services Act, these include:

- ▶ licensing print media
- ▶ co-ordinating government advertising, which is important as much of the media depends on government advertising for revenue.

The role and functions of the Director of Information Services are problematic as it places a large amount of control of the media, particularly print media, in the hands of the Government. This practice is not in accordance with international best practice and is a threat to the freedom of the print media in Tanzania.

The Independent Media Council (IMC)

Section 24 of the Media Services Act establishes the Independent Media Council (IMC) which is responsible for developing and enforcing a professional code of ethics for journalists, in terms of section 26.

In terms of section 25(1) of the Media Services Act, every accredited journalist is required to be a member of the IMC. Section 25(3) provides that the leadership of the IMC, which appears to be appointed by the membership of the IMC, comprises:

- ▶ the chairman
- ▶ the vice-chairman
- ▶ two accredited journalists nominated by media associations.

In terms of section 25(2) of the Media Services Act, the minister responsible for content must publish a notice in the Gazette to convene the first meeting of the IMC to elect members of the IMC to leadership positions; this appears not to have occurred as yet and, thus, the IMC appears not to have been established.

Journalists Accreditation Board (JAB)

Section 11 of the Media Services Act establishes the JAB, which is made up of seven members who are appointed by the minister responsible for content and which is responsible for:

- ▶ accrediting journalists and issuing press cards
- ▶ enforcing the journalist's code of ethics
- ▶ maintaining a roll of accredited journalists
- ▶ suspending or expunging accredited journalists from the accreditation roll
- ▶ setting fees for accreditation
- ▶ any other function the minister responsible for content may direct.

Section 19 of the Media Services Act prohibits any person from practising as a journalist without accreditation from the JAB.

Despite section 11 of the Media Services Act establishing the JAB and section 12 providing that the minister responsible for content must appoint the members of the JAB, it appears to have not yet occurred. It is currently unclear who accredits local journalists operating in Tanzania; however, it seems that foreign journalists are accredited to work in Tanzania by the National Film Censorship Board.

3.3.2 The Electronic and Postal Communications Act

The EPC Act was enacted to provide a comprehensive regulatory regime for electronic communications service providers, including the issuing of content service licences. A content service licence is defined in the EPC Act as a transmission service 'offered for speech or other sound, text or image, whether moving or still, except where transmitted in private communications'. It appears to include online content, although this is not explicitly stated.

3.3.3 Ownership of Media Houses

Section 6 of the Media Services Act provides that, to license under the Media Services Act and the Electronic and Postal Communications Act, there are two categories of media houses, public-owned (owned by the state) and private-owned (non-state-owned media). Conditions for the ownership of media houses are regulated by regulations dealt with in section 4 below.

Section 7(1) of the Media Services Act provides that all journalists and media houses shall enjoy the following rights:

- ▶ the freedom to collect and gather information
- ▶ the freedom to process and edit information following professional ethics governing journalists

- ▶ the freedom to publish or broadcast news.

Section 7(2) sets out obligations with which media houses must comply.

- ▶ Section 7(2)(a) provides for the obligations of public media houses, these include:
 - ▶ observing universal service obligations
 - ▶ providing media services to the public and government
 - ▶ upholding the professional code of ethics
 - ▶ enhancing communication within and between the government and the public
 - ▶ maintaining accountability and transparency of funding.
- ▶ Section 7(2)(b) of the Media Services Act provides for the obligations of private media houses; these include:
 - ▶ providing media services to the public per their licensed service areas;
 - ▶ upholding the professional code of ethics
 - ▶ promoting public awareness in various issues of national interest by disseminating information
 - ▶ broadcasting or publishing news or matters of national importance as the government may direct
 - ▶ maintaining accountability and transparency in funding.

3.3.4 Making regulations

Section 65 of the Media Services Act empowers the minister responsible for content to make regulations to carry out the provisions of this Act. It should be noted that the minister may also make regulations for:

- ▶ the terms and conditions for the operation of licensed media houses
- ▶ procedure for appeal against decisions of the JAB
- ▶ prescription of shareholding requirements by foreign media owners
- ▶ prescription of fines
- ▶ requirement and procedure for accreditation of journalists and issuance of press cards
- ▶ reporting the sources of funding by media houses and media associations.

3.4 Legislation governing print media

Print media in Tanzania is governed in terms of the Media Services Act of 2016. The

Media Services Act requires that any person wishing to operate in print media must be licensed to do so. There are several crucial provisions of the Media Services Act which impact on the media and the practice of journalism in Tanzania.

3.4.1 Licensing of the Print Media

Section 8 of the Media Services Act prohibits the printing, publishing, selling, importing, distributing or producing of any print media which is defined in section 2 as 'newspapers, journals, magazines, newsletters and any other related print intended for mass media', unless it is licensed per the Media Services Act.

In terms of sections 5 of the Media Services Act, one of the functions of the Director of Information Services is to licence print media. Section 9 provides that the Director of Information Services, or any person acting on his or her behalf, is responsible for licensing as he or she may:

- ▶ reject any application that does not comply with the prescribed requirements for licensing; or
- ▶ suspend or cancel the licence of any licensee who fails to comply with the prescribed conditions of a licence.

Section 10(1) of the Media Service Act provides that, any person aggrieved by the decision to reject a licence application or suspend or cancel a licence may, within 30 days of the decision, appeal to the minister responsible for content. In terms of section 10(3), any person aggrieved by the decision of the minister may seek redress from the High Court.

3.4.2 Complaints Handling in the Print Media

Section 26(1)(c) of the Media Services Act provides that the Independent Media Council (IMC) is responsible for determining print media content complaints. The complaints committee of the IMC is established in accordance with section 27 of the Media Services Act. Section 28(1) provides that any person aggrieved by the content of print media may, within three months from the date of publication of the offending content, make a written complaint to the complaints committee. The IMC must prescribe the conduct and procedures to be followed in determining print media complaints and the matters to be awarded by the complaints committee, section 28(2).

In terms of section 29 of the Media Services Act, any person aggrieved by a decision of the complaints committee may appeal to the High Court in all matters save those relating to defamation.

3.5 Legislation governing the broadcast media

Broadcasting in Tanzania is regulated by several different pieces of legislation, namely the:

- ▶ Media Services Act, Act 12 of 2016 (Media Services Act) — refer to section 3.2, Key Legislative Provisions Governing the Media Generally, above
- ▶ Tanzania Communications Regulatory Authority (TCRA) Act, 2003
- ▶ Electronic and Postal Communications Act (EPC Act), 2010
- ▶ Universal Communications Service Access Act (UCSAA), 2006.

3.5.1 Establishment of the TCRA, the content committee and the council

The TCRA Act establishes several 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.

3.5.2 Main functions of the TCRA, the content committee and the council

The TCRA

The TCRA Act distinguishes between the duties and functions of the TCRA. In terms of section 5 of the TCRA Act, the TCRA must 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 functions of the TCRA. 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
 - ▶ the 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 carry 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 concerning 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 powers of the content committee, 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 using electronic communication networks.

The TCRA consumer consultative council

The TCRA has, in terms of section 38 of the TCRA Act, 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 and so on)
- ▶ 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.

3.5.3 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 does not hold an office which he or she could use to exert influence on the TCRA. The members include:

- ▶ A non-executive chairman and vice-chairman who are appointed by the president on the basis that if one comes from one part of the Union (for example, Tanzania), the other shall come from the other part of the Union (for example, Zanzibar).
- ▶ Four non-executive members. These are appointed by the Minister of Communications, after consultation with sector ministers, that is the ministers responsible for the different sectors, telecommunications, broadcasting, postal services and so on. The members are selected from short-listed candidates who apply for positions in response to public advertisements. The 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 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, on 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 of 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 minister appoints the chairperson of the council and the vice-chairman is elected by the council members.

Notably, 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 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 the regulated industries, including:

- ▶ low-income, rural and disadvantaged persons
- ▶ industrial and business users
- ▶ government and community organisations.

3.5.4 Funding for the TCRA, the content committee and the council

The TCRA

In terms of section 49(1) of the TCRA Act, the TCRA 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 to 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. However, 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 council during the first three years of its existence
- ▶ such sums as may be appropriated from the funds of the TCRA for the council
- ▶ grants, donations, bequests or other contributions.

3.5.5 Making broadcasting regulations

In terms of section 47(1), the Minister of Communications is empowered to make regulations, rules, or both 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 essential 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 of Communications) concerning:

- ▶ a 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, on conviction, is liable to a fine.

Note further that section 103 of the EPC Act provides that the minister may make content-related regulations and that the TCRA may make content-related rules on the recommendation of the content committee.

3.5.6 Licensing regime for broadcasters in Tanzania

Categories of broadcasting services

Section 13(3) of the Electronic and Postal Communications Act (EPC Act) provides seven categories of so-called content services, which are defined in section 3 of the EPC Act as a 'service offered for speech or other sound, text or images whether still or moving except where transmitted in private communications'. Although the EPC

Act does refer 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 EPC Act) 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 ECP Act, a person wishing to operate a content service shall apply to the TCRA for a licence. Section 13(1) of the EPC Act prohibits a person from providing a content service without a licence. The EPC Act refers to a content service being provided under an individual or a class licence but is unclear as to when a content service would require an individual as opposed to a class licence. Subsections 6(2) and (3) of the EPC Act 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 competitive frequency bands.

Section 116(3)(b) of the EPC Act makes it an offence to provide a content service without having first obtained the necessary licence. The penalty on conviction is a fine, imprisonment or both.

Frequency spectrum licensing

Section 71(1) of the EPC Act 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. 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 on conviction is a fine, imprisonment or both.

3.5.7 Responsibilities of broadcasters in Tanzania

Adherence to licence conditions

Section 152(3) of the EPC Act provides that any person who contravenes or fails to comply with any licence condition 'without lawful excuse' is guilty of an offence and on conviction, is liable for a fine.

Furthermore, section 117(2) of the EPC Act 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. Broadcasters are subject to a range of content regulations concerning 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 EPC Act, a person who uses a content service to transmit any communication which is obscene, indecent, false, menacing or offensive with the intent to annoy, abuse, threaten or harass another person is guilty of an offence. The penalty on conviction is a fine, imprisonment or both.

Adherence to a code of conduct

Section 104 of the EPC Act refers 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. The code of conduct has to achieve several 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 EPC Act 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 Tanzanian society') shall:

- ▶ be designed to ensure that the content is reasonably accessible to members of the public simultaneously and without undue delay
- ▶ 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 EPC Act 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 EPC Act 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 Tanzania
- ▶ prevent the excessive provision by content service licensees of:
 - ▶ content that is not relevant or conducive to the development of 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 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 EPC Act 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 of the EPC Act 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:
 - ▶ the maximum amount of time to be allocated to advertisements in any hour
 - ▶ the minimum interval which can elapse between any two periods allocated to advertising
 - ▶ number of such periods to be allowed in any hour or day
 - ▶ the 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 of the EPC Act empowers the TCRA to make rules concerning 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 a content service licensee provides educational content
- ▶ provisions to ensure that educational content provided is:
 - ▶ of high quality
 - ▶ suitable to meet the requirements of Tanzanian society
- ▶ different categories of educational content, and impose differential obligations of content service licensees, concerning such categories.

Content for the visually- and hearing-impaired

Section 111 of the EPC Act empowers the minister, when making content regulations, or the TCRA, when making rules, to cater to 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- visually- or both, impaired
- ▶ how 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 EPC Act requires the minister when making content regulations concerning the provision of political content (other than political advertising):

- ▶ not to prohibit content service licensees from providing political content
- ▶ to regulate political content consistent with the constitution.

Counter versions or right of reply

Section 113 of the EPC Act 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(1)(b) of the EPC Act provides that the holder of content service licence is required to have a minimum of 51% local shareholding.

Adherence to pricing and billing requirements

Section 31 of the EPC Act provides that licensees may set and revise prices charged for content services offered to the public; this applies 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:

- ▶ 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 before introduction
- ▶ publish its prices in the public media at its own expense at least one week before introduction.

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

Adherence to duty of customer confidentiality

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

Adherence to access requirements

Section 13 of the Universal Service Act provides that broadcasters are obliged to ensure that their services are accessible to rural and urban under-served areas in the service area provided for in their licence.

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, on conviction, is a fine. Section 18(2) provides that this is to be calculated based on the licensee's eligible revenue and section 18(5) provides that the minister is to make regulations on the procedure to be followed to determine the levy.

3.5.8 Is the TCRA an independent regulator?

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 concerning the process of appointing board members and also in regulatory functions, including the power to make broadcasting-related content regulations.

3.5.9 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. The TCRA Act ought to set out detailed provisions regarding the qualities, expertise and qualifications required of a TCRA board member. After that, 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, regulations and so on, and the minister ought not to have regulation-making powers concerning broadcasting matters.

Also, the EPC Act does not clarify the differences between various categories of content that is, broadcasting services, sufficiently. 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.

3.6 Legislation that regulates the public broadcast sector

3.6.1 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 on Tanzania to transform the TBC into a public broadcaster.⁷

The principal 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.

3.6.2 Establishment of the TBC

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

3.6.3 The mandate of the TBC

Section 4 of the TBC Order provides that its 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 and 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 using 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 been developed yet.

In terms of section 32(2) of the TCRA Act, the TBC charter prescribes categories of services 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.

3.6.4 Appointment of the TBC board

In terms of section 9 of the TBC Order, the TBC board consists of nine members. The president appoints the chairperson. 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 concerning the public corporation in question, or public affairs.

Notably, 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.

3.6.5 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.

3.6.6 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 based mainly on the role of the minister in appointing the TBC board members.

3.6.7 Weaknesses in the legislation which should be addressed to strengthen the TBC

The government has 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 several weaknesses, these include:

- ▶ 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. After that, the president ought to appoint all TBC board members formally. 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 via the minister.

3.7 Legislation governing broadcasting signal distribution

Relevant provisions in international instruments

The Electronic and Postal Communications Act (EPC Act) is the critical statute for broadcasting signal distribution (the technical process of ensuring that the content-carrying signal of a broadcaster is distributed such that it can be heard, viewed, or both, by its intended audience).

The EPC Act 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, using 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.

3.8 Legislation that undermines 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 who can 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.

3.8.1 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 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 that could constitute material evidence about a crime, the journalist might be ordered to reveal sources of information relating to that crime in terms of sections 142 or 195 of the CPA.

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

3.8.2 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, can give any information relating to any enquiry being conducted by the tribunal to appear before it to answer questions or to produce any document.

3.8.3 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, on conviction, is a fine or imprisonment. In the absence of a recognised qualified privilege for

journalists, this subsection might be used to force a journalist to reveal his or her sources of information.

3.8.4 The Cyber Crimes Act, Act 14 of 2015

Section 32 of the Cyber Crimes Act provides that, where the disclosure of data is required for a criminal investigation or the prosecution of an offence, a police officer in charge of a police station or a law enforcement officer of similar rank may issue an order to any person to disclose any such information in his or her possession.

However, it is important to note that, whether or not requiring a journalist to reveal a source is 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.

3.9 Legislation that prohibits the publication of certain kinds of information

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

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

- ▶ prohibition on the publication of information prejudicial to a child
- ▶ prohibition on the publication of certain types of information regarding legal proceedings
- ▶ prohibition on the publication of information that discloses the proceedings of the Cabinet
- ▶ prohibition on the publication of hate speech
- ▶ prohibition on the publication of information that could endanger the safety or life of any person
- ▶ prohibition on the publication of information that encourages the commission of an offence;
- ▶ prohibition on the publication of information that invades privacy
- ▶ prohibition on the publication of information that infringes commercial interests
- ▶ prohibition on the publication of information that could harm the economy

- ▶ prohibition on the publication of state security-related information
- ▶ prohibition on publications which promote ill-will or hostility between classes of the population
- ▶ prohibition on obscene publications
- ▶ prohibition on the publication of incitement to violence
- ▶ prohibition on the publication of extreme violence involving children
- ▶ prohibition on the publication of false news
- ▶ prohibition on the publication of misleading information regarding HIV and Aids
- ▶ prohibition on the publication of information regarding the civil service
- ▶ prohibition on the publication of election-related information
- ▶ prohibition on the publication of material concerning genocides or crimes against humanity
- ▶ prohibition on the publication of 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 their work. The key provisions of such laws are therefore set out below.

3.9.1 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 on conviction is a fine, imprisonment or both.

3.9.2 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 any information or a photograph that may lead to the identification of a child in any matter before the court without the permission of 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 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 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 includes both aspects of contempt of court — that is, the *sub judice* rule and the rule against ‘scandalising’ the court.

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).

The Media Service Act, Act 12 OF 2016

The Media Services Act contains the same definition of seditious intention as is contained in the Penal Code, set out immediately above. It further provides, in section 53, that any person who publishes, sells, offers for sale, reproduces or imports a seditious publication is guilty of an offence and liable, on conviction, to a fine, imprisonment or both.

Section 7(3) of the Media Services Act provides that media houses must ensure they do not disseminate information that could:

- ▶ undermine lawful investigations being conducted by a law enforcement agent
- ▶ impede due process of the law
- ▶ damage the information holder’s position in any actual or contemplated legal proceedings or infringe professional privilege
- ▶ significantly undermine a person’s ability to give adequate and judicious consideration to a matter of which no final decision has been taken and which remains the subject of consideration.

The Cyber Crimes Act, Act 14 of 2015

Section 21 of the Cyber Crimes Act makes it an offence for any person to knowingly

and unlawfully disclose details of a criminal investigation which requires confidentiality. The penalty for this offence, on conviction, is a fine, imprisonment or both.

3.9.3 Prohibition on the publication of information that discloses the proceedings of Cabinet

Section 7(3) of the Media Services Act provides that media houses must ensure they do not disseminate information that could disclose the proceedings of the Cabinet.

3.9.4 Prohibition on the publication of hate speech

Section 7(3) of the Media Services Act provides that media houses must ensure they do not disseminate information that could constitute hate speech.

3.9.5 Prohibition on the publication of information that could endanger the safety or life of any person

Section 7(3) of the Media Services Act provides that media houses must ensure they do not disseminate information that could endanger the safety or life of any person.

3.9.6 Prohibition on the publication of information that encourages the commission of an offence

Section 7(3) of the Media Services Act provides that media houses must ensure they do not disseminate information that could facilitate or encourage the commission of an offence.

3.9.7 Prohibition on the publication of information that invades privacy

Section 7(3) of the Media Services Act provides that media houses must ensure they do not disseminate information that could involve unwarranted invasion of privacy of an individual.

3.9.8 Prohibition on the publication of information that infringes commercial interests

Section 7(3) of the Media Services Act provides that media houses must ensure they do not disseminate information that could infringe lawful commercial interests, including intellectual property rights of that information holder or a third party from whom the information was obtained.

3.9.9 Prohibition on the publication of information that could harm the economy

Section 7(3) of the Media Services Act provides that media houses must ensure they do not disseminate information that could hinder or cause substantial harm to the government to manage the economy.

3.9.10 Prohibition on the publication of state security-related information

National Security Act, 1970

Section 4 of the National Security Act contains several 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, upon conviction, 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 on 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 on 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 established by law
- ▶ 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 the administration of justice with a view to the remedying of such errors or defects
- ▶ persuade inhabitants of the United Republic to attempt to procure the alteration of any matter, by lawful means.

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).

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 imprisonment.

The Media Service Act, Act 15 of 2016

The Media Services Act contains the same definition of seditious intention as is contained in the Penal Code, set out immediately above. It further provides, in section 53, that any person who publishes, sells, offers for sale, reproduces or imports a seditious publication is guilty of an offence and liable, on conviction, to a fine, imprisonment or both.

Section 7(3) of the Media Services Act provides that media houses must ensure they do not disseminate information that could undermine the national security of the United Republic of Tanzania.

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

Penal Code [CAP.16]

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 any matters that produce or tend to evoke feelings of ill-will and hostility between different classes of the population of the Republic with a view to their removal.

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).

Cyber Crimes Act, Act 14 of 2015

Section 17 of the Cyber Crimes Act makes it an offence to use a computer system to produce, offer, make available, distribute or transmit material that is racist or xenophobic. The penalty on conviction is a fine, imprisonment or both.

Section 18 of the Cyber Crimes Act makes it an offence to use a computer system to insult another person based on race, colour, descent, nationality, ethnic origin or religion. The penalty for this offence, on conviction, is a fine, imprisonment or both.

3.9.12 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 on 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'.

The Cyber Crimes Act, Act 14 Of 2015

Section 13 of the Cyber Crimes Act makes it an offence for any person to publish child pornography or make available or facilitate access to child pornography using a computer system. The penalty for such an offence is a fine, imprisonment or both. In addition, any person convicted of this offence may be adjudged to compensate a person injured by the offence.

Section 14 of the Cyber Crimes Act makes it an offence to publish, or cause to be published using a computer, or any other information and communication technology, pornography, or pornography which is lascivious or obscene. The penalty on conviction is a fine, imprisonment, or both.

3.9.13 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, on conviction, is a fine, imprisonment or both.

3.9.14 Prohibition on the publication of extreme violence involving children

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.

3.9.15 Prohibition on the publication of false news

Media Services Act, Act 15 of 2016

Section 54(1) of the Media Services Act, Act 15 of 2016, 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, on conviction, is a fine, imprisonment or both.

Note, however, that in terms of section 54(2), it is a defence if the accused proves that before 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.

Section 50(1)(a)(i) of the Media Services Act makes it an offence for any person to

publish information which is intentionally or recklessly falsified in a manner that threatens the interests of defence, public safety, public order, the economic interests of the United Republic, public morality or public health. On conviction, the penalty is a fine, imprisonment or both.

Cyber Crimes Act, Act 14 of 2015

Section 16 of the Cyber Crimes Act makes it an offence for any person to use a computer system to publish information or data presented in a picture, text, symbol or any other form, knowing that it is false, deceptive, misleading or inaccurate, and with the intent to defame, threaten, abuse, insult or otherwise deceive or mislead the public or counselling commission of an offence. The penalty for this offence is a fine, imprisonment or both.

3.9.16 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.

3.9.17 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 extraordinarily draconian and run entirely counter to the notion of a civil service that is transparent, accountable and responsive to public needs.

3.9.18 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 to promote the election of another candidate. The penalty on conviction is imprisonment.

Note that this section is exceptionally 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.

3.9.19 Prohibition on the publication of material concerning genocides or crimes against humanity

Section 19 of the Cyber Crimes Act, Act 14 of 2015 makes it an offence to use a computer system to publish unlawfully, or cause to be published, material which incites, denies, minimises or justifies acts constituting genocide or crimes against humanity. The penalty for this offence, on conviction, is a fine, imprisonment or both.

3.9.20 Prohibition on the publication of criminal defamation

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

Section 50(1)(a)(ii) of the Media Services Act, Act 15 of 2016, makes it an offence to use a media service to publish information which is intentionally or recklessly falsified in a manner which is injurious to the reputation, rights and freedoms of other persons. The penalty, on conviction, is a fine, imprisonment or both.

Section 35 (and section 36 for print media) provides that a person publishes a libel if he or she causes the printing, 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 37 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.

In terms of section 38, the publication of defamatory material is absolutely privileged in some instances. 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 a 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 29 of the Media Services 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 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 published previously 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 concerning 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.

Cyber Crimes Act, Act 14 of 2015

Section 16 of the Cyber Crimes Act makes it an offence for any person to use a computer system to publish information or data presented in picture, text, symbol or any other form, knowing that it is false, deceptive, misleading or inaccurate, and with the intent to defame, threaten, abuse, insult, or otherwise deceive or mislead the public or counselling commission of an offence. The penalty, on conviction, is fine, imprisonment or both.

3.10 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 explicitly designed for use by the media, can and often are used by the media to uncover and publicise information in the public interest.

3.10.1 Access to information

The Access to Information Act, Act 9 of 2016, was enacted to provide access to information in Tanzania and define the scope of information which the public has the right to access. According to the preamble, the Access to Information Act is also intended to promote transparency, accountability of information holders and to provide for other related matters.

In terms of section 2(2), the Access to Information Act applies to:

- ▶ public authorities
- ▶ private bodies registered under any written law which:
 - ▶ utilise public funds
 - ▶ possess information which is of significant public interest.

Part II of the Access to Information Act relates to the Right of Access to Information.

Section 5 provides that every person has the right to access information. However, in terms of section 6(1) of the Access to Information Act, information holders may withhold information where he or she:

- ▶ is satisfied that the information is exempted in terms of section 6(2)
- ▶ determines the disclosure is not justified in the public interest.

Information is exempt from disclosure in terms of section 6(2) of the Access to Information Act if the information:

- ▶ undermines defence, national security and international relations, in terms of section 6(3)
- ▶ impedes the due process of law or endangers the safety or the life of any person
- ▶ undermines lawful investigation being conducted by law enforcement
- ▶ facilitates or encourages the commission of an offence
- ▶ involves the unwarranted invasion of an individual's privacy, other than the individual who made the request
- ▶ infringes lawful commercial interests, including the intellectual property rights of that person or a third party. In terms of section 6(4) this exemption does not apply to a request for information relating to the results of any product or environmental testing and information that reveals a serious public safety or environmental risk

- ▶ hinders or causes substantial harm to the government's ability to manage the economy. In terms of section 6(4), this exemption does not apply to a request for information relating to the results of any product or environmental testing and information that reveals a serious public safety or environmental risk
- ▶ significantly undermines the information holder's ability to give adequate judicial consideration to a matter of which no final decision has been taken and which remains the subject of active consideration. In terms of section 6(4) this exemption does not apply to a request for information relating to the results of any product or environmental testing and information that reveals a serious public safety or environmental risk
- ▶ damages the information holder's position in any legal proceedings or infringes professional privilege;
- ▶ undermines Cabinet records and those of its committees
- ▶ distorts or dramatises records or data of court proceedings before the conclusion of a case.

It should be noted that, in terms of section 6(5) of the Access to Information Act, unless it can be proven otherwise, the information shall be presumed not to be exempt if it has been held for more than 30 years.

Section 14 of the Access to Information Act provides that, if an information holder rejects a request for access to an application, he or she must notify the person requesting the information in writing and must:

- ▶ include the reason for the refusal to provide the information
- ▶ inform the person who requested the availability of review
- ▶ where the decision is because the information does not exist, the notice must state that a thorough and diligent search was done.

In terms of section 18 of the Access to Information Act, any person who receives information must not distort that information. Any person who distorts information commits an offence, the penalty for which is imprisonment.

Section 22 provides that, any person who alters, defaces, blocks, erases, destroys or conceals any information held, to prevent its disclosure, commits an offence; the penalty on conviction is a fine, imprisonment, or both.

Section 19 provides that, any person aggrieved by the decision of an information holder, relating to a request for information, may apply to the head of an institution for review which must be responded to in 30 days. Any person aggrieved by the decision of the head of an institution may appeal the decision to the minister responsible for legal affairs. Note, where the information being requested is under the authority of the minister, the minister ceases to be the appellate and any person may apply to the High Court for review.

In terms of section 23 of the Access to Information Act, a person in the service or employment of any information holder shall not be subject to any legal, administrative or employment-related sanctions for releasing information on wrongdoing such as the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption, dishonesty or maladministration regarding the information holder, or which discloses a serious threat to health, safety or the environment, so long as the person acted in good faith and the reasonable belief that the information was substantially correct.

Section 20 of the Access to Information Act empowers the minister responsible for legal affairs to make regulations for the carrying out of the provisions of the act.

3.10.2 Whistleblower and Witness Protection Act, Act 20 of 2015

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 them to uncover and publicise information in the public interest.

Tanzania passed the Whistleblower and Witness Protection Act (Whistleblower Act) to promote and facilitate reporting of organised crime, corruption, unethical conduct, abuse of office and illegal and dangerous activities. The Act was also passed to provide for the protection of whistleblowers and witnesses against potential retaliation or victimisation and provide for a legal mechanism to reward and compensate whistleblowers and witnesses.

Making a disclosure

Section 4(1) of the Whistleblower Act provides that any person may make a public interest disclosure, to a competent authority if he or she believes that:

- ▶ a crime has been committed, or is about to be committed
- ▶ another person has not complied with the law or is in the process of or is likely to break a law which imposes an obligation on that person
- ▶ the health or safety of an individual or community is endangered, has been or is likely to be endangered
- ▶ in a public institution, there has been, or there is likely to be waste, misappropriation or mismanagement of public resources or abuse of office
- ▶ the environment has been, is being or is likely to be degraded.

Information exempted from disclosure

Section 6 of the Whistleblowers Act exempts certain information from disclosure, and provides that no person is either required or authorised to furnish any information, answer any question, produce any document or information or render any other assistance likely to prejudice:

- ▶ the interest of the sovereignty and integrity of the United Republic of Tanzania
- ▶ the security of the state
- ▶ friendly relations with a foreign state
- ▶ public order, decency or morality or lead to committing an offence
- ▶ disclosure of proceedings of the Cabinet.

Protection of whistleblowers and witnesses

In terms of section 9 of the Whistleblower Act, whistleblowers must be protected and shall not be subjected to criminal or civil prosecution for disclosure if:

- ▶ the disclosure was made in good faith
- ▶ the whistleblower has reasonable cause to believe that the information disclosed is substantially valid
- ▶ the disclosure is made following the provisions of the Whistleblower Act.

Sections 10 and 11 provide a whistleblower must be protected if as a result of a disclosure made following the Whistleblower Act:

- ▶ he or she may be subjected to dismissal, suspension, harassment, discrimination or intimidation by his employer or members of staff
- ▶ his or her life or property, or the life or property of a person close or interpersonal relationship is endangered or is likely to be endangered.

Section 13 provides that, subject to approval from the minister responsible for legal affairs, in consultation with the minister responsible for law, may reward or compensate a whistleblower or witness for a disclosure.

Offences concerning whistleblowers and witness protection

Section 16 of the Whistleblower Act provides that any competent authority that divulges information relating to the identity of a whistleblower commits an offence, the penalty for which, on conviction, is a fine, imprisonment or both. It should also be noted that any competent authority who fails to take action concerning disclosure and as a result, he or she causes loss to a public institution, commits an offence, the penalty on conviction is a fine, imprisonment or both.

Section 17 of the Whistleblower Act provides that any person who knowingly discloses false information commits an offence, the penalty on conviction is a fine, imprisonment or both. Also, if a whistleblower, or any person to whom disclosure is made, discloses that information to a person against whom the disclosure has been made, commits an offence, the penalty on conviction is a fine, imprisonment or both.

Making regulations

Section 15 of the Whistleblower Act empowers the minister responsible for legal affairs to make regulations for carrying out the provisions of the Whistleblower Act.

4 Regulations affecting the media — Tanzania

In this section, you will learn:

- ▷ definition of regulations
- ▷ regulations governing the media generally
- ▷ regulations governing the print media
- ▷ regulations governing online media
- ▷ regulations governing broadcasters
- ▷ regulations governing broadcasting content
- ▷ regulations governing radio frequency spectrum

4.1 Definition of regulations

Regulations are a type of subordinate legislation. They are legal rules 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 parliament having to pass a specific statute thereon. The empowering law will give the minister or a body such as the TCRA power to make regulations, rules or both, on particular matters within the scope of the functions and powers of that minister or body.

4.2 Regulations governing the media generally

Media Services Regulations regulating the media sector generally in Tanzania were published in Gazette Notice No 18 on 3 February 2017 in terms of the Media Services Act 2016.

4.2.1 Appeals relating to decisions made by the Director of Information Services

In terms of section 26(1) of the Media Services Regulations, any person aggrieved by a decision of the Director of Information Services when exercising the powers specified under Part II, Information Services, of the Media Services Act may appeal to the minister responsible for content within 30 days. Such decisions include decisions on licensing of the print media and the placing of government advertising.

4.2.2 Accreditation of the press

The Media Services Act prohibits any person from practising as a journalist without accreditation from the Journalists Accreditation Board (JAB). In terms of section 17 of the Media Services Regulations, the following people require accreditation as a journalist:

- ▶ editors, reporters, freelancers, correspondents, photographers, news producers and radio and television broadcasters working with media houses
- ▶ foreign journalists
- ▶ students pursuing media, mass communication, journalism or a related field
- ▶ members of the public with outstanding service for the media profession.

It should be noted that to be eligible for accreditation as a journalist, a person must have:

- ▶ a diploma or degree in journalism or media-related studies from a recognised institution offering journalism or such related studies
- ▶ a diploma, degree or higher in media-related studies.

It should be noted, as discussed above, the JAB does not yet appear to be established so, while there is regulation governing the accreditation of journalists, it is unclear exactly who, if anybody, is currently accrediting local journalists in Tanzania.

Foreign journalists are accredited in terms of section 20(b) by the submission of the prescribed form to the JAB.

It should be noted, as discussed above, the JAB does not yet appear to be established, so while there is regulation that governs the accreditation of journalists, foreign journalists are still accredited to operate in Tanzania by the National Film Censorship Board.

In terms of section 21, a press card may be granted to a journalist accredited by the JAB under these regulations.

In terms of section 23 the JAB may cancel an issued press card if it is satisfied that a journalist has violated:

- ▶ the professional code of ethics
- ▶ national laws and policies.

In terms of section 23, a press card is generally valid for two years.

The effect of this provision is that journalists have to apply for re-accreditation repeatedly.

4.2.3 Appeals relating to decisions made by the JAB

In terms of section 26(2) of the Media Services Regulations, any person aggrieved by the decision of the JAB when accrediting or withdrawing accreditation may appeal to the minister responsible for content within 30 days. The appellant is required to state his grievance with the decision and provide any documents necessary to enable the minister to understand and determine the matter.

4.3 Regulations governing the print media

4.3.1 Ownership of Print Media

Media Services Regulations, published in Gazette Notice No 18 on 3 February 2017 per the Media Services Act 2016, provides regulations concerning the media sector in Tanzania.

Section 4 of the Media Services Regulations regulates the ownership of print media houses. Section 4(1) provides that any person who intends to own print media must:

- ▶ in the case of a local company or sole proprietor, whether in an individual capacity or jointly, meet the requirements to own print media
- ▶ in the case where the applicant is a foreigner, have a minimum of 51% local ownership.

In terms of section 4(2) of the Media Services Regulations, a print media licensee must notify the Director of Information Services about any change in the shareholding structures. Companies with a foreign shareholder must obtain authorisation from the Director of Information Services before any change in the shareholding structures in terms of section 4(3). The above changes in shareholding are subject to the relevant fees prescribed in the First Schedule of the Media Services Regulations.

In terms of section 10 of the Media Service Regulations, any applicant or licensee for a print media licence must have a physical address in the United Republic of Tanzania and must provide the particulars of that address to the Director of Information Services. A licensee may change the physical address by submitting the prescribed change of the address form and paying the fees prescribed in the First Schedule to the Director.

Section 11 provides that a print media outlet may change its name, or any other particulars by submitting a prescribed application form, the fees prescribed in the First Schedule and other relevant documents to the Director of Information Services and any other relevant authority.

In terms of section 12 of the Media Services Regulations, print media licensees must pay both an annual fee and a licence renewal fee, prescribed for in the First Schedule to the Information Services Department.

4.3.2 Obligations of Print Media licensees

Section 6 of the Media Services Regulations obliges every print media licensee to deliver two printed and electronic copies of every issue of the print media published at his or her own expense, to the Director of Information Services and the National Archives Department, as well as a copy of every supplement.

Section 14 of the Media Services Regulations states that print media licensees are required to provide and maintain any information that the Director of Information Services requires to carry out his functions as provided for in the Media Services Act. The Director has the right to request periodic reports on statistics, other data and any additional information to assist him or her in enforcing the terms of a licence from any print media licensee.

Should the Director believe that a licensee has breached a term of his or her licence, he or she may issue a summons, warning or recommend further action to relevant bodies.

Section 15 of the Media Services Regulations prohibits a print media licensee from assigning, transferring or disposing of any rights or obligations or in any way alienating a licence or any part thereof unless the licensee applies for a new licence or other changes of particulars.

4.3.3 Print media licensing provisions

In terms of section 5(e) of the Media Services Act, the Director of Information Services is empowered to licence print media. Section 7 of the Media Services Regulations provides that the Director may delegate licensing functions to offices responsible for newspaper registration and licensing under his supervision.

Licence applications

In terms of section 8(1) of the Media Services Regulations, any person who intends to own a print media outlet in Tanzania is required to fill in an application form and accompany the form with:

- ▶ a certificate of incorporation or any other legal registration
- ▶ a business plan containing:
 - ▶ vision

- ▶ mission
 - ▶ policy
 - ▶ place and nature of business
 - ▶ *curriculum vitae* and certified copies of academic certificates and names of editors
- ▶ a dummy copy of the intended media layout
 - ▶ the prescribed fee provided for in the First Schedule of the Media Services Regulations.

In terms of section 8(5), if the Director of Information Services believes that the registration of a print media entity requires a bond, he or she may direct such a bond. The amount of such bonds is specified in the First Schedule of the Media Services regulations.

In terms of section 13 of the Media Services Regulations, the Director of Information Services must issue an invoice to successful licence applicants to pay the initial fees before the licence is granted. Should the applicant fail to pay the initial fee within one month of the issuance of the invoice, the Information Services Department may reject the application. The Director may extend the payment period by one month on the request of the applicant who must show good cause for the extension. The payment period may not be extended a second time.

Print media licence renewal

Section 8(3) of the Media Services Regulations provides that any licence granted under the Media Services Act must be renewed annually. In terms of section 8(4), application for renewals must be made to the Director of Information Services and must include:

- ▶ an application for renewal
- ▶ an annual performance report
- ▶ the prescribed renewal fee.

Print media licence suspension and cancellation

Section 9(b) of the Media Services Act empowers the Director of Information Services to suspend or cancel a licence in the event of failure by a licensee to comply with the conditions of his or her licence.

Section 27 of the Media Services Regulations provides that in performing the above function, the Director may:

- ▶ issue a default notice to the licensee and demand a written defence within a specified time

- ▶ summon the licensee to appear before him and make an oral defence.

On receiving the written or oral defence, the Director must then decide on the matter. Should the licensee fail, or refuse, to provide a defence within the prescribed time, the Director may determine the matter without one.

4.4 Regulations governing online media

The Electronic and Postal Communications (Online Content) Regulations, 2020 (Online Content Regulations), published in Gazette No 29 Vol 101 of the 17th July 2020, regulates online content creators and distributors in Tanzania under section 103, Electronic and Postal Communications Act.

4.4.1 Online content Licences

Section 4 of the Online Content Regulations make it an offence for any person to provide online content without a licence issued by the TCRA. The penalty for this offence is a fine, imprisonment or both.

In terms of section 5 of the Online Content Regulations, there are four types of licences available for online content provision in Tanzania. These include:

- ▶ a licence for the provision of predominantly news and current affairs issued to an online content service provider whose content covers news, events and current affairs
- ▶ a licence for the provision of predominantly entertainment content issued to an online content service provider whose content covers music, films, series, plays, drama, comedy, sports and any other related entertainment
- ▶ a licence for the provision of predominantly education and religious content issued to an online content service provider whose content covers religious information and content that aims to educate
- ▶ a simulcasting licence issued to a mainstream broadcasting licensee with national coverage rights.

An application for an online content licence in terms of section 6 must be made to the TCRA in the prescribed form found in the First Schedule of the Online Content Regulations and the payment of the fees prescribed in the Second Schedule. It must be accompanied by the relevant documents determined by the TCRA. A licence is valid for three years. Section 7 provides that the TCRA can either issue a licence or refuse the application request. Reasons must be provided in the event of a refusal.

Section 8 of the Online Content Regulations provides that the TCRA may suspend or revoke an online content licence should it be satisfied that the licensee has contravened the terms and conditions of the licence and must inform the licensee in writing. When an online content licence has been revoked, the licensee must surrender the licence to the TCRA within seven days.

4.4.2 Obligations of online content licensees

In terms of section 9 of the Online Content Regulations, online content licensees are obliged to comply with the terms and conditions of his or her licence and must observe the following:

- ▶ ensure that online content is safe, secure and does not contravene the provisions of any written law
- ▶ consider trends and cultural sensitivities of the general public
- ▶ establish policies or guidelines on the safe use of online content and make it available to online content users
- ▶ use moderating tools to filter prohibited content
- ▶ have mechanisms in place to identify the source of content
- ▶ take corrective measures for objectionable or prohibited content
- ▶ ensure that prohibited content, as set out in the Third Schedule to the Online Content Regulations, is removed immediately on this being ordered by the TCRA. The schedule on prohibited content is detailed and covers the following topics:
 - ▶ sexuality and decency
 - ▶ personal privacy and respect for human dignity
 - ▶ public security, violence and national safety
 - ▶ criminal activities and illegal trade activities
 - ▶ health and public safety
 - ▶ protection of intellectual property rights
 - ▶ respect for religion and personal beliefs
 - ▶ public information that may cause public havoc and disorder
 - ▶ use of bad language and disparaging words
 - ▶ false, untrue or misleading content
- ▶ be responsible and accountable for the information he or she publishes
- ▶ use passwords to protect any user equipment, access equipment or hardware to prevent unauthorised access or use by unintended persons
- ▶ pay regulatory fees
- ▶ not access, store, keep, publish, circulate or broadcast prohibited content
- ▶ cooperate with law enforcement officers in pursuing functions under these regulations.

It should be noted that mainstream content service providers with district or regional content service licenses are prohibited from simulcasting their content using an online platform.

4.4.3 Obligations of online content licensees

In terms of section 12 of the Online Content Regulations, online content licensees whose licence is specifically for online news and current affairs must:

- ▶ adhere to journalism ethics, professionalism and local content requirements
- ▶ submit proof of staff academic qualifications and human resource development plans to the regulator
- ▶ adhere to ownership and corporate obligations provided under the Electronic and Postal Communications Act.

4.4.4 Penalties for online content

In terms of section 21 of the Online Content Regulations, any person who contravenes the provisions of the Online Content Regulations commits an offence and shall, on conviction and where no specific punishment has been provided, be liable to a fine, imprisonment or both.

Where a licensee commits a breach under the Online Content Regulations, the TCRA may subject the licensee to the content committee who may take one or more of the following actions:

- ▶ issue a warning
- ▶ require the licensee to issue an apology to the public, and the victim of the content complained about
- ▶ order removal of the content
- ▶ impose a fine under the Electronic and Postal Communications Act.

4.5 Regulations governing broadcasters

4.5.1 Broadcasting licence provisions

Guidelines and procedures for licensing electronic and postal communications in Tanzania, 2005

The TCRA has made the Guidelines and Procedures for Licensing Electronic and Postal Communications in Tanzania under the Tanzania Communications Regulatory Authority Act, Act No 12 of 2003 (Licensing Guidelines) which sets out various categories of licences.

In terms of section 2.1(iv), a content service licence authorises the provision of

services such as satellite broadcasting, broadcasting terrestrial free-to-air TV, terrestrial radio broadcasting and other electronic media.

In terms of section 2.2(iii) of the Licensing Guidelines, a person granted a Radio Communications and Frequency Spectrum User Licence is authorised to use radio frequency spectrum and own a radio communication station.

Electronic And Postal Communications (Licence Procedures) Rules, 2014

Electronic and Postal Communications (Licence Procedures) Rules, 2014, were published in Gazette No 43 on the 24th October 2014, under the Electronic and Postal Communications Act, 2003. The Licence Procedures regulate the process of applying for a content services licence, other than a Community Content Service Licence.

In terms of section 4 of the Licence Procedures, the TCRA must invite applications for Content Services Licences which require spectrum and the TCRA must announce the invitation for tender. The TCRA must convene an evaluation team to evaluate all tenders submitted and must notify the bidders on the outcome of the tender evaluation in writing, section 5.

Section 6 of the Licence Procedures provides that the TCRA must publish a notice about the bidders in a widely-circulated newspaper, inviting written comments from the public. In terms of section 7, after the publication of the public notice, an applicant will be notified and invited to make a presentation before the TCRA of his or her business plan. In terms of section 8, the names of all qualified applicants must be submitted to the management for approval. The TCRA must then notify successful bidders.

4.6 Regulations governing broadcasting content

4.6.1 Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations, 2018

Broadcasting content is regulated by the Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations, 2018 published Government Gazette No 134 on 16th March 2018 (the Content Regulations). The sheer number of content-related restrictions is too large to itemise here. Suffice it to say that there are dozens of specific content-related restrictions provided for in the Content Regulations which fall into the following broad categories:

- ▶ Restrictions dependant on the nature of the content service that is public, commercial, community or subscription broadcasting services.
- ▶ General programme content requirements applicable to all content service licensees. These include:
 - ▶ prohibitions on:

- › discriminatory content and hate speech based on gender, race, disability and the like
- › content affecting individuals such as intrusions on privacy and defamatory content
- › obscenity, indecency or both
- › blasphemy
- › subliminal messaging
- › false content
- › violent content
- › content unsuitable for children
- › content that encourages the commission of a crime
- › identities of victims of sexual offences
- ▶ positive content requirements:
 - ▶ national identity
 - ▶ local content:
 - › 60% of content broadcast on free-to-air services must be local
 - › 80% of music broadcast on public or commercial content services must be local
 - › 10% of local content must be independently produced
 - ▶ sign language, audio and visual content, particularly regarding news for people with disabilities
 - ▶ educational content, 2% of programming for free-to-air service providers
 - ▶ events of national interest, including sporting and political events. Note that subscription services may not have exclusive rights to events of national interest.
 - ▶ names of programme producers
 - ▶ programme classifications
 - ▶ hourly station identification
 - ▶ electronic programme guide
 - ▶ must carry rules requiring subscription broadcasters to broadcast the programming of public broadcasting services
- ▶ restrictions, requirements or both on specific types of content:
 - ▶ broadcast outside the watershed period that is, between 22h00 to 05h30
 - ▶ children's content

- ▶ news, current affairs, judicial and parliament proceedings, election-related, advertising and infomercials, expressions of personal opinions, controversial issues of public importance, interviews, investigative reporting, live programming
- ▶ languages other than English or Kiswahili
- ▶ requiring programme schedules to be published a month in advance in a newspaper or on the content service's website
- ▶ public emergency-related.

In terms of section 45 of the Radio and Television Broadcasting Content Regulations, content service licensees who contravene any provision of the Content Regulations commit an offence and, where no penalty is expressly provided, shall, on conviction, pay a fine.

Section 48 of the Content Regulations deals with the complaints procedures concerning content.

4.6.2 The Political Party Elections Broadcasts Code, 2020

Broadcasting content related to elections in Tanzania, while briefly covered in the Radio and Television Broadcasting Content Regulations, are regulated in greater detail in the Political Party Elections Broadcasts Code, 2020 (Elections Code), published in Government Notice No 774 on the 18th September 2020, and made under section 15 of the Tanzania Communications Regulatory Authority Act.

The Elections Code applies to electronic media, including broadcast and online media. In many instances, the Elections Code repeats content-related restrictions which have been dealt with above. Requirements not previously dealt with include:

- ▶ News coverage of elections
- ▶ How candidates are to be represented
- ▶ Election results
- ▶ Political debates, including public participation
- ▶ Election broadcast slots
- ▶ Treatment of opinion polls, including a prohibition on broadcasting these within 30 days before polling day
- ▶ Content prohibited from being broadcast until after polls have closed on polling day:
 - ▶ discussion and analysis of election and referendum issues
 - ▶ the result, or purported result, of the voting in a constituency before the close of all the polling stations in that constituency

- ▶ the results of any opinion poll
- ▶ any political advertisements, political broadcasts or any other election programming produced by, or on behalf of a candidate, political party or other person or entity
- ▶ the results of previous polls
- ▶ exit polls
- ▶ Accuracy of reporting on election results and duty to inform the public of these as they become available
- ▶ Political advertisements
- ▶ Political party broadcasts
- ▶ Sales of airtime.

In terms of section 20 of the Elections Broadcasts Code, complaints must be submitted to content service licensees within 48 hours of the airing the material. Where a complainant is not satisfied with the decision of a content service licensee, he or she can lodge the complaint with the content committee of the TCRA within 48 hours of the decision.

In terms of section 22 of the Elections Broadcasts Code, a political party or candidate aggrieved by the decision of the TCRA may appeal against the decision of TCRA to the Fair Competition Tribunal under the provisions of section 45 of the Tanzania Communications Regulatory Authority Act.

4.7 Regulations governing radio frequency spectrum

Radio Frequency spectrum is regulated under the Electronic and Postal Communications Act by the Electronic and Postal Communications (Radio Communications and Frequency Spectrum) Regulations, 2011 (Radio Regulations) published in Gazette No 424 on the 9th December 2011.

No person may use radio frequency spectrum without a valid licence granted by the Tanzania Communications Regulatory Authority (TCRA). Licensed radio frequency spectrum may not be leased or transferred to a third party.

Section 40 of the Radio Communications and Frequency Spectrum Regulations makes it an offence for any person to contravene a provision of the regulations. The penalty on conviction is a fine, imprisonment or both.

5 Media self-regulation — Tanzania

In this section, you will learn:

- ▷ self-regulatory bodies
- ▷ the Media Council of Tanzania
- ▷ guidelines for media owners and publishers
- ▷ code of ethics for media managers and editors
- ▷ key provisions of the MCT codes of ethics common to all media practitioners
- ▷ media gender code of ethics

5.1 Self-regulatory bodies

There are ostensibly two self-regulatory bodies in Tanzania. The first is the Independent Media Council (IMC) which is a statutory body established by the Media Services Act, Act 12 of 2016 (and dealt with above). The second is the Media Council of Tanzania (MCT) which is a voluntary body. It should be noted that the IMC is yet to be established by the minister and so this section focuses solely on the MCT.

5.2 The Media Council of Tanzania

The MCT, a self-regulatory body, was established in 1995 and developed a Code of Ethics for Media Professionals and a Professional Code for Journalists, which was updated in 2016 and is enforced by the MCT.

The MCT has developed various codes of ethics for the different stakeholders in the media; these include codes of ethics for:

- ▶ media owners and publishers
- ▶ media managers and editors
- ▶ broadcasters
- ▶ press photographers, video producers and producers
- ▶ reporters.

Many of the provisions in the various codes of ethics are common to broadcasters, press photographers, video producers, producers and reporters. These provisions are combined under a single heading relating to media practitioners.

5.3 Guidelines for media owners and publishers

The code of ethics provides that media owners 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
- ▶ clearly state professional and non-professional interests and ambitions concerning the investment and the media organ
- ▶ allow mechanisms that monitor and respond to public opinion and concern concerning the media output and service to be established
- ▶ avoid sell-out attitudes, such as summoning the manager before a disgruntled party for redress
- ▶ carefully consider gifts and offers that may compromise the policy, objectives and integrity of the enterprise
- ▶ suggest any feelings concerning specific issues to the manager without coercion or intimidation.

5.4 Code of ethics for media managers and editors:

The code of ethics provides that media managers and editors should:

- ▶ ensure that all workers understand the organisation's objectives and how best to achieve them
- ▶ motivate personnel and plan incentives for job satisfaction
- ▶ remunerate all work done by employees fairly
- ▶ ensure that all employees are allowed to enhance their professional competence by 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 the outcome of an action for defamation to which it has been a party fairly and accurately
- ▶ 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 in any sexual or other criminal offence
- ▶ ensure that material that would identify victims of sexual assault is not published
- ▶ ensure that derogatory references to a person's creed or racial origin are not published
- ▶ ensure that neither themselves nor anyone else 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 and news
- ▶ avoid violations of individual privacy and human dignity, unless necessitated by the public interest
- ▶ not use material without giving due credit to the source
- ▶ not open any underprivileged person or community to ridicule
- ▶ not, as a rule, disclose sources of information given in confidence.

5.5 Key provisions of the MCT codes of ethics common to all media practitioners

The provisions of these codes include:

5.5.1 Truth and accuracy

Seek to keep the good faith of readers by assuring them that the news is accurate, unbiased and that all sides are presented fairly. Always provide a truthful and comprehensive account of events fairly and honestly. Find the subjects of news stories and allegations and allow them to respond as a matter of right. Distinguish clearly between 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.

5.5.2 Right of reply

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

5.5.3 Privacy

Publication or broadcast of information, including pictures, about the private lives or concerns of individuals without consent, is acceptable only if a serious, legitimate public interest or where the material concerned ought to be published in the public interest, outweighs 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 on in this, and other clauses of the codes include:

- ▶ detection and exposure 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.

5.5.4 Harassment and pursuit

Avoid undercover and surreptitious methods to obtain information from sources, except where conventional means have failed, and the information is of great public interest. When used, it must be explained as part of the story. Avoid seeking interviews, information or pictures by intimidation, harassment or persistent pursuit. Do not invade an individual's 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.

5.5.5 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 and, as a rule, use gender-sensitive language. Avoid identifying people by ethnicity or colour and be sensitive to the rights and dignities of the disabled. Avoid bringing someone's sexuality into the open.

5.5.6 Children

Avoid interviewing or photographing a child under the age of 18 in the absence of, or without the consent of, a parent or other adult responsible for the child, such as a teacher.

Publication of material about a child's private life without consent 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.

5.5.7 Victims in sexual cases

Avoid identifying victims of sexual assaults. Avoid identifying children under the age of 18 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.

5.5.8 Sexual relations and conduct

Avoid depictions of nudity and explicit sex.

5.5.9 Crime

Avoid glamourising crime and antisocial behaviour involving violence; issue warnings whenever a factual scene includes violence.

5.5.10 Innocent relations

Avoid implicating families of criminals in wrongdoing or guilt by association. Avoid identifying relatives of criminals unless the connection is directly relevant to the matter being reported.

5.5.11 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 dignified manner.

5.5.12 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 bereaved,

including pressurising them for interviews. Treat the dead with respect; close-ups should be avoided.

5.5.13 Advertising

Advertisements should not promote social disharmony. Advertisements and sponsored material must be distinguishable from general editorial and programming matter, where necessary by being clearly labelled in print or on-air as 'advertisement' or 'advertising feature'.

5.5.14 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.

5.5.15 Confidential sources

Never, as a rule, disclose sources of information given in confidence unless required to do so by a legal process. All media journalists have a moral obligation to protect confidential sources of information and to respect confidences knowingly and willingly accepted.

5.5.16 Withholding information

Never suppress useful information unless it is in the public interest. The government may ask you to withhold publication of a story until it has been investigated and acted on.

Exercise caution but do not hold stories back that protect the government as opposed to the country.

5.5.17 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.

5.5.18 Freedom of the press

Defend the freedom of the media at all costs. 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.

5.5.19 Online content and materials

When handling online content, media managers and editors must verify its context and validity, even when a broadcasting content licensee has verified it.

When traditional media outlets use online content, full identification of the author should be indicated in the story.

Traditional media outlets should give full acknowledgement for all online content used.

When used in traditional media, all online content should be bound by industry laws and regulations guiding the media outlet.

Media managers and editors should take full responsibility for the consequences resulting from online content used by their outlets.

5.6 Media gender code of ethics

The Gender Code of Ethics governs the conduct and practice of all media practitioners, media owners, publishers and media institutions that are members of the MCT and should be read in conjunction with the Media Council of Tanzania Professional Code of Ethics for Journalists.

5.6.1 Accuracy and fairness

Media houses must always give fair and equal space to men and women in their reporting.

Broadcasters shall increase the number of programmes on gender-specific topics as well as those that challenge gender stereotypes.

In their coverage of politics, economic issues or war, members must ensure that women's voices and views are heard.

Media houses must put training programmes in place to improve the knowledge of current and emerging gender issues and its various manifestations in their practitioners.

Media practitioners must be encouraged to probe and research gender issues continually to keep themselves abreast of current debates on the subject.

5.6.2 Balance, credibility and impartiality

Media houses shall take proactive steps to seek out the views of both women and men equally, regardless of their social standing.

Media practitioners shall always strive to be impartial and avoid publicity associating themselves with partisan statements or organisations.

Members shall increase programmes on gender-specific topics and encourage more women to become involved in the production of such programmes.

MCT recognises that women are not a homogenous group. Media houses will be encouraged to give inclusive coverage of all women that goes beyond differences

of class, social standing and whether they are from rural or urban areas.

5.6.3 Accountability

Journalists must hold all policymakers accountable for ensuring gender equality in their areas of work following national, regional and international commitments.

The MCT must use its mandate as a self-regulatory council for media to collaborate with media training institutions to ensure that gender is mainstreamed in their curricula.

5.6.4 Gender stereotyping

Media houses must desist from reporting stories that advocate hatred or incite violence based on gender, which could constitute an incitement to cause harm. Media houses shall, therefore, be required to refrain from:

- ▶ promoting pornography and violence against women and children
- ▶ depicting women as helpless or deserving victims of violence and abuse, unless the violence is integral to the story
- ▶ degrading or exploiting women as helpless victims of violence and abuse
- ▶ degrading or exploiting women and undermining their positive role and position in society
- ▶ reinforcing gender oppression and stereotypes
- ▶ publishing stories that might incite violence and hatred based on gender and broadcasting or publish material that glamourises violence against women.

The media has a mandate to report on all issues as thoroughly and accurately as possible. However, in pursuit of this goal, media houses shall be required to balance harm and discomfort with alternatives that maximise the goal of telling the truth.

Broadcasters shall not broadcast material, which judged in context, contains a scene or scenes, simulated or real, of any of the following:

- ▶ a person who is, or is depicted as being, under the age of 18 years, participating in sexual conduct or a lewd display of nudity
- ▶ explicit violent sexual conduct
- ▶ bestiality
- ▶ explicit sexual conduct which degrades a person in the sense that it advocates a particular form of hatred based on gender and which constitutes incitement to cause harm.

5.6.5 Language

Media houses shall prohibit the use of sexist language in their coverage.

Media practitioners shall respect the dignity of women and desist from making derogatory and discriminatory references to people based on gender.

When editing and selecting facts, headlines, news highlights, pictures, audio and graphics, media houses shall not oversimplify and report gender issues out of context.

5.6.6 Marketing and advertising

Media houses should ensure that consistent standards are applied between advertising and editorial content.

Gender stereotyping or negative gender portrayal should not be permitted in advertising.

5.6.7 Gender and sensitivity in the workplace

Media houses are encouraged to incorporate gender balance in their recruitment and selection policies to ensure equitable representation of women at all levels of decision making.

Media houses are encouraged to ensure that their employees have access to training and inclusive mentoring programmes for both female and male staff, with particular attention to female staff.

Media houses should be encouraged to adopt policies that discourage sexual harassment.

Media houses should put in place career path-planning, capacity-building, fast-tracking and promotion policies to ensure that both female and male employees have equal opportunities to specialise in reporting any beat in the newsroom.

6 Case law and the media — Tanzania

In this section, you will learn about:

- ▷ The definition of common law
- ▷ The right to freedom of expression

6.1 Definition of common law

The common law is judge-made. It is made up of judgments handed down in cases adjudicated on disputes brought by people, whether natural (individuals) or juristic (for example, companies or government departments). In common law legal systems such as in Tanzania, judges are bound by the decisions of higher courts and also by the rules of precedent, which require rules laid down by the court in previous cases to be followed unless they were wrongly decided. Legal rules and principles are, therefore, decided on in an incremental, case-by-case basis.

In this section, we focus on a case that is not a case from the Tanzania court system but is a judgment from an international, regional court, namely the East African Court of Justice. We include it because, although its decisions are not binding, in Tanzania, its decisions have strong persuasive value and because of the importance of the pronouncements regarding the restrictions on freedom of expression. It is noteworthy that the case was brought by, among others, the self-regulatory Media Council of Tanzania.

6.2 The right to freedom of expression

The right to freedom of expression is protected under the Constitution of Tanzania in terms of article 18. However in the case of the *Media Council of Tanzania and Others v the Attorney General of the United Republic of Tanzania [Case No 2/2017]*⁸ in the East African Court of Justice, which was decided on 28th March 2019, the MCT, the Legal Human Rights Centre and the Tanzania Human Rights and Defenders Coalition challenged the Media Services Act, Act 12 of 2016. The human rights groups argued that the Media Services Act placed an unjustified restriction on the right to freedom of expression provided for in the African Charter on Human and Peoples' Rights which Tanzania has committed to abide by in the Treaty for the Establishment of the East African Community.

The MCT argued that there were numerous aspects of the Media Services Act which violated the rights to freedom of expression, including:

- ▶ the restriction, without reasonable justification, on the types of news or content the media could distribute
- ▶ the introduction of mandatory accreditation for journalists and the power to withdraw accreditation by the Journalist's Accreditation Board
- ▶ the criminalisation of defamation, false news and seditious statements
- ▶ the conferring of absolute authority to the minister to prohibit the importation of publications and sanction media content.

The Attorney General argued that the criminal offences and the powers given to the minister did not violate freedom of expression, given that the right to freedom of expression is not absolute. Additionally, the Attorney General argued that the accreditation requirements placed on journalists provide obligations under which media houses must conduct themselves and serves as an oversight mechanism for

the journalism profession. It should be noted that the Attorney General argued the Media Services Act was justifiable in that it sought to give effect to the protection of the right of freedom of expression provided for in article 18 of the Tanzanian Constitution.

In making its judgment, the court found that the following sections of the Media Services Act violate the Treaty for the Establishment of the East African Community:

- ▶ many sub-sections of section 7(3), relating to content obligations placed on media houses
- ▶ section 19, relating to the accreditation of journalists
- ▶ section 20, relating to press cards
- ▶ section 21, relating to the journalists roll
- ▶ section 35, relating to defamation
- ▶ section 36, relating to defamation in the print media
- ▶ section 37, relating to the definition of unlawful publication
- ▶ section 38, relating to absolute privilege
- ▶ section 39, relating to conditional privilege
- ▶ section 40, relating to offers of amendment for defamation
- ▶ section 50, relating to offences concerning media services
- ▶ section 52, relating to seditious intention
- ▶ section 53, relating to seditious offences
- ▶ section 54, relating to publications likely to cause fear and alarm
- ▶ section 58, relating to the powers to prohibit the importation of publications
- ▶ section 59, relating to offences concerning publications.

It should be noted that the court found that both sections 13 and 14 of the Media Services Act, relating to the powers and functions of the Journalists Accreditation Board, were following the Treaty for the Establishment of the East African Community.

Although the East African Court does not have jurisdiction in Tanzania, and this judgment cannot be used to void any of the provisions of the Media Services Act, the judgment is important. The decision of the court places pressure on the Tanzanian Government to repeal or amend those provisions that have been declared in contravention of the Treaty for the Establishment of the East African Community to meet the requirements of the international treaties they have promised to uphold.

7 The media and the constitution — Zanzibar

In this section, you will learn:

- ▷ the definition of a constitution
- ▷ the definition of constitutional supremacy
- ▷ the definition of a limitations clause
- ▷ constitutional provisions that protect the media
- ▷ constitutional provisions that might require caution from the media or might conflict with media interests
- ▷ key institutions relevant to the media
- ▷ how rights are enforced under the constitution
- ▷ the ‘three branches of government’ and ‘separation of powers’
- ▷ weaknesses in the constitution that ought to be strengthened to protect the media

7.1 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 Zanzibar, 1984, sets out Zanzibar’s founding values and principles in its preamble and other provisions. For the media, the following values and principles on which Zanzibar is said to be founded are particularly important and are summarised below. It is important to note that many provisions of the Tanzania Constitution have been adopted by Zanzibar, albeit with different numbering.

From the preamble:

freedom, justice, fraternity and concord ... can only be realised in a democratic society in which the Executive is accountable to a House of Representatives composed of elected members and representatives of the people and also a judiciary which is independent and dispenses justice without fear or favour thereby ensuring that all human rights are preserved and protected and that the duties of every person are faithfully discharged.

- ▶ *Article 8, Fundamental Objectives of the Government:* Article 8 provides that it is the duty and responsibility of government, all its organs and all persons or authorities exercising executive, legislative or judicial functions, to observe the principles of independence, justice and peace.
- ▶ *Article 9, The Government of the People:* Article 9(1) provides that Zanzibar is a state that adheres to the principles of democracy and social justice and accordingly Article 9(2) provides that:
 - ▶ sovereignty resides in the people
 - ▶ the primary objective of the government shall be the welfare of the people
 - ▶ the government shall be accountable to the people
 - ▶ the people shall participate in the affairs of government in accordance with the constitution.
- ▶ *Article 10, Objectives of the Constitution:* Article 10 provides that the objectives of the Government of Zanzibar are to promote unity, development and social welfare of the people of the Zanzibar and it is the Revolutionary Government of Zanzibar's duty to ensure:
 - ▶ all citizens have an equal opportunity to exercise:
 - › freedom of movement
 - › the rendering of services to all
 - › the right to live anywhere in Zanzibar
 - ▶ the eradication of corruption and abuse of office against the public by a person holding public office
 - ▶ the national economy is managed and controlled in accordance with the principles and objectives laid down in the Constitution of Zanzibar
 - ▶ that, in accordance with the constitution, the economy is planned and promoted in a balanced and integrated manner, economic activities are not conducted in a manner capable of resulting in the concentration of wealth and major means of production in the hands of a few individuals or particular groups
 - ▶ that in the implementation of the policy:

- › every citizen is treated equally in terms of justice
- › every citizen is accorded equal responsibility and opportunity in accordance with the law
- › human dignity and other human rights are respected and cherished
- › freedom, absence of favouritism, the impartiality of the judiciary and opportunity of access to courts of law is guaranteed and respected
- ▶ that policy is directed to ensure every person has access to:
 - › adequate health care
 - › equal opportunity to adequate education
 - › equal opportunity to work
- ▶ that the elderly, sick, children and the disabled are assisted in earning a living
- ▶ that all posts in public offices are for the benefit of the public and those who have responsibilities of public office are directly accountable to the public or the House of Representatives
- ▶ that all government organs adhere to the international treaties on human rights and good governance.

It is important to note that articles 8, 9 and 10 are in Chapter Two of the Constitution of Zanzibar, headed Fundamental Objectives and Directive Principles of the Revolutionary Government of Zanzibar. Article 10A of the constitution specifically provides that the provisions of that chapter shall not be enforced by any court. All courts in the country shall have no power to decide any matter either to do or not to be done by any person or authority or law or any judgment which is in accordance with the provisions of that chapter. The effect of this is that no one can be held to account for failure to comply with the founding principles enunciated in Chapter Two.

7.2 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 specific 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 because it is unconstitutional.

The Constitution of Zanzibar makes provisions for constitutional supremacy in article 4. Article 4 provides that the Constitution of Zanzibar shall have the force of law throughout Zanzibar and, if any legislation is found to conflict with the constitution, the constitution shall prevail. That law shall be null and void to the extent that it conflicts with the constitution.

7.3 Definition of a limitations clause

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. Governments require the ability to limit rights 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 Zanzibar makes provision for two types of legal limitations on the exercise and protection of rights contained in Chapter Three, Protection of Fundamental Rights and Individual Freedom, namely, general limitations and internal limitations.

7.3.1 General limitations

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, provided this is done in accordance with the constitution.

One can find the general limitations clause applicable to Chapter Three, Protection of Fundamental Rights and Individual Freedom, in article 24 of the Constitution of Zanzibar, headed Limitations to the Rights and Freedoms and Safeguard to the Rights and Obligations.

Article 24(1) of the Constitution of Zanzibar, provides that the human rights and freedoms set out in the constitution, shall not be exercised by a person in a manner that causes interference with, or curtailment of, the rights and freedoms of other persons, and can be limited by the law enacted by the House of Representatives if that limitation is necessary and agreeable in the democratic system. It should be noted that such limitations may not include:

- ▶ a limitation on the right not to be tortured inhumanely punished or humiliated
- ▶ a limitation of the foundation of the right in question.

Additionally, limitations may not bring about more harm to society than is already present.

It should be noted that article 24(2) provides that any person who alleges that any provisions of this part of Chapter Three, or in any law concerning his right or duty owed to him has been, is being or is likely to be violated by any person anywhere in Zanzibar, may institute proceedings for redress in the High Court. The High Court has the power to declare and order compensation to any concerned person.

Article 25(2) provides that the provisions of Chapter Three are intended to enable the preservation of the said rights and freedoms in accordance with prescribed

limitations in respect of those rights and freedoms as provided for in the relevant articles to ensure that the enjoyment of those rights and the individual freedoms does not infringe on the rights and freedoms of others or the national interest in general.

The general limitations clause is extremely problematic because of the very wide grounds on 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, basic rights can be limited. However, as mentioned above, article 24(2) does provide a measure of recourse via the High Court.

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

7.3.2 Internal limitations

The Constitution of Zanzibar also has several so-called internal limitations. These are limitations to specific rights and are dealt with below concerning the particular rights to which they apply.

7.4 Constitutional provisions that protect the media

The Constitution of Zanzibar contains several important provisions in Chapter Three, Protection of Fundamental Rights and Individual Freedom, 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.

7.4.1 Freedom of expression

The most important section that protects the media is article 18, which sets out several detailed and important provisions protecting freedom of expression. Article 18 provides that:

Every person:

- ▶ has freedom of opinion and expression of his ideas
- ▶ has the right to seek, receive, disseminate or both, information, regardless of national boundaries
- ▶ has the freedom to communicate and protection from interference with his or her communication
- ▶ has a right to be informed of various important events of life and activities of

the people and also of issues of importance to society at all times.

These provisions need some explanation.

The rights and freedoms apply to every person and not just to certain people, such as citizens. Hence, every person, 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 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, the press or both, specifically mentioned, although it is implied in the right to freedom of expression.

7.4.2 Freedom of association

Article 20(1), grants every person the freedom to assemble, associate and cooperate with other persons freely and peacefully and also to express views publicly, form and join associations or organisations formed for purposes of preserving or furthering his beliefs or interests or any other interests.

The right provides protection for journalists to form organisations, including trade unions. It also provides protection of people to create media houses and for media houses to form self-regulatory bodies, press associations and the like. An interesting aspect of this right is that it includes the right to express views publicly, supporting the right to freedom of expression.

It is important to note that article 20 is a right which is subject to an internal limitation which provides that legislation that limits the right in section 20(1) is nonetheless lawful if it deals with:

- ▶ the defence and security of citizens, health aspects and those of society
- ▶ the preservation of rights and freedoms of other persons
- ▶ government officials, military personnel or any other persons appointed of their free will.

7.4.3 Privacy and personal security

Article 15(1), headed Right to Privacy and Personal Security 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, SMS, mail and telephone conversations) is an important right for working journalists.

Note further that this right is subject to an internal limitation provided in article 15(2) which provides that the state must lay down procedures and circumstances under which this right may be encroached on. This is, of course, so broadly framed that the right is can be limited by almost any legislation, which undermines the nominal supremacy of the constitution.

7.4.4 Freedom to participate in public affairs

A fairly uncommon right is provided for in article 21(2) of the Zanzibar 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 or her, his or her wellbeing 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 critical 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 important 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 supports the need for a free press.

7.4.5 Provisions regarding the functioning of parliament

There are provisions of the Constitution of Zanzibar, apart from the rights discussed above, which are important and which assist the media in performing its functions. Article 86 of the Zanzibar Constitution is headed The House to Enact Law. In brief, article 86(3) provides that members of the House of Representatives in the due discharge of their responsibility in the House and anywhere else shall:

- ▶ have immunity from criminal charges or civil suits
- ▶ have immunity in respect of what they discuss
- ▶ not be arrested in the course of carrying out their responsibilities.

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

7.5 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 Zanzibar can be used against the media. Several of these exist.

7.5.1 Right to privacy

The right to privacy in article 15 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 and so on. The media has to be careful in this regard and should be aware that there are always boundaries 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.

We have dealt with the internal limitations on privacy rights elsewhere in the chapter.

7.5.2 Fundamental duties

Article 25(1) of the Constitution of Zanzibar provides that every person has the right and duties to enjoy fundamental human rights and personal freedoms provided that personal freedom shall be exercised in a manner that neither infringes on the rights and freedoms of others nor the public interest.

This can be used against journalists either by individuals claiming their rights and freedoms have been infringed by a journalist in ordinary performance of his or her duties, or else on the determination that the journalist has acted against the public interest. It should be noted that the constitution does not indicate who determines what is against the public interest.

7.6 Key institutions relevant to the media

There are two important institutions concerning the media that are established under the Constitution of Zanzibar, namely, the judiciary and the Judicial Service Commission. Another important institution, the Commission for Human Rights and Good Governance, is established in terms of the Constitution of the United Republic of Tanzania but does not have jurisdiction in Zanzibar.

7.6.1 The judiciary

The Constitution of Zanzibar

Chapter Six of the Constitution of Zanzibar is titled The Judiciary. Part One of Chapter Six provides for the establishment, composition and jurisdiction of the

High Court of Zanzibar. Article 93(1) of the Constitution of Zanzibar establishes the High Court of Zanzibar as the superior court of record with unlimited jurisdiction on criminal and civil cases and other powers as may be conferred in accordance with the Constitution of Zanzibar or any other law. Article 93(2) provides that, the High Court shall comprise the Chief Justice and not less than two judges who are referred to as High Court Judges.

In terms of article 94 of the Constitution of Zanzibar, the Chief Justice and other judges of the High Court of Zanzibar are appointed by the president of Zanzibar after consultation with the Judicial Service Commission.

Article 94(3) provides the required qualifications for appointment as a judge or acting judge of the High Court of Zanzibar. These include:

- ▶ holding a law degree from a recognised university or institution
- ▶ being an advocate of Zanzibar or Tanzania for not less than seven years
- ▶ being a judge of a similar court with civil and criminal or appellate jurisdiction in Tanzania or any other place in the commonwealth
- ▶ having a combined period of experience of not less than seven years as an advocate or a judge in Tanzania or Zanzibar.

Article 99 of the Constitution of Zanzibar provides that the Appellate Court of the United Republic of Tanzania is empowered to hear appeals from the High Court of Zanzibar except in cases relating to:

- ▶ the interpretation of the Constitution of Zanzibar
- ▶ matters of Islamic law which began at the Khadi's Court (a religious or Sharia court)
- ▶ any other matters mentioned in the Constitution of Zanzibar or by any other law enacted by the House of Representatives.

Part Three of Chapter Six of the Constitution of Zanzibar is titled Other Courts. Article 100 provides that the House of Representatives may establish other courts that are subordinate to the High Court of Zanzibar with the powers and jurisdiction as provided for by law. It should be noted that, in terms of article 59 of the Constitution of Zanzibar, the president of Zanzibar may:

- ▶ pardon any person convicted of any offence
- ▶ grant temporary or permanent suspension of execution of any sentence handed down by any court;
- ▶ reduce any sentence handed down to any person in respect of an offence.

The Constitution of the United Republic of Tanzania

It is important to note that article 125 of the Constitution of the United Republic 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.

It is crucial 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. Part IV of Chapter Five of the Constitution of Tanzania titled The High Court of Zanzibar provides in article 114 that no provision of Chapter Five of the Constitution of Tanzania prevents the establishment or continuance of the High Court of Zanzibar or any of its subordinate courts.

7.6.2 The Judicial Service Commission

The JSC for Zanzibar is a constitutional body established in terms of article 102 of the Constitution of Zanzibar. Article 102A sets out the main functions of the JSC for Zanzibar. These include:

- ▶ advising the president of Zanzibar on the appointment of the Chief Justice
- ▶ advising the president of Zanzibar on appointments of judges of the High Court.

Article 103 provides additional functions of the JSC for Zanzibar, these include:

- ▶ the appointment and discipline of registrars of the High Court, Regional District and subordinate court magistrates, the office of the Khadi and other officers of the courts as prescribed by the House of Representatives
- ▶ establishing committees to implement its functions.

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

In terms of article 102(1), the JSC is made up of:

- ▶ the Chief Justice appointed by the president of Zanzibar
- ▶ one judge of the High Court appointed by the president of Zanzibar
- ▶ one retired Judge of the High Court or Appellate Court of Tanzania appointed by the president of Zanzibar
- ▶ one advocate appointed by the president of Zanzibar on the recommendation of the Zanzibar law society
- ▶ the Attorney General

- ▶ the Chief Khadi
- ▶ any other person whom the president of Zanzibar sees fit to appoint.

7.6.3 The Commission on Human Rights and Good Governance

The Commission for Human Rights and Good Governance (HRGG Commission) is an important organisation concerning 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 concerning 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 concerning 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 to promote and enhance conciliation among persons and various institutions appearing before the HRGG Commission.

It is important to note that, in terms of article 130(6) of the Constitution of Tanzania, the HRGG Commission has jurisdiction over both the Governments of the United Republic and Zanzibar. However, the HRGG Commission may not undertake activity concerning the president or the 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 of sentences
- ▶ any other matter mentioned in law.

This last provision is troubling as it 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 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, with which it is bound to comply. 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.

7.7 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 24(2) provides that any person who alleges that any provisions of Chapter Three protecting fundamental rights and individual freedom or in any law concerning his or her rights or duties owed to them has been or will be violated by any person anywhere in Zanzibar may institute proceedings for redress in the High Court. The High Court has the power to order compensation to any concerned person.

7.8 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.

7.8.1 Branches of government

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

The executive

The Constitution of Zanzibar

Chapter Four of the Constitution of Zanzibar provides for the Executive of Zanzibar. Article 51 provides that the authority of the Government of Zanzibar is vested in the president. The president may exercise the authority of the government directly or by delegating the authority to other leaders subordinate to him or herself. It should be noted that article 52 provides that the president is not obliged to take the advice given to him or her by any person in the performance of his duties.

It should be noted that any person holding office in the Revolutionary Government of Zanzibar does so at the pleasure of the president.

Article 26(1) of the Constitution of Zanzibar provides that the president of Zanzibar is the head of government of Zanzibar and Chairman of the Revolutionary Council. In terms of article 26(2), a person is eligible to be president if he or she:

- ▶ was born in Zanzibar
- ▶ is at least forty years of age
- ▶ has the necessary qualifications to be elected as a member of the House of Representatives
- ▶ is a member and a candidate nominated by a political party duly registered in accordance with the Political Parties Act, 1992.

In terms of article 28 of the Constitution of Zanzibar, the term of office of the president of Zanzibar is five years, and a president is eligible for one additional term of five years.

Article 39 of the Constitution of Zanzibar provides that there shall be a chief minister for Zanzibar appointed by the president from the members of the House of Representatives. The chief minister is the principal advisor to the president in the execution of his functions and shall have authority over the control, supervision and execution of the day-to-day functions and affairs of the Revolutionary Government of Zanzibar, and is the leader of government business of the Revolutionary Government of Zanzibar in the House of Representatives.

Article 42 provides that the president of Zanzibar is empowered to establish ministries of the Revolutionary Government of Zanzibar. The ministers for the different ministries are appointed from the House of Representatives by the president of Zanzibar in consultation with the chief minister.

Article 43 provides that a Revolutionary Council comprising the president of Zanzibar, chief minister, ministers and other members the president deems fit, is established. The members of the Revolutionary Council are appointed by the president of Zanzibar from among the members of the House of Representatives. The Attorney General shall attend the meetings of the Revolutionary Council and has the rights of a member of the Revolutionary Council.

The functions of the Revolutionary Council include:

- ▶ assisting and advising the president on all matters relating to the Revolutionary Government of Zanzibar
- ▶ coordinating the functions of the president, chief minister and the ministries of the Revolutionary Government of Zanzibar in the exercise of their functions. The Revolutionary Council shall collectively be responsible to the House of Representatives and the people in general regarding all matters implemented on the orders of the president, the chief minister or any other minister in the execution of his or her functions.

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

The Constitution of the United Republic of Tanzania

Chapter Four of Constitution of Tanzania makes provision for the Revolutionary Government of Zanzibar, the Zanzibar Revolutionary Council and the House of Representatives of Zanzibar. The provisions of the Zanzibar Constitution on these matters replicate those of the Constitution of Tanzania, and we do not repeat them here.

The legislature

The Constitution of Zanzibar

Chapter Five of the Constitution of Zanzibar titled The House of Representatives provides for the legislature of Zanzibar. Article 63(1) provides that the Legislative Council consists of two parts, the president of Zanzibar and the House of Representatives. In terms of article 63(2) any matter that requires a decision by both parts of the House of Representatives in accordance with Constitution of Zanzibar, the matter shall not have a force of law unless it is decided or done by both the members of the House of Representatives and the president of Zanzibar.

Article 64 of the Constitution of Zanzibar establishes the House of Representatives, which consists of:

- ▶ 120 elected members, elected in terms of article 65 in which one member of the House of Representatives is elected for every constituency of Zanzibar
- ▶ ten members nominated by the House of Representatives and appointed by the president of Zanzibar pursuant to article 66, it should be noted that not less than 2 of the nominated members must be appointed in consultation with the opposition leader in the House of Representatives or with other political parties if there is no opposition leader
- ▶ 30% of the members of the House of Representatives must be female in accordance with article 67
- ▶ all regional commissioners appointed in the regions of Zanzibar pursuant to article 61
- ▶ the attorney general pursuant to article 55(3).

Article 68 of the Constitution of Zanzibar provides that a person is qualified to be a member of the House of Representatives if that person:

- ▶ is a Zanzibari who has reached the age of 21
- ▶ is registered or is qualified to be registered in an election constituency as a voter in an election for a member of the House of Representatives
- ▶ can read, or in the case of impaired vision or other physical infirmity, is capable of speaking Kiswahili
- ▶ is a member and candidate proposed by a political party registered in terms of the Political Parties Registration Act, 1992
- ▶ is not disqualified from contesting elections.

Article 69 provides that a person is disqualified from being elected as a member of the House of representatives if he or she:

- ▶ has citizenship of another country
- ▶ is mentally unfit as determined by the High Court of Zanzibar
- ▶ is not a member and candidate nominated by a party
- ▶ has been convicted of a criminal offence and sent to an educational centre or prison in Tanzania for six months or more for election offences during the preceding five years
- ▶ is the Chairman of the Revolutionary Council.

In terms of article 78 of the Constitution of Zanzibar, legislative power is vested in the House of Representatives by passing bills in the House of Representatives. Where a bill is passed, it must be sent to the president of Zanzibar for assent. Once

assented to by the president, the bill becomes law following its publication in the official Gazette.

In terms of article 79 of the Constitution of Zanzibar, when a bill is presented to the president of Zanzibar for assent, he or she may either assent or withhold assent. In the event that assent is withheld, the bill must be returned to the House of Representatives together with a statement of the reasons. If a bill is returned to the House of Representatives, it may not be returned to the president for assent before six months have passed except in cases where two-thirds of the House of Representatives have voted to return the bill to the president for assent. If a bill is voted to be returned early to the president for assent by two-thirds of the House of Representatives, he or she must either assent to the bill within 21 days of it being returned, or else dissolve the House of Representatives.

Amendments of the Constitution of Zanzibar may be passed by the House of Representatives, in terms of article 80, only with the support of two-thirds of the members at both the first and second readings of the amendment.

The Constitution of the United Republic of Tanzania

Part III of Chapter Four of the Constitution of Tanzania provides for the House of Representatives of Zanzibar and its legislative functions in Zanzibar. The provisions of the Zanzibar Constitution on these matters replicate those of the Constitution of Tanzania, and we do not repeat them here.

However, it is important to note that article 106(3) of the Constitution of Tanzania invests legislative authority in Zanzibar in the House of Representatives of Zanzibar over all matters that are not Union Matters

The judiciary

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

7.8.2 Separation of powers

In a functioning democracy, it is important to divide government power between different organs of the state to guard against the centralisation of power, which may lead to abuse. 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 several 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.

7.9 Weaknesses in the constitution that ought to be strengthened to protect the media

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

7.9.1 Provide for a right of access to information

The Constitution of Zanzibar does not provide for a right of access to information. In the information age, such a right is fundamental. It is also a critical right used by the media the world over. Constitutional protections for the media and for people generally would be greatly strengthened by a provision being made for such a right.

7.9.2 Remove internal constitutional limitations on the right to privacy

Concern has already been expressed about the fact that article 15, 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 concerning their communications.

The effect of this provision is that the constitutional right becomes subordinate to legislation and other legal mechanisms limiting the right.

7.9.3 Improve the general limitations clause

As already set out above, the general limitations clause is extremely problematic owing to the very wide grounds on 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, the legislation will trump basic rights, despite the provisions of the constitution's supremacy clause.

7.9.4 Provide constitutional protection for the broadcasting regulator

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

7.9.5 Provide constitutional protection for the public broadcaster

The broadcasting environment in Zanzibar 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.

8 The media and legislation — Zanzibar

In this section, you will learn:

- ▷ what is legislation
- ▷ legislation governing the publication of print media
- ▷ legislation governing films
- ▷ legislation governing the broadcasting media in general
- ▷ legislation governing the public broadcasting sector
- ▷ legislation governing radio frequency spectrum
- ▷ legislation that threatens a journalist's duty to protect sources
- ▷ legislation that prohibits the publication of certain kinds of information
- ▷ legislation that specifically assists the media in performing its functions

8.1 Legislation: An introduction

8.1.1 What is legislation?

Legislation is a body of law consisting of Acts properly passed by the Legislative Council, that is, the president of Zanzibar and the members of the House of Representatives. It is important to note that legislation passed by the Legislative Council does not apply to Tanzania. Legislation that applies to Tanzania is discussed above in section 2 of this chapter.

Chapter Five of the Zanzibar Constitution deals with the legislature of Zanzibar, and Part Two thereof deals with its procedure, powers and privileges. In respect of legislation, articles 78-80 and article 108, are particularly important.

There are detailed rules in articles 78-80 and article 108 of the Constitution of Zanzibar, 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 Zanzibar, there are three kinds of legislation, each of which has particular procedures, rules or both, applicable to it. These are:

- ▶ legislation that amends the constitution; the procedures, applicable rules or both, are set out in article 80 of the Constitution of Zanzibar
- ▶ ordinary legislation, the procedures, applicable rules or both, are set out in articles 78 and 79 of the constitution. Essentially, decisions (including the decision to pass legislation) are to be taken by a majority vote of the members of the House of Representatives and the president of Zanzibar. If either party refuses to assent to any legislation, it is deemed not to have been passed
- ▶ legislation that deals with taxation or national debt issues, the procedures, applicable rules or both, are set out in article 108 of the Constitution of Zanzibar.

8.1.2 The difference between a bill and an act

A bill is a piece of draft legislation that is debated and usually amended by the House of Representatives during the law-making process. If a bill is passed by the Legislative Council 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 of Zanzibar, in terms of article 79(1) of the Constitution of Zanzibar.

If the president of Zanzibar withholds his or her consent, a bill may be referred back to the House of Representatives, together with a statement of reasons for withholding consent, for reconsideration, in terms of article 79(1) of the constitution. The bill cannot be presented to the president of Zanzibar again by the House of Representatives until six months have elapsed unless the bill has been passed by at least two-thirds of all the members of the House of Representatives, in which case the president of Zanzibar must assent to it within 21 days or dissolve the House of Representatives, article 79(3).

8.2 Legislation governing print media

The law governing the print media in Zanzibar is archaic and is not in accordance with international norms and standards. Besides requiring registration, newspapers are also required to post bonds or sureties in certain circumstances. The Registration of Newsagents, Newspapers and Books Act, Act No 5 of 1988 (the Newspapers Act), governs newspapers in Zanzibar. There are several critical provisions of the Newspapers Act which impact on the media and the practice of journalism in Zanzibar.

8.2.1 The advisory board

In terms of section 4 of the Newspapers Act, the Advisory board is established

and consists of a chairman appointed by the president, and five other members appointed by the minister responsible for information. The functions of an advisory board are to:

- ▶ consider applications made under the Newspapers Act and advise the minister
- ▶ advise the minister on the implementation of the Newspapers Act
- ▶ perform any other work assigned by the minister concerning the Newspaper Act.

8.2.2 Registration of newspapers

Section 8 prohibits the printing or publishing of a newspaper, which is defined extremely broadly in section 2 as:

any printed matter 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. The affidavit must contain:

- ▶ the 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 9, 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 10 of the Newspapers Act, when a company is the proprietor, printer or publisher of a newspaper, the affidavit required by section 8 of this Act must be signed by the secretary or one of the directors of the company.

In terms of section 14 of the Newspapers Act, the printer and publisher of every newspaper published in Zanzibar shall deliver or send by registered post (at his or her own expense) a copy of every newspaper published and every supplement to the registrar.

Failure to comply with, among others, sections 8, 9 or 10 is an offence, and on conviction, a person would be liable to a fine, imprisonment or both, section 16.

8.2.3 Bonds to be paid by newspapers

In terms of section 18(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 18(2), such a bond may be used for the payment of:

- ▶ any monetary penalty imposed on the publisher on 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 18 is an offence, and on conviction, a person would be liable to a fine, imprisonment or both, section 22.

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

In terms of section 25(1), each copy of every newspaper published in Zanzibar shall have the name and address of its printer and publisher, and the description of the place of printing and publication printed legibly on the first or last printed page.

Failure to comply with section 25(1) is an offence, and on conviction, a person would be liable to a fine, imprisonment or both, section 25(2).

In terms of section 26(1), every person who prints a newspaper must keep a copy for six months and produce it on written demand by the Registrar or by a court, judge or magistrate.

Failure to comply with section 26(1) is an offence, and on conviction, a person would be liable to a fine, imprisonment or both, section 26(2).

8.2.5 Seizures of newspapers, searches of premises and destruction of newspapers

In terms of section 27(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 the act.

Further, in terms of section 27(2), a magistrate may, by a 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 27(3).

In terms of section 27(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.

8.2.6 Suspension and prohibition of the publication of a newspaper

In terms of section 30 of the Newspapers Act, where the minister responsible for information is of the opinion that it is in the public interest, he may suspend the publication of a newspaper by order.

In terms of section 31, where the minister responsible for information, with the advice of the Advisory Board, is of the opinion that prohibiting the publication of a newspaper suspended in accordance with section 30, he or she may direct that the newspaper cease publication by order published in the Gazette.

Section 33(1), makes it an offence for any person to publish, print or sell a newspaper suspended or ordered to cease publication on or after the effective date of suspension or ordered cessation, the penalty for which is a fine, imprisonment or both.

8.2.7 Prohibition on the importation of publications

Section 34 of the Newspapers Act provides that, if the president is of the opinion that the importation of any publication would be against the public interest, he or she may, in his or her absolute discretion, prohibit the importation of that publication. Such a prohibition can be made in respect of a publication produced by a particular person, regardless of the content thereof.

Section 35 of the Newspapers Act, makes it an offence for any person to import, or have in their possession, a publication prohibited under section 34, the penalty for which is a fine, imprisonment or both.

8.2.8 Restrictions on the collection and distribution of news

Section 39 of the Newspapers Act prohibits any person who does not hold a written authorisation issued by the Director of Information Services from:

- ▶ collecting, or causing to be collected any news or news material for the purpose of dissemination in Zanzibar
- ▶ distributing, or cause to be distributed, whether in or outside Zanzibar any news or news material for dissemination collected in Zanzibar.

It should be noted that the only people who can obtain such a written authorisation are:

- ▶ local news reporters
- ▶ freelance reporters
- ▶ foreign newsagents.

In terms of section 42 of the Newspapers Act, newsagents collecting, distributing or disseminating news or news material are bound by government policy and in particular must have regard to:

- ▶ the need to promote national policies and aspirations of the people of Zanzibar, Tanzania and the government
- ▶ the need to promote and maintain harmony in society.

8.2.9 Registering journalists

Section 39(2) of the Newspapers Act empowers the Director of Information Services to issue an authorisation on application. The Director may also refuse, suspend or revoke any written authorisations without providing reasons. Section 39(3) provides that any person aggrieved by the decision of the Director to refuse, suspend or revoke an authorisation, may appeal to the minister responsible for information. The decision of the minister is final and conclusive and not subject to review by any court.

Section 40 empowers the minister responsible for information to revoke any authorisation issued by the Director of Information Services if he or she is of the opinion that it would be in the public interest.

8.3 Legislation governing films

The Zanzibar Arts and Censorship Council Act, Act No 7 of 2015 (Censorship Council Act), governs, among other things, the making of films in Zanzibar. This has an impact on the film and video media in Zanzibar.

The Zanzibar Arts and Censorship Council (Bassfu)

Section 3 of the Censorship Council Act establishes Bassfu as a government agency. The members of Bassfu are appointed by the minister responsible for matters relating to culture.

The functions of Bassfu are varied, those that particularly relate to the media, in terms of section 7, are:

- ▶ to preserve, maintain and promote the values and norms of Zanzibar culture
- ▶ to promote local artistic performances and exhibitions and assist recognised bodies with training, research and publications
- ▶ to maintain the policy of the government in matters concerning arts and culture and to disseminate that policy
- ▶ to ensure that all films recorded in or outside Zanzibar are censored by Bassfu before they are presented to the public
- ▶ to censor entertainment advertisements in motor vehicles and business banners and other related material.

In terms of section 8, Bassfu has the power to:

- ▶ take disciplinary action against any person who contravenes the Censorship Council Act
- ▶ censor films, video cassettes or any other items related thereto which have been recorded in or outside Zanzibar that is intended to be presented to the public
- ▶ suspend any cinematographic exhibition, stage play and any other entertainment which is inconsistent with the righteous conduct of Zanzibar.

In terms of section 35 and 36(1) of the Censorship Council Act, any person who intends to exhibit or distribute a film, poster or advertisement in Zanzibar must apply and receive a licence from Bassfu. Bassfu must also approve and censor the material before release. Section 36(2) makes it an offence for any person to contravene these requirements, the penalty for which a fine, imprisonment or both.

Section 54 of the Censorship Council Act empowers the minister responsible for cultural matters to make regulations relating to the Censorship Council Act in consultation with Bassfu.

The Censorship Act has not been updated and amended to take account of video content distributed online or via social media, and consequently, it is not clear if its provisions are interpreted as including online content or not.

8.4 Legislation governing the broadcast media generally

Broadcasting in Zanzibar is regulated by the Zanzibar Broadcasting Commission Act, Act No 7 of 1997 (Broadcasting Commission Act).

8.4.1 Establishment of the Zanzibar Broadcasting Commission

Section 5 of the Broadcasting Commission Act establishes the Zanzibar Broadcasting Commission (the Commission) as an autonomous body corporate. In terms of section 6, the Commission is made up of the chairman and executive secretary who are appointed by the president and four to eight other members appointed by the minister responsible for information. The Commission also includes a state attorney from the Attorney General's office.

Section 6(2) empowers the Commission to elect a member from among their number to act as the vice-chairman.

In terms of section 6 (5) of the Broadcasting Commission Act, members of the Commission shall serve terms of three years and be eligible for reappointment for one more term. The chairman holds office at the pleasure of the president, section 6(6).

8.4.2 Functions of the Commission

In terms of section 7(1) and 7(2) of the Broadcasting Commission Act, the functions of the Commission, in accordance with any regulations made under the act, are:

- ▶ to issue broadcasting licences
- ▶ to regulate and supervise broadcasting activities from Zanzibar to places outside Zanzibar with the intention that such broadcasts are received regularly in the United Republic of Tanzania or any part of it
- ▶ to maintain a register of all person licensed as a broadcaster and dealers in broadcasting stations
- ▶ to regulate the activities of broadcasters and their conduct of broadcasting as well as that of dealers in broadcasting apparatus
- ▶ to be responsible for the radio frequency spectrum available for broadcasting and to allocate those resources to ensure the greatest diversity of programming and the optimal utilisation of those resources, giving priority to broadcasters transmitting the maximum number of hours per day and to community-based broadcasters where possible
- ▶ to protect the policy, security, culture and tradition of Zanzibar
- ▶ to inspect institutions which are broadcasting businesses
- ▶ to give direction to broadcasting businesses where the Commission deems necessary
- ▶ any other function assigned to it by the president in writing or under any written law.

In terms of section 7(3), the Commission shall, in the performance of its functions under the act, establish and maintain, as far as may be practicable, a system of consultation, coordination and operation with the Tanzania Telecommunications Corporation and any other body or organisation established by or under any other written law and having similar functions to those of the Commission or have functions that relate to broadcasting or radio communication generally.

8.4.3 Broadcasting licensing

Section 11 of the Broadcasting Commission Act, prohibits any person from operating a broadcasting service or permitting anything to be done that requires a licence under the Broadcasting Commission Act

Any person seeking to become a licensee under the Broadcasting Commission Act must, in terms of section 12, be:

- ▶ a Zanzibari or Tanzanian citizen

- ▶ a company registered in Zanzibar with at least 20% of the shareholding being owned by the Zanzibar Government
- ▶ a company not registered in Zanzibar but with at least 30% of the shareholding being owned by Zanzibar's Government and which is not directly or indirectly controlled by persons who are not Zanzibaris.

Any application for a licence must be made to the Commission accompanied by:

- ▶ the prescribed application fee
- ▶ the prescribed deposit
- ▶ the applicant's proposals concerning the policy and nature of the service and a programme schedule regarding the daily transmission time allocated to different programmes
- ▶ a network plan, technical specifications of the equipment and studio and installations programme
- ▶ the training programme involving local staff
- ▶ a statement of account setting out the financial resources available to the application to conduct a broadcasting service
- ▶ any other information as the Commission may deem necessary to decide on the ability of an applicant to provide a technically viable and socially acceptable broadcasting service.

The Commission must, when granting a broadcasting licence, consider:

- ▶ the expertise, experience and financial resources available to the applicant
- ▶ the desirability or otherwise of allowing any person or association of persons to have control of a substantial interest in more than one broadcasting service
- ▶ compliance with the prescribed technical broadcasting standards
- ▶ whether the conditions of a broadcasting licence shall unjustly benefit one holder of a broadcasting licence above another
- ▶ the allocation of radio frequency spectrum resources in such a manner as to ensure the widest possible diversity of programming and the optimal utilisation of such resources, provide that priority may be given to broadcasters transmitting the maximum number of hours per day
- ▶ the reservation of radio frequency spectrum resources for future use
- ▶ the desirability of giving priority to community-based or national development broadcasts
- ▶ the extent to which the applicant is determined, and has planned, to train local staff in matters concerning radio or television broadcasting.

It should be noted that no person may have a licence for both radio and television but may have a licence for only one of these services.

Every application must be published by the Commission in the Gazette, and any person may lodge written representations to the Commission regarding the applicant that must be taken into account when the Commission considers any application within 14 days of the publication.

Where the Commission is satisfied that an applicant meets the requirements of the Broadcasting Commission Act, it shall grant a licence to the applicant subject to the prescribed fee. The Commission must publish a notice of the granting of a broadcasting licence in the Gazette and any newspaper published in Zanzibar and to the successful applicant. It should be noted that the Commission may attach conditions to the licence it issues in relation to:

- ▶ the frequencies, power limitations and technical servicing and inspection of a station and any other technical specifications
- ▶ the prevention of electric and other disturbances of radio reception or the transmission over any telegraph line
- ▶ the broadcasting or non-broadcasting of reports, announcements, news or other information which is required to be broadcast in the public interest
- ▶ the location of a transmitter station, when applicable, and the specific geographical area to which the broadcast may be made.

The Commission may, after giving the broadcasting licensee the opportunity to make written representations, amend any of the prescribed conditions, including adding further conditions:

- ▶ if the Commission is of the opinion that it is in the interest of orderly radio frequency spectrum management
- ▶ to give effect to any international treaty concerning broadcasting to which Zanzibar is a party
- ▶ at the request of the licence holder.

In terms of section 13(5), any person aggrieved by a decision of the Commission regarding any matter relating to broadcasting may appeal to the minister responsible for information.

In terms of section 13(6), the minister may, on the advice of the Commission, specify other matters or activities connected to broadcasting which require a licence.

Section 14 provides that broadcasting licences are issued for a period determined by the Commission but may not exceed three years in the case of radio and five years in the case of television broadcasting.

The Commission may upon application by the licensee and on the expiration of

the broadcasters' licence, renew the licence for a period not exceeding five years. Applications for licence renewal must be made within three months of the expiration of the licence. The Commission may request additional information from the licensee when considering the licence renewal, and if the renewal for the licence has not been confirmed by the date of the licence expiration, the licensee will continue to operate until such time as the licence renewal is either approved or rejected.

In terms of section 28 of the Broadcasting Commission Act, broadcasting licences may not be transferred to another person without the prior approval of the Commission. When a company is the holder of a licence, no person other than an existing shareholder may, except with the prior approval of the Commission, acquire shares or any other interest in such a company which results in that person acquiring a controlling interest in the company.

8.4.4 Rights and obligations of a broadcasting licensee

In terms of section 15 of the Broadcasting Commission Act, broadcasting licensees are obliged to comply with the conditions of their licenses. The Commission may, with the approval of the minister responsible for information and by notice published in the Gazette, specify such duties, or further duties to be discharged.

Broadcasting licensees are obliged to:

- ▶ present all news in a factually accurate, impartial and non-partisan manner
- ▶ present current affairs in a balanced, clear, factual, accurate and impartial manner
- ▶ encourage the development of Zanzibar and Zanzibari expression by providing a wide range of programming that reflects Zanzibar opinions, ideas, values and artistic creativity by displaying Zanzibar cultures and entertainment programmes
- ▶ serve the needs and interests and reflect the circumstances and aspirations of Zanzibar men, women and children in a democratic society
- ▶ produce and maintain programmes of a high standard and make maximum use of the island's creative and other resources in the creation and presentation of programming
- ▶ limit advertisements to a maximum of 30% of the total daily broadcasting time
- ▶ contribute to shared national consciousness, identity and continuity
- ▶ provide programming that caters for culture, arts, sports and education pertaining to Zanzibar and Africa
- ▶ comply with generally accepted standards of journalistic ethics in the editing of any programme to be broadcast as formulated in the Code of Conduct for the Media Professions

- ▶ keep and store sound and video recordings of all programmes broadcast for a minimum of three months after the date of transmission of the broadcast, or for such further period as the Commission may direct
- ▶ disclose the name of the producer of every programme at the end of transmission of a programme
- ▶ respect copyright and neighbouring rights and obligations in respect of any broadcast material.

Section 16 provides that the Commission must monitor compliance by broadcasting licensees and, where the Commission is of the opinion that a broadcasting licensee has breached a condition of his or her licence, it may request in writing that the licensee make written representations to the Commission regarding the breach. If thereafter, the Commission is of the opinion that a licensee has materially breached a licence condition, it may issue an order:

- ▶ warning the licence holder
- ▶ directing the licence holder to affect a programme change within a period not longer than thirty days from the date of receipt of the directions
- ▶ directing the licence holder to disclose the finding of the Commission free of charge and in such manner as the Commission may direct
- ▶ imposing a fine
- ▶ suspending the broadcasting licence for a period determined by the Commission
- ▶ revoking the broadcasting licence.

In terms of section 17 of the Broadcasting Commission Act, a broadcasting licensee must broadcast a counter version presented by any person or body of persons affected by an assertion of fact in any programme transmitted that the assertion of fact is false. It should be noted that the licensee must not transmit a counter version if:

- ▶ the person or organisation concerned has no direct interest in the transmission of the counter version
- ▶ the counter version is not of reasonable length, and in particular, if it is substantially longer than the part of the broadcast which dealt with the false assertion of fact.

Counter versions must:

- ▶ be limited to a factual account
- ▶ not contain any material which may reasonably be anticipated to expose the licence holder to legal action if such material were to be broadcast

- ▶ be made in writing
- ▶ specify the programme and the assertions to which the objection is raised
- ▶ be signed by the person affected or, in the case of an organisation, by the chief executive officer.

Requests for counter versions must be made by the person, or body of persons, affected within 30 days of the original airing of the offending programme. Licensees must:

- ▶ at the first opportunity broadcast the counter version, but not later than ten days from receipt
- ▶ broadcast the counter version in the same programme or programme section as the one in which the false assertion was made and at the same time of day or, should that not be possible, at time equal in value to that of the disputed programme
- ▶ broadcast the counter version without any omissions and interruptions
- ▶ broadcast the counter version free of charge.

On receipt of the counter version, broadcasting licensees must immediately inform the Commission and must keep and store the programme objected to and the counter version until it receives a notice to the contrary from the Commission.

Note, section 17 does not apply to a broadcast of a public meeting of the House of Representatives of Zanzibar.

Section 18 of the Broadcasting Commission Act empowers the minister to appoint inspectors.

In terms of section 27 of the Broadcasting Commission Act, the minister or any person authorised by the minister may require a broadcasting licensee to broadcast any matter for the purposes of national security, or in the public interest. If the minister is of the opinion that broadcasting any matter may be in opposition to national security or not in the public interest, he or she may prohibit the broadcasting of such matter by notice.

8.4.5 Offences under the Broadcasting Act

Section 26 of the Broadcasting Commission Act, makes it an offence for any person to:

- ▶ carry on the business of a broadcaster or a dealer in broadcasting apparatus without an appropriate licence
- ▶ contravene or fail to comply with the conditions of a broadcasting or other licence under the Broadcasting Commission Act

- ▶ fail or refuse to supply information in the manner and time prescribed
- ▶ supply false or incomplete information
- ▶ fail or refuse to produce to an inspector or a police officer a licence or a book, record or document relating to any broadcasting apparatus which is in his possession or under his control
- ▶ interfere with or obstruct the transmission or reception of any radio communication
- ▶ wilfully delay or obstruct an inspector, police officer or other authorized officer in the exercise of the powers conferred upon him or her by or under the Broadcasting Commission Act
- ▶ fail or refuse to comply with any order or direction lawfully given to him by the Commission
- ▶ fail or refuse to comply with the terms and conditions of the licence he or she holds
- ▶ make a false declaration for the purpose of obtaining a licence, whether for himself or another person.

The penalty for such an offence is a fine, imprisonment or both.

Any court that convicts a person of an offence under the Broadcasting Commission Act, may, in addition to any other penalty, order the forfeiture of any broadcasting apparatus or other material in relation to, or in connection with, committing the offence to the Government.

8.4.6 Making regulations

In terms of section 29 of the Broadcasting Commission Act, the minister responsible for information may make regulations for carrying out the provisions of the act.

8.4.7 Is the Commission an independent regulator?

The Commission does not meet international standards for an independent regulator. The Broadcasting Commission Act does not even claim that the Commission is an independent regulator. The minister responsible for information has significant powers in the process of appointing board members and in terms of regulatory functions, including the power to make broadcasting-related content regulations. Essentially, the Commission acts as an arm of the executive branch of government.

8.4.8 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 Commission. In our

view, the legislation ought to be amended such that the House of Representatives is responsible for calling for public nominations for candidates to serve on the Commission and for developing the short-list of suitably qualified candidates. The Commission Act ought to set out detailed provisions regarding the qualities, expertise and qualifications required of a Commission board member. Thereafter, the president ought to formally appoint all Commission board members.

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

In addition, the Broadcasting Commission Act does not clarify the differences between various categories of content, that is broadcasting services, sufficiently. 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.

Further, the requirement of government shareholding in broadcasting licensees undermines the right of freedom of association and expression and effectively brings all media operations under some kind of governmental control.

8.5 Legislation that regulates the public broadcast sector

8.5.1 Introduction

The Zanzibar Broadcasting Corporation (ZBC) is Zanzibar's national broadcaster. It includes a national radio and television station.

The main statute governing the affairs of the ZBC is the Zanzibar Broadcasting Corporation Act, 2013 (ZBC Act).

8.5.2 Establishment of the ZBC

The ZBC was established under section 3 of the ZBC Act. It should be noted that the ZBC is the successor of the state media known as Television Zanzibar and Radio Sauti ta Tanzania Zanzibar.

8.5.3 The ZBC mandate

Section 5 of the ZBC Act provides that the mandate of the ZBC is to:

- ▶ provide information, education and entertainment to the public
- ▶ provide radio, television broadcasting and other related services and programmes that contribute to social, economic, political and cultural development with an emphasis on national unity in cultural diversity
- ▶ run the corporation's business and commercial activities
- ▶ reflect the public vision regarding the objective composition and overall management of the broadcasting services

- ▶ provide electronic media and consultancy services that educate and guide the public.

8.5.4 Functions of the ZBC

In terms of section 6 of the ZBC Act, the functions of the ZBC are to:

- ▶ establish a sustainable system of gathering, analysing, storage and dissemination of information to the public
- ▶ produce quality local programming and adapt foreign programmes to suit the needs of Zanzibar society
- ▶ establish systems of accountability and enhance profitability in running public broadcasting services
- ▶ maintain responsible editorial independence and set national broadcasting standards by exemplary performance
- ▶ protect the public interest in rendering broadcasting services
- ▶ operate an efficient and self-sustaining corporation
- ▶ provide accurate, timely and reliable reporting of events and presentation of programmes
- ▶ carry out any other activity that may be done by a public broadcaster
- ▶ conduct research and develop programmes in pursuit of its general objectives which it may operate both in the Corporation and in collaboration with relevant institutions.

In terms of section 19 of the ZBC Act, the ZBC must have an editorial policy which conforms with the code of conduct as prescribed by the information policy and the Broadcasting Commission Act.

8.5.5 Appointment of the ZBC board

In terms of section 8 of the ZBC Act, the ZBC board consists of the following members:

- ▶ the chairperson, appointed by the president. Note that no person may be appointed chairperson unless he or she holds relevant knowledge and experience in any of the fields of broadcasting, information technology, administration, media law, business management, mass communications or other related fields
- ▶ the director-general of the ZBC
- ▶ a member of the Zanzibar chamber of commerce, appointed by the minister
- ▶ a state attorney from the attorney general's office appointed by the minister

- ▶ a member from the ministry responsible for finance appointed by the minister.

8.5.6 Functions of the ZBC board

In terms of section 10 of the ZBC Act, the functions of the ZBC board are to:

- ▶ advise the ZBC in broadcasting services
- ▶ formulate and review the policy of the ZBC with due regard to the ZBC's objectives
- ▶ approve the action plan for the ZBC and endorse the annual budgets
- ▶ establish and supervise staff regulations, financial regulations and salary structures of the employees and other benefits
- ▶ exercise supervision over the management team of the ZBC
- ▶ determine the ZBC's corporate structure, staff levels and terms and conditions of service
- ▶ perform such other functions incidental to the functions of the ZBC board.

8.5.7 Powers of the minister

In terms of section 13 of the ZBC Act, the Minister of Information and Broadcasting may:

- ▶ give the ZBC board general, or specific directions as to the performance of the functions and the exercise of the powers of the ZBC and the ZBC board must give effect to such directions
- ▶ in consultation with the minister responsible for finance, approve any major alterations in the tariffs, rates, fares and other charges made for the services provided by the ZBC (this appears to be a form of a television licence fee to fund the ZBC)
- ▶ give particular directions to the ZBC board concerning an agreement with another country or in the national interest.

8.5.8 Funding the ZBC

In terms of section 15 of the ZBC Act, the funds and resources of the ZBC consist of:

- ▶ funds from the government
- ▶ money derived from its commercial activities
- ▶ money raised by loans, donations or grants from inside or outside Zanzibar
- ▶ such sums of money or property which may become payable to, or be vested in, the ZBC for the purpose of carrying out the functions of the ZBC.

It should be noted that all funds must be placed in the ZBC's bank account and may only be used as prescribed by the ZBC board.

8.5.9 Making regulations

In terms of section 20 of the ZBC Act, the minister responsible for information and broadcasting is empowered to make regulations to carry out the ZBC Act better, acting on the advice of the ZBC board.

8.5.10 The ZBC: Public or state broadcaster?

ZBC remains a state broadcaster. From a legal perspective, the ZBC remains an extension of the ministry responsible for information and broadcasting. This is largely based on the role of the minister in appointing the ZBC board members and the regulatory powers vested in the minister.

8.5.11 Weaknesses in the broadcasting legislation which should be addressed to strengthen the ZBC

The government has not transformed the ZBC into a genuine public broadcaster. Consequently, there are several weaknesses that bedevil its governing statute. The ZBC Act ought to be amended to provide:

- ▶ for the independence of the ZBC board
- ▶ the House of Representatives being responsible for calling for public nominations of candidates to serve on the ZBC board and for developing the short-list of suitably qualified candidates
- ▶ for the qualities, expertise and qualifications required of a ZBC board member
- ▶ that the president formally appoints all ZBC board members
- ▶ the ZBC board ought to be solely responsible for managing the activities of the ZBC with no role for the minister
- ▶ that the ZBC is accountable directly to the House of Representatives and not via the minister.

8.6 Legislation that regulates radio frequency spectrum

In terms of section 7(1)(e) of the Zanzibar Broadcasting Commission Act, Act 7 of 1997, the Commission is responsible for the standardisation and management of the radio frequency spectrum available for broadcasting. The responsibilities include the allocation of radio frequency spectrum to ensure the widest possible diversity of programming and the optimal utilisation of radio frequency spectrum resources. The Commission must where possible, give priority to broadcasters transmitting the maximum number of hours per day and to community-based broadcasters.

8.7 Legislation that undermines 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.

8.7.1 Criminal Procedure Act, Act 7 of 2018

Section 132 of the Criminal Procedure Act (CPA) empowers the Director of Public Prosecutions or any competent court to determine that the production of any document or other thing is necessary or desirable for the purposes of investigation, enquiry, trial or other proceedings. The Director of Public Prosecutions or such court may issue a written order or summons to any person in whose possession such a document or thing is believed to be, requiring him or her to attend and produce it at the time and place stated in the summons.

Section 185 of the CPA provides that any person involved in any proceeding under the CPA may be summoned to appear before a magistrate and the magistrate may examine, cross-examine and re-examine any witness believed to be in possession of any information relevant to the case. Thus, if a court believes that a journalist knows something about a crime that could constitute material evidence, such journalist might be ordered to reveal sources of information relating to that crime in terms of sections 132 or 185 of the CPA.

8.7.2 Public Leaders Code of Ethics Act, Act 13 of 1995

Section 24 empowers the Zanzibar Public Leaders Code of Ethics Commission established under the Zanzibar Public Leaders 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.

8.7.3 Penal Decree Act, No 6 of 2004

Section 104(1)(b) of the Penal Decree Act makes it an offence to refuse to answer a question in a judicial proceeding without lawful excuse. The penalty on conviction is a fine or imprisonment. In the absence of a recognised qualified privilege for journalists, this subsection might be used to force a journalist to reveal his or her sources of information.

8.7.4 The Zanzibar Electoral Commission Act, No 1 of 2017

Section 6 of the Zanzibar Electoral Commission Act empowers the Zanzibar Election Commission to demand any information relating to national security from any person or institution the Election Commission reasonably believes has that information. Failure to provide the Election Commission with the requested information without a reasonable excuse, or provide false information is an offence. The penalty, on conviction, is a fine, imprisonment or both.

8.7.5 The Anti-Corruption and Economic Crimes Act, No 1 of 2012

In terms of section 23(3) of the Anti-Corruption and Economic Commission Act, the Director-General of the Zanzibar Anti-Corruption and Economic Crimes Authority may by notice in writing require any person to provide, within a reasonable period of time, any information or documentation in the person's possession that relate to a person suspected of corruption or economic crime. It should be noted that section 23(5) provides that any information that is privileged under any written law is not required to be revealed, on request of the Director-General, unless a court orders that privilege be waived.

8.7.6 The Criminal Code, Act No. 17 of 2018

In terms of section 139 of the Criminal Code, if the Director of Public Prosecutions is satisfied that specified data stored in a computer system is reasonably required for the purpose of a criminal investigation or criminal proceedings, he or she may order in writing that a person in control of the computer system disclose sufficient traffic data about a specified communication to identify the service provider and the path by which the communication was transmitted.

While this does not relate directly to journalists, it is important to note that any information that is shared through a computer system can be traced and used to identify a journalist's source by tracking the communication to its origin.

However, it is important to note that whether or not requiring a journalist to reveal a source is 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.

8.8 Legislation that prohibits the publication of certain kinds of information

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

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

- ▶ Prohibition on the publication of certain kinds of information regarding legal proceedings
- ▶ Prohibition on the publication of the identity of victims of sexual crimes
- ▶ Prohibition on the publication of treasonous material
- ▶ Prohibition on the publication of state security-related information
- ▶ Prohibition on publications which the president considers contrary to the public interest
- ▶ Prohibition on obscene publications
- ▶ Prohibition of incitement to violence
- ▶ Prohibition of false news
- ▶ Prohibition on the publication of information regarding the HIV and Aids status of children
- ▶ Prohibition on the publication of material that affects relationships with foreign states and external tranquillity
- ▶ Prohibition on the publication of libel.

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

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

The Children's Act, Act No 6 of 2011

Section 33 of the Children's Act makes it an offence to publish any information or photograph that may lead to the identification of an abused child without the permission of the court. The penalty for this offence on conviction is a fine, imprisonment or both.

Section 48 of the Children's Act provides that section 33 applies relating to the prohibition on the publication of information of photographs, with such changes as may be required in the event that the child is accused or a witness to a crime.

The Zanzibar Anti-Corruption And Economic Crimes Act, Act No 1 of 2012

Section 29 of the Zanzibar Anti-Corruption and Economic Crimes Act makes it an offence for any person to disclose any information, except with permission from the director-general of the Zanzibar Anti-Corruption and Economic Crimes Authority or with another lawful excuse, relating to an investigation, including the identity of any person being investigated. The penalty for this offence on conviction is a fine, imprisonment or both.

8.8.2 Prohibition on the publication of the identity of victims of sexual crimes

Section 165 of the Penal Decree Act makes it an offence for any person to print or publish the name or any matter which may make known the identity of any person against whom a sexual crime is alleged or found to have been committed. On conviction, the penalty for this offence is a fine or imprisonment.

8.8.3 Prohibition on the publication of treasonous material

In terms of section 28 of the Penal Decree Act any person who publishes any printing or writing or by any overt act, or does any act which is intended to bring about or cause the removal or change of the Government of Zanzibar other than by the mode and manner provided under the Constitution of Zanzibar, is guilty of the offence termed treason and shall be liable for execution.

8.8.4 Prohibition on the publication of state security-related information

National Security Act, 1970

Section 4 of the National Security Act, although being a piece of Tanzania legislation, has jurisdiction over the United Republic, and contains several 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. On conviction, 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. On conviction, the penalty is a fine.

The Registration Of Newsagents, Newspapers And Books Act, Act No 5 of 1988

In terms of section 48(1) of the Newspapers Act, any person who prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication, or imports any seditious publication, unless he or she has no reason to believe that it

is seditious, shall be guilty of an offence and on conviction shall be liable to a fine, imprisonment or both.

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

Section 34 read with section 28 of the Newspapers Act, makes it an offence to publish a publication which the president has prohibited the importation of, on the basis that he or she is of the opinion that its importation would be contrary to the public interest. On conviction, the penalty is a fine, imprisonment or both.

8.8.6 Prohibition on obscene publications

The Penal Decree Act, Act No 6 of 2004

Section 179(1)(a) of the Penal Decree Act makes it an offence for any person to have in his or her possession, for the purpose of dissemination or exhibition, obscene writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films, or any other obscene objects, or any object tending to corrupt morals. This is a misdemeanour offence and, on conviction, the penalty is a fine or imprisonment.

Zanzibar And Censorship Council Act, 2015

Section 46 of the Censorship Council Act makes it an offence for any person to produce, broadcast, procure, export, sell or traffic in pornography. On conviction, the penalty is a fine or imprisonment.

Section 47 of the Censorship Council Act makes it an offence for any person to produce, participate in the production of, traffic in, publish, broadcast, procure, import or export pornography depicting images of children. On conviction, the penalty is a fine, imprisonment or both.

In term of section 53 of the Censorship Council Act, it is an offence for any person to possess, create, produce, distribute, broadcast, export or import a film or publication which contains depictions, descriptions or scenes of pornography, or which advocates, advertises, encourages or promotes child pornography or the sexual exploitation of children. On conviction, the penalty is a fine, imprisonment or both.

8.8.7 Prohibition on the publication of incitement to violence

Section 45 of the Penal Decree Act makes it an offence for any person who prints, publishes or makes any statement indicating or implying without lawful excuse that it would be desirable to do any act calculated to bring death or physically injure any person, class of person or community, or perform any act that leads to the destruction of property is guilty of a misdemeanour. On conviction, the penalty is imprisonment.

8.8.8 Prohibition on the publication of false news

In terms of section 44 of the Penal Decree Act, any person who publishes or reproduces any false statement which is likely to cause fear and alarm to the public or disturb public peace is guilty of a misdemeanour. On conviction, the penalty is imprisonment in terms of section 396(2).

8.8.9 Prohibition on the publication of information regarding the HIV and Aids status of children

Section 114 of the Children's Act makes it an offence to reveal the HIV status of any child who is HIV-positive without consent from a child aged 16, or who is of sufficient maturity to understand the benefits, risks and social side effect of such a disclosure. Disclosures may also be made if:

- ▶ a parent or guardian of a child under the age of 16 gives consent
- ▶ the medical superintendent or person in charge of a hospital provides consent in the event that a child is under the age of consent and is not of sufficient maturity to understand the benefits, risks and social side effect of such a disclosure or the child does not have a parent or guardian
- ▶ a children's court feels that the HIV-positive status is being unreasonably withheld and the disclosure is in the best interests of the child or the child or parent or guardian is unable to give consent.

On conviction, the penalty for this offence is a fine, imprisonment or both.

It should be noted that a person can reveal the HIV-positive status of a child if the disclosure is:

- ▶ within the power and duties of a person in terms of the Children's Act or any other law
- ▶ necessary to carry out the provisions of the Children's Act
- ▶ for the purpose of legal proceedings
- ▶ in terms of a court order.

8.8.10 Prohibition on the publication of material that affects relationships with foreign states and external tranquillity

The Penal Decree Act, Act No 6 of 2004

Section 46 of the Penal Decree Act makes it an offence for any person who publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitaries with intent to disturb peace and friendship between Zanzibar and the country to which such prince, potentate, ambassador or

dignitary belongs without justification. Such a person is guilty of a misdemeanour and, on conviction, the penalty is imprisonment in terms of section 396(2).

The Registration Of News Agents, Newspapers And Books Act, Act 5 of 1988

In terms of section 61 of the Newspapers Act, any person who publishes anything intended to be read, or any sign or visible representation intended to degrade, revile or expose to hatred or contempt, a foreign sovereign ruler, ambassador or other foreign dignitaries with the intention of disturbing the peace and friendship between Tanzania and a foreign country without justification commits the offence of libel. In terms of section 62 of the Newspapers Act the penalty for the offence of libel, on conviction, is a fine, imprisonment or both

8.8.11 Prohibition on the publication of libel

Section 53 of the Newspapers Act provides for the offence of libel, that is where a person unlawfully publishes any defamatory matter concerning another person with the intent to defame that other person by means including print or writing.

Section 55 provides that a person 'publishes a libel' if he or she causes the printing, 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 56 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 57, 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 a 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 58 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 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 published previously 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 58 provides that good faith will be presumed in conditional privilege cases, section 59 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.

In terms of section 62 of the Registration of News Agents Newspapers and Books Act the penalty for the offence of libel, upon conviction is a fine, a term of imprisonment or both.

In terms of section 61 of the Newspapers Act, any person who publishes anything intended to be read or any sign or visible representation intended to degrade,

revile or expose to hatred or contempt, a foreign sovereign ruler, ambassador or other foreign dignitaries with the intention of disturbing the peace and friendship between Tanzania and a foreign country without justification commits the offence of libel. In terms of section 62 of the Registration of News Agents Newspapers and Books Act, the penalty for the offence of libel, on conviction, is a fine, imprisonment or both

8.9 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. These would include Access to Information and Whistleblower Protection statutes. Sadly, Zanzibar has yet to pass this kind of legislation.

9 Regulations affecting the broadcast media — Zanzibar

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 Zanzibar Broadcasting Commission, to make legally binding rules governing an industry or sector, without having parliament pass a specific statute thereon. The empowering statute will empower the minister or a body such as the Zanzibar Broadcasting Commission to make regulations, rules or both, on particular matters within the scope of the functions and powers of that minister or body.

Unfortunately, we have not been provided with any regulations relating to the media environment in Zanzibar, nor are we able to locate such regulations.

10 Media self-regulation — Zanzibar

The self-regulatory body, the Media Council of Tanzania (MCT), discussed in section 5 of this chapter, operates as the self-regulatory authority for both Tanzania and Zanzibar. Please refer to section 5 of this chapter to review Media self-regulation in Zanzibar.

11 Case law and the media — Zanzibar

Zanzibar is a common-law jurisdiction. The common law is judge-made law. It is made up of judgments handed down in cases adjudicating on disputes brought by people, whether natural (individuals) or juristic (for example, companies or government departments). In common law legal systems such as Zanzibar's, judges are bound by the decisions of higher courts and also by the rules of precedent, which require rules laid down by the court in previous cases to be followed unless they were clearly wrongly decided. Legal rules and principles are, therefore decided on an incremental, case-by-case basis.

We have not been provided with Zanzibari cases.

Notes

- 1 <https://populationstat.com/tanzania/> [Last accessed on 10 November 220].
- 2 <https://data.worldbank.org/indicator/EG.ELC.ACCS.RU.ZS?locations=TZ> [Last accessed on 10 November 2020].
- 3 <https://www.itu.int/en/ITU-D/Spectrum-Broadcasting/DSO/Pages/dataminer.aspx>[Last accessed on 10 November 2020]
- 4 <https://tradingeconomics.com/tanzania/households-with-television-percent-wb-data.html> [Last accessed 10 November 2020].
- 5 <https://www.internetworldstats.com/africa.htm#tz> [Last accessed on 10 November 2020].
- 6 <https://freedomhouse.org/country/tanzania/freedom-world/2020#CL> [Last accessed on 10 November].
- 7 Concluding Observations on the Consolidated 2nd to 10th Periodic Report of the United Republic of Tanzania, p. 6, para. 34. Available online: <https://www.achpr.org/sessions/concludingobservation?id=73> [Last accessed 4 December 2020].
- 8 <https://africanlii.org/node/2905> [Last Accessed on 4 December 2020]