



## RESEARCH

# REPORT ON THE STATE OF DIGITAL RIGHTS IN THE UNITED REPUBLIC OF TANZANIA

2020

**THE 2020 REPORT ON THE STATE OF DIGITAL RIGHTS IN TANZANIA**

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## FOREWORD

### Dear Friends,

In the time so far, I have served as the Executive Director of the Zaina Foundation, it has been my privilege to work alongside such an experienced, knowledgeable, and committed team of staff and partners. Everywhere I look, I see passion and commitment that I find both humbling and deeply impressive.

It has come to the attention of the country that Digital Rights matter. The values we share, the work we do, and our cause for promoting Digital Rights in Tanzania, is so that the poor, the oppressed, the marginalized, and all those women who are left behind are empowered.

I am thrilled to share with you the 2020 Report on the State of Digital Rights in the United Republic of Tanzania, which documented all forms of Digital Rights event during the presidential election in the United Republic of Tanzania throughout 2020. This report showcases the major Digital Rights incidences that have happened in Tanzania during 2020, recommendations and post-election activities to be considered in the Digital Rights ecosystem.

In 2020, the focus was centered on Internet Shutdowns; measurements, documentations, and circumventions during network disruptions, reflected the current shrinking civic space situation in Tanzania. The most challenging time where the Digital Rights environment has been grim; laws hindering civic space, CSOS and media space being enacted and enforced.

We have witnessed a deteriorating digital rights situation in the country throughout 2020, and basic freedoms of assembly, expression, association, access to information and data privacy, have all severely been restricted by the government. There has been a continued restriction to political assembly and the right to participate in governance has also been violated. Occurrence of Internet Shutdown in the United Republic of Tanzania during election in October 2020 brought adverse effects to democracy to this country.

Most of the 2020 incidences started since the introduction and enforcement of new Post and Electronic Communication (Online Contents) Regulations in July 2020. This new regulation limited access to information and rights to privacy to Tanzanians ahead of Elections on October 2020. Suspension of media, CSOS and increase of surveillance among journalists were witnessed during 2020.

The Zaina Foundation remained strong, focused, determined, and vigilant to achieve its objectives. We invite you to read our Report on State of Digital Rights in the United Republic of Tanzania, 2020, for further details and to share your feedback for our next Research Report in 2021.

**By Zaituni Njovu - Executive Director at Zaina Foundation**

## ABOUT ZAINA FOUNDATION

Zaina Foundation is a private, autonomous, voluntary, non-governmental, non-profit sharing organization which was founded in 2017 and registered under NGO's Act of 2002 with the aim of promoting digital rights in Tanzania.

### **Vision**

To Promote Digital Rights in Tanzania through advocacy on affordability and accessibility of internet, digital security and privacy capacity building, workshops and convene.

### **Mission**

To continuously aid women who are Journalists, Human Rights Defenders, Technologists, Lawyers, and Students alike, to permanently improve the way they protect and access their information online.

### **Objectives**

1. To promote Digital Rights in Tanzania.
2. To advocate on affordability and accessibility of internet and Digital Security Awareness to women in Tanzania.
3. To localize digital tools and Contents into Swahili language.
4. To empower women to 21st Century Skills.

Therefore, in ensuring that the Zaina Foundation is promoting digital rights in the United Republic of Tanzania we have conducted a study to document cases and issues around the situation of digital rights in the country for the year of 2020.

## ACKNOWLEDGMENT

Foremost, I would like to extend my deepest appreciation to Access Now for their support and hence, the successful completion of this work. The Zaina Foundation expresses its sincere appreciation to the research team for their commitment and time dedicated for this work within a short period of time.

We personally thank Zaituni Njovu and Neema Olle Ndemno for their tireless efforts, dedicated professionalism and commitment beyond definition, that greatly led to the realization of this work.

Furthermore, Zaina Foundation recognizes and applauds the tremendous work done by the assistant's field researchers Godfrey Abely Magehema from Dodoma, Vincent Uhenga from Afusha, Mussa Kombo Mussa from Zanzibar who managed to collect data through questionnaire from the community members.

Finally, Zaina Foundation sends sincere appreciation to all community members who volunteered themselves and take their time to fill out the questionnaires both online and offline.

Equally important, Zaina Foundation acknowledges various experts from various CSOS organizations and government officials who participated in this study through focus group discussion and key informant interview, their participation made this work exemplary and successful.

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## LIST OF ABBREVIATIONS

COVID 19	Corona Virus Disease of 2019
CSOS	Civil Society Organizations
ECOWAS	Economic Community of West Africa States
EPOCA	Electronic and Postal Communication Act
FGD	Focus Group Discussion
FoE	Freedom of Expression
GBV	Gender Based Violence
ICCPR	International Convention on Civil and Political Rights
ICERD	International Convention on Elimination of All Forms on Racial Discrimination
ICESCR	International Convention on Economic, Social and Cultural Rights
ICT	Information and Communication Technologies
LHRC	Legal and Human Rights Centre
NBS	National Statistics Bureau
NGO's	Non-Governmental Organizations
PWD	People with Disabilities
SADC	Southern African Development Community
SDG	Sustainable Development Goals
TCRA	Tanzania Communication Regulatory Authorities
THRDC	Tanzania Human Rights Defenders Coalition
UN	United Nation
UNICEF	United Nation International Children's Emergency Fund
URT	United Republic of Tanzania
VPN	Virtual Private Network
WHO	World Health Organization

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## EXECUTIVE SUMMARY

This is the first report detailing the situation of digital rights in the United Republic of Tanzania with regard to freedom of expression online, freedom of association and assembly online, rights to information and data privacy. The report has three chapters narrated herein. Chapter one generally highlights the concepts of digital rights, it analyses the legal framework of digital rights of international, regional and national laws, as well as elaborating the methodology used in this report.

Chapter two covers in detail the findings and discussion of the study. The findings show that, peoples' understanding on the concepts of digital rights in the United Republic of Tanzania is very low. Peoples' understanding on digital security is limited whereby 66% of respondents said they don't know about digital security while 62% of respondents said they don't know about internet shutdown. Furthermore, respondents said they don't know about data privacy and surprisingly, 91% of respondents said they don't know about online GBV. However, the respondents mentioned youth group to be the most group affected by the infringements of FoE, data privacy and internet shutdown by 45.4% followed by women by 9.9%, HRD's/ activists by 9% and journalist by 7.4%. Lastly, the chapter highlighted 20 recorded digital rights incidents happened for the year of 2020.

Chapter three covers the conclusion and recommendations. Among the recommendations which was mentioned include advocating for the amendment of all repressive laws which adversely affecting the enjoyment of digital rights in the United republic of Tanzania.

## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.0 INTRODUCTION

This chapter gives a general introduction and analyzes general concepts of digital rights which includes freedom of expression, freedom of assembly/association, access to information and data privacy. It further outlines the legal framework around digital rights from the international, regional and national levels.

#### 1.1 Understanding Concept of Digital Rights

According to Wikipedia, digital rights are those human rights and legal rights that allow individuals to access, use, create, and publish digital media or to access and use computers, other electronic devices and telecommunications networks. The concept is particularly related to the protection and realization of existing rights such as the rights to privacy and freedom of expression in the context of digital rights, especially the internet (right to internet access). A number of human rights have been identified with regard to the internet. These include freedom of expression and association, access to information and data privacy.

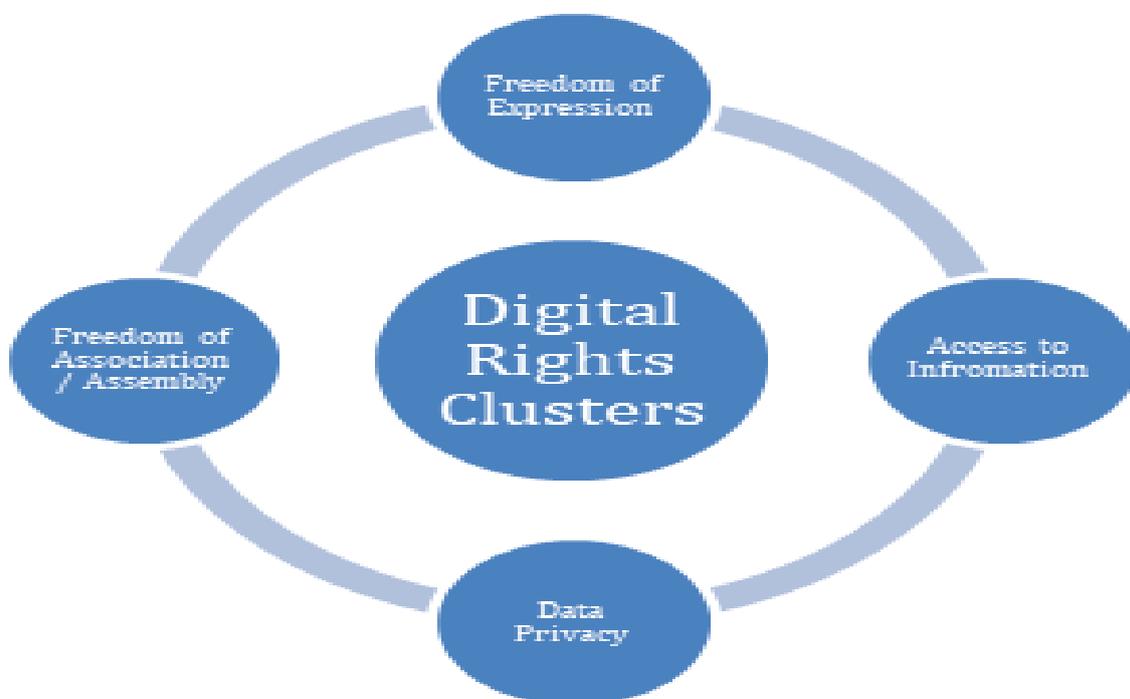


Figure 1: Digital Rights Clusters

<sup>1</sup> [https://en.wikipedia.org/wiki/Digital\\_rights](https://en.wikipedia.org/wiki/Digital_rights) (Accessed 16/6/2021)

In the United Republic of Tanzania, these groups and concepts of digital rights (since they are also recognized as human rights) are enshrined in the Constitution of URT and other legislations.

### 1.1.1 Freedom of Expression

According to Freedom Forum Institute, the concept of freedom of expression refers to the ability of a person or group of individuals to express their beliefs, thoughts, ideas and emotions about different issues freely without government censorship.

In International Human Rights Law, freedom of expression notably encompasses the right to express ideas and opinions, as well as seek, receive and impart information and ideas of all kinds regardless of frontiers. In other words, these are also known as pillars of freedom of expression (FoE) as stipulated in Article 19 of ICCPR and figure below;

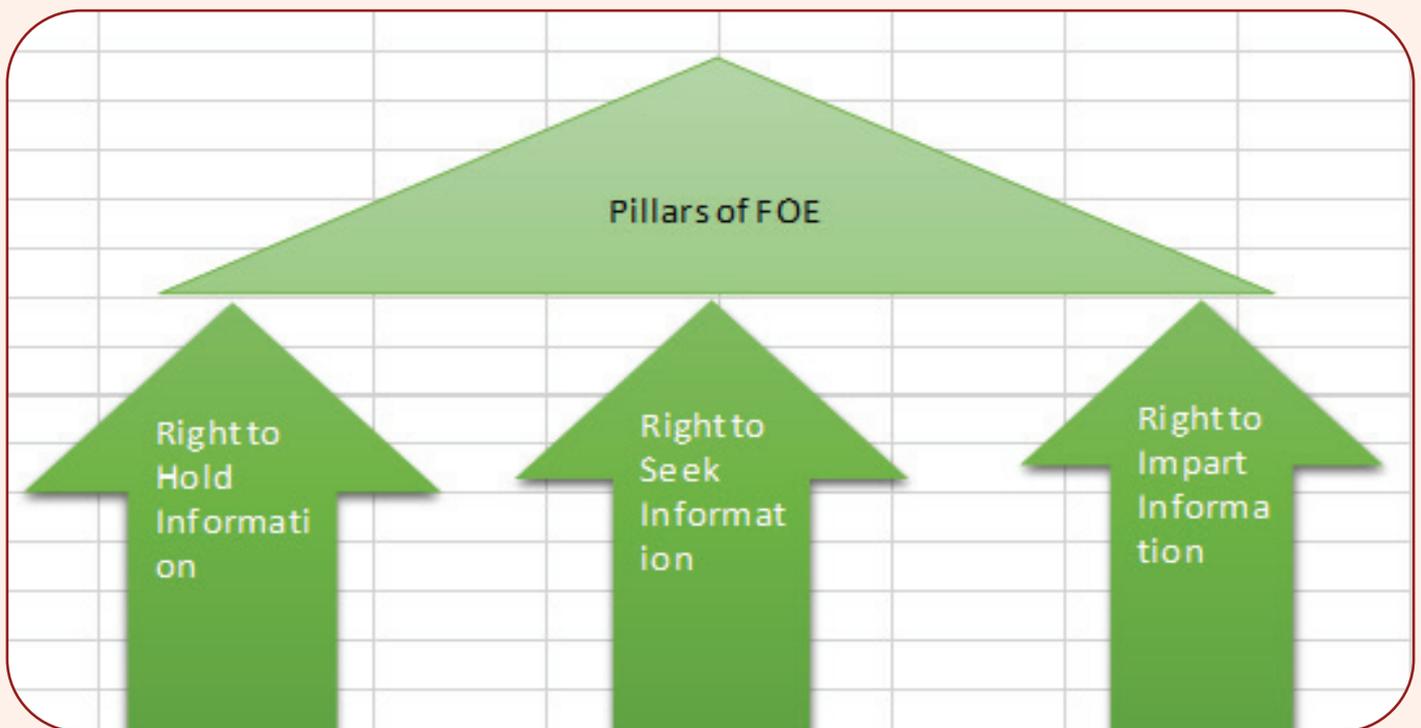


Figure 2: Pillars of Freedom of Expression

Source: Article 19 of ICCPR

Freedom of expression is a highly valued human right because it is seen as crucial to both individual autonomy and dignity, as well as structurally important to any society, and the foundation for free and democratic societies. The Constitution of the United Republic of Tanzania in Article 18 has clearly provided that;

*“18. Every person –*

*(a) has a freedom of opinion and expression of his ideas.*

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

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

*(d) has a right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society.”*

However, with regards to digital rights, FoE is that ability for a person to express her/himself through online and digital platforms.

### **1.1.2 Freedom of Information / Access to information**

Freedom of information can be explained as the liberty of a person or people to publish and consume information. While Access to information is the ability for an individual to seek, receive and impart information effectively. Article 20 (d) of the Constitution of URT provides for the right to be informed.

### **1.1.3 Data Privacy**

Data protection, information privacy or data privacy are terms used interchangeably in relation to legal frameworks that protect individuals against the negative impact of the processing of their personal information. The concept of privacy is interrelated to six theories or conceptualization as shown in the figure below;

<sup>1</sup> Centre for Human Rights Mooc (2021); The Rights to Privacy in a Digital Age. Module 1; Introduction to Privacy and Data Protection

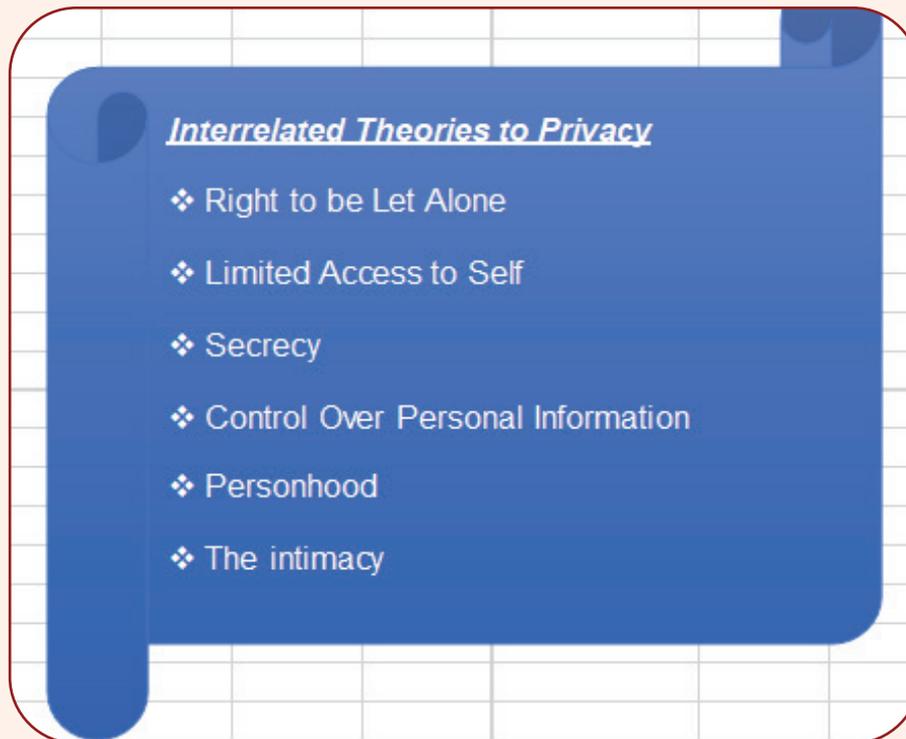


Figure 3: Interrelated Theories to Privacy

Source: MOOC presented by Centre for Human Rights

In the Constitution of the United Republic of Tanzania, Article 16 provides, for the right to privacy, the following;

*“16(1) 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”.*

#### **1.1.4 Freedom of Association and Assembly**

Freedom of association encompasses both an individual's right to join or leave groups voluntarily, the right of the group to take collective action to pursue the interests of its members, and the right of an association to accept or decline membership based on certain criteria.

Freedom of association is one of the most basic rights enjoyed by humans. It ensures that every individual is free to organize, to form and participate in groups, either formally or informally.

With regards to digital rights freedom of association is the right to associate with other people online through social media platforms, or any digital devices. This right is stipulated in various international and regional human rights instruments as well as in national legal framework. In the Constitution of the United Republic of Tanzania, Article 20 provides as follow;

*“20(1) Every person has a freedom, to freely and peaceably assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organizations formed for purposes of preserving or furthering his beliefs or interests or any other interests.”*

## 1.2 Legal Framework of Digital Rights

The legal framework around digital rights has been put into in three categories which are the international framework, regional framework and national framework. This part will elaborate in general the legal framework around digital rights in the United Republic of Tanzania. The words ‘digital rights’ may not be used therein but we will look at the components of digital rights in available laws.

### 1.2.1 The International Framework

The United Republic of Tanzania is a signatory to a number of international Covenants, Treaties, and Conventions, including the International Covenant on Civil and Political Rights (ICCPR), which was ratified in 1976. By signing and ratifying such international instruments, the Government of the United Republic of Tanzania accepts that it has a responsibility to respect, protect, observe, fulfill and promote the rights in those instruments.

The right to freedom of opinion and expression is enshrined in a number of international human rights instruments, including the following:

- Universal Declaration of Human Rights (article 19)
- International Covenant on Civil and Political Rights (ICCPR) (article 19)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (article 5)
- Convention on the Elimination of All Forms of Discrimination against Women (article 7)
- General Comment 10 [19] (Article 19) of the Human Rights Committee (CCPR/C/21/Rev.1 of 19 May 1989)
- General Comment 11 [19] (Article 20) of the Human Rights Committee (CCPR/C/21/Rev.1 of 19 May 1989)
- The public's right to know: Principles on Freedom of Information Legislation. Annex II Report E/CN.4/2000/63  
LHRC (2018): Know Your Rights: Freedom of Expression  
<https://www.ohchr.org/en/issues/freedomopinion/pages/standards.aspx> (Accessed 26/7/2021)

### 1.2.2 The Regional Framework

#### a) African Charter on Human and Peoples’ Rights

At the Regional level, the right to FoE is guaranteed under Article 9 of the African Charter on Human and Peoples’ Rights, which provides that “Every individual shall have the right to receive information,” as well as “the right to express and disseminate his opinions within the law.”

The African Charter, unlike other regional human rights instruments, contains no guarantee of the right to privacy. Despite such lacunae, the right to access, update and correct personal information is provided for in the Declaration of Principles on Freedom of Expression in Africa (the Declaration) which was adopted by the African Commission on Human and Peoples' Rights (African Commission) in 2002, to supplement the right to freedom of expression as guaranteed by article 9 of the African Charter on Human and Peoples' Rights. Principle IV of the Declaration which lays down key principles on the right of access to information makes, reference to the term 'personal information' as follows:

"Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies".

The Declaration also makes reference to privacy in Principle IV (2) in the context of protecting reputations by stating that 'Privacy laws shall not inhibit the dissemination of information of public interest.'

In 2016, the African Commission adopted a Resolution on the Right to Freedom of Information and Expression on the Internet in which it recognized that privacy online is important for the realization of the right to freedom of expression and to hold opinion without interference, and the right to freedom of peaceful assembly and association.

### **b)Southern African Development Community (SADC) Model Law on Computer Crime and Cybercrime of 2021.**

This law serves as a guideline for states in the SADC to develop substantive and procedural cybercrime laws. Since it is a model law, it does not pose any legal cooperation obligations on states. The states have to create cybercrime laws that can utilize the SADC Protocol on Mutual Legal Assistance in Criminal Matters and the SADC Protocol on Extradition to facilitate cooperation and coordination in international cybercrime investigations. This model law provides for the Illegal Access that if any person without lawful excuse excess of a lawful excuse or justification, accesses the whole or any party of a computer system commits an offence punishable, on conviction by imprisonment for a period not exceeding (period), or a fine not exceeding (amount) or both.

Also the model law provided on illegal interception and illegal data interference is that if a person damages or deteriorates computer data, deletes computer data, alters computer data or renders computer data meaningless, useless or ineffective, obstructs, interrupts or interferes with any person in the lawful use of computer data, denies access to computer data to any person authorized to access it, commits an offence punishable, on conviction, by imprisonment or a fine.

### **c)Economic Community of West African States (ECOWAS) Directive on Fighting Cybercrime of 2011**

This directive requires member states to criminalize cybercrime in national law and facilitate mutual legal assistance, cooperation, and extradition in cyber and cybersecurity related matters to facilitate cooperation in cybercrime investigations and extradite cybercriminals.

Among other things, the directive on fighting against fraudulent access to computer systems, computer data forgery, this is when a person produces or manufactures a set of digital data through fraudulent input, deletion or suppression of computer data stored, processed, or transmitted by a computer system, resulting in counterfeit data, with the intent that it be considered or used for legitimate purposes as if it were genuine.

Obtaining benefit from computer related fraud; this is an act of obtaining fraudulently for oneself or for another person material or economic benefit through the input, alteration, deletion, or suppression of computer data through any other form of interference with the functioning of a computer system. The member states of ECOWAS shall adopt the necessary legislative, regulatory and administrative measure in order to comply with this directive and they shall form the ECOWAS Commission of the measures they will adopt to comply with these Directives.

### **1.2.3 The National Framework**

#### **1.2.3.1 The Constitution of United Republic of Tanzania (1977)**

The Constitution of the United Republic of Tanzania (1977), with the purpose of complying with its international commitments, protects FoE and right to information in Article 18, which provides:

“Every person (a) has a freedom of opinion and expression of his ideas; (b) has a right to seek, receive and, or disseminate information regardless of national boundaries; (c) has the freedom to communicate and a freedom with protection from interference from his communication; (d) has a right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society”.

However, on the right to privacy and personal security the Constitution in Article 16 provides as follow; 16.-(1) 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.

(2) For the purpose of preserving the person’s right in accordance with this Article, the state authority shall lay down legal procedures regarding the circumstances, manner and extent to which the right to privacy, security of his person, his property and residence may be encroached upon without prejudice to the provisions of this Article.

#### **1.2.3.2 Other National Laws Regulating Digital Rights**

These are other domestic laws formed to complement the Constitution in promoting, respecting and protecting these digital rights.

#### **A.The Electronic and Postal Communication Act, (EPOCA) 2010 and its Regulations of 2020**

This Act provides for;

➤ The regulation of electronic and postal communications service providers;

- The issuance of communications and postal licenses;
- The regulation of licensees, agents and customers, content, competition and practices;
- Offences relating to electronic and postal communications.

### **B.The Cybercrimes Act, 2015**

This is an Act to make provisions for criminalizing offences related to computer systems and Information Communication Technologies; to provide for investigation, collection, and use of electronic evidence and for matters related therewith.

### **C.Tanzania Communications Regulatory Authority Act, 2003**

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

### **D.Media Services Act, 2016**

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

### **E.The Access to Information Act, 2016**

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

### **G.The Electronic Transactions Act**

This gives legal recognition to the use of electronic transactions to do business. It also allows for the Government to interact with its citizens and to offer certain services by electronic means. Although there are no direct and comprehensive provisions on privacy and data protection, there are some provisions which are relevant. One is the requirement that suppliers of goods and services by electronic means must disclose all information pertaining to themselves and their businesses, and the goods or services they are offering. Before placing an order, the customer must be allowed to review the transaction and have the discretion to withdraw from it. Furthermore, the suppliers are prohibited from interfering with an individual's privacy and they are also prohibited from sending unsolicited commercial communications unless the consumer consents to this.

Therefore, in winding up this chapter, I would like to emphasize that digital rights are very important in this digital age and to achieve the SDGs. The 2030 Agenda is grounded in human rights, and protecting human rights is necessary to reach the SDGs. We believe that extending secure and open access to the internet is essential to the exercise of human rights in the digital age, and therefore to reaching the SDGs.

## **1.3 METHODOLOGY**

This subchapter presents the design of the study, geographical coverage and method of data collection used in this study. It further provides a description of sampling and data analysis technique and reporting.

### **1.3.1 Geographical Coverage**

This study was conducted in some regions of Tanzania mainland and Zanzibar. In Tanzania mainland the study was conducted in Dar es salaam, Arusha, Dodoma. Whereby, in Zanzibar the study was conducted in Unguja only.

### **1.3.2 Study Design**

The survey involved both qualitative and quantitative methods of data collection which include questionnaires, focused group discussion, and key informant interviews.

### **1.3.3 Sample Size**

The sampling of the data was drawn from Dar es salaam, Arusha, Dodoma and Zanzibar.

### **1.3.4 Data Collection Tools**

Information and data used to prepare this report was obtained from both primary and secondary sources. Primary data was mainly obtained through field survey conducted in Arusha, Dar es Salaam, Dodoma and Zanzibar, focus group discussion with government officials, CSOS and key informant interview with human rights and digital rights experts. Secondary data was obtained from various credible and reliable sources including reports and statements by government and non-governmental actors.

### **1.3.5 Analysis and Reporting**

The analysis of study used a qualitative approach for legal perspective. It was supported by primary data collected from field detailing the situation of digital rights in Tanzania. Qualitative data from key informant interview and focused group discussion were analyzed by means of thematic analysis. Data collected through questionnaire were analyzed through Microsoft Office Excel 2016 and were presented in the form of charts and figures.

## CHAPTER TWO FINDINGS AND ANALYSIS

### 2.0 An Overview

This chapter presents in detail the findings and discussion of the situation of digital rights in Tanzania. It will further identify people's understanding of digital rights, challenges faced by human rights defenders in promoting digital rights in the United Republic of Tanzania and initiatives taken to protect digital rights in the country.

### 2.1 Gender of Respondents

The gender of the respondents to this study shows that out of 121 respondents who were interviewed, 51.2% were female while 43.8% were male, and 4.9% preferred not to disclose their gender identity.

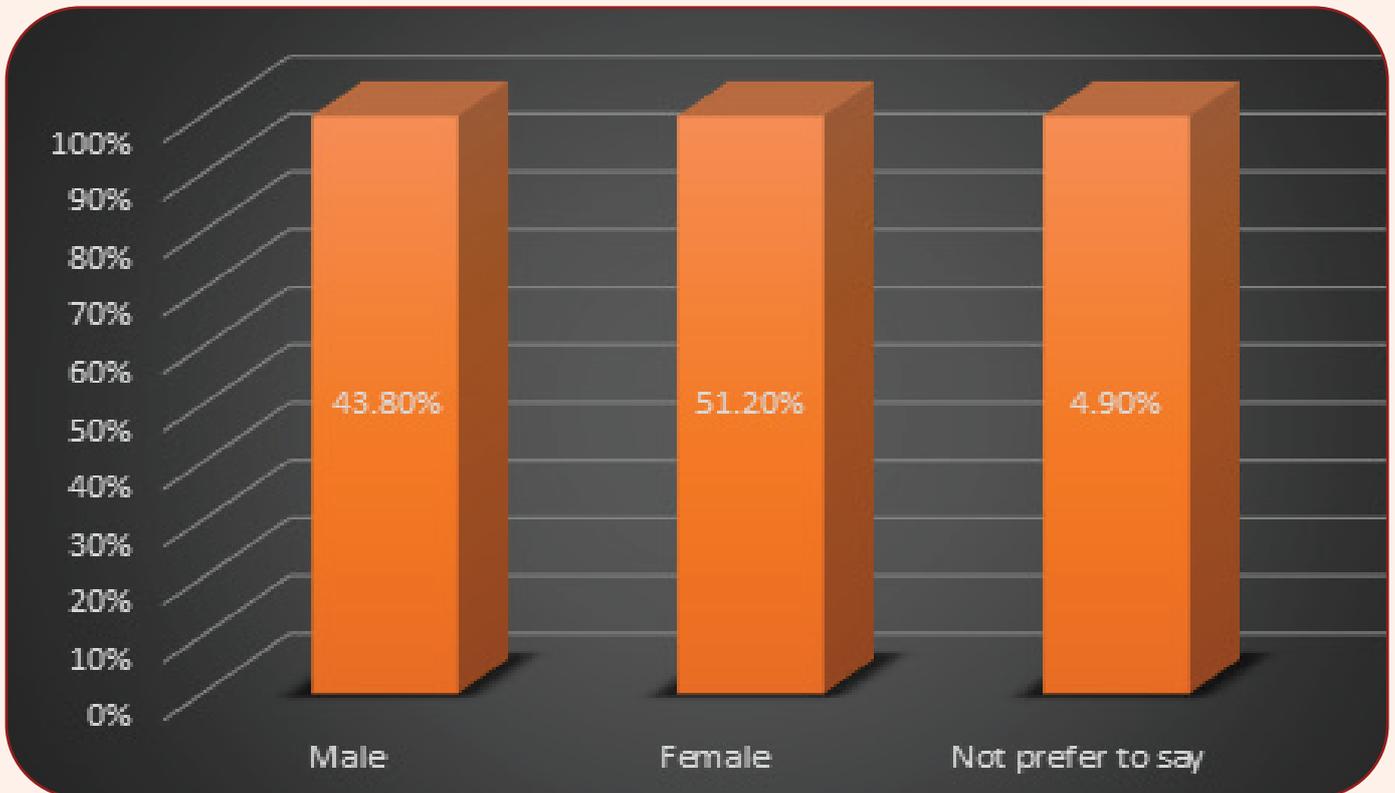


Figure 4: Gender of Respondents

Source: Field data 2021

### 2.2 Age of Respondents

The age of the respondents interviewed in this study ranged between 18 to at least 45 years. The significant percentage of respondents interviewed were aged above 18 to 25 as described in the figure below;

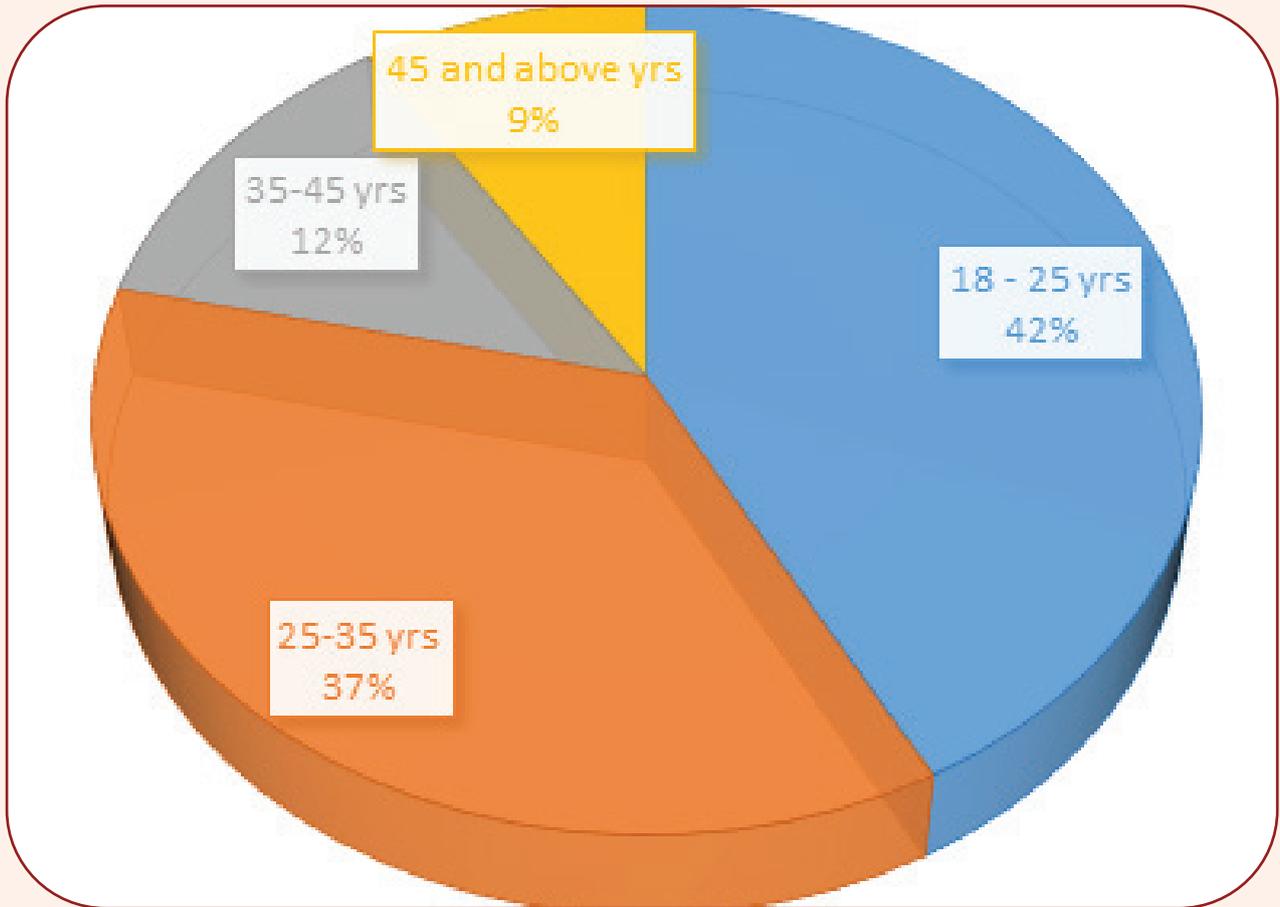


Figure 5:Age of Respondents

Source: Field data 2021.

### 2.3 People's Understanding of Digital Rights in Tanzania

This sub part will highlight people's understanding on the digital rights concepts and situations in Tanzania. Generally, digital rights concept is still a new concept and most of the young people tend to at least understand the concept and use digital platforms compared to adults.

#### 2.3.1 Freedom of Expression

When discussants were asked about their understanding on freedom of expression, some of them said as following;

'Freedom of expression is having the liberty to air out one's views freely without any obstacles or intimidation' – Discussants in 2021

Most of the respondents to this question seem to have a basic knowledge about their rights to freedom of expression, but should incidents occur where these rights are infringed, they would fail to claim them back.

However, according to various Human rights reports it's noted that the freedom of expression further deteriorates in 2020, mainly due to the existence and implementation of restrictive laws. We have experienced banning, suspensions, and fines for media outlets through implementation of the online content regulations of 2018 as amended from time to time.

### 2.3.2 Digital Security

This study reveals that people's understanding of digital security knowledge is limited. Most of them have inadequate or no knowledge on digital security issues. During a questionnaire, 66% of the interviewees who answered this question affirmed that they don't know about digital security. And among those who answered that they knew about digital security, most of them failed to explain what it was, their closest guess being that it's the use of passwords in mobile phones and laptops.

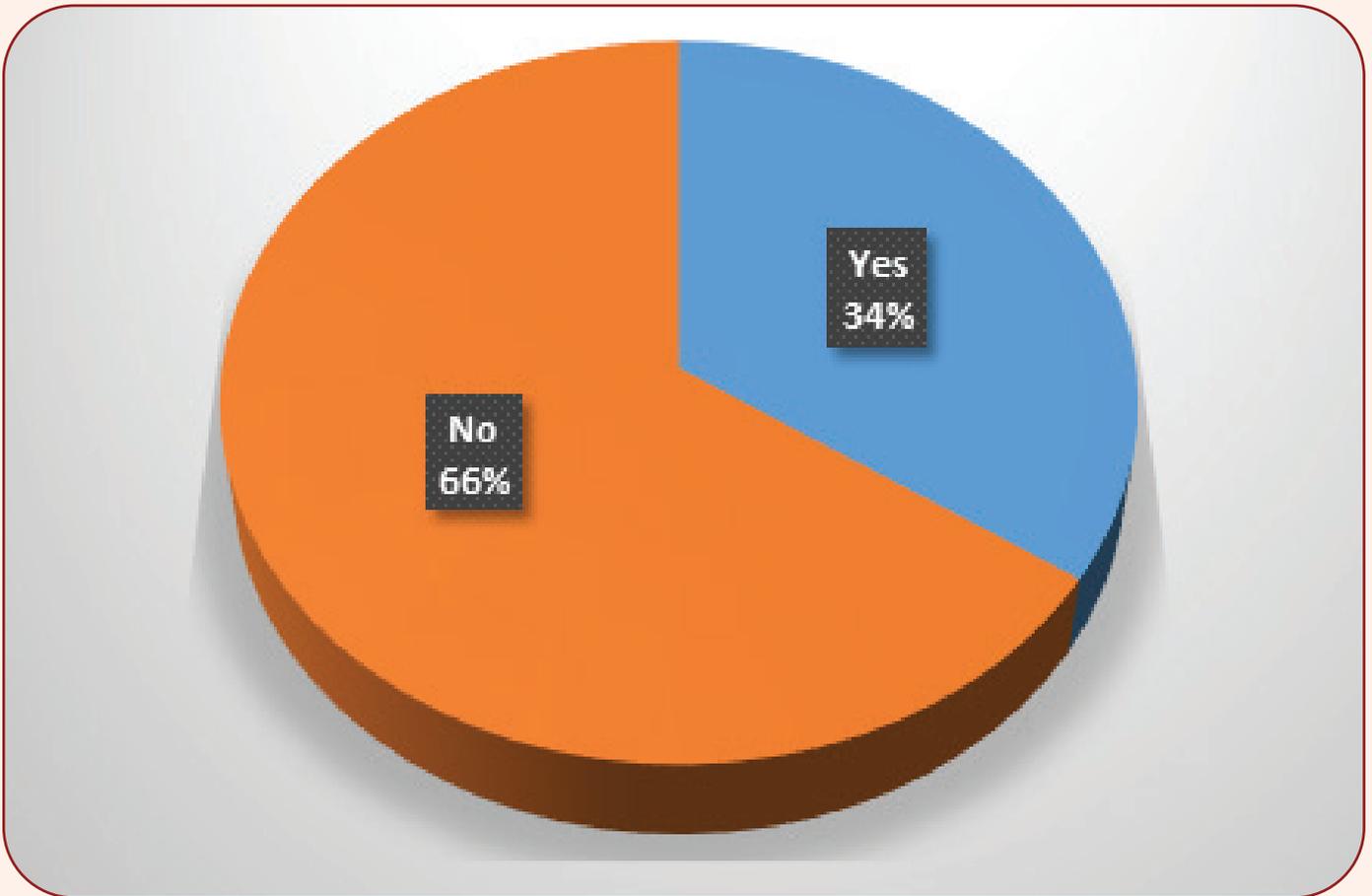


Figure 6: People's Understanding on Digital Security

Source: Field Data 2021.

### 2.3.3 Internet Shutdown

The discussants during FGD elaborated internet shutdown to mean the blocking of internet services. However, about 62% of respondents who answered the questionnaires confirmed that they don't know about internet shutdown. The 38% who knew about it, when told to explain, most of them referred to the general election of 2020. Internet shutdown could be new to most Tanzanians as the 2020 general elections were the first occasion of such a shutdown in the country. Most all of social media access were limited (e.g. Twitter, YouTube, Facebook, WhatsApp, etc.). The figure below elaborates more on the findings of people's understanding of internet shutdown in Tanzania.

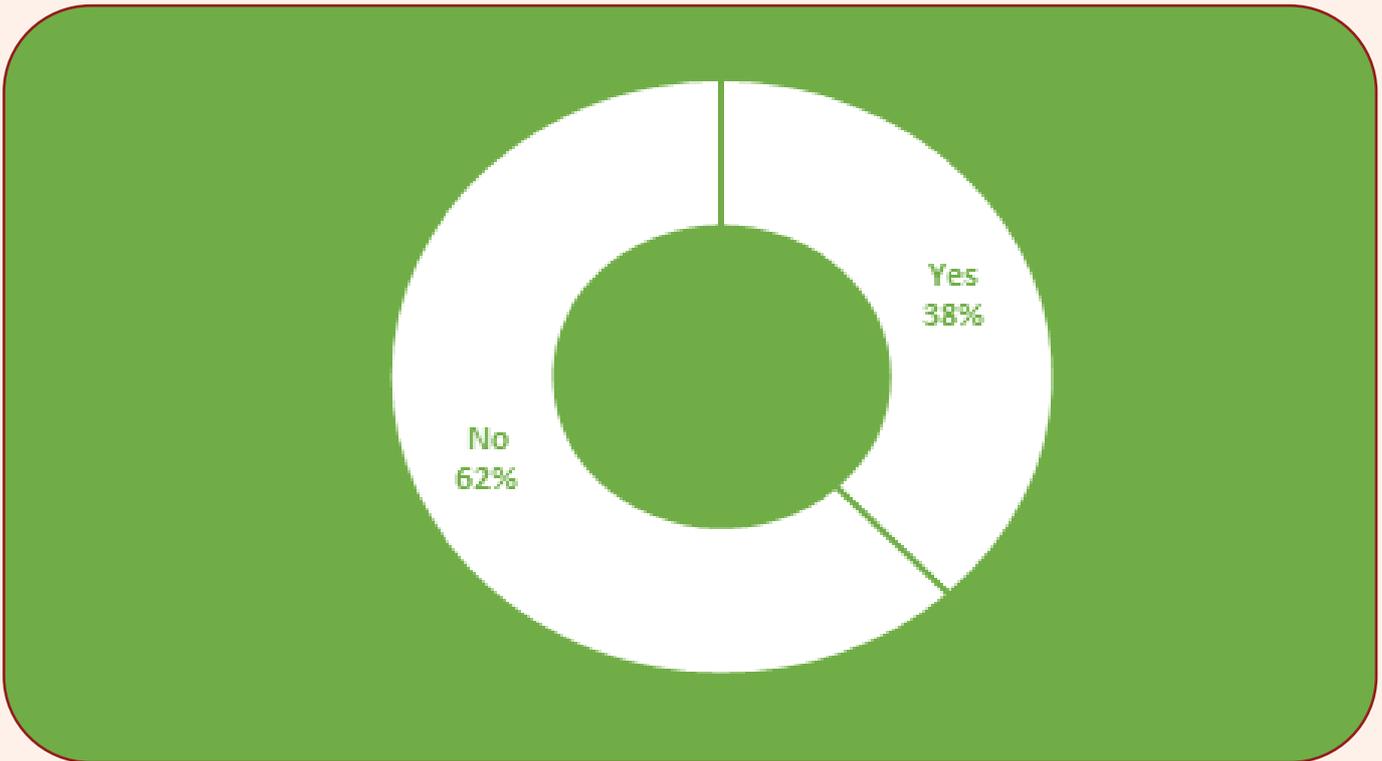


Figure 7: People's Understanding on Internet Shutdown

Source: Field data 2021

Internet shutdown is the act of restricting access to internet by ordering internet service providers to limit access to their subscribers. Cases of internet shutdowns has been rising in Africa. The United Republic of Tanzania restricted access to the internet and social media applications during elections in October 2020. In June 2020, Ethiopia imposed an internet shutdown which lasted for nearly a month, after the unrest preceded by the killing of a prominent Oromo singer and activist Hachalu Hundessa.

Zimbabwe, Togo, Burundi, Chad, Mali and Guinea also restricted access to the internet or social media applications at some point in 2020. In 2019, there were 25 documented instances of partial or total internet shutdowns, compared to 20 in 2018 and 12 in 2017, according to Access Now, an independent monitoring group.

#### 2.3.4 Data Privacy

The understanding of the community around data privacy and protection is inadequate since majority of respondents to this study affirmed this by 64%. Some respondents to this study, when asked to explain about data privacy, said just the following;

*“Data privacy is secrecy of information and having password to mobile or laptops”, said a discussant, 2021.*

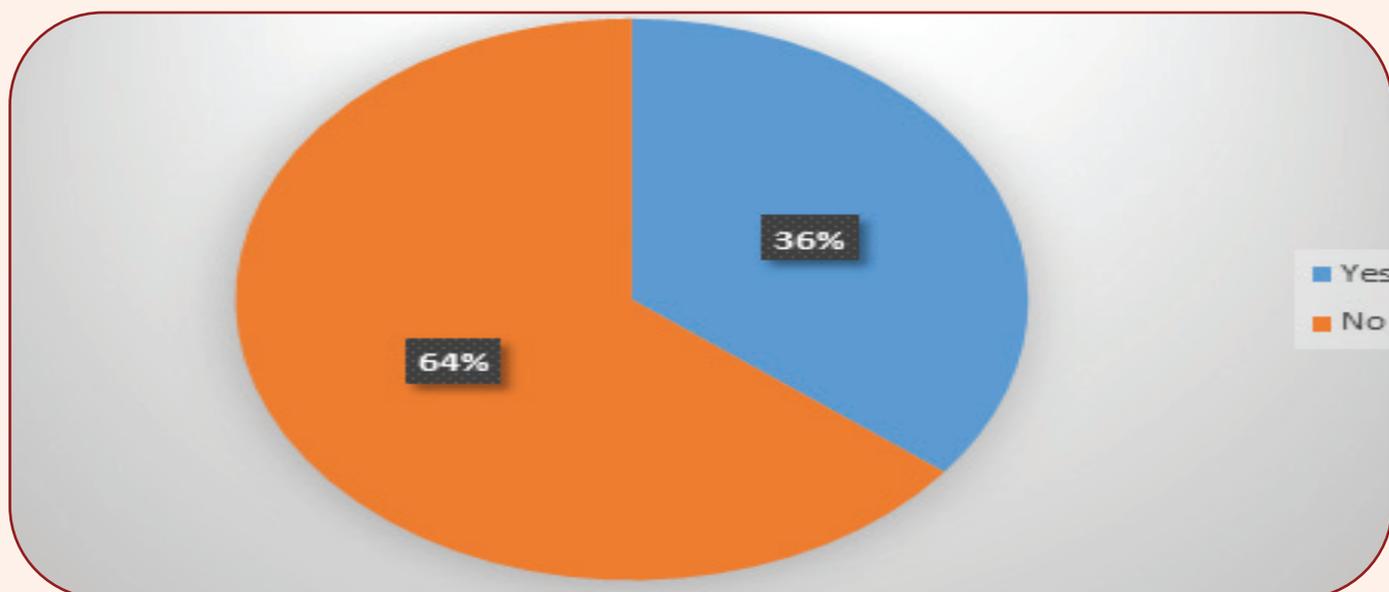


Figure 8: People's Understanding on Data Privacy

Source: Field data, 2021

### 2.3.5 Online Gender based Violence

People's understanding of online GBV is still challenging in Tanzania. The respondent to the questionnaire confirmed this. About 91% of interviewees to the questionnaires who were asked of their understanding on online Gender-Based Violence said they don't know this concept.

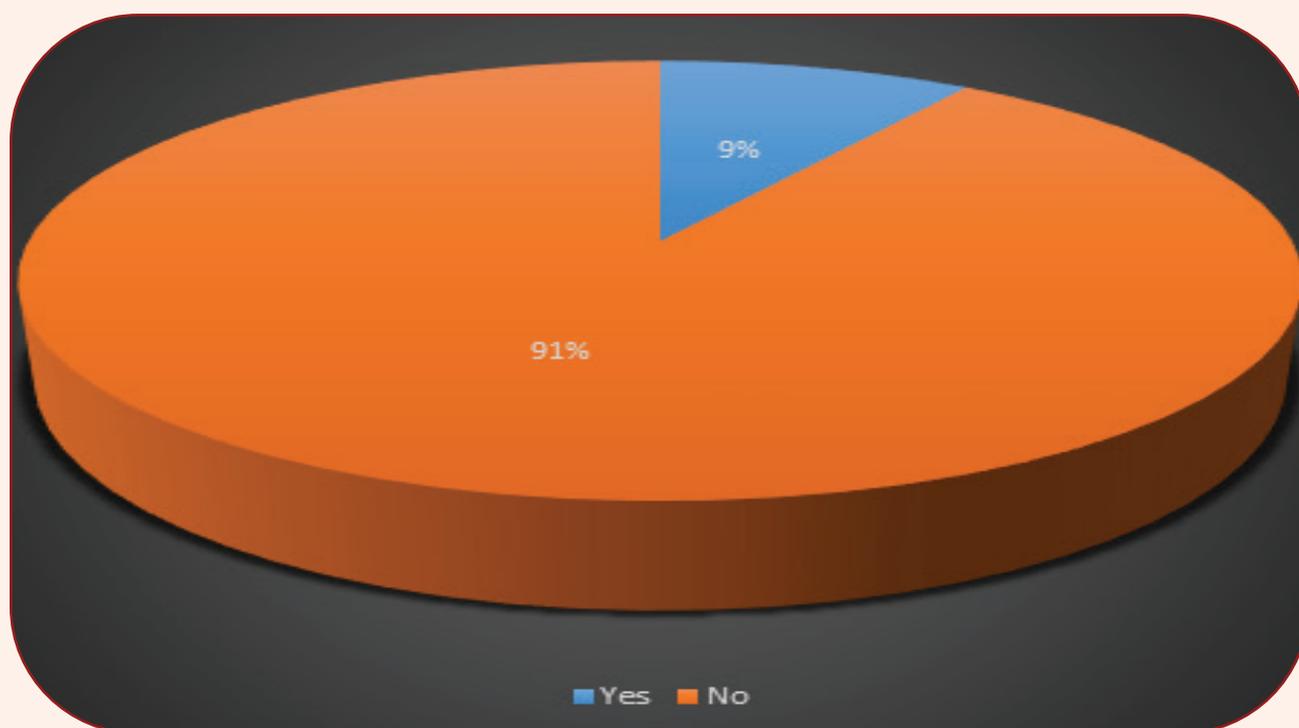


Figure 9: People's understanding on Online GBV

Source: Field Data, 2021.

During FGD, one discussant when asked to explain about online GBV said the following

*“Online GBV is the kind of violence which is conducted on online platforms, for example, uploading or sharing of someone’s nude photos without consent, hate speech or any act which is performed online for the aim of shaming and intimidating someone”, said the discussant.*

## 2.4 Experience in infringement of FoE, data privacy or internet shutdown

Various strategies have been used to undermine people’s right to FoE, freedom of association, data privacy and internet availability. These include censorship, internet crackdown, restrictive press legislation, harassment of journalists, bloggers, intimidation/persecution of political activists and others who voice their opinions, as well as crackdowns on religious minorities and other forms of suppression of religious freedom. However, most of the citizens have little knowledge on these issues and thus the authorities are taking advantages of their ignorance. For instance, for the year 2020, during the general election in Tanzania, the authorities imposed partial national internet crackdown but most of the citizens were unaware of the situation. Most of them thought it’s an internet problem.

The interviewee who answered whether they have experienced infringement of FoE, data privacy or internet shutdown for the year of 2020 majority of them said ‘no’ by 51.2% as shown in the figure below. This affirms that majority of the community members are unaware of these things. Since the concepts and the practice of digital rights are new to our communities, we are indebted to raise awareness to the community members.

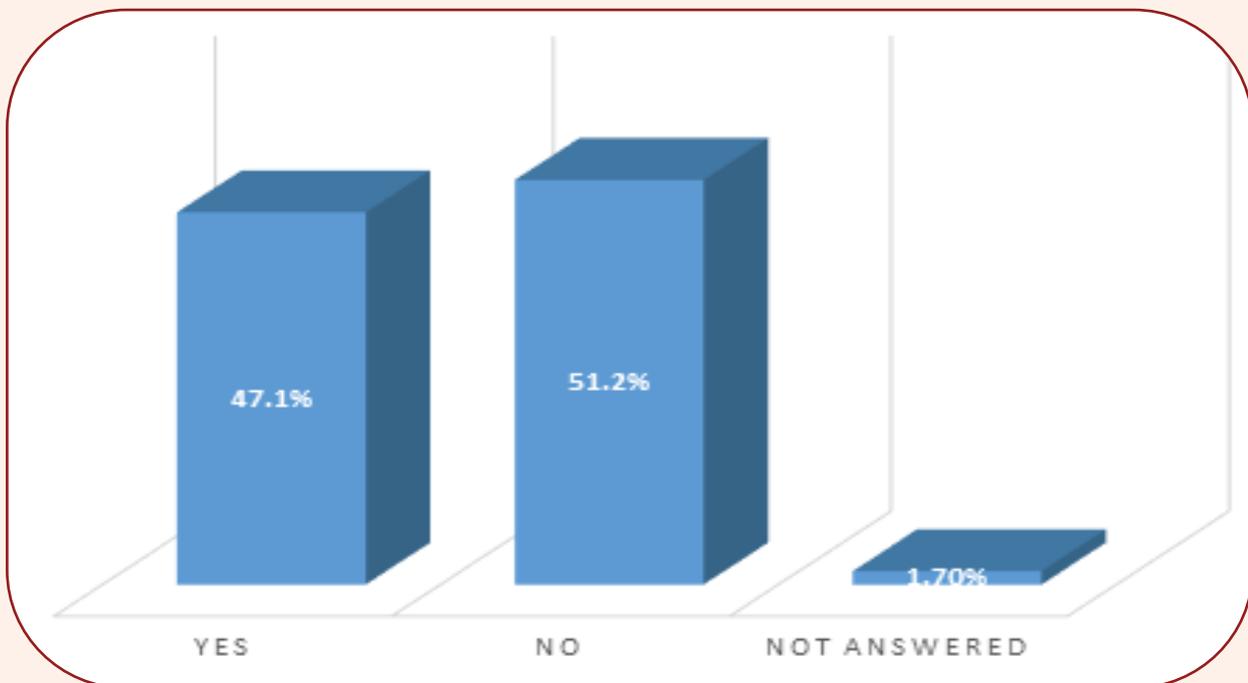


Figure 10: People's Experience in Infringement of FoE, Data Privacy and Internet shutdown

Source: Field data, 2021.

The development of digital tools and the internet is growing faster in Tanzania. The latest data from the Tanzania Communications Regulatory Authority (TCRA) showed that the number of mobile internet subscribers stood at 27,900,069 at the end of September 2020 from 26,832,089 users recorded at the end of the first quarter, in March 2020. Young people are the most affected group because most of youth are students and they use more internet in their academics. They also use more social media platforms for chatting and online businesses.

However, during FGD, discussants mentioned the following groups to be the mostly groups affected by the infringement of freedom of expression, internet shutdowns and data privacy last year:

- The working group (19 – 60 years old)
- Activists/human rights defenders
- Journalists
- Opposition politicians
- PWD
- Academicians/ students
- Digital platform users
- Election observers
- General public
- Women
- Youth

The 2020 Report of Article 19 which monitors freedom of expression and digital environment Eastern Africa mentioned Tanzania to be the worst performer in the rights to freedom of expression and digital environment.

## **2.3 Challenges Faced in Promoting Digital Rights in the United Republic of Tanzania**

Discussants during the FGD highlighted that promoting digital rights in Tanzania for the year of 2020 was so challenging. The following are the challenges which were faced by human rights defenders (HRD's) / activists in Tanzania:

### **2.3.1 Enforcement and Enactment of Repressive Laws/Regulations**

For the year 2020, the United Republic of Tanzania has experienced the implementation of restrictive laws. According to 2020 Human Rights Report by LHRC, it noted the following;

*“The year 2020 was also characterized by decline of internet freedom, which was largely contributed by existence and implementation of restrictive laws such as Cybercrimes Act 2015 and Online Content Regulations 2018 and later (2002). There were also reported disruption of internet in different parts of Tanzania, affecting civil, political and economic of internet users”.*

Over the past five years, the Tanzanian government has either enacted or begun to actively enforce repressive laws that undermine independent media, political opposition and civil society. These include the 2015 Cybercrimes Act, which restricts free expression online; the 2015 Statistics Act, which, until its amendment in June 2019, criminalized publishing statistics without government approval and blocked the publication and dissemination of independent research; 2018 regulations to the Electronic and Postal Communications Act that subject bloggers to excessive licensing fees; and the 2016 Media Services Act, which gives government agencies broad power to censor and limit the independence of the media by creating stringent rules for journalist accreditation and creating offenses and oversight powers that are open to abuse by the government.

### 2.3.2 Shrinking of civic Space

The working environment for CSOS was not pleasant. The government adopted new regulations in 2018 requiring NGOs to publicly declare their sources of funds, expenditures and intended activities, or face deregistration. Since then, it is a requirement for any organization to submit contractual agreements with donor to the state treasury if the contracts are valued higher than 20 million Tzs. Furthermore, the CSOS were given 10 years of registration certificate. After 10 years, if you wish to continue you will need to start the reregistration process.

### 2.3.3 Internet shutdown

For the first time the United Republic of Tanzania has restricted partial access to internet during the general election of 2020. Many social media (including Twitter, Facebook and YouTube) were restricted without the use of VPN.



Figure 13: A screenshot of OONI showing WhatsApp is likely blocked in Tanzania

Source: OONI Website

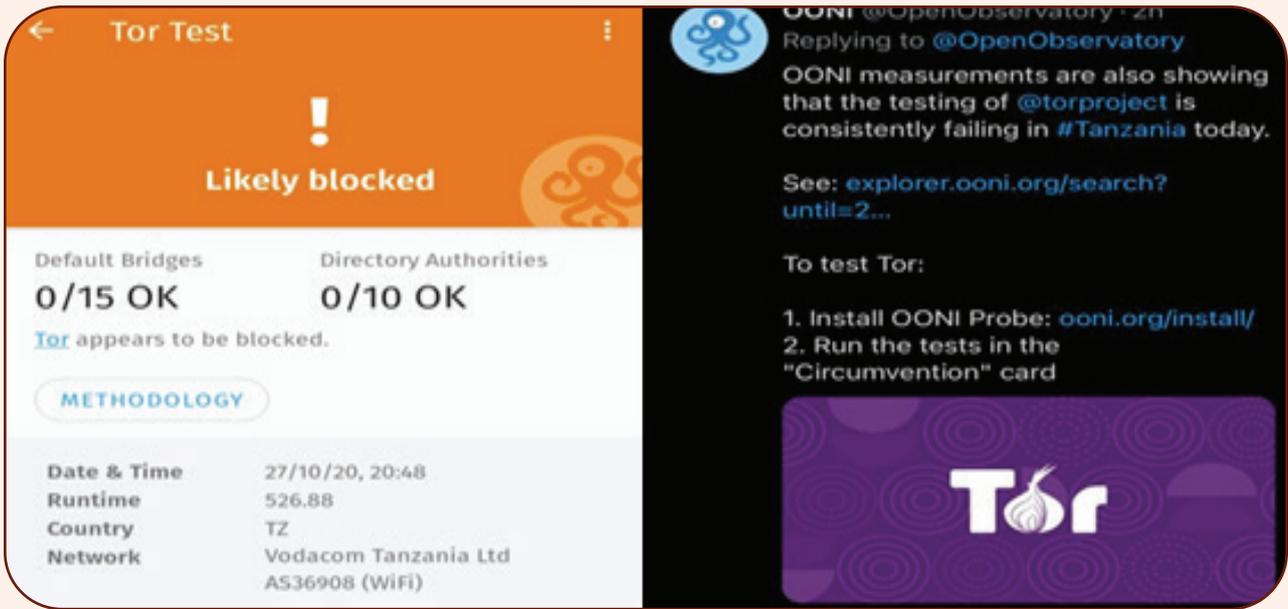


Figure 14: A screenshot showing Tor testing consistently failing in Tanzania

Source: Tor Website

During the 2020 general elections, Tanzanians experienced the internet shutdown for almost a month. The censorship started a month before, gradually but escalating from 26th and reaching its climax on the 28th of October, 2020. Some people started to experience internet traffic a month before. Furthermore, there was a letter from TCRA directing telecommunication companies to temporarily suspend bulk messages from the 24th of October to the 11th of November, 2020.

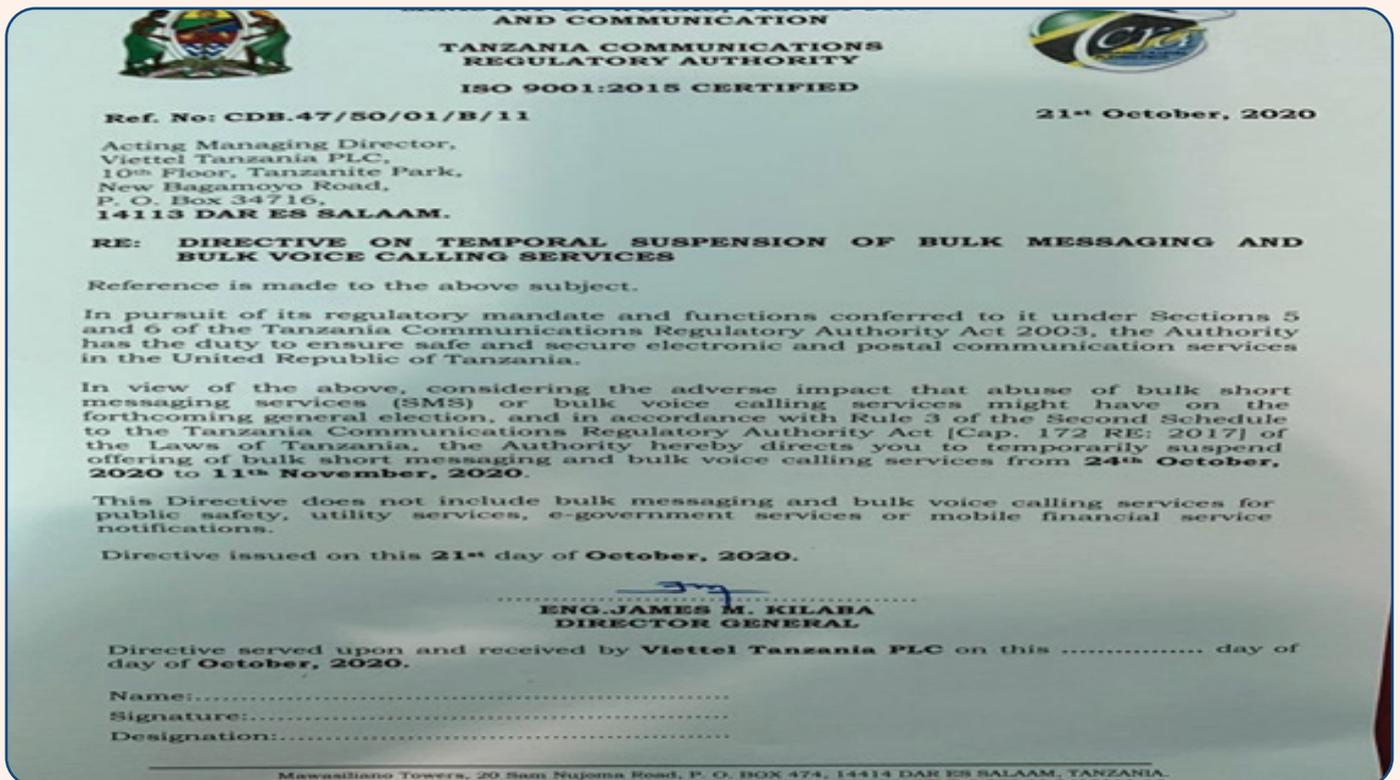


Figure 15: A Directive letter from TCRA to telecommunications companies to suspend bulk messages

### 2.3.4 Fabricated persecution of cases to HRD/activists/journalists

The government has arbitrarily arrested and, in some cases, brought harassing prosecutions against journalists, activists, and opposition politicians, perceived to be government critics. For year of 2020 we have seen various journalists who were persecuted, with a few others being fabricated cases

### 2.3.5 Freezing of organization accounts

In ensuring vibrant human rights, CSOS in the country are inactive as the government froze their accounts to paralyze their operations. A good example is THRDC, where on 12th of August 2020, the government froze the bank accounts of the Tanzania Human Rights Defenders Coalition, a local NGO, thus paralyzing its operations. This was followed by summons from the police to the Coordinator, Onesmo Ole Ngurumwa, to explain why the organization had failed to submit its contractual agreements with donors to the State Treasury, as required by 2018 regulations.

### 2.3.6 Ban and fines of Media

The amendment of the Electronic and Postal Communications (Online Content) Regulations 2020 has only exacerbated the crackdown on media as it criminalizes free speech, prohibits publication on a wide range of issues and gives the regulator sweeping powers to suspend media outlets and journalists. According to Article 19, it documented the following crackdowns to media during 2020;

- *On 23 March 2020, a journalist with Mwananchi Publications was dismissed after his Twitter post criticizing the President on his response to the Coronavirus pandemic.*
- *In April 2020, Mwananchi newspaper's online license was suspended and the media group fined after they posted a picture of the President in a crowded market, sparking discussions on the Coronavirus*
- *On 2 April 2020, Star Media Tanzania Ltd, Multichoice Tanzania Ltd and Azam Digital Broadcast Ltd were fined and ordered to apologize for airing 'false and misleading information on the country's approach to managing COVID-19.*
- *On 20 April 2020, the government suspended a journalist with the Tanzania Daima daily newspaper for six months for reporting on the Coronavirus pandemic.*
- *On 24 June 2020, Tanzania Daima's distribution and publication license was suspended by Tanzania Information Services Department for breaching the law and professional ethics.*
- *On 6 July 2020, The Tanzania Communication Regulatory Authority (TCRA) announced that they were suspending Kwanza Online Tv for 11 months for 'generating and disseminating biased, misleading and disruptive content' after sharing a US embassy health alert on Instagram about the government's failure to publish any Coronavirus figures since 29 April 2020.*

➤ On 10 August Radio Free Africa was placed on probation for three months by Tanzania Communication Regulation Authority for airing a BBC interview with the opposition presidential candidate on account that the interview lacked balance.

➤ Other stations such as Radio One Stereo, Abood FM Radio and CG FM received severe warnings from the regulation body, putting them on observation for three months.

### 2.3.7 Government Surveillance

Authorities have censored and suspended newspapers and radio stations, arbitrarily deregistered NGOs, and have not conducted credible investigations into abductions, attempts on the lives of journalists and opposition figures.

Towards the 2020 general election, the government using its authorities used to conduct surveillance and the misuse of private data like mobile phone number. During the FGD some discussants mentioned that they received text messages from the ruling party requesting them to vote for their presidential candidate as shown in the below figure.



Figure 16: A Screenshot of a text message from a ruling party requesting to vote for their presidential candidates. This message received by some discussants

Source: Field data 2021

In the United Republic of Tanzania we don't have the data protection law. I suggest that it is time to start advocating for one. Our personal information and data should be kept well and should not be used without one's consent. It has to be borne in mind that Tanzania is a signatory to many international and regional instruments which require for the State to respect, promote and protect civil, economic and political rights. Further, the 1977 Constitution of URT , has incorporated the bill of rights in Articles 13 – 29.

### **2.3.8 Suspension of PIL advocate**

During the FGD, discussants mentioned that among the challenges faced by HRD in promoting digital rights in Tanzania, is the suspension of public interest litigation advocates/lawyers. A good example is the case of Advocate Fatuma Karume who was suspended from practicing due to her principles of criticizing the government and filing public interest cases (strategic litigations). However other young PIL lawyers/advocates has being brought to the advocate committee; Advocate Jebra and Edson Kilatu. All of this has been done to create a fear to other PIL advocated not to criticize the government and to paralyses the freedom of expression (online or offline).

### **2.3.9 Intimidation, Arrest, Abduction & Prosecution of Journalists & HRD's**

The government has used the Cybercrimes Act to harass opposition politicians, journalists and activists, while police have arbitrarily arrested, and in some cases, beaten journalists as they covered events. Police have also arrested two journalists engaged in investigative reporting on government policy. Authorities have not adequately investigated the abduction of two other journalists, one of whom remains missing at the time of writing. According to THRDC, in the period of January to April 2020, at least 13 people including seven journalists and bloggers, have been prosecuted for contravening the Online Content Regulations of 2018, including their failure to register websites and YouTube pages.

Therefore, according to the LHRC report it is noted that the United Republic of Tanzania, Uganda and Ethiopia reportedly fared worse than Kenya, Rwanda and South Sudan in terms of protection of free expression online. This is why in 2020, the index puts the United Republic of Tanzania at 124th position, dropping 6 places further in the world ranking.

## **2.4 Laws & Regulations Affecting Digital Rights in Tanzania**

This sub chapter will analyze some laws which adversely affect the development of digital rights in the United Republic of Tanzania.

### **2.4.1 Electronic and Postal Communications (Online Content Regulation, 2020**

These Regulations were drafted by the Ministry of Information, Culture, Arts, and Sports with the intention of regulating all online content providers with the mandatory requirement of registering to the Tanzania Communication Regulatory Authority (TCRA). The Regulations were issued on 16th of March, 2018, which were repealed and replaced in July 2020.

These regulations have some positive provisions like the protection of internet and social media users from online criminal activities, fighting hate speeches, promoting user's responsibilities and accountability as well as protecting children against indecent online content. On the other hand, the Regulations contains provisions which hinder full enjoyment of fundamental digital rights including freedom of opinion in online platforms and rights to information.

Key concerns with regards to media freedom, freedom of opinion and right to information include:

**a. Mandatory Registration, License and Fee Requirements;** of all bloggers, online forums, online radio and television, social media users, business and civil society organizations that publish online with the TCRA.

According to Regulation 4 (1) it provides that;

*“A person can only provide online content services upon obtaining a license from TCRA. Failure of which may result to a fine of not less than 5millions or imprisonment of twelve months or both”*

The regulations further require payment of application fees, initial license annual fees and renewal fees. These are provided for under the second schedule of the Regulations. These fees are excessive for most Tanzanians who are unemployed youth and deprive their rights to grow and develop in their passion and careers as new bloggers as well as exercising their digital rights to freedom of expression and access to information.

**b. Some Provisions Infringe the Right to Privacy.** The regulation makes an obligation to owners of internet cafes to install surveillance cameras to record and archive activities of the internet users for at least twelve months. This provision violates the rights to privacy of users and this requirement is very costly for both internet users and owners. Subsequently, this requirement is not in conformity with the international standards regulating the right to privacy and other human rights.

The Human Rights Committee (HRC), which is the body of experts tasked with interpreting and overseeing the implementation of the ICCPR, has interpreted the normative content of the right to privacy as provided by article 17. In its General Comment No 16 on the Right to Privacy, the HRC stated that the guarantee of the right to privacy imposes an obligation on States to adopt legislative and other measures to give effect to the right.

*“In particular, such laws must amongst other things:*

➤ *prevent unlawful or arbitrary interference with the right to privacy by the State and other natural or legal persons;*

➤ *ensure that the ‘gathering and holding of personal information on computers, data banks and other devices whether by public authorities or private individuals or bodies, must be regulated by law*

➤ *take measures to prevent personal information being in the possession of authorized persons by law or used for a purpose incompatible with the privacy provisions of the ICCPR and*

➤ *to ensure every individual is able to ascertain whether, in what form, and for what purposes, personal information is stored in automatic data files; determine which public or private authority controls such files and to ensure the rectification or deletion of incorrect or unlawfully processed data”.*

**c. The Regulations Prohibits Right to Anonymity.** Regulation 9(e) requires a licensee to ensure that they have in place mechanisms to identify source of content. This is contrary to international standards which encourage anonymity to enable people to freely express their ideas, opinions, as well as the protection of whistleblowers. It further contravenes the right to privacy which is protected under UDHR, ICCPR and other regional instruments which the United Republic of Tanzania is signatory. The implication of this regulations is that it prohibits the use of all other digital applications which use anonymity, like VPN and others.

**d. The Regulations Restricts Peaceful Assembly and Association Online.** Under the 3rd Schedule of the Online Content Regulation of 2020, 'it prohibits contents that is involved in planning, organizing, promoting or calling for demonstrations, marches or the like which may lead to public disorder'. This provision is very broad and, in essence, arbitrarily restricts freedom of peaceful assembly and association through social media and other online platforms. However, the restrictions on this FoE and rights to privacy must conform to the three - part test of legality necessity and proportionality.

According to Africa Declaration on Internet Rights and Freedoms it provides that everyone has the rights to peaceful assembly and association online.

**e. It Contains Discriminatory Provisions.** Regulation 10 prohibits any mainstream content service provider with district or regional license from simulcasting content using online platforms. This provision is discriminatory in nature and restricts the right to information and FoE ads stipulated under the URT Constitution, UDHR, ICCPR and Banjul Charter.

**f.**The Regulations prohibit online content service providers from publishing "false content which is likely to mislead or deceive the public", unless the publications are preceded by a statement that the content is not factual.

**g.**The Regulations impose an ambiguous restriction on content providers which automatically limits freedom of opinion, the right to disseminate information, criticism of the government and other legitimate forms of expression.

This Regulations received strong critics from within and outside. For example, in July 2018 the African Commission on Human and People's Rights, which based in Banjul, issued a press release on the growing trends of stringent regulations of the internet in East Africa. For Tanzania, the commission was particularly concerned with the adoption of Online Content Regulation.

#### **2.4.2 Cybercrime Act, 2015**

The National Assembly enacted the Cybercrimes Act and it was signed it into law on 25 April 2015. This law criminalizes offenses relating to computer systems and Information Communication Technologies. It also provides for investigation, collection, and use of electronic evidence and related matters. Some provisions of this law pose a real threat to the enjoyment of digital rights, particularly FoE in Tanzania, including the following:

- The Act contains a number of vaguely-defined offences.
- It criminalizes sharing of information.
- It legalizes surveillance without proper court warrants.
- It grants broad powers of search and seizure to police.

#### **2.4.3 The Media Service Act, of 2016**

The National Assembly enacted this law on the 5th of November 2016, with the purpose of promoting professionalism in the media industry. This has resulted in the establishment of such bodies as the Journalists' Accreditation Board and the Independent Media Council. The Act seeks to provide a legal framework for the regulation of media and other related services. Key concerns with this law in regard to digital rights are as follows:

- It has a narrow definition of a journalist. According to this Act, 'a journalist is defined as a person accredited to be a journalist under this Act, who gathers, collects, edits, prepares or presents news, stories, materials and information for mass media services, whether an employee of media house or as a freelancer.' This definition excludes the community journalists who did not go through colleges and are not accredited. The definition requires that for anyone to be a journalist they need to attain some journalist training (professional).

However, The UN Special Rapporteur on the Protection and Promotion of Freedom of Opinion and Expression explained in a 2010 report to the UN General Assembly that a journalist is defined as follows:

'Journalists are understood to be individuals who are dedicated to investigating, analyzing and disseminating information, in a regular and specialized manner, through any type of written media, broadcast media (television or radio) or electronic media. With the advent of new forms of communication, journalism has extended into new areas, including citizen journalism.'

The international human rights standards have adopted the definition of journalist to include both professional journalists and citizen journalists. The UN special rapporteur report noted that while citizen journalists cannot replace professional journalists, 'the growing phenomenon of threats, attacks, arrests, arbitrary detention, surveillance and prosecution of citizen journalists must be recognized, and their rights protected in accordance with States' obligations under international human rights law.

'Thus, the report reminded states of their obligations to respect, protect and fulfil the right of citizen journalists to seek, receive and impart information and ideas of all kinds without fearing for their security. This includes developing legislation and mechanisms guaranteeing freedom of expression and information and effectively investigating and prosecuting crimes against freedom of expression. Therefore, legal protections should ideally focus on 'acts of journalism', rather than seek to comprehensively define the professional functions of a journalist'.

- It criminalizes defamation with absolute privilege to the government officials.
- It criminalizes publication, distribution and importation of seditious material which is overly broad and vague.
- It criminalizes the publication of a false statement, report, speculations, and imposes a penalty without considering the intention of the maker.
- It gives absolute powers and discretion to the minister to prohibit publications.

Furthermore, the Media Council of Tanzania and two other non-governmental organizations, the Legal and Human Rights Centre Tanzania Human Rights and the Defenders Coalition, challenged the Media Services Act, 120 of 2016 (the Act) in the East African Court of Justice. The Media Council argued that “the Act in its current form is an unjustified restriction on the freedom of expression which is a cornerstone of the principles of democracy, rule of law, accountability, transparency and good governance which [Tanzania] has committed to abide by, through the Treaty”. The Media Council submitted that the Act infringed articles 6(d), 7 and 8 of the Treaty for the Establishment of the East African Community.

The central issue for the Court was to determine whether the impugned provisions in the Act were unjustifiable limitations to the right to freedom of expression and so violated the Treaty.

The Media Council argued that there were numerous problems with the Act: it restricted types of news or content without reasonable justification; it introduced a mandatory accreditation for journalists and gave power to the Board of Accreditation to withdraw accreditation; it criminalized defamation, false news and rumors and seditious statements; and it conferred on the Minister absolute power to prohibit importation of publications and sanction media content.

The Court applied the three-part test, and, with reference to the *CORD* case and to the African Court on Human and People’s Rights case of *Konate v. Burkina Faso* App No. 004/2013/ (2014), held that the provision did not meet the requirements of clarity as it was “vague, clear and imprecise” and that it therefore was not “prescribed by law”. The Court found that “the word ‘undermine’ which forms the basis of the offence, is too vague to be of assistance to a journalist or other person, who seeks to regulate his or her conduct” and that “‘impede’ is vague and would not meet the UN Human Rights Committee’s guidance that ‘laws must contain rules which are sufficiently precise, to allow persons in charge of their application to know what forms of expression are legitimately restricted and what forms of expression are unduly restricted’”. In addition, the Court said that “hate speech” was not defined which meant the provision was vague and “potentially too broad”, and that “‘unwarranted invasion’ also in our view fails the test of clarity and precision”. The Court also found that the phrases “infringe lawful commercial interests”, “hinder or cause substantial harm”, “significantly undermines” and “damage the information holder’s position” did not adequately define the scope of the content restrictions and so did not provide clarity on what was prohibited by the legislation

The Court therefore declared that sections 7(3)(a), (b), (c), (d), (e), (f), (g), (h), (i) and (j); 19; 20; 21; 35; 36; 37; 38; 39; 40; 50; 52; 53; 54; 58; and 59 were in violation of the Treaty, but that sections 13 and 14 did not violate the Treaty. The Court directed the government of Tanzania to “take such measures as are necessary to bring the Media Services Act into compliance with the Treaty for the Establishment of the East African Community”

#### 2.4.4 The Access to Information Act 2016

This is an Act to provide for access to information; to define the scope of information which the public has the right to access; to promote transparency and accountability of information holders; and to provide for other related matters.

Key concerns with this Act include:

=> Contrary to international best practice, other domestic laws governing access to information take precedence when in conflict with the provisions of this Act.

=> The appeals process is skewed in favor of information holders as it gives the final say to the minister in charge of legal affairs rather than the courts.

=> Severe penalties are imposed on information holders who wrongly release information, which promotes self-censorship and the withholding of information.

#### 2.4.5 Statistics Act, 2015

This Act mandates the National Bureau of Statistics (NBS) to provide official statistics to the Government, the business community and the public at large. The Act also mandates the NBS to play the role of a co-coordinating agency, within the National Statistical System (NSS) to ensure that quality official statistics are produced. Key concerns with this Act in regards to digital rights and freedom of expression are as follows:

=> The provisions on the dissemination of survey micro-data are unnecessarily restrictive.

=> Rules appear to be inconsistent with principles of open government and open data.

=> It includes obstacles to whistleblowing without any public interest protections.

=> It requires approval from the NBS prior to producing or publishing statistics.

=> It restricts publication or communication of any contentious statistical information and makes it illegal to publish or communicate “false statistical information” that “may result in the distortion of facts.” These restrictions disregard the fact that dispute in statistics is an essential part of academic and policy debate

In short, the Act prohibits publication of any other statistics and reports before getting any approval from the government statistic body i.e. NBS. This Act has received critics since it prohibits organizations, especially human rights CSOS, from reporting statistics of human rights violations happening in a country.

### 2.5 Initiatives Taken to Protect Digital Rights

This part will discuss various initiatives taken by the government to protect and promote digital rights in Tanzania. However, these initiatives might have a negative implication but we understand the government might have imposed them in a good motive. This is why in the previous sub chapters we have discussed the challenges HRD’s are facing in promoting digital rights in Tanzania.

### **2.5.1 Availability Laws**

The United Republic of Tanzania is signatory to many international and regional human rights instruments including UDHR, ICCPR, Banjul Charter and many more. These instruments have set principles and standards of international human rights law which has to be followed by all countries that are member states and signatory to the conventions/ treaties. Fortunately, the United Republic of Tanzania has incorporated bill of rights in its mother law (Constitution of URT) Article 12 -29.

Apart from that, the government in ensuring that it promotes, respects and protects human rights and particularly digital rights it has enacted various laws and regulations including the Cybercrimes Act, Media Services Act, Whistleblowers Act, etc.

### **2.5.2 Strategic Litigation Cases**

Various strategic litigations have been filed and some cases are still pending while others have been decided. For example, the case of Media Council of Tanzania v. Attorney General.

### **2.5.3 TCRA Awareness Training**

TCRA has been providing community awareness trainings. For instance, the Tanzania Communications Regulatory Authority (TCRA) has been working with various stakeholders to build awareness on the gender digital divide, support technology education and skills training, as well as encourage more girls and young women to actively pursue careers in Science, Technology, Engineering and Mathematics (STEM).

However, in the effort to close the gender digital access gap, TCRA provides support to schools and communities in the provision of ICT equipment to girls' schools as well as integrated ones and community ICT centers, "Telecentres".

### **2.5.4 Police push messages on awareness of data and property safety**

In ensuring that the awareness knowledge is reaching the majority at rural areas, TCRA has been using various means to spread its awareness including push messages, social media, and media etc.

### **2.5.5 Awareness and trainings done by CSOS and Government**

Various stakeholders, including CSOS, have been providing awareness sessions to the community on digital rights and its challenges as well as how to deal with the digital challenges when happening. Zaina Foundation stand as a good example around Tanzania. Throughout 2020 they promoted accessibility and affordability of internet on social media with the hashtag #KeepItOnTz

## **2.6 Online Gender Based Violence**

Violence against women and girls is one of the most prevalent human rights violations in the world. It knows no social, economic or national boundaries. Worldwide, an estimated one in three women will experience physical or sexual abuse in her lifetime.

Gender-based violence (GBV) undermines the health, dignity, security and autonomy of its victims, yet it remains shrouded in a culture of silence. In 2020, incidents of violence against women recorded by the police force increased by 5.7% from 23,685 in 2019 to 26,544 in 2020. However, these reported assaults include physical violence, sexual violence in form of rape, sodomy and psychological violence and sexual corruption. Nevertheless, it seems there is inadequate records of reported online GBV despite the fact that most of young girls, women and other people are experiencing online GBV from day to day.

According to this study, majority of the interviewees seemed to be ignorant of online GBV. Although during FGD the discussants highlighted that online GBV is the kind of violence which is conducted by using online platforms. Online GBV is also referred as cyberbullying or cyber harassment.

According to UNICEF, cyberbullying is a bullying with the use of digital technologies. It can take place on social media, messaging platforms, gaming platforms and mobile phones. It is repeated behaviour, aimed at scaring, angering or shaming those who are targeted. Examples include:

- spreading lies about or posting embarrassing photos of someone on social media
- sending hurtful messages or threats via messaging platforms
- impersonating someone and sending mean messages to others on their behalf.

Cyberbullying Research Centre also defined cyberbullying to mean “willful and repeated harm inflicted through the use of computers, cell phones, and other electronic/ digital devices”

Therefore, in simple words cyberbullying refers to the misuse of information technology with the intention to harass others.

## 2.7 Digital Rights Inclusion

Digital Inclusion refers to the activities necessary to ensure that all individuals and communities, including the most disadvantaged, have access to and use of Information and Communication Technologies (ICTs). For example, PWD's, indigenous communities, and etc. This includes 5 elements:

- 1) affordable, robust broadband internet service
- 2) internet-enabled devices that meet the needs of the user
- 3) access to digital literacy training
- 4) quality technical support and
- 5) applications and online content designed to enable and encourage self-sufficiency, participation and collaboration.

Digital Inclusion must evolve as technology advances. Digital Inclusion requires intentional strategies and investments to reduce and eliminate historical, institutional and structural barriers to access and use technology.

When considering the five mentioned elements there is still a challenge in the United Republic of Tanzania on digital inclusion.

## 2.8 COVID 19 and Digital Rights

Coronavirus disease (COVID-19) is an infectious disease caused by a newly discovered corona virus. New disease was declared by WHO on 11 March 2020 as a global pandemic. Around the world, cities have stepped up in response to the COVID-19 pandemic, forcing changes to our daily lives. Digital technologies have proven to be a key part of solutions during this crisis, allowing local and regional governments to continue to offer essential public services, ensuring an avenue for many businesses to continue operations and keeping people in touch while following COVID-19 related public health measures. Digital technologies will also be pivotal to the future sustainability of towns and cities everywhere, particularly as we enter the Decade of Action to address the Sustainable Development Goals by 2030.

In response to what the World Health Organization (WHO) has labeled a pandemic, governments around the world have been using technology to contain the spread of the virus and keep people safe. Since COVID 19 was a global pandemic, Tanzanians also was forced to change their daily routine of life in controlling the spread of Corona virus. Meaning to say COVID protocols were observed like social distancing, avoid unnecessary movements etc. Due to this, digital technologies were the best solution. All meetings moved to online meetings, online platforms were the best way of association and communication in schools, colleges, universities and at work places.

Nevertheless, due to the circumstances and the situation of this pandemic authorities are forced to collect and use citizen's health data as well as tracking the geographic location of the patients and families and neighbors. In so doing, this pandemic will affect the right to privacy and data protection. During a public health crisis, the question is not if governments can use health data to help fight the crisis but how this can be done while safeguarding individual privacy and dignity to the maximum extent possible.

In combating COVID-19, public authorities should be able to rely on data, including health data, to determine the best course of action to mitigate the spread of the virus and identify what measures must be taken to safeguard people and their rights during and after the crisis. Measures applied should be transparent, necessary and proportionate and, when they exist, data protection and privacy laws should have clear exceptions that apply to public health crises to allow for greater than usual use of data.

In situations of state of emergency, the international human rights law has set the standards to be followed by its member states. Article 4 of ICCPR, which allows derogating, provides as follows;

*1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.*

From the above quoted provision, it seems the standards set by international human rights laws gives states the possibility of derogating, in exceptional circumstances and in a limited and supervised manner, from their obligations to guarantee certain rights and freedoms. The law defines the circumstances in which it is valid for a state to derogate from their obligations, limits the measures they may take in the course of any derogation, protects certain fundamental rights from any derogation, and finally sets out the procedural requirements that states must follow.

However, there are certain rights that do not allow for any derogation, such as the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, the prohibition of slavery, and the rule of “no punishment without law.

A special legal order such as a declaration of a state of emergency or danger is not an extra-legal situation; the rule of law continues to apply and there should be scope and time limitations. Issuing a legal order does not make lawful every measure undertaken pursuant to it. Fundamental human rights continue to apply in special legal orders or periods of emergency. Rights can only be restricted when necessary to prevent and mitigate the risks caused by the crisis, and restrictive measures must not go beyond the extent strictly required by and strictly proportionate to the exigencies of the circumstances.

- *The state of danger to be introduced as a special legal order is not an extra-constitutional situation and should not be allowed to become one.*
- *The special legal order cannot last forever; instead, it should be in place for a limited period of time which, if necessary, can be extended in case the “state of danger” continues to exist.*
- *The fundamental rules of the rule of law cannot be superseded in case of epidemic danger.*
- *Citizens are entitled to fundamental rights protection even in case of an emergency. These rights may only be restricted in the interest of averting a threat.*

Having noted that in combating this pandemic, the authorities will have to use peoples’ sensitive health data in order to mitigate the problem, and be aware that the international norms allow derogation in times of public emergence. The concern is that the United Republic of Tanzania is yet to enact the Data Protection Law. How can the country protect and ensure privacy is adhered?

## 2.9 Digital Rights Incidents in 2020

The digital rights incidents highlighted in this part are the ones in regard to clusters of digital rights which include any violation to FoE, freedom of assembly and association, rights to privacy, and rights to information. Therefore, with the above explanation the following are the digital rights incidents happened in the year of 2020 in Tanzania;

- Punishments and suspension of media houses which informed the public on COVID 19 and related speech which are contrary to the government information. For example, *Kwanza Online TV was suspended for 11 months* in June 2020 for reposting on Instagram a health alert from the US Embassy warning of an “elevated” risk of Covid-19 in the country, which the regulator found to be misleading content that contravened professional standards, arguing that the media house had failed to verify the accuracy of the information in the alert.

The Zanzibar Information Department suspended Talib Ussi Hamad, a journalist with the Tanzania Daima daily newspaper, for six months under the Registration of News Agents, Newspapers, and Books Act No. 5 of 1988 and its amendments No. 8 of 1997. Talib Hamad had allegedly reported about a Covid-19 patient without the patient’s consent. He filed a case in the Zanzibar High Court in July challenging the decision. The Zanzibar government lifted the suspension in August 2020.

Likewise, Mwananchi daily newspaper had its online license suspended for six months and fined five million shillings (USD 2,200) by the TCRA after it posted a photo of President Magufuli out shopping and surrounded by a crowd of people, eliciting online discussion on Tanzania's approach to addressing Covid-19 and the apparent breach of social distancing guidelines. According to the TCRA, the paper breached the Electronic and Postal Communications (Online Content) Regulations as its report was allegedly misleading and had caused confusion in the community.

Three other media organizations – Star Media Tanzania Ltd, Multichoice Tanzania Ltd and Azam Digital Broadcast Ltd – were on April 2, 2020 fined USD 2,200 each and ordered to apologize for “transmission of false and misleading information” about the country's approach to managing Covid-19.

On April 28, 2020, Ibrahim Bukuku, a first-year student at the University of Dodoma, was arrested and charged for allegedly disseminating false and misleading information through a WhatsApp group about an alleged cure for Covid-19”.

➤ Arrest of journalists. *Earlier in April 2020, Albert Sengo, a journalist working with Jembe Radio FM in Mwanza region, was charged in court for publishing online content on his “unregistered” online GSENGO TV*

*On April 30, 2020 two employees of Mwananchi Communications Ltd. – Haidary Hakam and Alona Tarimo, were arrested and charged for allegedly disseminating false information about Covid-19 victims on WhatsApp groups contrary to the Cybercrime Act of 2015.*

➤ Online GBV. Tanzania had various cases of online GBV

➤ Internet shutdown. For the first time the country had restricted the internet during the general election of October 2020.

➤ Enactment and enforcement of repressive law. *On July 17, 2020, the Tanzania government issued new Electronic and Postal Communications (Online Content) Regulations, 2020 that apply to online content production, hosting and dissemination. The regulations entrench the licensing and taxation of bloggers, online discussion forums, radio and television webcasters, and repress online speech, privacy and access to information*

➤ Prosecution of PIL advocates (*Jebra Kambole and Edson Kilatu*) after publishing posts through their online platforms.

Therefore, with the above explanation this study has noted that for the year of 2020 the United Republic of Tanzania had about 20 recorded incidents of digital rights.

## CHAPTER THREE

### CONCLUSION AND RECOMMENDATIONS

#### 3.0 An Overview

This chapter presents the conclusion and policy recommendations of the study for decision makers as well as the community at large on the situation of digital rights in Tanzania.

#### 3.1 Conclusion

The 2020 Digital Rights situation report indicates that digital rights in the country is still facing challenges. The report indicates that the United Republic of Tanzania continues to enact and enforce repressive laws which are in non-conformity with the international human rights law standards of which the country is a signatory. Therefore, this has adversely affected the situation of digital rights. The report further shows a drastic shrinking of the civic space which infringes people from exercising their right to freedom of association online.

The right to FoE in the United Republic of Tanzania has been greatly violated in the year 2020. Online GBV, internet shutdown and government surveillance has been an issue. Data protection law is not enacted in Tanzania. Further, the report has recorded about 20 digital rights incidents happened for the year 2020.

However, despite this situation, it will be unfair not to recognize that the state through its different apparatus have conducted various initiatives in the promotion and protection of digital rights in the country. These initiatives include provision of citizen's awareness on digital rights, enactment and enforcement of existing laws, etc.

#### 3.2 Recommendations

This report has the following recommendations;

- To continue providing awareness/training from grass route level to national level.
- Repeal or amend all repressive sections of the Media Services Act, in accordance with the decision of the East African Court of Justice, the Cybercrimes Act, and the Electronic and Postal Communications (Online Content) Regulations as well as all provisions of any law which are contrary to the provision of the Constitution of URT, which promote and protect digital rights.
- Joint effort between CSOS to create more awareness to much of the Tanzanian community and advocate for changes and amendments of repressive laws that infringe on digital rights.
- Government engagement.
- Promotion of digital literacy among the key groups to all groups especially the most affected group like women
- Adoption and advocating for legislation of the data protection law and its regulations in Tanzania.
- Engagement of a like-minded community to push the agenda of digital protection

- Ensuring there is adequate data and information (hub of digital rights center) records of all incidents of digital rights including online GBV, in order to provide a sustainable solution to the problems.
- Advocacy for digital rights and inclusion in Tanzania.

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