

Analysing Civic Space in East Africa through a judicial lens

1. INTRODUCTION

Although the concept of ‘civic space’ is particularly present in human rights discourse, there is no universally accepted definition of what the term means. According to a United Nations note, civic space is ‘the environment that enables people and groups to participate meaningfully in the political, economic, social and cultural life of their societies.’¹ Civic space is often approached through the lens of the core civic freedoms enshrined in international human rights instruments: freedom of association, freedom of peaceful assembly and freedom of expression.

Notwithstanding a comprehensive international legal framework protecting the enjoyment of civic space in place,² serious challenges persist in East Africa. The CIVICUS Monitor, which tracks the status of civic space across the world, describes the status of civic space in Uganda,³ Tanzania⁴ and Burundi⁵ as “repressed”, while the situation in Kenya is qualified as “obstructed”.⁶ For instance in Uganda,

Civicus notes that journalists and environmental human rights defenders face threats as well as attacks, and government critics face harassment.⁷

This research paper⁸ analyses a wealth of jurisprudence on civic space in Uganda, Tanzania, Kenya and Burundi.⁹ It first provides an analysis of civil liberties and their permissible limitations, according to national courts. It then considers the contributions by the East African Court of Justice (EACJ), which has accepted to exercise its jurisdiction over cases relating to violations of civic freedoms and human rights more broadly despite the absence of specific provisions granting such jurisdiction in the Treaty for the Establishment of the East African Community (EAC Treaty). Finally, the paper identifies the common trends and environments of closing civic space, in which civil society organisations have to navigate in East Africa.

¹ United Nations, ‘Guidance Note on the Protection and Promotion of Civic Space’, 2020. https://www.ohchr.org/sites/default/files/Documents/Issues/CivicSpace/UN_Guidance_Note.pdf.

² The Universal Declaration of Human Rights (articles 19, 20, 21); The International Covenant on Civil and Political Rights (articles 19, 21, 22, 25); the African Charter on Human and People’s Rights (articles 9,10, 11).

³ CIVICUS, ‘Monitor, Tracking Civic Space, Uganda’, <https://monitor.civicus.org/country/uganda/>.

⁴ CIVICUS, ‘Monitor - Tracking Civic Space, Tanzania’, <https://monitor.civicus.org/country/tanzania/>.

⁵ CIVICUS, ‘Monitor - Tracking Civic Space, Burundi’, <https://monitor.civicus.org/country/burundi/>.

⁶ CIVICUS, ‘Monitor - Tracking Civic Space, Kenya’, <https://monitor.civicus.org/country/kenya/>.

⁷ Ibid FN 3.

⁸ This paper is based on an analysis written by Dr. Fred Sekindi, and is one of the outputs of a project entitled “Protecting civic space: a public interest litigation approach” funded by the Belgian Development Cooperation.

⁹ These different judgements have also been integrated in a database available on the website of ASF, accessible at <https://asf.be/database/civic-space/>.



2. NATIONAL JURISPRUDENCE ON LIMITING CIVIC SPACE

Permissible limitations to civic freedoms

The constant challenge that courts face, whether in East Africa or elsewhere, is how to strike a balance between individuals' freedoms on the one hand, and the need to protect the rights of others and the public interest, on the other hand.

With regards to the permissible limitations to the enjoyment of human rights, the High Court of Kenya established an important jurisprudence by developing a three-stage test in the ***CORD & 2 others Vs. the Republic of Kenya and Others*** case,¹⁰ which was later used by other national courts in the region. The test is a three-stage process posing the following questions: "(a) is the limitation one that is prescribed by law? It must be part of a Statute, and must be clear, and accessible to citizens so that they are aware of what is prohibited: (b) Is the objective of the law pressing and substantial? It must be important to the society; and (c) Has the State, in seeking to achieve its objectives chosen a proportionate way to do so? This is the test of proportionality relative to the objectives or purpose it seeks to achieve".¹¹

This three-prong test was used in a case that the Media Council of Tanzania filed before the EACJ to challenge provisions of the Media Services Act,¹² in which they argued that the Act imposed unjustified restrictions to the freedom of expression in Tanzania. The Court ruled in their favor and held that the Tanzanian government had failed to demonstrate that the limitations, in particular those on the content of the news, and the criminal offenses (defamation, publication of false news and rumors) on the basis of which journalists could be severely

punished, were legitimate. The Court's judgment confirmed the restrictive reading of justifiable limitations to the right to freedom of expression, thereby advancing the protection of civic freedoms in the region.

Similarly, in Uganda, the permissible limitations on the enjoyment of civic freedoms are one of the key issues that has been contested in the courts. In defining the parameters of acceptable limitations on civic space, Uganda's courts have been largely guided by the Constitution. Article 43 of the Constitution provides for limitations on fundamental freedoms and other human rights. It states that: *'(1) in the enjoyment of the rights and freedoms no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest; (2) public interest shall not permit— (a) political persecution; (b) detention without trial; (c) any limitation of the enjoyment of the rights and freedoms beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in the Constitution'*.¹³ In the case of ***Charles Onyango Obbo & Anor Vs. Attorney General***,¹⁴ the Supreme Court defined the scope of these permissible limitations envisioned by article 43. According to the Court, article 43(1) refers to the first permissible restriction to fundamental freedoms, which is that one cannot use their rights to infringe upon the rights of others. That limitation is however nuanced by the second paragraph of Article 43, which was enacted to avoid the danger of misuse or abuse of such a limitation in the name of public interest.¹⁵ Article 43(2) expressly prohibits the use of political persecution and detention without trial, and prevents the use of exceptions in the name of public interest in these situations. Moreover, the last part of Article 43 provides a yardstick to gauge

¹⁰ *CORD & 2 others v. the Republic of Kenya and others*, HRC Petition No.628 of 2014.

¹¹ *Ibid* §60.

¹² *Media Council of Tanzania and 2 Others v. The Attorney General of United Republic of Tanzania*, Reference No. 2 of 2017.

¹³ Constitution of Uganda, Article 43.

¹⁴ Constitutional Appeal No. 2 of 2002.

¹⁵ *Ibid* p.12.

any limitation to human rights, which must be “acceptable and demonstrably justifiable in a free and democratic society”.

While jurisprudence in Kenya, Tanzania and Uganda advanced civic freedoms by setting strict acceptable limitations balancing the rights at stake, courts in Burundi have not always abided by the same standards. In the case ***Examen de constitutionnalité de la loi N°1/11 du 04 juin 2013 régissant la presse au Burundi***,¹⁶ the Burundian Journalist Union (*Union Burundaise des Journalistes - UBJ*), supported by national and international organisations, challenged eight provisions of that press law for being contrary to provisions of the Constitution. Ever since its promulgation, the draft of what became the press law of 4 June 2013 gave rise to a strong outcry amongst media and human rights groups.¹⁷ The latter argued that the press law violated the rights of journalists to protect their sources of information, contained disproportionate restrictions on freedom of expression, imposed an illegitimate system of censorship on films produced in Burundi and provided for exorbitant fines to punish press offences. The Constitutional Court of Burundi however ruled that the restrictions on freedom of the press and freedom of expression contained in the law were in conformity with the Constitution, citing the protection of privacy, national security and public order as legitimate reasons justifying said restrictions within the meaning of the Constitution and other international texts ratified by Burundi (in particular the African Charter on Human

and Peoples' Rights and the International Covenant on Civil and Political Rights).

The permissible limitations arising out of the judicial decisions developed above are similar to those in international human rights law.¹⁸ Two categories of limitations are envisaged in international human rights law. First, the freedoms may legitimately be regulated by law to protect the rights and freedoms of others. Second, limitation may be justified for different public interest reasons, namely including national security, morality, health and public order.¹⁹ International human rights law has laid out guiding principles to analyse the legitimacy of limitations, which are: legality (prescribed by law), pursuit of a legitimate aim, necessary in a democratic society (also known as the principle of proportionality) and presumption of freedom (freedom is the rule, limitation is the exception).

Laws that regulate civic freedoms must be clear and predictable

Another matter of litigation in Uganda has been the clarity and predictability of laws that limit the enjoyment of civic freedoms. It is settled case-law²⁰ that the enjoyment of civic freedoms can be legally limited within what is demonstrably justifiable in a free and democratic society, but these limitations should be legal, clear, proportionate, non-discriminatory and predictable.

In the case of ***Andrew Karamgi & Robert Shaka Vs. Attorney General***,²¹ the Constitutional Court was tasked with

¹⁶ RCCB271.

¹⁷ See Amnesty International, 'Burundi: Freedom of expression under threat from new press law', 30.04.2013, <https://www.amnesty.org/en/latest/press-release/2013/04/burundi-freedom-expression-under-threat-new-press-law/>; Committee to Protect Journalists, 'Burundi – Key developments', <https://cpj.org/2014/02/attacks-on-the-press-in-2013-burundi/>; United Nations Office in Burundi, 'UN chief 'regrets' new Burundi media law which may curb press freedom', 06.06.2013, <https://bhub.unmissions.org/un-chief-%E2%80%98regrets%E2%80%99-new-burundi-media-law-which-may-curb-press-freedom>.

¹⁸ See Report of Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, A/71/373, 06.09.2016.

¹⁹ See *Sunday Times v. UK*, (1979) 2 EHRR 245, para 65; See also *Frumkin v. Russia* (2016) 63 EHRR 18.

²⁰ See *Centre for Constitutional Governance Vs. National Bureau for Non-Governmental Organisations* Miscellaneous Cause No. 374 of 2020; Miscellaneous Cause No. 292 of 2021 [2022] UGHCCD 80 (9 May 2022); *Uganda Women Network & Anor Vs. The Financial Intelligence Authority and Attorney General*; Miscellaneous Cause No. 23 of 2021; *Center for Public Interest Law (CEPIL), Human Rights Network for Journalists (HRNJ) & East African Media Institute Vs Attorney General* Constitutional Petition No. 09 of 2014; *Joachim Buwembo, Bernard Tabaire, Emmanuel Davies Gyezaho & Mukasa Robert Vs Attorney General*, Constitutional Reference No. 1 of 2008; *Uganda vs Lule David, Katongole Julius, Nyanzi Fred Ssentamu, Sebufu Edward & Hon. Robert Kyagulanyi Sentamu*, Constitutional Reference No 022 of 2020.

²¹ Constitution Petition No.05 of 2016.

determining the clarity of Section 25 of the Computer Misuse Act, No. 2 of 2011. This provision created the crime of offensive communication worded as “*wilfully and repeatedly use electronic communication to disturb or attempt to disturb the peace, quiet or right of privacy of any person with no purpose of legitimate communication.*” The petitioners contended that it was inconsistent with and/or in contravention of Article 29(1)(a) of the Constitution that protects freedom of expression. The Court indeed found that the provision was unconstitutional, and reasoned that the wording of Section 25 was not clear, and in particular did not clearly define the elements of an offence.²² The Court put forward the doctrine of vagueness, founded on the rule of law, in particular the principles of fair notice to citizens²³ and the boundaries of discretion in law enforcement. Fair notice to the citizen is, according to the Court, comprised of two elements: a formal aspect (knowledge among citizens about the actual text of a statute) and a substantive aspect (an understanding that certain conduct is the subject of legal restrictions). In order to limit the discretion of the executive branch when enforcing laws, the Court held that the law must not be so vague that a decision to prosecute a citizen automatically leads to a conviction.²⁴ The Court continued by mentioning that the threshold for a law to be found vague is relatively high.²⁵

This decision indicates that courts will strike down penal laws that limit the enjoyment of civic freedoms where such laws are vague, unpredictable and disproportionate.²⁶ It

stated that vague laws have harmful effects. First, innocent citizens may be harmed when they are not sufficiently warned of potential offences. Second, vague laws can encourage arbitrary and discriminatory enforcement, as there can be insufficient statutory interpretation by impartial and competent bodies. Lastly, they offend crucial values and freedoms.²⁷

Proportionality

Still in the same case, the Constitutional Court further stated that for laws to be lawful rather than arbitrary, they should contain adequate safeguards against arbitrary decisions and provide effective controls against abuse by those in authority. In other words, the Court stated that any limitation on public freedoms imposed by a law must not go further than is reasonably necessary to achieve the legitimate objective. This is also known as the principle of proportionality. Consequently, a law which infringes a basic right and does not meet this proportionality requirement is contrary to Article 43(2)(c) of the Constitution,²⁸ and thus null and void.²⁹

The proportionality test was also at the heart of the ***Muwanga Kivumbi Vs. Attorney General*** case, brought again before the Constitutional Court in Uganda.³⁰ The applicants in this case argued that Section 32(2) of the Police Act³¹ had limited their right to freedom of assembly without a legitimate justification. The Court declared the provision unconstitutional because the extent to which it limited freedom of

²² Constitution Petition No.05 of 2016, p.15.

²³ Ibid, p.10. Fair notice to the citizen is, according to the Court, comprised of two elements: a formal aspect (an acquaintance with the actual text of a statute) and a substantive aspect (an understanding that certain conduct is the subject of legal restrictions).

²⁴ Ibid, p.12.

²⁵ Ibid p.10. The Court listed three factors to consider: '(a) the need for flexibility and the interpretative role of the courts; (b) the impossibility of achieving absolute certainty, a standard of intelligibility being more appropriate; and (c) the possibility that many varying judicial interpretations of a given disposition may exist and perhaps coexist'.

²⁶ See also *Andrew Mujuni Mwenda & The East African Media Institute (U) Ltd Vs Attorney General*; Consolidated Constitutional Petitions Numbers 12 of 2005 and 3 of 2006.

²⁷ Constitution Petition No.05 of 2016, p.12; see also *Skilling vs United States*, 1.30. S. Ct. 2896(2010).

²⁸ Article 43(2)(c) provides that “*public interest shall not permit any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.*”

²⁹ Ibid, p.13.

³⁰ Constitutional Petition No. 9 of 2005.

³¹ The section relates to the power to regulate assemblies and processions. Paragraph 2 reads as follow: ‘*If it comes to the knowledge of the inspector general that it is intended to convene any assembly or form any procession on any public road or street or at any place of public resort, and the inspector general has reasonable grounds for believing that, the assembly or procession is likely to cause a breach of the peace, the inspector general may, by notice in writing to the person responsible for convening the assembly or forming the procession, prohibit the convening of the assembly or forming of the procession.*’

association was beyond what the Court deemed acceptable and demonstrably justifiable in a free and democratic society, and therefore did not meet the proportionality test. The Court found that the provisions in the Police Act, which granted powers to the police to prohibit assemblies or impose conditions to demonstrations, denied citizens their right to peacefully assemble and demonstrate together with others, as guaranteed under Article 29(1)(d) of the Constitution.

In summary, civic freedoms are not absolute and can be limited by the law, but such limitations must be demonstrably justifiable in a free and democratic society.³² This has been the consistent position of Ugandan courts in the majority of cases.³³ Courts have also considered any limitation to human rights as a secondary objective, while the enjoyment of public freedom is the primary objective of the law in question.³⁴

3. BEYOND NATIONAL COURTS AND LAWS: THE EAST AFRICAN COURT OF JUSTICE (EACJ) IN CIVIC CASES

The EACJ is the judicial body of the East African Community (EAC), established in 1999 by the Treaty Establishing the East African Community. The particularity of the EACJ, in comparison with other regional or international bodies (including the African Commission and Court on Human and People's Rights), is that there is no legal requirement for exhaustion of local remedies, which is favorable to human rights groups and individuals. However, applicants are restricted by a two-month limitation period to seize the Court, starting from the act or decision allegedly violating provisions of the Treaty. Though there are no specific human rights provisions in the Treaty, human rights cases have been brought

under the fundamental principles outlined in articles 6(d), 7(2) and 8 of the Treaty. Article 6(d) provides that one of the fundamental principles that govern the Community is "good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and people's rights in accordance with the provision of the African Charter on Human and Peoples' Rights". Article 7 requires member states to adhere to the principles set out in article 6(d) and states that "Partner States undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights". Article 8 obliges member states to "abstain from any measures likely to jeopardize the achievement of the objectives or the implementation of the provisions" of the Treaty.

The EACJ has adjudicated cases of violations of civic freedoms, such as in the matter of ***East African Law Society Vs. Attorney General of the Republic of Uganda and Secretary General of the East African Community***.³⁵ After the 2021 elections, and in reaction to the high cost of living in Uganda, opposition political activists called on the population to 'walk to work' to protest the situation. The government qualified the protests as unlawful assembly and the heavy-handed response by the security forces led to the death of at least nine people.³⁶ In light of the events, the applicants in this case tasked the EACJ to determine if the excessive use of force by security forces amounted to a violation of the Ugandan constitution, the EAC Treaty or the African Charter on Human and Peoples'

³² Ibid FN 6.

³³ See *Andrew Mujuni Mwenda & The East African Media Institute (U) Ltd Vs. Attorney General; Center for Public Interest Law, Human Rights Network for Journalists & East Africa Media Institute Vs. Attorney General*, Constitutional Petition No. 09 of 2014.

³⁴ Ibid.

³⁵ Reference No.3 of 2011.

³⁶ See Human Rights Watch, 'Uganda: 5 years on, No Justice for 'Walk to Work' killings', 21.05.2016, <https://www.hrw.org/news/2016/04/22/uganda-5-years-no-justice-walk-work-killings>.

Rights (ACHPR). In the ruling, the Court held that the right to a peaceful assembly is an integral part of the rule of law and good governance and any violation thereof would amount to a violation of Articles 6(d) and 7(2) of the EAC Treaty and Article 11 of the ACHPR.³⁷ However, the Court ruled that the Applicant did not furnish its request with the necessary evidence to prove the allegations it raised; in other words, that the evidence produced was too weak to help it in ruling against the actions of Uganda. This ruling is nevertheless important in as far as it highlights that violations of civic freedoms are also violations of sub-regional as well as regional treaty obligations and standards.

The EACJ has also heard cases involving issues closely related to civic space, such as political participation and freedom of the press. On 26 May 2023, the Appellate Division of the EACJ dismissed an appeal from the Attorney General of Tanzania, requesting the Court to overturn a decision from the Trial Court, which had declared that Sections of the Political Parties (Amendment) Act violated the EAC Treaty. Freeman A. Mbowe, Zitto Zuberi Kabwe, Hashim Rungwe, Salim Mwalim and Legal and Human Rights Center filed a suit against the government of Tanzania, challenging provisions of Sections 3, 4, 5, 9, 15 and 29 of the Political Parties (Amendment) Act. The parts of the Act, which were called into question by the applicants in this case, gave the Registrar of Political Parties the power to monitor intra party elections and nomination processes and provided for sanctions against party leaders who failed to give the Registrar any information it requested. The Registrar was also given broad powers to suspend a member of a political party from conducting political activities and to regulate civic education carried out by political parties. To determine whether these provisions were in violation of the Treaty, the Court applied the tree-tier test set out in the *Tanzania Media*

Council case (see above). The Appellate Division confirmed the holding and reasoning of the Trial Court by reiterating that the challenged provisions were vague, disproportionate and unjustified restrictions of the freedom of association, the free participation in political affairs and access to information.

Similarly, in the case involving the Media Council of Tanzania against the government of Tanzania,³⁸ three civil society organisations challenged numerous sections of the Media Services Act. They argued that the restrictions the Act imposed on the content of news; the use of criminal offences for false news and defamation and the mandatory accreditation of journalists by a Board of Accreditation infringed the right to access information and the freedom of the press and expression. The Court held that the challenged provisions violated both the Treaty and the African Charter on Human and People’s Rights and directed Tanzania to bring the Act into compliance with the latter.

4. DETERIORATING ENVIRONMENT FOR CIVIL SOCIETY ACTORS: KEY TRENDS

The work of civil society organisations (CSOs) is regulated by laws and policies that provide for a wide number of obligations that CSOs have to observe.

In Uganda, until recently the state agency charged with regulating the work of CSOs was the NGO Bureau, exercising its powers under the NGO Act. The NGO Act vested the Bureau with the powers to register, suspend, blacklist, or revoke an organisation’s permit, among other functions.³⁹ It was also entrusted with establishing and maintaining a register of organisations, and considering applications for issuing and renewing operation permits.⁴⁰ On 23 April 2024,

³⁷ Article 11 of the ACHPR provides that “every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms”.

³⁸ *Media Council of Tanzania and 2 Others v. The Attorney General of United Republic of Tanzania*, Reference No. 2 of 2017.

³⁹ NGO Act, Section 7.

⁴⁰ *Ibid*, Section 6.

parliament however passed the NGO (Amendment) Bill,⁴¹ returning those functions to the Ministry of Internal Affairs as was the case before the bureau was created.

The equivalent in Kenya is the Non-Governmental Organizations Coordination Board, a State Corporation (government agency) established by the Non-Governmental Organizations Coordination Act (Cap 19) of 1990. The Board has the responsibility of regulating and enabling the NGO sector. On the Tanzanian side, NGOs are governed by a number of laws, depending on the legal form they have opted for. On June 30, 2019, the Written Laws (Misc. Amendments) Act No. 3 of 2019 amended key laws governing civil society, which are the NGO Act, the Societies Act and the Company Act. The Registrar of NGOs, within the Ministry of Community Development, Gender, Women and Special Groups, is the relevant office for regulating NGOs.

The courts in these countries have supervised agencies regulating civic freedoms and adjudicated on different issues affecting CSOs, as developed below.

Sweeping powers of government on regulation of civic freedoms

In Uganda, the powers of the NGO Bureau were challenged in several court cases. In the case of ***Centre for Constitutional Governance Vs. National Bureau for Non-Governmental Organisations***,⁴² the applicants challenged the decision by the NGO Bureau to suspend the operations of the National Election Watch Uganda (NEW-U). NEW-U was a coalition composed of around 60 organisations created ahead of the 2021 elections to, among other aims, observe these elections. The NGO Bureau based its decision on the grounds that NEW-U was operating as a civil society

organization without a permit nor any form of incorporation or registration to operate under the relevant laws. The Centre for Constitutional Governance, a member of NEW-U which instituted the court case, argued that since most of the members of the coalition were NGOs that were legally registered with the NGO Bureau and had been issued with operational permits, NEW-U was legally constituted. The Court held that the evidence on record indicated that NEW-U was working as a CSO and all its activities and intentions were crafted as a NGO, which under the law must have been issued with a permit. The Court thus concluded that the NGO Bureau had lawfully halted its operations under the circumstances.

A more favorable ruling for civil society was delivered in the ***Chapter Four Uganda Vs. National Bureau for Non-Governmental Organisations*** case,⁴³ in which the Court found that the decision by the NGO Bureau to indefinitely suspend the operations of Chapter Four Uganda - without detailing a timeframe for its investigations into allegations of non-compliance - was procedurally improper, thus rendering the suspension unlawful. Interestingly, the High Court criticized the NGO Bureau for failing to give Chapter Four Uganda an opportunity to rebut the allegations against it, thereby denying its right to a fair hearing. The Court ordered the NGO Bureau to investigate the allegations, hear Chapter Four and determine this matter within one month. The Court reasoned that the powers conferred upon the NGO Bureau were not intended to be exercised in a way that would defeat the entire spirit of the NGO Act of regulating the civil society sector. According to the Court, a suspension without a timeline and an indefinite suspension can be understood to mean the same thing, which can be deemed

⁴¹Legislators have scrapped the Non-Governmental Organisations (NGOs) Board, on Tuesday, 23 April 2024, returning its mandate of overseeing operations of NGOs back to the Ministry of Internal Affairs. For further information, see

<https://www.parliament.go.ug/news/7273/mps-return-mandate-supervise-ngos-back-internal-affairs-ministry>.

⁴² Miscellaneous Cause No. 374 of 2020.

⁴³ Miscellaneous Cause No. 292 of 2021 [2022] UGHCCD 80 (9 May 2022).

unreasonable, even if it is granted by the law.

In Tanzania, a similar situation to the case of Chapter Four occurred. In the case of ***Managing Editor, Mseto and Another Vs. Attorney General of the United Republic of Tanzania***,⁴⁴ Mseto, a Tanzanian newspaper, challenged its three-year suspension which it faced as a consequence of its reporting. In 2012, the Registrar of Newspapers gave the newspaper a warning regarding its license, reminding it was limited to sports journalism. Since the warning, however, Mseto continued to publish general news articles and in 2016, it published an article alleging bribery by a senior official. The article, entitled "*Minister soils JPM*", alleged that an Assistant Minister in the President's office had taken bribes to raise funds for the presidential campaign.⁴⁵ Following the publication of that article, on August 10th 2016, the Minister of Information, Youth, Culture and Sports, Nape Nnauye, issued an order suspending the newspaper for three years, citing the Newspaper Act of 1979. The order directed the representatives of the newspaper to launch an application to the EACJ, asserting violations of their freedom of expression and press under the EAC Treaty. The Court ruled in favour of the applicant by declaring that the order, rooted in section 25(1) of the Newspaper Act, violated treaty principles of democracy, the rule of law and human rights. It added that the Minister had acted unlawfully and that the restriction of the right to freedom of expression was "unlawful, disproportionate and did not serve any legitimate or lawful purpose", ordering the government to annul the suspension order and allow Mseto to resume publication. It is worth noting that the Court declared in its concluding paragraph that newspapers have an obligation to highlight instances of high-level corruption, referring to the impugned article.

In Burundi, the powers of the Minister regarding press freedom have also been challenged before the Constitutional Court. The Burundian Constitution recognises and guarantees press freedom in its Article 26§2. The National Communication Council (CNC), which is governed by Law n°1/18 dated 25 September 2018, is mandated to oversee the freedom of audio-visual and written media and their compliance with the law, public order and morality. To this end, the Council has the power to take decisions, including with regard to freedom of the press and equitable access for political parties to state media. The CNC has often been criticised for its lack of independence, and the different iterations of laws regulating the press have been criticised for its provisions limiting the freedom of the press. In the 1992 ***Examen de constitutionnalité du Décret-loi portant réglementation de la presse au Burundi*** case,⁴⁶ the Court found numerous provisions of the Decree-Law regulating the press in Burundi (1992) unconstitutional. Article 11 of the Act states that "*accreditation of foreign journalists is granted by the Minister responsible for communication. Such authorisation may be withdrawn at any time by the same authority if the journalist breaches the provisions of this Decree-Law*". This article, along with others of the same Decree-Law, gave the Minister responsible for communication decision-making powers over the various aspects of press freedom, whereas this power was constitutionally reserved for the CNC. The Court highlighted that the power to decide on all different aspects of press freedom should be given to a body recognised by the Constitution, and not to the Minister.

Since then, a new press law was adopted by Parliament, on 7th May, 2024. The new law partially decriminalizes certain offenses, such as insult or defamation. But according to journalists' organizations, it does not contain any substantive changes to advance

⁴⁴ Reference No.7 of 2016.

⁴⁵ Media Defence, 'East African Court overturns Tanzania's newspaper ban', 27.06.2018,

<https://www.mediadefence.org/news/east-african-court-overturns-tanzanias-newspaper-ban/>.

⁴⁶ RCCB6.

the freedom of the press or protect journalists.⁴⁷

Freezing of accounts

In the matter of ***Uganda Women Network & Anor Vs. The Financial Intelligence Authority and Attorney General***,⁴⁸ the High Court of Uganda ruled that the decision by the Financial Intelligence Authority (FIA) to freeze the bank accounts of the Uganda Women Network (UWONET), a women's rights organization, was unlawful and beyond its authority. The Court stated that the FIA had taken the decision without any credible evidence that the applicants were about to or were involved in terrorism financing. Prior to the FIA's decision, the Directorate of Public Prosecution (DPP) had advised the FIA to unfreeze the bank accounts of the organisation, pending further investigations. The Court reasoned that the FIA must establish that the funds or property were intended for terrorism activities before freezing the accounts. In order for the FIA to reach this conclusion, it must have information or point to circumstances leading to reasonable suspicion that the suspected party has engaged in or is about to engage in terrorism activities, as provided under Section 17A (1) of the Anti-Money Laundering Act. In the Court's view, there must be a proper basis for the FIA's actions and it must be in position to present that information or the circumstances of reasonable suspicion to the Court, if called upon, for the Court to see that there was genuine cause for its action. Otherwise, the Court concluded that the FIA is acting beyond its power, as it did in this case.

(De)Registration of CSOs

In Uganda, in the case of ***Frank Mugisha & 2 Ors***,⁴⁹ the High Court was asked to adjudicate on the refusal by the Uganda Registration Services Bureau (URSB) to register the proposed company by Sexual Minorities Uganda (SMUG), a CSO aimed at promoting the rights of the Lesbian, Gay, Bisexual, Transgender, Queer and Intersex (LGBTQI+) community. The High Court held that the proposed company would be formed to protect an assembly or association of homosexuals whose practices, ideals, beliefs and objectives, according to the Court, contravene the law in Uganda. Similar to Kenya, Burundi and Tanzania, Section 145 of the Penal Code Act of Uganda criminalises same-sex relations, described as unnatural offences, with prison sentences. Additionally, the recently enacted Anti-Homosexuality Act (AHA) 2023 in Uganda also further prohibits and criminalizes same sex relations, imposing the death penalty for cases of "aggravated homosexuality" and up to twenty years for the 'promotion' of homosexuality.⁵⁰ On 5 August 2022, the NGO Bureau issued a statement halting the operations of SMUG, for failing to register as an NGO contrary to Sections 29 (1), 31(1) and 31 (2) NGO Act 2016.⁵¹ The applicant appealed the decision to the Court of Appeal in the ***Frank Mugisha & 2 others vs. the Uganda Registration Services Bureau***⁵² but was unsuccessful, leading to the refusal to register the name SMUG and the subsequent prohibition of their activities in the country lacking proper registration.

In the Kenyan case of ***NGOs Coordination Board vs Eric Gitari & Others***,⁵³ the

⁴⁷ See Iwacu, 'Nouveau projet de loi sur la presse au Burundi : un non-événement', 13.05.2024, <https://www.iwacu-burundi.org/nouveau-projet-de-loi-sur-la-presse-au-burundi-un-non-evenement/>.

⁴⁸ Miscellaneous Cause No. 23 of 2021.

⁴⁹ Miscellaneous Cause No. 96 of 2016.

⁵⁰ Anti-Homosexuality Act, 2023, Section 10; The Constitutional Court of Uganda upheld the core provisions of the AHA in its Consolidated Constitutional Petitions No. 14, 15, 16 & 85 of 2023, <https://ulii.org/akn/ug/judgment/ugcc/2024/10/eng@2024-04-03/source.pdf>. In the judgement, the right to freedom of expression, thought and association have been brought by the

applicants under the issues 10 and 11. The Court however held that the contested sections 2 and 3 of the AHA are not inconsistent with those civic liberties enshrined in Article 29(1)(a) and (c) of the Constitution.

⁵¹ See The National Bureau for Non-Governmental Organizations, 'Statement on halting the operations of sexual minorities Uganda', 22.08.2022, <https://www.ngobureau.go.ug/en/news-and-notice/statement-on-halting-the-operations-of-sexual-minorities-uganda>.

⁵² Civil Appeal No. 223 of 2018.

⁵³ Petition No.16 of 2019.

appellant sought to register an NGO that champions the rights of LGBTQI+ persons in Kenya. The government body declined to grant permit registration arguing that it would contravene sections of the country's Penal Code (S.162 and 165) that criminalise gay and lesbian unions. In its ruling, the Supreme Court of Kenya criticized the government for failure to register an association for LGBTQI+ people, reasoning that the decision discriminates the rights of the community. The Court ruled that even if same-sex unions are illegal in Kenya, everyone has a right of association. While the Court left open the question of the rights of sexual minorities, it advanced civic freedoms.

Similarly in Tanzania, in the case of ***Baraza la Wanawake Tanzania & others Vs. Registrar of Societies & Others***,⁵⁴ the Tanzania National Women's Council (BAWATA) challenged a decision of the Registrar of Societies that deregistered them as a NGO on the claim that they were operating as a political party and that they had failed to comply with obligations of the Societies Ordinance (submitting annual accounts), without affording them a chance to be heard. BAWATA had registered itself as an NGO after the introduction of multiparty politics in the country in 1992 to serve as a nonpartisan platform to defend women's rights and ensure gender equity. It was involved in electoral campaigns and advocated for candidates who championed women's rights.⁵⁵ After 12 years of litigation, in 2009, the High Court of Tanzania declared various provisions of the Society Ordinance (now the Society Act) on which the registrar relied to deregister BAWATA as unconstitutional. The High Court ordered the appropriate authority to take the necessary steps to make the provisions comply with the Constitution within a year following the date of the delivery of the judgement.

CONCLUSION

Civic freedoms are an integral part of a democratic society and are recognised at a national, regional and international level. Despite such comprehensive legal frameworks, state authorities in East Africa tend to limit these freedoms. Civil society organisations are often at the receiving end of such restrictions, through suspensions of the organisations' operations, de-registration and freezing of their accounts.

Domestic courts in Uganda, Tanzania and Kenya and regional courts have ensured, through checks and balances, that arbitrary acts, whether emanating from government or Parliament, which curtail civic freedoms are revoked. Courts have consistently examined whether restrictions to civic freedoms are prescribed by law, pursue a legitimate aim and are proportionate compared to the aim pursued. The analysis of jurisprudence from national courts and tribunals shows that the balance between freedoms and limitations has been most of the time struck in favour of the liberty at stake, and not its permissible limitation. Despite those positive judicial decisions, their enforcement at national level remains a challenge as governments have on multiple occasions ignored them. Human rights organisations, and in particular those promoting the women's rights or sexual minorities, face steep obstacles to register their organisation. With the exception of Kenya, national courts have failed to protect their fundamental freedoms in the rulings analysed, as their activities are qualified as illegal and incompatible with the morals and values. Despite their shortcomings, courts at national and regional level remain an important venue to uphold civic freedoms and hold repressive governments to account.

⁵⁴ Miscellaneous Civil Cause No. 27 of 1997.

⁵⁵ For more analysis on the case, see Rugemeleza Nshala, 'The Freedom of Association in Tanzania - Implications for Civil

Society and Sustainable Development', 11.1997, http://tanzaniagateway.org/docs/The_freedom_of_association_in_Tanzania.pdf