

# TANZANIA ARTISTS RIGHTS ORGANIZATION (TARO)



## LEGAL POSITION PAPER

### THE DILEMMA OF ARTISTIC FREEDOM IN TANZANIA

Denying artists their right to freely express themselves in their artistic works is not only detrimental to the artwork and creative community but also limits the ability of society to progress and address its issues through artistic means.

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## 1.0 INTRODUCTION

**Tanzania Artists Rights Organization (TARO)** is a non-governmental organization that advocates for the rights and interests of artists and their works. TARO serves as both a human rights and a cultural rights defender for artists. It engages to contribute to the development of the Tanzanian arts and cultural sector by focusing on enhancing **Artistic freedom** in the area of **promotion of artistic freedom of expression, artists' rights and interests, professionalism, and gender equality**. The organization achieves this through advocacy, awareness campaigns, research, monitoring, and reporting on artistic freedom in Tanzania. It was registered in 2021 under "Non-Governmental Organizations Act. No.24. of 2002"

In May 2023, TARO was invited to participate in **the 9<sup>th</sup> World Summit on Arts and Culture** which took place in **Stockholm, Sweden**. The aim of the summit was **"SAFEGUARDING ARTISTIC FREEDOM"**. The summit was coordinated by **the Swedish Arts Council** and **the International Federation on Arts and Cultural Agencies (IFFCA)**. The organization acted as delegate and expert to present on **"Building the Case from Action to Law"**

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**Sanaarights/ArtistsRights** is a project that aims to enhance the policy and legislative landscape for the Tanzania arts scene. The initiative has invested resources to develop innovative recommendations for improving the policy and legal framework governing Tanzania's arts and cultural sector. It is a three-year program (2022-2025). **Tanzania Artists Rights Organization (TARO)** is a cooperating partner of **Culture and Development East Africa (CDEA)** to implement the legal component of the Sanaarights project, which is funded by the **Norwegian Embassy in Tanzania**. Its implementation includes roundtable meetings with various strategic stakeholders in the arts and cultural sector, **"drafting legal position papers"**, parliamentary advocacy on artists' human rights, public dialogues on the status of artists, and drafting of policy briefs

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## THE DILEMMA OF ARTISTIC FREEDOM IN TANZANIA

### Understanding of Artistic Freedom under International Law

According to UNESCO, United Nations Educational, Scientific and Cultural Organization (2018). "[2005 Convention Global Report. Reshaping Cultural Policies. Advancing Creativity for Development. 2018](#)". UNESCO. Retrieved 13 January 2019, **Artistic freedom (or freedom of artistic expression)** can be defined as "the [freedom](#) to imagine, create and distribute diverse cultural expressions free of governmental [censorship](#), political interference or the pressures of non-state actors. **UN report (A/HRC/23/34, 2013)**, **Artistic freedom** includes the right of all persons to freely experience and contribute to *artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations.*

**Article 15(3)** of the **International Covenant on Economic, Social and Cultural Rights (1966)** provides that *"The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity."*

**Article 4(3)** of the **Convention on the Protection and Promotion of the Diversity of Cultural Expressions(2005)** provides that *"Cultural expressions" are those expressions that result from the creativity of individuals, groups, and societies, and that have cultural content.*

**Article 5 (2)** of the same Convention provides that *"Parties, in conformity with the Charter of the United Nations, the principles of international law and universally recognized human rights instruments, reaffirm their sovereign right to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions and to strengthen international cooperation to achieve the purposes of this Convention."* The concept of artistic freedom is essential in safeguarding and

encouraging a wide range of cultural expressions. It aims to promote and protect diversity, ensuring that individual artists have the liberty to produce and share their artworks without fear of censorship or persecution.

## Artistic freedom at the scope of the United Republic of Tanzania

Artistic freedom is among the types of **freedom of expression** such as freedom of the press and freedom of speech. There is no law enacted in Tanzania with the wording Artistic freedom. However, **Article 18(a)** of the English version of the **Constitution of the United Republic of Tanzania(1977) as amended from time to time** provides *that every person has a freedom of opinion and expression of his idea*. It is the mother law that lays the foundation for preserving the fundamental right to freedom of expression. It serves as a crucial tool to ensure that freedom of expression is protected. Despite of existing constitutional shield of protection, the parliament is recorded to adopt amendments and enactment of new laws that undermine **freedom of expression**.

Tanzania has enacted various parliamentary legislations to govern the arts and cultural sector. Such legislation can be categorized into three groups such as film, fine arts, and performing arts. Most enacted laws are found to be outdated and not relevant to the current context. The law can be characterized as outdated when it accommodates provisions that are not in conformity with existing social, political, economic, or cultural factors. For the sector to withstand contemporary challenges and enhance the freedom of creativity there is a great need for review and reforms of the existing legislations.

About critical analysis, It may be concluded that some provisions of laws were conspicuously crafted to monitor freedom of Artistic expression rather than enhance Art. Unfortunately, these two functions cannot be implemented simultaneously within the same government institution without causing failures. Since 2015, history has revealed the

extremism of the government to enact laws for monitoring the way artistic expression should be embedded in artistic works.

## 2.0 THE LEGAL REGIME THAT MONITORS ARTISTIC FREEDOM IN TANZANIA

The laws have settled in place justifiable grounds to censor artistic works that are perceived to be controversial to the government. However, the government argued that laws have been put in place to preserve Tanzanian ethical values and to protect the public against degrading artistic content. The wording of the laws is more precisely to clarify the status of Artistic freedom in Tanzania. The above-mentioned can be discussed with vivid examples from the existing provisions of laws in the sector as provided below.

### I. FILMS AND STAGE PLAYS ACT NO.4 OF 1976.

The law regulates motion picture/video production/filming in Tanzania and stage plays. it is illegal to engage in artistic works relating to filming and stage performance without government permits. The restrictions have been elaborated below:-

- **Section 7(1) and (2)** have provided that no person shall engage in filming activities unless granted a permit from the film board.
- **Section 15 (1) of Films and Stage Plays Act. No.4 of 1976** read together with **section 23** of the Written Laws (miscellaneous provisions )Act. No.3of 2019 provides that no person shall publish a film work on his premises until granted a premises permit by the Board or unless it is in a production process, it is a government film, it was made for family use or it is undergone a process of classification in the related authority.
- **Section 16 of Films and Stage Plays Act. No.4 of 1976** as amended with **Section 24** of the **Written Laws (miscellaneous provisions )Act. No.3. of 2019**

provides that no Film cover/Poster shall be published until granted permission from the film board

- **Sections 22** and **23** provide that no person shall engage in stage performance without being granted a permit from the film board. The said law is implemented with the support of its regulations called **Kanuni za Filamu na Michezo ya Kuigiza Mwaka 2020**.
- **Section 3 (1)** provides that *whereby Subject to the provisions of subsection (2) of this section and **section 8** of this Act, no person shall direct, or take part, or assist in, the making of film, whether intended exhibition or sale either within or outside Tanganyika except under and accordance with the terms and conditions of a film permit granted by the minister under this part.*  
**Section 5 (1)** of the same Act provides that *“The Minister may, in his discretion, grant or refuse to grant a film permit for which application has been made under this Act, or may issue it subject to the observance of any regulations made under this Act, or to such special conditions and restrictions to be specified in such permit as he may deem fit”*
- **Section 10 (1)** provides that no person shall use any place as a theatre except under and Theatre licenses in accordance with the terms and conditions of a theatre license granted by a licensing authority under this Part.
- **Section 15 (1)** provides that no person shall direct, or assist or take part in. Or Permit Restriction on Exhibitions in any premises under his control or management, an exhibition of a film unless a certificate of approval in respect thereof approving the film for such exhibition has been granted by a Censorship Board:



- **Section 16 (1)** says no person shall display, or cause, or permit to be displayed in a public place, or to be visible from a public place, any poster unless a Film Board has first approved the poster for public display.
- **Section 23 (1)** provides that no person shall present, or cause or permit to be presented, or direct or produce, or take part or assist in the direction or production of, any public performance of a stage play, unless a stage plays authority has granted a certificate of approval authorizing such performance

According to the crafting of the sections discussed above, An artist shall be cautioned in the manner and content of his/her expressions in the film and stage play performance. He shall understand the political and cultural sphere of the country to create his work. Otherwise, the spectrum of arts will turn out to be bitter with the refusal of permits, approval, and censorship of the film work.

## II. **SHERIA YA BARAZA LA KISWAHILI LA TAIFA , SURYA YA 52**

.The law has enacted its regulations under **section 11**. The regulations are called **Kanuni za Sheria ya Baraza la Kiswahili la Taifa za mwaka 2019**. Under **regulation 43** of the said regulations, it has been provided that no Swahili book shall be published until is granted a permit from the SWAHILI COUNCIL. It is when the contents of each Swahili book are monitored indirectly.

## III. **TANZANIA COMMUNICATION REGULATORY AUTHORITY ACT.NO 13 OF 2013.**

The legislation monitors and regulates all broadcasting contents of all media and social media in Tanzania. They are given the mandate to order the removal or restriction of publishing or broadcasting any artistic content in newspapers, media, or social media without offering an artist an opportunity to be heard or defend him/herself. The law should be read together with its regulations called **Electronic**

and **Postal Communications (Online Content). Gn. No. 538 of 2020**. They have a very wide and strict sense to ensure they cover all artistic expression in society. The regulations are not famous in application. Normally artistic expressions in the media become more sensible, controversial, and magnetic to censorship when they depict issues relating to human rights, the rule of law, democracy, and good governance. Authorities are not friendly and tolerant of content that tries to push critical analysis on the aforementioned issues.

- IV. **Electronic and Postal Communications (Radio and Television Broadcasting Content)(Amendment) Regulations 2020. Gn. No. 486 of 2020** which amended regulation 45 of **Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations 2018, Gn.No. 134 of 2018**, has mandated TCRA to order the removal of any artistic content from being published on radio or television stations if contravenes the regulations. Parliamentary draftsmen scrutinized the law to ensure no loophole could prevent the authorities from banning any artistic work that happened to be controversial to the interests of the government. Therefore, An artist to preempt the collision with authorities, needs to understand the existing legal regime.
- V. **THE NATIONAL ARTS ACT. NO 23 OF 1984 (CAP 204)**. It does not govern motion picture/ video/film work. It established the National Arts Council.

**The Written Laws (Miscellaneous Amendments) (No. 5) Act 2019** is recorded to be a very dangerous legislation in the history of the sector. It introduced very terrifying provisions towards artistic freedom in Tanzania. The provisions have been enlisted as follows:-

- **Section 19** introduced other new functions to the **National Art Council (Baraza la Sanaa la Taifa-BASATA)**. The functions are “ **to monitor, regulate**



and asses” artistic work in Tanzania. The functions were not there before 2019.

- **Section 20** added a new section to the principal legislation such as **Section 4A**. It is the one that criminalizes the act of engaging in artistic works without registration.
- **Section 21** provides for proper monitoring, control codes of conduct, and disciplinary systems for artists, composers of artistic works, groups of persons, associations, organizations, and owners of infrastructures."

**The National Arts Act. No 23 of 1984 (Cap 204)** has been mandated to enact regulations for its implementation as per **section 15**. In 2015, the government enacted regulations of the National Arts Council. The regulations can be legally cited as **Kanuni za Baraza la Sanaa Taifa za Mwaka 2015**. In 2018 they were repealed by another regulation cited as **Kanuni za Baraza la Sanaa Taifa za Mwaka. 2018**.

The new regulation effectively and assertively monitors artistic expressions, as demonstrated below.:-

- **Regulation 23 (1)** has provided that no person shall engage in artistic works without being registered. It is a crime with punishment. The registration is subject to the annual fee. It is the most terrifying provision of law to artists which had never been enacted since the independence of the country. It does not take into consideration International treaties on the protection of Human rights (Cultural rights) which Tanzania has signed and ratified. The regulation requires the enjoyment of cultural rights to be limited with registration and payment of fee. It does not appreciate Art as a human right
- **Regulation 25(6)** has provided the criteria for the assessment of ethical values in artistic work to be allowed in public. This regulation has been

notorious for banning most of the critical expressions of artistic works in Tanzania. It requires each artistic work to be assessed for acceptable ethical values by the National Arts Council before being exposed to the public.

- **Regulation 25 (8)(a)(b)** has provided that, the failure to comply with regulations can be punishable by banning of the artistic work and a fine.
- **Regulation 26(1)** has provided that no media shall broadcast any artistic work until the work is approved by the National Arts Council.
- **Regulation 64 (1)** has provided that, any artist who contravenes the regulations may be punishable by being restrained from doing artistic work for six months, lifetime, or any other punishment as the council thinks fit.

Since TARO learned to maintain positive relationships with Arts authorities in Tanzania, It was not difficult to acquire their perspectives on the existing laws. The government views the law as a tool to protect the public against defamatory, misleading, and unethical art. They argued that the majority of the banned artistic works lack any artistic value. Their lack of creativity in their expressions hinders their ability to be seen as artistic, causing complexity within society. Artists should express themselves creatively to avoid damaging the reputations of individuals, organizations, or authorities.

## VI. CYBERCRIME ACT, NO. 14 OF 2015

It is an undeniable truth that artists frequently encounter legal disputes within the criminal justice system as a direct result of the artistic expression that is embedded in their work. Artists are being targeted and imprisoned through the active application of this law. This is a clear violation of artistic freedom and poses a threat to the cultural progress of society. We must stand together to protect the rights of artists and preserve the creative spirit that makes us human. The law does not understand art as a way to express opinions or views and has nothing to do with

truth. Thus why, in its application, the truth of artistic expression is often the focal point for police interrogations that precede legal implications faced by artists.

**Section 16** of the **Cybercrime Act No. 14 of 2015** is frequently used against Tanzanian artists with critical artistic expressions. The section provides for the offense of **Publication of false information**. The section states that *“Any person who publishes information or data presented in a picture, text, symbol or any other form in a computer system knowing that such information or data is false, deceptive, misleading or inaccurate, and with intent to defame, threaten, abuse, insult, or otherwise deceive or mislead the public or counselling commission of an offence, commits an offence, and shall on conviction be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than three years or to both”*.

The same provision of the law was used to prosecute **Optatus John Fwema**, a visual artist, in 2021, Sifa Boniventure Bajune, a gospel singer in 2023, and imprisoned Juma Dawa, a traditional musician, in 2023. Both cases have been elaborated below.

### 3.0 DOCUMENTED CASES OF ARTISTIC FREEDOM IN TANZANIA.

This part will refer to some public cases in which artists were persecuted and their works were censored due to their enjoyment of freedom of artistic expression in their artistic work from 2015- 2023 in Tanzania.

#### a) Roma Mkatoliki case(2017)

Roma Mkatoliki is a famous hip-hop artist, whose real name is Abernego Damiani. The incident occurred on April 12, 2017, at Tongwe Records in Masaki, Dar es Salaam. He was in a studio session with his producer (Bin Laden) and other individuals identified as Moni and Emanuel. The kidnappers were five in number and armed with firearms. Roma and his fellow were ambushed, tied with handcuffs, and covered with pieces of black clothes on their heads, then they were taken to a wagon. They were kidnapped, interrogated, beaten, and highly



tortured. After that, they were dumped to the street at UNUNIO (Dares salaam). Roma Mkatoliki said the incident was connected with his politically critical songs. It was a warning to stop engaging in such kind of art.

In November 2019, in the USA, Roma released another song called NAITWA ROMA, a very politically controversial song. Since then he has not returned to Tanzania. We shall remember that on 10<sup>th</sup> September 2015 after the release of his first hit song called VIVA ROMA, he posted on Twitter (x) that he was being threatened by the authorities that his song would be banned but he did not mention the exact authority.

## b) Ney wa Mitego case (2017-2023)

His real name is **Emanuel Elibariki**, and he is very prominent for releasing controversial songs in the social, political, and economic spheres. He has been a victim of the simultaneous censorship of his songs by the National Arts Council (BASATA). To mention a few:-

- In February 2016 his song called SHIKA ADABU YAKO was banned,
- It shall be noted. On 26 March 2017, his song WAPO was banned.
- In March 2017 he was arrested by the police for the allegations that he released a song that was slanderous against the government
- In February 2018 his two songs, PALE KATI PATAMU and MAKUMAZ were banned,
- In May 2021 his song MAMA was banned for being politically critical.
- On 4<sup>th</sup> November 2021, his song BABA was banned for the same reason.
- On 24 September 2022, his song called TOZO was banned for being politically controversial and critical.
- On 4<sup>th</sup> November 2022, he was called by an unknown to be informed that police were searching for him. He posted on his Instagram account
- In July 2023 his song called "AMKENI" was banned.
- On 2<sup>nd</sup> September 2023, he posted on his Instagram account claiming he is facing challenges in his musical activities. He mentioned that in Tanzania there is no freedom of expression.
- On 3<sup>rd</sup> September 2023, he posted a video on his Instagram that he was denied a permit orally by the National Arts Council to conduct his Live shows.
- On 6<sup>th</sup> September 2023, he was summoned to appear at the Central Police station (Dar es Salaam) for the reasons of his song "AMKENI". He added that

the National Arts Council (BASATA) reported the case to the police. He responded to the summons and was escorted by his Lawyer famously known as JEBRA KAMBOLE. On the same day, the National Arts Council responded through the press that they were not responsible for police intervention in relation to the song AMKENI. BASATA refused to grant a permit for his live performances because he was summoned to appear in their office but he denied it. After few days later he appeared at the offices of the National Arts Council (BASATA) and they granted him the said permits.

### c) Optatus John Fwema case (2021-2022)

On 24<sup>th</sup> September 2021, Optatus John Fwema (A Cartoonist) was arrested. He was denied bail and kept in custody at a police station for two weeks without being taken to court which is against the law. After the Legal and Human Rights Centre (LHRC) intervened, On 8<sup>th</sup> October 2021, The prosecutor filed criminal charges against Optatus, before the Resident Magistrate Court of Kivukoni at Kivukoni (Dar es salaam) on criminal case no 156 of 2021. He was charged contrary to **section 16 of the Cybercrime Act no 14 of 2015**, for the crime of **publication of a false information**. The charges came up after OPPTATUS JOHN FWEMA posted on his Instagram account a cartoon image of a girl in hijab playing with a bowl filled with water while a man is standing behind her. The prosecution claimed in the charge that the cartoon of a girl was a reflection of the President of the United Republic of Tanzania Honorable. Dr. Samia Suluhu Hassan.

On 20<sup>th</sup> September 2022, after a year the prosecution side entered NOLLE PROSEQUI (no intention of the prosecution side to sue) and the Court released him. Immediately after his release, the police arrested him around the court premises and took him to Osterbay Police Station (Dar es Salaam). With the assistance of his close friends and a lawyer from the **Legal and Human Rights Centre (LHRC)**, He was released on police bail. He was ordered to report on Friday 22<sup>nd</sup> September 2022.

OPPTATUS JOHN FWEMA is a political activism cartoonist. He applies his creative art talent to advocate for good governance, the rule of law, and human rights. On 6<sup>th</sup> July 2022, he posted a cartoon image on his Instagram account to address

police abuse of power. Therefore, he believes that the persecution, arrests, and criminal charges were connected to his artistic works.

**d) Masoud Kipanya case (2018)**

On 1<sup>st</sup> January 2018, A prominent cartoonist (Masoud Kipanya) was arrested and it became scandalous in social media. He was arrested for his controversial art (cartoon images) about critical artistic opinions on political matters. His employer, Clouds Media stated that the public to stay calm for further updates

**e) Nikki Mbishi case (2018)**

His real name is Nicas John Mchuche, his one of the very conscious hip-hop artists, who is famous for his highly opinioned compositions on politics and social issues. In February 2018, his song called JK was banned for being politically controversial.

**f) Dawa case (2023)**

A traditional musician called Juma Dawa was arrested by the police on 3<sup>rd</sup> April 2023, After he released his called MAMA SAMIA on YouTube. Immediately after his arrest, the office of the Director of Public Prosecution instituted criminal charges against him for the offense of **Publication of false information** contrary to **Section 16** of the **Cybercrime Act, No. 14 of 2015**. He was prosecuted at Chato District Court. On 5<sup>th</sup> May 2023, Dawa was sentenced to 6 years imprisonment or payment of a fine equivalent to 4500 USD. The court found the song to be defamatory towards the president of the United Republic of Tanzania.

**g) Sifa Boniventure Bajune (2023)**

On 13<sup>th</sup> September 2023, A female gospel artist called Sifa Boniventure Bajune, 25 years old, a resident of the Mbeya region, Isyesye in Tanzania as the 1<sup>st</sup> Accused, and 2 other collaborated artists such as Salome Mwampeta as the 2<sup>nd</sup> Accused and Hezekiel Millyashi (Music Producer) as 3<sup>rd</sup> Accused, together were arrested for releasing a song called **"Tanzania inaelekea wapi?"** in social media (youtube, TikTok and, facebook) which contains false information against the government. The name of the song means **"Where is Tanzania headed?"**



The song contains a Swahili phrase “*Kijana mdogo kang’olewa meno na maaskari, hii kwasababu mnatuona nyani tu* “. In English, it means, A young was pulled out of his teeth by armed officers because you see us as monkeys.

Whereas, on 19<sup>th</sup> September 2023, the 1<sup>st</sup> and 2<sup>nd</sup> Accused were placed on criminal charges contrary to **section 16 of the Cybercrime Act.no 14 of 2015**, for the crime of **publication of false information**.Whereas the 3<sup>rd</sup> Accused was **charged** contrary to **sections 16 and 25(1)(b)(2) of the Cybercrime Act. No 14 of 2015**, as a principal offender for the crime of **publication of false information**.

The accused are represented for defense by a prominent human rights lawyer named JEBRA KAMBOLE, before the District Court of Mbeya, in criminal case no. 135 of 2023. It is still proceeding.

#### 4.0 RECOMMENDATIONS

The above-mentioned laws should be reviewed and amended to accommodate a free and safe space for artists to express their ideas, views, and opinions in their artistic works. The existing legal regime has sharp edges. It limits artistic expression for an artist to be free from persecution. Freedom of expression is one of the core pillars of upholding the democratic process and protecting it. The role of artists is incredibly important in ensuring freedom of expression is upheld in society. it is essential if we want to live in a society that is fair and equal for everyone. Failing to do so weakens democracy. Denying artists their right to freely express themselves in their artistic works is detrimental to human rights, democracy, the artwork, and the creative community and limits society's ability to progress and address its issues through artistic means. .