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NEW DIGITAL MEDIA: FREEDOM OF EXPRESSION AND SAFEGUARDING JOURNALISTS IN THE CONTEXT OF EAST AFRICA

TONNY RAYMOND KIRABIRA *

ABSTRACT

Many East African states have developed restrictive legal and policy measures regarding the use of the internet. This has resulted in the declining state of media freedom and safety of journalists. This article addresses freedom of expression as a pre-condition for safeguarding journalists in selected East African countries of Tanzania and Burundi. It highlights notable cases, where the regional court has emphasized the importance of press freedom as a precursor for democracy. It concludes that the relevant regional legal framework offers adequate protection for the safety of journalists. However, countries have not fully implemented their obligations. In particular, press and cyber laws create a chilling effect on the treatment of journalists. The article contributes to a broader interrogation of how discourses about the safety of journalists are constructed and applied in the context of growing online activity.

KEYWORDS

East Africa, Digital Media, Democracy, Journalists, Freedom of Expression, Safeguarding

* Tonny Raymond Kirabira, LL.M. (Notre Dame) is a PhD Law Researcher at University of Portsmouth (UK).
Contact Address: Tonny Raymond Kirabira, University of Portsmouth Faculty of Business and Law, Richmond Building, Portland St, Portsmouth PO1 3DE
Email: tonny.kirabira@myport.ac.uk, tonnyraymo@gmail.com.

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1. INTRODUCTION

Sub-Saharan Africa is the fastest-growing region in terms of mobile uptake, according to analysts, and was projected it would have 500 million cellphone subscribers by 2020.¹ In addition, increasing access to the internet has spurred technological adaptation amongst consumers. To the general public, there are new and cheaper alternative forms of communication through social media platforms like Facebook and Google. To the media, this development not only expands audiences and sources but also suggests changes of business models.² Although media professionals and journalists still publish content through traditional mainstream channels like print and broadcasts, they have also turned to online platforms. In some cases, they now own channels like websites, digital radio, television and social media.³

It is also critically important, however, not to lose sight of the human rights challenges that coincide with these technological developments. In previous years, there have been reports of state attacks on journalists within the East African region.⁴ With the growth of technology the threats are now manifest in the digital environment, targeting online journalists, bloggers, editors and their sources of

¹ Toby Shapshak, 'Almost All Of Facebook's 139 Million Users In Africa Are On Mobile' (*Forbes*, 18 December 2018) <<https://www.forbes.com/sites/tobyshapshak/2018/12/18/almost-all-of-facebooks-139m-users-in-africa-are-on-mobile/#69c351e668e7>> accessed 1 July 2020.

² David Thomas, 'Africa's print media crosses the digital divide: Sales of print editions are declining, but the digital revolution provides opportunities as well as challenges for Africa's news media' (*African Business*, 21 November 2017) <<https://africanbusinessmagazine.com/sectors/technology/media-special-report-africas-print-media-crosses-digital-divide/>> accessed 2 May 2020.

³ Jamii Forums in Tanzania, See Basillioh Mutahi 'Maxence Melo's Jamii Forums: Tanzania's 'accidental journalist' (*BBC News*, 12 January 2020) <<https://www.bbc.co.uk/news/world-africa-50973409>> See also the Investigator Uganda <<https://theinvestigatornews.com/>> accessed 29 May 2020.

⁴ Edwin Kiplagat, 'Kenyan editors condemn attacks on Uganda journalists' (*The East African*, 21 August 2018) <<https://www.theeastafrican.co.ke/news/ea/Kenyan-editors-condemn-attacks-on-Uganda-journalists-attack/4552908-4722956-rb8q32/index.html>> accessed 2 May 2020. The East African Community (EAC) is a regional bloc and intergovernmental organization of the six states of Uganda, Kenya, Tanzania, Rwanda, Burundi and South Sudan. See the East African Community website, <<https://www.eac.int/overview-of-eac>> accessed 2 May 2020.

information, amongst others.⁵ There are concerns over states' objectionable policies and legislations that include interception of content and surveillance.⁶

Burundi has been ranked 160 out of 180 countries in the 2020 World Press Freedom Index.⁷ This Index is published annually by Reporters Without Borders (RSF), ranking 180 countries and regions with regards to the level of media freedom available to journalists. Burundian journalists are "primary targets of systematic oppression by authorities, and face heightened risks of threats, intimidation and violent attacks".⁸ In 2017, for example, Burundian radio journalists were interrogated by the National Intelligence Services, over their alleged collaboration with "exile" radio stations.⁹

Similarly, the situation in Tanzania is worrisome. It is ranked 124th out of 180 countries in the 2020 World Press Freedom Index.¹⁰ Some media houses were shut down, and at the very least, more than twenty journalists arbitrarily arrested and detained between 2016 and 2017.¹¹ In March 2018, Tanzania introduced a new regulation requiring online forums, online radio and online televisions to register with the government.¹²

⁵ Media Defence, 'Mapping Digital Rights and Online Freedom of Expression in East, West and Southern Africa' (*Media Defence*, 15 February 2020) p.15 <https://10years.mediadefence.org/wp-content/uploads/2019/07/Mapping-digital-rights-litigation_Media-Defence_Final.pdf> accessed 15 September 2020.

⁶ *ibid* at 27,32,40.

⁷ See Reporters Without Borders-RSF 2020 World Press Freedom Index <<https://rsf.org/en/ranking>> accessed 12 September 2020.

⁸ International Service for Human Rights, 'Burundi: Stop the harassment, intimidation, arbitrary arrest and criminalization of human rights defenders', (*ISHR*, 18 January 2018) <<https://www.ishr.ch/news/burundi-stop-harassment-intimidationarbitrary-arrest-and-criminalisation-human-rights>> accessed 2 August 2020.

⁹ Reporters Without Borders, 'Burundi: Radio Isanganiro under pressure' (*RSF*, 6 April 2017) <<https://rsf.org/en/news/burundi-radio-isanganiro-under-pressure>> accessed 2 August 2020.

¹⁰ World Press Freedom Index (n 8).

¹¹ Human Rights Watch, 'Tanzania: Events of 2017', (*HRW*, 2017) <<https://www.hrw.org/world-report/2018/countrychapters/tanzania-and-zanzibar>> accessed 4 May 2020.

¹² Raheela Mohamed, 'Tanzania law for online content threatens free speech' (*Al Jazeera* 15 April 2018) available on <<https://www.aljazeera.com/videos/2018/04/15/tanzania-law-for-online-content-threatens-free-speech/>> accessed 5 May 2020.

Nonetheless, the internet is considered as, “the most important medium for local journalists, should they have influence on the many important stories that ought to come out to the global society, such as the Darfur crisis or the Mogadishu unrest”.¹³ However, a sizeable number of journalists, just like other ordinary internet users, are not aware of the legal implications of state regulatory mechanisms making them vulnerable to high safety risks. It is thus significant to examine the safety threats towards journalists within the digital environment in East Africa.

Drawing on both normative and legal instruments, this article addresses the safety of journalists in the digital landscape in selected East African countries of Tanzania and Burundi. It is important to note that the two countries have different legal traditions. Nonetheless, these countries were selected because they are state parties to the Treaty for the Establishment of the East African Community (EAC Treaty).¹⁴ Further, the East African Court of Justice (EACJ) is the regional judicial organ mandated to ensure adherence to law, in the interpretation, application of, and compliance with the EAC Treaty.¹⁵ This key organ represents the regions attempt, and ergo both countries attempt to take a similar approach to the application of law.

The underlying questions for this article are: How is freedom of expression interpreted within the ambit of the EAC Treaty? What obligations do these states have in terms of protecting journalists? The article then proposes approaches to more effectively increase the safety of journalists in the online environment, by way of legal compliance and self-regulation as an alternative to state regulation. It also recommends the strengthening of the established national mechanisms for the safety of journalists in each of the countries.

In terms of analytical framework, this article applies the theory relating to freedom of expression as a precursor for a flourishing democracy. There are arguably

¹³ Terje S Skjerdal and Charles M Ngugi, ‘Institutional and governmental challenges for journalism education in East Africa’ (2007)28 *Ecquid Novi: African Journalism Studies* 181.

¹⁴ Treaty for the Establishment of the East African Community (EAC Treaty) 1999, 2144 UNTS 255, Art. 27(1), Adopted 30 November 1999, entered into force 07 July 2000.

¹⁵ See the EACJ website, <https://www.eacj.org/> accessed 12 June 2020.

four theoretical justifications for freedom of expression, which are grounded in liberal conceptions of society.¹⁶

First, a truth justification for freedom of expression was proposed by theorist John Stuart Mill, and later adapted by the United States Supreme Court Judge, Oliver Wendell Holmes. The basic idea is that the pursuit of truth is akin to a free marketplace of ideas.¹⁷ The second theory justifies freedom of expression as a way of protecting individual autonomy. The idea here is “that individuals should have a right to decide what they see, hear and say as this is a crucial aspect of human autonomy”.¹⁸

The third theory envisages freedom of expression as necessary for self-fulfilment and development.¹⁹ Moon notes that, “[t]he activities of speaking and listening are part of a process and a relationship. This relationship is valuable because an individual agency emerges and flourishes in the joint activity of creating meaning”.²⁰ However, critics of liberalism view the language of liberal rights as pervasive and incoherent across different social traditions.²¹ Similarly, the conceptualization of human rights and media freedom from the perspective of individual autonomy can be considered problematic in African societies.²² Due to the oft perceived Western origin of notions of freedom of expression, there is an apparent “dialectical relationship” between Western and African approaches to this theory.²³ While recognising the relevance of the liberal notions of freedom of expression, An-

¹⁶ Richard Moon, 'The Social Character of Freedom of Expression' (2009) 2(1) *Amsterdam Law Forum* 43. Different theories of human rights articulate freedom of expression as a combination of social values of truth, democracy and individual autonomy.

¹⁷ Pnina Lahav, 'Holmes and brandeis: Libertarian and republican justifications for free speech' (1988) 4(3) *Journal of Law & Politics* 454.

¹⁸ Fiona Brimblecombe, 'The public interest in deleted personal data? The right to be forgotten's freedom of expression exceptions examined through the lens of Article 10 ECHR' (2020) 23(10) *Journal of Internet Law* 12.

¹⁹ *ibid* 13.

²⁰ Richard Moon(n 16) 47.

²¹ Mark T. Mitchell *The Limits of Liberalism: Tradition, Individualism, and the Crisis of Freedom* (University of Notre Dame Press, 2019) 208.

²² Khanyile Mlotshwa, 'What is Wrong with Media Freedom as a Human Right in Africa Today? The Social Character of Freedom of Expression' (2019) 1 *Cross-cultural Human Rights Review* 165.

²³ Abdullahi A An-Na'im, 'The Contingent Universality of Human Rights: The Case of Freedom of Expression in African and Islamic Contexts' (1997) 11 *Emory International Law Rev* 32,34.

Na'im suggests that it should be understood to include "positive action to enable inarticulate individual and collective social and cultural forms of self-expression".²⁴ To this end, Chasi envisages an African theory of freedom of expression in which "the agency of individual Africans can functionally or instrumentally participate in the socioeconomic development of the continent and its peoples – with the fruits of health that participation promises".²⁵

The fourth theory relates to freedom of expression as a precursor for a flourishing democracy. This was well articulated in the US defamation case of *New York Times Co. v Sullivan*,²⁶ which is regarded as the "most important freedom of press case in modern American history".²⁷ Sullivan sued the Times, following the publication of an advertisement that was considered defamatory. The key element in the Supreme Court's decision, was the recognition of the critical role freedom of expression plays in a democracy.²⁸

The theory relating to freedom of expression as a precursor for a flourishing democracy is utilized to articulate the core arguments under section three of this article. This theory is fit for this analysis for at least two reasons. Firstly, it is in line with the fundamental principles that govern the EAC. Partner states are required 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".²⁹ This is not a constitutional interpretation of human rights, but rather, outlined within the principles of good governance stipulated under Article 6 of the EAC Treaty.³⁰

The second reason for adopting this theory relates to its ongoing impact on the regional jurisprudence. The theory was also adopted by the EACJ in the interpretation

²⁴ *ibid* 38.

²⁵ Colin Chasi, 'Ubuntu and Freedom of Expression' (2014) 24(6) *Ethics & Behavior* 507.

²⁶ *New York Times Co. v Sullivan* 376 U.S. 254 (1964).

²⁷ Ken Paulson, 'The First Amendment Law Review's Annual Symposium: A Dialogue on the Legacy of *New York Times Co. v. Sullivan*' (2014) 12 *First Amend L Rev* 387.

²⁸ *ibid* at 392.

²⁹ EAC Treaty(n 14) Art.7(2).

³⁰ *ibid*.

of the Tanzania Media Services Act, 2016.³¹ Similarly, the centrality of freedom of expression in a democratic society has been emphasised by the African Commission on Human and People's Rights (African Commission), another key organ developing human rights law within the African region generally. The African Commission highlights the “fundamental importance of freedom of expression and access to information as individual human rights, as cornerstones of democracy and as means of ensuring respect for other human rights”.³² Domestically, it is also considered in other African contexts like South Africa.³³ This theory enables people to check on state accountability and participate in the governance of their societies.³⁴ Therefore, the theory is a necessary tool for both the local and regional contexts of East Africa.

Thirdly, another justification for the application of this theory in East Africa is embedded in the African concept of *ubuntu*. In line with the widely accepted view that “a person is a person with others”, *ubuntu* is defined as “a quintessentially African moral philosophy that warrants actions grounded on goodwill as only correct insofar as they promote shared identity among people”.³⁵ Classical scholarship in African tradition and *ubuntu* dismiss the view that Africans live as members of social collectives without any individual autonomy.³⁶

The article draws upon qualitative research and review of socio-legal literature on media and freedom of expression in East Africa. In addition, it draws upon the author’s personal observations and work with the media in Uganda since 2014.³⁷ The

³¹ *Media Council of Tanzania & 2 others v the Attorney General of the United Republic of Tanzania*, Reference No.2 of 2017, (2017) East African Court of Justice [EACJ] 11.<
<http://kenyalaw.org/kenyalawblog/encroaching-on-the-freedom-of-expression/>> accessed 23 June 2020.

³² Declaration of Principles on Freedom of Expression and Access to Information in Africa

³³ WJ van Vollenhoven, ‘The Right to Freedom of Expression: The Mother of Our Democracy’ (2015) 18(6) Potchefstroom Electronic Law Journal 2312.

³⁴ Agnès Callamard, ‘Accountability, Transparency, and Freedom of Expression in Africa Social Research’ (2010) 77(4) Social Research 1215.

³⁵ Colin Chasi (n 26) 496.

³⁶ *ibid* at 498.

³⁷ See also, Digital Rights Advocates: Interview with Tonny Kirabira (*Media Defence*, 19 February 2020) <
<https://www.mediadefence.org/news/digital-rights-advocates-interview-with-tonny-kirabira/>>
accessed 8 September 2020.

author participated in the East African regional conference on National Mechanisms for Safety of Journalists in 2017, that led to the adoption of the Nairobi Declaration on National Mechanisms for Safety of Journalists.³⁸ The article also draws on empirically grounded literature on the safety of journalists in East Africa. The search process itself, consists of a database driven search for local and international reports, together with legal instruments which were adopted by East African countries.

In terms of structure, the following section specifically analyses the safety of journalists from a normative perspective. The focus here is on how freedom of expression is expounded through key regional instruments, and the requisite state obligation arising in context of cybercrime. The definition of cybercrime encompasses a wide spectrum of intrusive online activities in the cyberspace, against persons or property.³⁹

Section three moves this discussion to a regional level, through an analysis of two prominent cases that were decided by the EACJ. These are *Burundi Journalists Union v the Attorney General of Burundi*;⁴⁰ and *Media Council of Tanzania & 2 others v the Attorney General of Tanzania*.⁴¹ A core component of this section is to provide a more contextualised understanding of key legal responses towards press freedom in these selected countries. The article suggests that safeguarding freedom of expression is an essential pre-condition for increasing the safety of journalists in the online digital environment. The conclusion suggests considering alternative approaches to safeguarding journalists, which moves beyond legal solutions. It recommends a holistic approach, by incorporating physical support; digital training; psychological aid; and symbiotic learnings between national mechanisms and internet service providers.

³⁸ Tonny R Kirabira, 'The Nairobi Declaration is welcome relief for Journalists and media' (*New Vision*, 21 November 2017) <<https://www.newvision.co.ug/news/1466100/nairobi-declaration-welcome-relief-journalists-media>> accessed 10 September 2020.

³⁹ Charlotte Decker, 'Cyber Crime 2.0: An Argument to Update the United States Criminal Code to Reflect the Changing Nature of Cyber Crime' (2008) 81(5) *Southern California Law Review* 936.

⁴⁰ *Burundi Journalists Union v the Attorney General of the Republic of Burundi*, Reference No.7 of 2013, East African Court of Justice [EACJ].

⁴¹ *Media Council of Tanzania & 2 others v the Attorney General of the United Republic of Tanzania* (n 31).

2. FREEDOM OF EXPRESSION: A LEGAL FOUNDATION FOR SAFEGUARDING JOURNALISTS IN EAST AFRICA

This section highlights state obligations in safeguarding freedom of expression for the purposes of protecting the safety of journalist, by drawing on normative frameworks in Africa generally. This is important as it shows that the safety of journalists is not only a domestic or regional subject, but rather, a widely accepted concern in Africa.

The African Charter on Human and Peoples' Rights (African Charter) is the main human rights instrument in the continent. Article 9 requires that; "Every individual shall have the right to receive information", and "the right to express and disseminate his opinions within the law".⁴²

All East African countries are state parties to the African Charter⁴³ and arguably have binding obligations in respect to the safety of journalists and freedom of expression generally. The articles in the Charter are interpreted by the African Court on Human and Peoples' Rights (African Court).⁴⁴ In assessing the validity of legislation that criminalises defamation, it was affirmed by the court that such sentences are disproportionate to the purpose of the state's national laws and a violation of freedom of expression in the Charter and ICCPR. This was the court's position in the case of *Lohe Issa Konate*, a journalist sentenced to prison for defamation in Burkina Faso.⁴⁵ He challenged different provisions of the Information Code which provided for the offence of criminal defamation.⁴⁶ The Court held that "custodial sentence constitutes a disproportionate interference in the exercise of the

⁴² African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter).

⁴³ State Parties to the African Charter, African Commission on Human and Peoples' Rights website, <<https://www.achpr.org/statepartiestotheafricancharter>> accessed 10 June 2020.

⁴⁴ Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. Adopted 10 June 1998, entered into force 25 January 2004.

⁴⁵ International Justice Resource Center 'African Court Addresses Freedom of Expression in Burkina Faso, in Landmark Judgment'(4 February 2015), < <https://ijrcenter.org/2015/02/03/african-court-addresses-freedom-of-expression-in-burkina-faso-in-landmark-judgment/>> accessed 11 September 2020.

⁴⁶ *Konaté v. Burkina Faso*, No. 004/2013, (2013) African Court on Human and Peoples' Rights [Afr. Ct. H.P.R.].

freedom of expression by journalists in general and especially in the applicants capacity as a journalist".⁴⁷ The court followed the international norms surrounding libel, in particular, the elimination of custodial sentences in favour of civil cases.⁴⁸ This judgement is indicative of a clear attitude to safeguard freedom of expression and protect the safety of journalists by the African Court.⁴⁹

The African Charter on Democracy, Elections and Governance (ACDEG), which also advances freedom of expression, states that, in order to advance political, economic and social governance, state parties shall commit themselves to "development and utilisation of information and communication technologies, promoting freedom of expression", in particular freedom of the press and fostering a professional media.⁵⁰ The African Court affirmed that the ACDEG is a binding human rights instrument, in a case relating to the legality of Ivorian electoral laws.⁵¹ Even though this decision did not involve freedom of expression, it is seen as an important development for the democratic governance and the rule of law in Africa.⁵² The ACDEG is particularly relevant to journalists, because the threats to their safety are more prevalent during periods of electoral activity and political contestation.⁵³ As of mid-2019, besides Tanzania, all other East African countries had signed the ACDEG.⁵⁴

⁴⁷ *ibid* para 165.

⁴⁸ Matt J Duffy, 'Konate V. Burkina Faso: An Analysis of a Landmark Ruling on Criminal Defamation in Africa' (2015) 6(1) *Journal of International Entertainment & Media Law* 18.

⁴⁹ *ibid* 20. See also, Dinah Shelton, 'Konaté v. Burkina Faso.'(2015) 109(3) *The American Journal of International Law* 635-636.

⁵⁰ The African Charter on Democracy, Elections and Governance (adopted on 30 January 2007 and entered into force on 15 February 2012) chapter IX: 27 '(7) Development and utilisation of information and communication technologies. (8) Promoting freedom of expression, in particular freedom of the press and fostering a professional media'.

⁵¹ *Actions pour la Protection des Droits de l'Homme (APDH) v Republic of Côte d'Ivoire, (APDH v Côte d'Ivoire)* appln. no 001/2014, paras 47–65.

⁵² Ben Kioko, 'The African Charter on Democracy, Elections and Governance as a Justiciable Instrument' (2019) 63(2) *Journal of African Law* 61.

⁵³ Gerald Walulya and Gorette L Nassanga, 'Democracy at Stake: Self-Censorship as a Self-Defence Strategy for Journalists' (2020) 8(1) *Media and Communication* 8.

⁵⁴ Ulf Engel, 'The 2007 African Charter on Democracy, Elections and Governance: Trying to Make Sense of the Late Ratification of the African Charter and Non-Implementation of Its Compliance Mechanism' (2019) 54(2) *Africa Spectrum* 132.

In terms of compliance, the signatories are required to submit, every two years, a report to the African Commission on the different measures taken to give effect to the principles and commitments of the ACDEG.⁵⁵ However, there is a general lack of implementation of this charter across Africa.⁵⁶

Apart from ACDEG, the Declaration of Principles on Freedom of Expression in Africa⁵⁷ is a soft law instrument, which further gives specificity to the African Charter and other international standards of freedom of expression. It guides member states in terms of both negative duties (refraining from interference), as well as positive duties (affirmative steps).⁵⁸ The African Commission has previously clarified that states have to take affirmative measures to ensure the safety of journalists.⁵⁹ These include effective measures to investigate, prosecute and punish perpetrators of attacks against journalists.⁶⁰ In addition to the Declaration, additional guidance on states duties and obligations have been expressed through resolutions.

In 2016, the African Commission adopted the Resolution on the Right to Freedom of Information and Expression on the Internet in Africa. This resolution is instructive to East African countries, as state signatories to the African Charter. The resolution affirms that “privacy online is important for the realisation of the right to freedom of expression and to hold opinions without interference, and the right to freedom of peaceful assembly and association”.⁶¹ Whilst acknowledging the importance of freedom of expression online, Sander suggests a cautious approach, due to the broad range of stakeholders like media organisations, advertisers and

⁵⁵ ACDEG (n 50) section 49(1).

⁵⁶ Ulf Engel (n 54) 139.

⁵⁷ See Declaration of Principles on Freedom of Expression in Africa, 2002, “(XVI) States Parties to the African Charter on Human and Peoples’ Rights should make every effort to give practical effect to these principles”.

⁵⁸ *ibid* 42.

⁵⁹ *ibid*.

⁶⁰ *ibid*.

⁶¹ African Commission on Human and Peoples’ Rights ‘Resolution on the Right to Freedom of Information and Expression on the Internet in Africa’ ACHPR/Res. 362(LIX) 2016 (4 November 2016).

governments.⁶² Nonetheless, it is important to have clear national laws that safeguard freedom of expression when publishing on the internet.

The African Union (AU) adopted the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) in 2014,⁶³ and in 2018, launched new personal data protection guidelines for Africa.⁶⁴ This Convention was influenced by both international and regional initiatives, including the non-binding EAC Legal Framework for Cyber Laws 2008.⁶⁵ The obligation on member states to establish cybersecurity policies and strategies is similar to that under the European Union (EU) Directive on Network and Information Security 2016.⁶⁶ Both require the adoption of national strategies on the security of network and information systems.⁶⁷ More importantly, the Malabo Convention requires member states to ensure that the establishment and implementation of legal measures for cybersecurity governance does not infringe human rights like freedom of expression, the right to privacy and the right to fair hearing.⁶⁸ This arguably demonstrates a strong legal basis in the region for protecting the safety of journalists, when using digital media for publication.

From a judicial perspective, courts within East Africa, have addressed questions relating to online publication. Although not directly connected to online safety, the two cases highlighted below are important because they expand the narrow

⁶² Barrie Sander, 'Freedom of Expression in the Age of Online Platforms: The Promise and Pitfalls of a Human Rights-Based Approach to Content Moderation' (2020) 43 *Fordham International Law Journal* 943,1006.

⁶³ African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) (adopted 27 June 2014) EX.CL/846 (XXV).

⁶⁴ African Investor, 'New data protection guidelines for Africa launched' (*African Investor*, 14 May 2018) < <http://www.africaninvestor.com/new-data-protection-guidelines-for-africa-launched/> > accessed 10 July 2020.

⁶⁵ Abdulrauf L Adebisi and Charles M Fombad, 'The African Union's Data Protection Convention 2014: A Possible Cause for Celebration of Human Rights in Africa?' (2016) 8(1) *Journal of Media Law* 74.

⁶⁶ Uchenna J Orji, 'The African Union Convention on Cybersecurity: a Regional Response towards Cyber Stability' (2018) 12(1) *Masaryk University Journal of Law and Technology* 101.

⁶⁷ See Article 26:1(a) of Malabo Convention (n 63) and Article 7(1) of EU Directive on Network and Information Security (2016).

⁶⁸ Malabo Convention (n 63) Article 25(3).

scope of the EAC Treaty, which lacks express human rights provisions.⁶⁹ The effective realisation of freedom of expression, just like other human rights, is often a question of judicial interpretation, especially where the policies or laws are unclear or underexamined. The next section discusses two notable EACJ decisions that apply the theory of freedom of expression as a precursor for democracy, enumerated under the normative framework, for securing the safety of journalists.

3. JUDICIAL PROTECTION FOR THE SAFEGUARDING OF JOURNALISTS: DEVELOPMENTS AT THE EACJ

The discussions in this section are aimed at exploring whether the regional court embraces the theory of freedom of expression as a precursor for democracy, and how this relates to the safety of journalists. The two cases, *Burundi Journalists Union v the Attorney General of the Republic of Burundi*;⁷⁰ and *Media Council of Tanzania & 2 others v the Attorney General of the United Republic of Tanzania*,⁷¹ are selected because of their outstanding impact on both domestic and regional legal discourses around freedom of expression. In addition, they demonstrate a progressive judicial approach at the regional level while denoting the complexities of state response at the domestic level.

3.1. BURUNDI JOURNALIST'S UNION V ATTORNEY-GENERAL OF BURUNDI 2013

The EACJ delivered a landmark decision concerning the constitutionality of Burundi's 2013 Press Law.⁷² Amongst other vague provisions, the law required journalists to disclose confidential sources of information. The case was submitted to the court by the Burundi Journalists' Union together with international non-governmental

⁶⁹ Tomasz P Milej, 'Human Rights Protection by International Courts - What Role for the East African Court of Justice' (2018) 26 *African Journal of International and Comparative Law* 108. See also, Nani J. Reventlow and Rosa Curling. 2019, 'The Unique Jurisdiction of the African Court on Human and Peoples' Rights: Protection of Human Rights beyond the African Charter' (2019) 33(2) *Emory International Law Review* 205.

⁷⁰ *Burundi Journalists Union v the Attorney General* (n 40).

⁷¹ *Media Council of Tanzania & 2 others v Attorney General* (n 31).

⁷² Law No 1/11 of 4 June 2013.

organizations (NGOs). The law was perceived as ‘an attempt to clamp down on journalists after persistent harassment and intimidation ha[d] failed to silence them’.⁷³

This case is relevant for three reasons. Firstly, it exemplifies the application of the theory of freedom of expression and media as a precursor for democracy, as discussed in the introduction of this article. Secondly, the EACJ expanded its narrow jurisdiction, to include cases relating to freedom of expression and the press.⁷⁴ In terms of jurisprudence, it establishes persuasive precedent within East Africa and Africa in general.⁷⁵ Thirdly, besides the discussion on content-based restrictions and freedom of expression, it affirmed the importance of journalists’ privacy, through the protection of confidential sources of information. Posetti argues that such protection is necessary in order to “respond to challenges of the digital age”.⁷⁶ She also notes that investigative journalism is dependent upon confidential sources.⁷⁷

In this case, the substantial question was whether freedom of the press and freedom of expression fell within the principles recognised by the Treaty for the Establishment of the East African Community (EAC).⁷⁸ The court upheld the principles of freedom of expression, noting, “democracy must of necessity include adherence to press freedom”.⁷⁹ The court’s judgment was based on Articles 6(d) and

⁷³ Human Rights Watch, ‘Burundi: New Law Would Muzzle Journalists’ (*HRW*, 12 April 2013) <<https://www.hrw.org/news/2013/04/12/burundi-new-law-would-muzzle-journalists>> accessed 19 June 2020.

⁷⁴ Unlike the other regional courts, the EACJ does not have express human rights jurisdiction. The Court’s major responsibility is to ensure the adherence to the law, in the interpretation, application of and compliance with the EAC Treaty. See the EACJ website, < https://www.eacj.org/?page_id=19> accessed 10 September 2020.

⁷⁵ See case analysis of Global Freedom of Expression (*Global Freedom of Expression*, 15 May 2015) <<https://globalfreedomofexpression.columbia.edu/cases/burundian-journalists-union-v-attorney-general/>> accessed 17 August 2020.

⁷⁶ Julie Posetti, ‘Protecting Journalism Sources in the Digital Age’ *UNESCO*, <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/protecting_journalism_sources_in_digital_age.pdf> accessed 10 September 2020.

⁷⁷ *ibid.*

⁷⁸ *Burundi Journalists Union v Attorney General* (n 40) para. 9.

⁷⁹ *ibid.* para. 2.

7(2) of the EAC Treaty which provide for the principles of democracy, rule of law, transparency and accountability.⁸⁰

The Court was persuaded by the jurisprudence of the European Court of Human Rights in the case of *Goodwin v. UK*,⁸¹ that the “[p]rotection of journalistic sources is one of the basic conditions for press freedom . . . Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest.”⁸²

Against this, it is important to note that vague provisions providing for the disclosure of information sources are common in East Africa. The Uganda, Rwanda and Tanzania Press laws include provisions for the waiver of journalists’ privilege of confidentiality sources, in the interest of conducting criminal proceedings.⁸³ In Tanzania, Maxence Melo, the founder of Jamii Forums, was charged with a host of offences including obstruction of investigations under the Cyber Crimes Act of 2015, and failure to disclose personal data to the police.⁸⁴ This is indicative of states lack of compliance with the Malabo Convention and the Resolution on the Right to Freedom of Information and Expression on the Internet in Africa.⁸⁵ It should be noted that section 22 of the 2015 Act, imposes a one-year jail term and sentence to anyone who fails to comply with state orders. That notwithstanding, section 38 prevents any legal challenge of these orders.⁸⁶ Similarly, the Regulation of Interception of Communications Act of Uganda has sweeping provisions for surveillance, which

⁸⁰ *ibid* para. 109.

⁸¹ *Goodwin v. UK*, Appl. No. 28957/95 (2009).

⁸² *Burundi Journalists Union v Attorney General* (n 40) para. 109

⁸³ Fred Nkusi, ‘Journalistic Privilege to Confidentiality Sources: Analysis of Rwanda’s Media Law’ (2014) 1(3) Boston University International Law Journal 2, available at SSRN: <<https://ssrn.com/abstract=2419423>> accessed 1 September 2020.

⁸⁴ CIPESA, ‘Maxence Melo Charged with Obstruction of Investigations and Operating a Domain Not Registered in Tanzania’ (16 December 2016), < <https://cipesa.org/2016/12/update-maxence-melo-charged-with-obstruction-of-investigations-and-operating-a-domain-not-registered-in-tanzania/> > accessed 10 July 2020.

⁸⁵ See Malabo Convention (n 63) Article 25(30 requires Member States to ensure that the establishment and implementation of legal measures for cybersecurity governance does not infringe human rights like freedom of expression, the right to privacy and the right to a fair hearing.

⁸⁶ The Cybercrimes Act of the United Republic of Tanzania, Proc No 14/2015 *Gazette of the United Republic of Tanzania* No. 22 (22 May 2015).

makes sources of journalists prone to disclosure.⁸⁷ These provisions are justified by the state on the basis of national security.⁸⁸

In the case under consideration here, the EACJ found the provision of Burundi's law to be in violation of the EAC Treaty. The court made references to the conceptions of freedom of expression in the US, together with the tests of proportionality and reasonableness used in Europe.⁸⁹ These tests were considered as the legal bases for restricting freedom of expression, and the court found that these conditions were not met.

In compliance with the judgment, Burundi enacted a new press law in 2015 that modified some sections of the 2013 law. This meant that journalists were now able to engage with audiences digitally, without any arbitrary restrictions from the state. More importantly, they could maintain the confidentiality of their sources of information.⁹⁰ Despite these reforms, the national courts still hold wide power to compel journalists to reveal their sources under a criminal procedure.⁹¹ This illustrates that the legal amendments undertaken are rather superficial, and suggests the need for harmonisation of the press law with laws of civil procedure.

Nevertheless, that EAC member states are obligated to abide and adhere to the principles of good governance under the EAC Treaty implicitly relates to freedom of expression as a precursor for democracy. It is important to note that in the case the EACJ emphasized the theory of democracy, noting that "looking at the freedom of the press and freedom of expression as vital components of every democracy, the Press Law does not meet that test and more so, in spirit and content, is a violation of Articles 6(d) and 7(2) of the Treaty".⁹² Beyond safeguarding freedom of expression, this EACJ

⁸⁷ Human Rights Network for Journalists-Uganda, 'The Regulation of Interception of Communications Act 2010 (HRNJ-U,2010)' <<https://www.hrnjuganda.org/media-legal-environment/domestic-laws/the-regulation-of-interception-of-communications-act-2010/>> accessed 10 July 2020.

⁸⁸ Regulation of Interception of Communications Act, 2010, Section 5(1).

⁸⁹ Tomasz P Milej (n 69) 112.

⁹⁰ Reporters Without Borders, 'National Assembly passes new media law' (RSF, 10 March 2015) <<https://rsf.org/en/news/national-assembly-passes-new-media-law>> accessed 12 June 2020.

⁹¹ The Collaboration on ICT Policy in East and Southern Africa et al 'Joint submission to Burundi's Universal Periodic Review' (29 June 2017) at 3.

⁹² *Burundi Journalists Union v Attorney General* (n 40) para 71.

decision serves as a basis for journalists to enjoy the protection of related-rights such as access to information.⁹³

3.2. MEDIA COUNCIL OF TANZANIA & 2 OTHERS V THE ATTORNEY GENERAL OF THE UNITED REPUBLIC OF TANZANIA 2017

In January 2017, a coalition of Tanzanian human rights NGOs, including the Media Council of Tanzania, the Legal and Human Rights Centre and the Tanzania Human Rights Defenders Coalition filed a reference before the EACJ to challenge several sections of Tanzania's 2016 Media Services Act.⁹⁴

This case is relevant because it illustrates a connection between the EAC Treaty, regional and international standards of freedom of expression, including the African Charter and International Covenant on Civil and Political Rights (ICCPR).⁹⁵ In addition, it also reemphasises the relationship between the right of press freedom and democracy. This particular case is also indicative of the EACJ's developing jurisprudence on human rights.

In the case, the applicants alleged that the 2016 Act provided for unjustified restrictions on the right to freedom of expression.⁹⁶ These included the restrictions on the type of news or content; mandatory accreditation of journalists; criminal penalties for defamation, publication of false news and seditious statements.⁹⁷ The state responded that the restrictions were legitimate aims, intended to ensure the rights, freedoms, privacy and reputation of other people, or that the interest of the public were not prejudiced by the wrongful exercise of the rights and freedoms of individuals.⁹⁸

On 28 March 2019, the EACJ held that the provisions violated articles 6(d) and 7(2) of the EAC Treaty, as well as the right to freedom of expression. Consequently,

⁹³ DefendDefenders, 'Don't Shoot the Messenger! Journalists as human rights defenders in the East and Horn of Africa' p.34 (*DefendDefenders*, October 2017) ,<https://www.defenddefenders.org/wp-content/uploads/2017/11/DontShootTheMessenger.pdf>> accessed 10 September 2020.

⁹⁴ Media Services Act, No. 120 of 2016.

⁹⁵ *Media Council of Tanzania & 2 others v Attorney General* (n 31) para. 20.

⁹⁶ *ibid* para. 21.

⁹⁷ *ibid*.

⁹⁸ *ibid* para. 15.

the court ordered the Tanzanian government to bring the Act in compliance with the EAC Treaty.⁹⁹ The court subjected the limitations in the Media Services Act to a three-tier test;

- a. the limitation that was prescribed by law had to have been part of a statute, and had to be clear, and accessible to citizens so that they were clear on what was prohibited;
- b. the objective of the law had to be pressing and substantial and important to the society;
- and c. the state, in seeking to achieve its objectives ought to have chosen a proportionate way to do so. That was the test of proportionality relative to the objectives or purpose it sought to achieve.¹⁰⁰

The court's decision recognised that criminal defamation and sedition laws pose huge challenges towards journalists' safety and human rights.¹⁰¹ The decision is an affirmation that the EAC Treaty obligations include measures for protecting press freedom and journalists' safety. It is a crucial step to ensure that journalists are able to publish stories without fear of incarceration. This is all the more necessary given that, the practice of imposing criminal sanctions limits the publication of critical news stories.¹⁰² In the months directly following this EACJ judgment, the Tanzanian Government had shown some commitment to making reforms, by holding talks with stakeholders.¹⁰³ However, the Parliament has not yet repealed or amended the repressive sections of the Media Services Act, in accordance with the decision of the EACJ.¹⁰⁴

⁹⁹ *ibid* para. 22

¹⁰⁰ *Media Council of Tanzania & 2 others v Attorney General* (n 31) at para. 7.

¹⁰¹ DefendDefenders Report (n 93) 34.

¹⁰² Benjamin Herskovitz, 'Speaking Truth to Power: Criminal Defamation before the African Court on Human and People's Rights' (2018) 50(4) *George Washington International Law Review* 901.

¹⁰³ Tetevi Davi, 'A Victory for Media Freedom and another Blow Dealt to Criminal Defamation and Sedition Laws by the East African Court of Justice' (*Opinio Juris*, 20 August 2019) <<http://opiniojuris.org/2019/08/20/a-victory-for-media-freedom-and-another-blow-dealt-to-criminal-defamation-and-sedition-laws-by-the-east-african-court-of-justice/>> accessed 10 June 2020.

¹⁰⁴ Human Rights Watch, "'As Long as I am Quiet, I am Safe'" Threats to Independent Media and Civil Society in Tanzania' (*HRW*, 28 October 2019) <<https://www.hrw.org/report/2019/10/28/long-i-am-quiet-i-am-safe/threats-independent-media-and-civil-society-tanzania>> accessed 10 June 2020.

It is important to note that besides journalists, Tanzania laws on media have a direct effect on the safety of other internet users. For example, in 2018, the Tanzania Communications Regulatory Authority (TCRA) ordered all bloggers and content providers to register their identities.¹⁰⁵ Although Tanzania's constitution¹⁰⁶ guarantees the right to freedom of expression, it does not expressly provide for freedom of expression on the internet.¹⁰⁷ With the emergence of the internet as the new medium of communication, this EACJ decision can serve as an advocacy tool for the recognition of freedom of expression, both online and offline.

Furthermore, this EACJ decision can be used as a lens through which to challenge similar laws in other East African countries. In Kenya, the offences of publication of false news and cyber libel¹⁰⁸ have a chilling effect on journalists.¹⁰⁹ Shortly after the passing of the Computer Misuse and Cyber Crimes Act in 2018,¹¹⁰ the Bloggers Association of Kenya (BAKE) filed a Constitutional Petition in the High Court of Kenya, challenging the constitutionality of the Act.¹¹¹ The High court rejected their arguments and stressed the need to prevent misinformation. With an explicit

¹⁰⁵ Fumbuka Ng'wanakilala, 'Tanzania orders all unregistered bloggers to take down their sites' (*Reuters*, 11 June 2018) <<https://www.reuters.com/article/us-tanzania-internet/tanzania-orders-all-unregistered-bloggers-to-take-down-their-sites-idUSKBN1J71W6> > accessed 10 June 2020.

¹⁰⁶ Constitution of the United Republic of Tanzania, 1977 (as amended), Art.18.

¹⁰⁷ Grace Nolasco, 'Freedom of Expression on the Internet and the Law in Tanzania' (2016) 46 *Journal of Law, Policy and Globalization* 37.

¹⁰⁸ The Computer Misuse and Cybercrimes Act, 2018. Sections 22,23. <<http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ComputerMisuseandCybercrimesActNo5of2018.pdf> > accessed 11 August 2020.

¹⁰⁹ *Bloggers Association of Kenya (BAKE) v Attorney General & 3 others; Article 19 East Africa & another (Interested Parties)* [2020] eKLR, para 63. See also ARTICLE 19, 'Kenya: Passage of flawed Computer and Cybercrimes Act threatens free expression' (*ARTICLE 19*, 18 May 2018) <<https://www.article19.org/resources/kenya-passage-of-flawed-computer-and-cybercrimes-act-threatens-free-expression/> > accessed 5 July 2020.

¹¹⁰ The Computer Misuse and Cybercrimes Act (n 119).

¹¹¹ CIPESA, 'Promoting best practice among activists for more effective collaboration in digital rights litigation in Kenya' (*CIPESA*, December 2019) <https://cipesa.org/?wpfb_dl=319 > accessed 1 August 2020.

reference to the internet, the court observed a real problem of misinformation or ‘fake news’ and justified a basis for the criminalization of cyber libel.¹¹²

Similarly, provisions on cyber harassment and offensive communication under the Computer Misuse Act of Uganda are prone to abuse by state authorities, to restrict criticism from journalists and other users of the internet.¹¹³ In addition, the offence of criminal libel is used to prosecute journalists that publish stories critical of the state.¹¹⁴ In 2013, a High Court in Uganda upheld the offence of criminal libel on online publications, in a case against investigative journalist Kalyegira Timothy.¹¹⁵ The substantial question was whether publishing online constitutes a commission of any offence under section 179 of the Penal Code Act.¹¹⁶ In its judgment, the court drew on a wide interpretation of ‘publication’ in criminal libel cases noting that, ‘whoever types out information on [a] computer and posts it makes the information available for reading, retrieval and circulation’.¹¹⁷ It is suggested that this wide interpretation of the law on libel,¹¹⁸ renders the 2011 Computer Misuse Act an extension of the 1950 Penal Code Act. It arguably demonstrates the court’s approach in reinterpreting old criminal libel provisions into newer legislation. Consequently, this has the negative impact of curtailing free speech in the modern digital era,¹¹⁹ in line with the state’s restrictive approach on freedom of expression.

However, the decision of the EACJ in the present case provides an opportunity through which East African states are confronted with invalidating arbitrary criminal

¹¹² Ibid paras. 45,56.

¹¹³ Solomon Rukundo, ‘My President is a Pair of Buttocks’: the limits of online freedom of expression in Uganda’ (2018) 26(3) International Journal of Law and Information Technology 259.

¹¹⁴ Eva Namusoke, ‘Uganda: Press Freedom Attacked by State Bodies’ (2018) 107(2) Round Table 1. See also Edward Anyoli, ‘Lawyers ask EACJ to strike out criminal defamation’ (*New Vision*, 28 August 2020) <<https://www.newvision.co.ug/news/1525746/lawyers-eacj-strike-criminal-defamation>> accessed 15 September 2020.

¹¹⁵ *Uganda v Nyakahuma Kalyegira Timothy*, Miscellaneous application no 1 of 2013 (unreported), <<https://ulii.org/ug/judgment/high-court-criminal-division/2013/30>> accessed 10 June 2020.

¹¹⁶ Penal Code Act, Cap. 120 as amended.

¹¹⁷ ibid 5.

¹¹⁸ Computer Misuse Act, 2011.

¹¹⁹ Ronald K Mayambala, ‘How Uganda is using old and new laws to block activists on social media’ (*The Conversation*, 8 September 2019) <<https://theconversation.com/how-uganda-is-using-old-and-new-laws-to-block-activists-on-social-media-121823>> accessed 15 September 2020.

libel laws, such as in Kalyegira Timothy's case.¹²⁰ This EACJ case can further be used as a basis to challenge the imminent threat of imprisonment for journalists and other online publishers posed by arbitrary national cybercrime regulations. Consequently, the EACJ's decision can be considered as judicial activism on their part. This is through their continuing commitment to address the safety of journalists, by reinforcing states obligation in securing freedom of expression for the press, within their national jurisdictions.

In summary, in both cases the EACJ drew a nexus between the EAC Treaty and fundamental human rights. One of the guiding principles relied on by the court was the theory of democracy, especially as the court emphasised that "...[u]nder Articles 6(d) and 7(2) the principle of democracy must of necessity include adherence to press freedom".¹²¹ By applying a tripartite test,¹²² the court was also not convinced that restrictions were necessary or appropriate within society and for the public's interest.¹²³ These cases should arguably change the debate on the application of national laws that have a bearing on freedom of expression and safety of journalists.¹²⁴

The jurisprudence of the court is instructive in this regard. As the highest judicial decision-making body in the region, the EACJ has played a crucial role in the promotion of freedom of expression. Moreover, the theoretical approach underlying these cases illustrates that the traditional approach to and framing of freedom of expression as a precursor for democracy is applicable within the East African context.¹²⁵

4. CONCLUSIONS AND RECOMMENDATIONS

This research asked: what obligations are on East African states in terms of protecting journalists' safety? This question was answered in two stages. Firstly, it examined normative frameworks within the African context, which address the right to freedom

¹²⁰ Edward Anyoli (n 114) See also, Ronald K Mayambala *ibid*.

¹²¹ *Burundi Journalists Union v Attorney General* (n 40) para. 73.

¹²² *Media Council of Tanzania & 2 others v Attorney General* (n 31) para. 7. See also case analysis of Global Freedom of Expression (n 75).

¹²³ *Ibid* at para. 10.

¹²⁴ Matt J. Duffy (n 48) 11.

¹²⁵ Fred Nkusi (n 83) 2.

of expression. This analysis demonstrated that states are legally obliged to establish and implement legal measures that do not infringe freedom of expression and the right to privacy. More importantly, a nexus was drawn between these rights and the safety of journalists. Secondly, the EACJ decisions examined indicated a judicial frame that is opposed to arbitrary restrictions on journalists.

However, legal remedies are not a conclusive solution to safeguarding freedom of expression for the purposes of ensuring the safety of journalists. This is especially the case when national judicial processes are not impartial, nor independent. It is also the case when national courts take a restrictive interpretation on press freedom in line with state policies and law that are contrary to international law. Generally, advocacy by the public for freedom of expression is necessary. This is crucial since personal safety and information privacy concern not only journalists, but also their sources of information and the general public, as well.¹²⁶ It further affects the methods used by the press to gather information in investigative journalism.

In this regard, understanding some key issues undergirding the field of media ethics, in the context of East Africa, can assist in providing alternative solutions to the safety of journalists. Nassanga notes that, “[whereas] journalism does not meet most of the features that identify a profession, nevertheless, it is recognized as a unique profession”.¹²⁷ Nassanga’s statement addresses the oft-posed question within East Africa on whether journalism can really be considered a ‘profession’. The undermining of this profession has the impact that many journalists do not receive formal journalistic training.¹²⁸ In any case, the already limited training opportunities, including safety online, are conducted by civil society organisations that target only a few journalists.¹²⁹

¹²⁶ Gerald Walulya and Goretta L. Nassanga (n 53) 12.

¹²⁷ Goretta L. Nassanga, ‘Journalism Ethics and the Emerging New Media Culture of Radio Talk Shows and Public Debates (Ekimeeza) in Uganda’ (2008) 9(5) SAGE Publications 646 - 650.

¹²⁸ Michael Behrman, James Canonge, Matthew Purcell and Anya Schiffrin, ‘Watchdog or lapdog? A look at press coverage of the extractive sector in Nigeria, Ghana and Uganda’ (2008)33(2) *Ecquid Novi: African Journalism Studies* 96.

¹²⁹ George Nyabuga, *Supporting safety of journalists in Kenya: an assessment based on UNESCO’s Journalists’ Safety Indicators* (United Nations Educational, Scientific and Cultural Organization, 2016) 58.

There is thus a need for the provision of specific training and professional education of journalists within East Africa. This should especially elucidate national regulations concerning online activities. With regards to journalists in volatile or conflict areas, there is need for both personal and online training. Ogenga explores the role of media in peacebuilding, particularly within the context of the new threat of terror in Africa.¹³⁰ He suggests an “Africa-centric” framework “that can guide journalists working in the continent, especially those in conflict regions, on how to cover news in a manner that would cultivate dialogue and peace, rather than fuel conflict”.¹³¹ In addition, digital tools like live streaming can be used to expose incidents of state brutality against journalists.¹³² In this sense, the safety of journalists can be supported through a “holistic approach incorporating physical, digital, and psychological aid”.¹³³

Finally, as suggested by Sander, other stakeholders like internet service providers (ISPs) need to be involved in discussions about the freedom of expression and safety of journalists.¹³⁴ ISPs can enforce their internal terms of service, in a way that adequately responds to incidences of data breaches, such as surveillance.¹³⁵ This may prove essential in driving national mechanisms to collaborate with and respond to ISPs, especially given that the use and types of digital media platforms are rapidly increasing in East Africa.¹³⁶

¹³⁰ Fredrick Ogenga, ‘Hybrid Peace Journalism: Institutional Philosophical Approaches to Peace and Security in Africa’ in F. Ogenga(ed) *Africa Peace Journalism: A Manual for Media Practitioners in East Africa* (Rongo University Center for Media, Democracy, Peace and Security,2017) 22.

¹³¹ *ibid* 32.

¹³² Andrew Puddephatt, ‘Mapping Digital Media: Freedom of Expression Rights in the Digital Age’ (*Open Society Foundations*, July 2011) , p.13 <<file:///C:/Users/Admin/Downloads/mapping-digital-media-freedom-expression-rights-20110728.pdf>> accessed 20 September 2020.

¹³³ Committee to Protect Journalists, ‘Report-The Best Defense: Threats to journalists’ safety demand fresh approach’ (*Committee to Protect Journalists*, 21 February 2017), <<https://cpj.org/reports/2017/02/Best-Defense-Threats-Safety-Journalists-Freelance-Emergencies-Attack-Digital.php>> accessed 10 July 2020.

¹³⁴ Barrie Sander (n 62) 999.

¹³⁵ Martha Minow, ‘The Changing Ecosystem of News and Challenges for Freedom of the Press’ (2018) 64 *Loyola Law Review* 548.

¹³⁶ David Thomas (n2).