Tanzania's and South African Laws for Preventing and Controlling Pandemics: Comparative Analysis and Lessons from COVID-19

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Abstract

The outbreak of pandemics causes significant negative impacts on the social, political and economic life of a country's population. Thus having in place measures, including effective legal framework to prevent and control pandemics is unavoidable. Legal frameworks create an enabling environment for effective and timely prevention, preparedness for, response to, and recovery from pandemics. The emergency of COVID-19 demonstrated this need. The implementation of measures to address COVID-19 in many countries has raised issues relating to the effectiveness of their legal frameworks for preventing and controlling pandemics. This article uses the International Health Regulations of 2005 to analyze the legal frameworks of Tanzania and South Africa in order to determine their adequacy for preventing and controlling pandemic outbreaks. The article draws experience from COVID-19 pandemic, borrowing lessons from legal measures that were implemented by the governments of the two countries to respond to the COVID-19 pandemic. The article argues that, when compared with Tanzania, the laws of South Africa are better in preventing and controlling pandemics. In particular, the legal framework in South Africa provides broad participation of stakeholders from the bottom to the national level in pandemics decision-making. Moreover, South Africa's legal framework enhances greater transparency and accountability.

Keywords:

COVID-19, pandemics, health regulations, Tanzania, South Africa

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1. Introduction

Legal frameworks play a critical role in addressing pandemics. They provide the basis for implementing measures to prevent the spread of infectious diseases and respond to their outbreak. Legal frameworks also provide an enabling environment for mitigating the impacts caused by infectious diseases. Law specifies formal measures and processes that need to be implemented in order to prevent and limit the spread or respond to a pandemics and further sets institutional frameworks for overseeing and enforcing the implementation of established measures to address pandemics outbreak.

The International Development Law Organisation notes that a good legal framework has significant contribution in preventing and controlling the spread of infectious disease pandemics by facilitating testing, counselling and education about the pandemic and the associated risks or impacts and improving access to vaccination.[1] The Organisation thus emphasizes that "all states need effective legal frameworks to deal with important public health challenges shared across nations and regions, especially during public emergencies such as infectious disease pandemics".[2]

Frequently used acronyms:
IHR International Health Regulations of 2005
WHO World Health Organization

[1] International Development Law, 'The Vital Role of Law in the Covid-19 Response: Key Lessons from Advancing the Right to Health' 2 <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.idlo.int/sites/default/files/pdfs/publications/idlo_vital_role_law-covid19-final.pdf> accessed 22 February 2023.

[2] Ibid.

States define 'pandemics' differently depending on the purposes they want to achieve.[3] One of the common definitions considers pandemic as "an epidemic occurring worldwide, or over a very wide area, crossing international boundaries and usually affecting a large number of people".[4] Nicol underlines that it is "the detailed description that is crucial in determining proportionate responses, not the definition"[5] of the word pandemic. Yet, defining the word at this juncture is appropriate to delineate the scope of this article. The word pandemic as used in this article means a widespread occurrence of an infectious disease over a whole country, several countries of the world or the world at a particular time and so declared by a competent authority. The phrases pandemics, pandemic diseases, infectious diseases and public health emergency are used interchangeably to mean the same thing.

Tanzania and South Africa are both African countries located at the Eastern and Southern Africa respectively. According to the 2022 census, the population of South Africa was 62 million[6] while that of Tanzania was 61.7 million.[7] In terms of GDP per capita, South Africa is wealthier than many of the African countries including Tanzania. Historically, the two countries are not strangers to pandemics, since they have (on several occasions) been attacked by pandemics. For instance, in 1886 Tanzania was affected by plague. The diseases re-emerged in 1980, affecting more than 8,490 persons.[8] Likewise, South Africa was hit by Spanish influenza (in 1918) which affected about 42% and killed at least 2 % of the total population.[9]

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[3] Barnet Daniel (2011). 'Pandemic Influenza and Its Definitional Implications', 89 *Bulletin of the World Health Organization* 539.

[4] Heath Kelly (2011). 'The Classical Definition of a Pandemic is Not Elusive', *89 Bulletin of the World Health Organization* 540.

[5] Angus Nicoll (2011). 'Planning for Uncertainty: A European Approach to Informing Responses to the Severity of Influenza Epidemics and Pandemics' 89 *Bulletin of the World Health Organization* 542.

[6] Department of Statistics South Africa, 'Media Release: Census 2022 Population Count Results 10 October 2023' <https://www.statssa.gov.za/?p=16716> accessed 3 November, 2024.

[7] President's Office - Finance and Planning, Office of the Chief Government Statisticians, Zanzibar (2022). *The 2022 Population and Housing Census: Age and Sex Distribution Report, Key Findings*, Tanzania <https://sensa.nbs.go.tz/publication/report7.pdf> accessed 3 November, 2024.

[8] Michael H Ziwa (2013). 'Plague in Tanzania: An Overview' *15 (4) Tanzania Journal of Health Research*, 1 - 2.

[9] Rob Siebörger (2020). 'Teaching about Dying and Death: The 1918 Flu Epidemic in South Africa' 24 *Yesterday & Today* 177.

Both Tanzania and South Africa were affected by COVID-19 pandemic. Several people were reported dead and some economic activities and social services such as schools were shut down. Moreover, considering that COVID-19 was a global pandemic that required global efforts, implementation of prevention and responsive measures by each country was a necessary step to prevent its spread and to limit its negative impacts.

Prevention and response measures that were implemented by the governments of Tanzania and South Africa to respond to COVID-19 pandemic demonstrated the implications of the two countries' legal frameworks for addressing pandemics. This article focuses on unveiling the strengths and weaknesses of the legal frameworks of the two countries in preventing and controlling pandemics. The article uses comparative methodologies where legal framework for preventing and controlling pandemic for each country is examined based on which best practices can be drawn from the analysis of the legal frameworks.

The requirements provided in the World Health Organisation (WHO) International Health Regulations of 2005 (IHR) framework are used as a benchmark of the comparisons. The use of IHR as a benchmark is based on the fact that both (Tanzania and South Africa) are members of the WHO and state Parties to the IHR. The article also draws experience from COVID-19 strategies that were implemented in the two countries to demonstrate the practical applications of the legal frameworks in the two jurisdictions.

In spite of the fact that COVID-19, occurred more than two years ago, the experience on how the pandemic was handled informs significantly necessary reforms that are required to be implemented in order to strengthen the domestic frameworks for controlling and preventing pandemics. Thus, the discussion in this article shows the need for broad legal and regulatory reforms to enhance effective national control and prevention of future pandemics.

After this introduction, the next section provides a brief description of the IHR. This description is necessary to understand the legal frameworks of the two countries discussed in this article. In fact, the IHR play a significant role in shaping the domestic laws in the member states. Particularly, all WHO member states are required to comply with IHR in preventing the spread and responding to epidemics declared by WHO to be pandemics. Section 3 examines the legal and regulatory frameworks for controlling pandemics in Tanzania and South Africa. The fourth section discusses how Tanzania and South Africa responded to COVID-19 pandemic with a view to establish the practical implementation of the legal framework of the two countries. Section 5 deals with the implications of the Tanzania and South Africa Legal Frameworks for Pandemics.

2. WHO Regulations on the Prevention and Control of Pandemics

Global pandemics are primarily regulated by International Health Regulations of 2005 (IHR) at the international level. Tanzania and South Africa being State Parties to the IHR administered by the World Health Organisation (WHO), are bound to comply with the Regulations including having in place systems for early detection and response to pandemics. IHR is legally binding agreement to the State Parties. The Regulations were adopted by the World Health Assembly in 1969 and at the time the Regulations had targeted 3 pandemic diseases. These were cholera, plague, and yellow fever.[10] In 2005, the Regulations were revised to cover all pandemic diseases outbreak.[11]

International Health Regulations provide measures to be implemented by the State Parties to prevent, control and reduce the spread of pandemic diseases. The Regulations require State Parties to develop their capacity to detect, assess, notify, report and respond promptly and effectively public health events.[12] However this has to be implemented in line with the sovereign right of the Member States "to legislate and to implement legislation in pursuance of their health policies",[13] provided that the exercise of the above sovereign right upholds the purpose of the IHR[14] which is "to prevent, protect against, control and provide a public health response to the international spread of disease".[15] Moreover, in order to ensure smooth implementations, IHR require each Member State to designate or establish a National IHR Focal Point and respective authority to implement the Regulations.[16]

The procedures for controlling and preventing pandemic diseases under IHR can be briefly described as follows: State Parties are required to detect and to notify WHO unexpected or unusual events that may constitute a potential public health emergency of international concern.[17] In practice, this requirement binds all State Parties where the pandemic originates or is firstly detected. In turn WHO will send to all Member States the health information

[10] Mohammad Reza Kameli, 'Transparency in International Law of Pandemics: Buttressing the International Health Regulations through Incorporation into the World Trade Organisation' (*Public International Law*, 26 February 2021).
[11] Ibid.
[12] International Health Regulations 2005, adopted in 1969, arts 5(1) and 13(1).
[13] Id., Art 3(4).
[14] Ibid.
[15] Id., Art 2.
[16] Id., Art 4(1).
[17] Id., Art 7.

which it receives in order to enable State Parties to respond to a public health risk.[18] Further WHO will use the information received to determine "whether an event constitutes a public health emergency of international concern".[19] Other factors are also considered in determining whether a public health emergency of international concern exists. These factors stated in Annex 2 of the Regulations are: "the advice of the Emergency Committee; scientific principles and evidence; and a risk assessment regarding human health, international spread, and interference with international traffic".[20]

The powers to declare public health emergency of international concern are vested to the WHO Director-General.[21] Having declaring existence of public health emergency of international concern, the Director-General is required to issue Temporary Recommendations which may be modified or extended as appropriate. The Recommendations are expected, among others, to provide measures to be implemented by the State Parties in order to prevent or reduce the spread of the disease. [22] The Temporary Recommendations may be followed by issuance of Standing Recommendations, if WHO deems necessary.[23] State Parties, including Tanzania and South Africa, are expected to implement these recommendations issued by WHO during pandemics.

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[18] *See* International Health Regulations 2005, *supra* note 12, Art 11(1).

[19] Id., Art 12.

[20] Lawrence O Gostin & Rebecca Katz (2016),'The International Health Regulations: The Governing Framework for Global Health Security: The International Health Regulations' in Sam F Halabi, Lawrence O Gostin, and Jeffrey S. Crowley (eds), *Global Management of Infectious Disease After Ebola* (Oxford University Press) 106 <https://onlinelibrary.wiley.com/doi/10.1111/1468-0009.12186> accessed 18 October 2022.

The Guidelines provide for six pandemic phases. Phases 1-3 focus on strengthening pandemic preparedness and response while phase 4 focus on reducing the spread of the disease. Phases 5-6 focus on responding to the pandemic. The disease will be declared pandemic in the 6th phase when the outbreaks have spread to several countries. *See* WHO Global Influenza Programme and World Health Organization (2009), *Pandemic Influenza Preparedness and Response: A WHO Guidance Document* (World Health Organization) 24–26 <https://iris.who.int/handle/10665/44123> accessed 26 February 2024.

[21] To date a number of diseases have been declared to be public health emergency of international concern. These include pandemic influenza H1N1 in 2009; polio and for Ebola in 2014, Zika in 2016 and most recent COVID-19 in 2020. The Director-General is also vested with powers to terminate a public health emergency of international concern, 'which automatically expires after 3 months unless extended, modified, or terminated earlier'. *See* Gostin & Katz, *supra* note 20, pp. 108 and 109.

[22] International Health Regulations 2005, *supra* note 12, Art 15.

[23] Id., Art 16.

3. Legal Framework for Prevention and Control of Pandemics

3.1 Tanzania Legal Framework

There are a number of laws that affect the prevention and control of pandemics in Tanzania. These laws establish measures to prevent and respond to pandemics and further set up institutional framework to enforce compliance of the established measures. The Constitution of the United Republic of Tanzania does not establish any specific measure to address pandemics. However, it puts obligations to the Government to ensure that public health is protected. For instance, Article 9(i) of Tanzania's Constitution requires state authority and agencies to ensure that "the use of national wealth places emphasis on the development of the people and in particular is geared towards the eradication of poverty, ignorance and disease". Moreover, Article 11(1) calls state authority to make "appropriate provisions for the realization of a person's right to work, to self-education and social welfare at times of old age, sickness or disability and in other cases of incapacity. Without prejudice to those rights, the state authority shall make provisions to ensure that every person earns his livelihood".[24]

Article 30(2)(b) of the Constitution entrusts the Government with powers to enact laws to defend public health. On the other hand, Article 14 guarantees the right to life. In many jurisdictions, the right to life is interpreted to include the right to health.[25] Today it is understood that the right to health embodies the "right to adequate protection of health" and "the right to equal access to health care."[26] The right to health also "obliges States to create conditions favourable to the achievement and maintenance of the highest attainable level of health".[27]

Apart from the IHR discussed in the preceding section, Tanzania is also a member to several international instruments that protect public health. These

[24] *See* the Constitution of the United Republic of Tanzania of 1977, Cap. 2 R.E 2002.

[25] *See Laxmi Mandal* v *Deen Dayal Harinagar Hospital & Others* [2010] 8853/2008 and *Jaitun* v *Janpura Maternity Home & Others* [2010] 10700/2009 (High Court of Delhi, 4 June 2010). In these cases, the High Court of India held that the right to life includes the right to food). *See* Human Rights Law Centre, 'Right to Life Includes Right to Health and Freedom from Poverty' (*Human Rights Law Centre*, 4 June 2010).

[26] Aart Hendriks (1998). 'The Right to Health in National and International Jurisprudence', 5 *European Journal of Health Law* 389.

[27] Ibid.

include the Universal Declaration of Human Rights of 1948,[28] the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966,[29] the International Convention on the Elimination of all forms of Discrimination against Women,[30] the Convention on the Rights of the Child[31] and the African Charter on Human and Peoples' Rights.[32] These instruments require member states to ensure that the right to the enjoyment of the highest attainable standard of physical and mental health is guaranteed.[33] Specifically, Article 12 of the ICESCR states that:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
   (a) The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child;

[28] Article 25 of the Universal Declaration of Human Rights of 1948 (General Assembly Resolution 217 A) articulates the right to health as part of the right to a standard of living.

[29] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, Vol. 993, p. 3, available at: https://www.refworld.org/docid/3ae6b36c0.html [accessed 24 August 2022]. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. ICESCR entered into force on 3 January 1976, in accordance with Art 27. Other international regional interments that recognise the right to health and to which Tanzania is a part are: International Convention on the Elimination of All Forms of Racial Discrimination (1965) Art 5 (e) (iv), the Convention on the Elimination of All Forms of Discrimination against Women (1979) Arts 11 (1) (f), 12 and 14 (2) (b), the Convention on the Rights of the Child (1989) article 24, the Convention on the Rights of Persons with Disabilities (2006) article 25 and the African Charter on Human and Peoples' Rights (1981), Art 16.

[30] *See* Art 7 of the International Convention on the Elimination of all forms of Discrimination against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.

[31] *See* Art 24 of the Convention on the Rights of the Child, 20 November1989, United Nations, Treaty Series, Vol. 1577, p. 3.

[32] *See* Art 16 of the African Charter on Human and Peoples' Rights, 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

[33] The preamble of the Constitution of the World Health Organization (WHO) of 1946 also recognizes the right to health. The preamble states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."

(b) The improvement of all aspects of environmental and industrial hygiene;
(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness..

The Office of the High Commissioner for Human Rights and the WHO emphasize that among others, the right to health entitles the citizens the right to prevention, treatment and control of diseases.[34] It should be noted that, being a dualist state, Tanzania is expected to enact laws that honour its obligations provided in the international instruments to which is a party.[35] Therefore taking measures to prevent and control pandemic diseases by the government of Tanzania is part of its obligation not only under the Constitution and national laws but also under international instruments ratified by Tanzania.

The Tanzania's Public Health Act[36] is the principal Act for the promotion, preservation and maintenance of public health. The Act addresses various aspects of public health including diseases prevention and control; sanitation, housing and hygiene; and food, food hygiene and nutrition. Part III of the Act, among others, addresses control of infectious or communicable and non-communicable diseases. The Act defines communicable or infectious disease as "an illness caused by an infectious agent or its toxic products, which is transmitted directly or indirectly from an infected person or animal or through the agency of a mediate environment."[37] Any person suffering from infectious disease listed in the Act or a health officer who becomes aware of such diseases is required to report the same to the specified authorities.[38]

The power to inform the public about occurrence or existence of any infectious disease listed in the Act is vested in the Minister responsible for health.[39] Infectious diseases listed in the Act include Viral Hemorrhagic

[34] Anne Bayefsky (2001), 'Office of the United Nations High Commissioner for Human Rights', *The UN Human Rights Treaty System in the 21 Century* (Brill | Nijhoff) 3 <https://brill.com/view/book/edcoll/9789004502758/B9789004502758_s044.xml> accessed 24 August 2022.
[35] *See* the Constitution of the United Republic of Tanzania of 1977 (as amended from time to time), article 63(3)(e).
[36] Act No. 1 of 2009.
[37] Id., sec 3.
[38] Id., sec 10.
[39] Id., sec 9(1).

fevers, such as Ebola fever, Rift valley fever, Yellow fever and Marbug fever; Avian influenza; Severe Acute Respiratory Syndrome (SARS); and others.[40] However, the list is not exhaustive as the Minister has the power to extend the list by publishing a notice in the government Gazette.[41] Upon notification about occurrence of infectious diseases, the Tanzania Chief Medical Officer may advice and specify directives to be complied by the medical officers in order to prevent and to control the spread of the infectious disease.[42] These measures may include quarantine, vaccination, disinfections,[43] isolation and restricting entry into Tanzania.[44]

The Public Health Act also addresses epidemic, endemic and pandemic diseases. A pandemic is "a widely spread deadly disease resulting in the death of many people and so named by recognised authority".[45] The provisions of the Public Health Act relating to the control of pandemic are mainly intended to control diseases which are known to spread very fast and to cause many deaths in a short period. Thus the pandemics targeted by the Act include: "plague, cholera, celebralspinal meningitis [*sic*], malaria, schistosomiasis, tuberculosis, dysentery, typhoid, viral hemorrhagic fevers or any other disease the Minister responsible for health may declare to be epidemic, endemic or pandemic."[46] Effective implementation of the Public Health Act requires a number of regulations to be made by various authorities including the Minister responsible for health. However most of these regulations are not developed yet.

Generally, the Public Health Act is intended to address infectious diseases that are declared pandemic under the laws of Tanzania. In addition to the national framework, the international frameworks apply for infectious diseases that are declared pandemic by the WHO. In this regard, Section 4(2) of the Public Health Act states categorically that IHR shall apply in tandem with the provisions of the Act.[47]

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[40] *See* the first schedule to the Public Health Act. The diseases are grouped into international notifiable diseases and national notifiable diseases. International notifiable diseases include Ebola fever, Avian influenza, Severe Acute Respiratory Syndrome (SARS) and others.

[41] *See* sec 17.

[42] Id., sec 14.

[43] Id., sec 15.

[44] Id., sec 35.

[45] Id., sec 3.

[46] Id., sec 25.

[47] The provisions of the Public Health Act that focuses on pandemic other than that originating in Tanzania are those giving powers to the Port Health Officer to restrict

3.2 South Africa Legal Framework

Unlike Tanzania, South Africa has strong mechanisms for prevention and response to pandemics.[48] South Africa's legal framework for preventing and controlling pandemics is composed of the Constitution of South Africa of 1996, laws made by the Parliament, regional and international laws. This subsection focuses on the Constitution and laws made by the parliament because regional and international instruments covered in the preceding sections, also apply to South Africa, a state party to those instruments.

The Constitution of South Africa guarantees justiciable socio-economic rights including access to health care services and access to social security.[49] Like other rights contained in the Bill of Rights contained in the Constitution, no limitation is allowed to the above rights except "in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors."[50] These factors include the "(a) nature of the right; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose".[51]

Alongside the Constitution are the Disaster Management Act of 2002,[52] amended in 2015,[53] the National Health Act of 2005[54] and the regulations made under these Acts which include the Regulations relating to COVID-19 of 2020[55] made under the Disaster Management Act and the Regulations relating to the Surveillance and the Control of Notifiable Medical Conditions of 2017[56] made under the National Health Act. The Disaster Management Act provides the basic framework for dealing with pandemics in South Africa. Its

entrance into Tanzania any foreigner from infected country; power to require any person entering Tanzania to undergone examination, quarantine, isolation, vaccination and disinfection.

[48] D Moonasar *et al* (2022), 'Governing a Pandemic: A Case Study of South Africa's Coordination and Management Structures Used to Respond to the COVID-19 Pandemic', 112 *South African Medical Journal* 357.

[49] The Constitution of the Republic of South Africa, 1996, approved by the Constitutional Court (CC) on 4 December 1996 and took effect on 4 February 1997, Art. 27(1).

[50] Id., Art 36.

[51] Ibid.

[52] Act No. 57 of 2002.

[53] Act No. 16 of 2015.

[54] Act No. 61, 2003.

[55] Government Notice R480 of 2020, Regulations relating to COVID-19 of 2020.

[56] Vol. 630, No. 41330.

objectives are to provide for "an integrated and co-ordinated disaster management policy that focuses on preventing or reducing the risk of disasters; mitigating the severity of disasters; emergency preparedness; rapid and effective response to disasters and post-disaster recovery; the establishment of national, provincial and municipal disaster management centres; disaster management volunteers and matters incidental thereto".[57]

The Disaster Management Act defines disaster to mean "a progressive or sudden, widespread or localized, natural or human-caused occurrence which causes or threatens to cause death, injury or disease; damage to property, infrastructure or the environment; or disruption of the life of a community;" and where its magnitude exceeds "the ability of those affected by the disaster to cope with its effects using only their own resources".[58] Sections 27(1), 41(1) and 55(1) of the Disaster Management Act provides for the declaration of national, provincial, or municipal states of disaster by, respectively.

The powers to declare disasters are vested in the designated Minister for national disasters, the premier of a province for provincial disasters and municipal leadership for the case of municipal disasters. Once a national state of disaster is declared, the designated Minister may, after consulting the responsible Cabinet member, "make regulations or issue directions or authorize the issue of directions" to control and respond to the disaster.[59] The Act further establishes and provides for the operation of various disaster management frameworks,[60] disaster advisory forums,[61] disaster management centres,[62] and disaster management plans[63] at national, provincial, and municipal levels, as well as intergovernmental relations and cooperation between these structures.

Section 23(3) of the Disaster Management Act lists the factors to be considered to determine whether the disaster is local, provincial or national. In particular, the national state of disaster will be declared where a disaster affects more than one province or affects a single province which cannot manage it effectively.[64] Unless terminated or extended by the designated Minister, the national state of disaster lapses three months after it has been

[57] *See* the long title of the Act.
[58] Act No. 57, 2002. *Supra* note 52, sec 1.
[59] Id., sec 27(2).
[60] Id., secs 6(1); 28(1); and 42(1).
[61] Id., secs 5(1); 37(1) and 51(1).
[62] Id., secs 8(1); 29(1); and 43(1).
[63] Id., secs 19(1); 39(1) and 53(1).
[64] Id., sec 23(6).

declared.[65] Although the Disaster Management Act does not specifically mention pandemic diseases, its broad applications covers efforts related to pandemics since the prevalence of a pandemic may amount to declaration of state of disaster. To wit, COVID-19 was declared a national state of disaster and thus most of the responsive measures that were implemented to control and contain COVID-19 were issued under the Regulations relating to COVID-19 of 2020 made under the Disaster Management Act.

On the other hand, the National Health Act has the objectives of regulating national health and providing uniformity in respect of health services by establishing national health system composed of public and private health service providers.[66] The Act also aims at ensuring equitable health services to the population of South Africa and "setting out the rights and duties of health care providers, health workers, health establishments and users" and "protecting, respecting, promoting and fulfilling the rights of the people of South Africa to the progressive realisation of the constitutional right of access to health care services".[67]

The right to access health care services encompasses access to reproductive health care; the right to environment that is not harmful to health or well-being of people of South Africa; the right of children to basic nutrition and basic health care services and the right of vulnerable groups such as women, children, older persons and persons with disabilities.[68] The Act establishes various bodies from national to the local levels with responsibilities relating to health services provisions. In particular, Section 90 of the National Health Act gives powers to the Minister responsible for health to make regulations among others to regulate communicable diseases and notifiable medical conditions.[69]

In 2017, the Minister of Health exercising the powers under Section 90 of the National Health Act made the Regulations relating to the Surveillance and the Control of Notifiable Medical Conditions. The implementations of the Regulations is required to consider the Constitution of South Africa, respect for the dignity, confidentiality, human rights and fundamental freedoms of persons; and the requirement by IHR.[70] The Regulations also identify medical

[65] Id., sec 27(5).
[66] Act No. 61, 2003. *Supra* note 54, sec 90(1)(k)&(j).
[67] Ibid.
[68] Ibid.
[69] Ibid.
[70] *See* reg 2.

conditions that should be notified to the focal persons designated from the national to the local level.

The notifiable medical conditions are categorized into different groups depending on their severity. Serious notifiable medical conditions including plague, rift valley fever for human beings and respiratory disease caused by a novel respiratory pathogen must be communicated to the relevant authority immediately, usually within 24 hours of their diagnosis by health care providers, private health laboratories or public health laboratories.[71] The Minister responsible for health may increase the list of notifiable condition through a notice published in the government gazette; if in his opinion the medical condition:

> … poses a public health risk to a population of a particular community, district, municipality, province or the country; may be regarded as a public health risk or has a potential for regional or international spread; and may require immediate, appropriate and specific action to be taken by the national department, one or more provincial departments or one or more municipalities.[72]

Apart from reporting, the Regulations also specify measures to be implemented in order to control the spread of diagnosed notifiable medical conditions. These include voluntary and mandatory medical "examination, prophylaxis, treatment, isolation and quarantine" complying with national guidelines issued by the relevant competent national authority.[73] Mandatory procedures will be implemented if the notifiable medical condition poses a public health risk and a person who is a clinical or laboratory confirmed case, carrier or contact of a notifiable medical condition refuses voluntary measures to protect public health.[74] However, the head of provincial department must apply to the High Court for an order to implement mandatory measures.[75]

The next section underscores the experience in the two countries in handling COVID-19. The aim is to demonstrate the practical applications and the impacts of the national frameworks in controlling and preventing pandemics.

[71] *See* regs 1, 12 and Annexure A.
[72] *See* reg 12(2).
[73] *See* Chapter 3 of the Regulations. *Supra* note 56.
[74] *See* reg 15(5).
[75] *See* reg 15(2).

4. Response to COVID-19

COVID-19, a disease that was first discovered in Wuhan, China in November 2019, was declared by WHO to be a public health emergency of international concern on 30 January 2020 before being declared a pandemic on 11 March 2020.[76] Immediately after being declared public health emergency of international concern, the Director-General accepted and issued the advice of the Emergency Committee to be Temporary Recommendations issued by WHO under IHR.[77] Since then, WHO Director-General continued to issue Temporary Recommendations from time to time to help State Parties to reduce and control the spread of the disease. Among the measures recommended by WHO included sharing of data, knowledge and experience with WHO and the world, combating the spread of rumours and misinformation[78] through risk communications and community engagement activities,[79] social distancing, cooperation among states[80] and others.

4.1Tanzania's Response to COVID-19

The first COVID-19 case in Tanzania was announced on 16 March 2020 and it was a case from Arusha region.[81] The victim was a Tanzanian who was coming back from Belgium.[82] The number of COVID-19 increased as the disease kept on spreading to the other parts of the country. Upon confirmation of existence of COVID-19 in Tanzania, the Government introduced restrictive measures to prevent and control the spread of the disease in other parts of the country.

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[76] WHO, 'Coronavirus Disease (COVID-19) Pandemic: Overview' (*World Health Organization*) <https://www.who.int/europe/emergencies/situations/COVID-19> accessed 26 November 2024.

[77] *See* World Health Organization, 'Statement on the Second Meeting of the International Health Regulations (2005) Emergency Committee Regarding the Outbreak of Novel Coronavirus (2019-nCoV)' (*World Health Organization*, 30 January 2020).

[78] 'WHO Director-General's Statement on IHR Emergency Committee on Novel Coronavirus (2019-nCoV)' (*World Health Organization*, 30 January 2020).

[79] WHO, 'Statement on the Third Meeting of the International Health Regulations (2005) Emergency Committee Regarding the Outbreak of Coronavirus Disease (COVID-19)' (*World Health Organization*, 1 May 2020).

[80] WWF, 'Updated WHO Recommendations for International Traffic in Relation to COVID-19 Outbreak' (*World Health Organization*, 29 February 2019).

[81] Clifford Silver Tarimo and Jian Wu (2020), 'The First Confirmed Case of Covid-19 in Tanzania: Recommendations Based on Lesson Learned from China' (2020) 48 *Tropical Medicine and Health*, 1.

[82] Ibid.

The measures included social distancing, sanitation measures (hand washing and using hand sanitizers), shutting down schools and universities, banning mass gatherings save where followers were to observe preventive and protective measures,[83] emphasizing on wearing face masks[84] and providing data and regular updates on the prevalence of the disease. The Government also closed all international boarders, suspended international travel and instituted a mandatory 14-days quarantine at the point of entry "for all travellers from countries which are most affected by the COVID-19."[85] However, the Government did not implement lock down as was the case in many countries of the world including neighbouring countries of Rwanda, Kenya and Uganda.

Within a short period of implementing the instituted COVID-19 responsive measures, the Government started to abandon some of the proactive measures. In particular, the Government stopped to provide official updates and data on COVID-19 situation.[86] As of 29 April 2020, when the last official update was made, Tanzania had 509 cases and 21 deaths.[87] On May 2020, the government of Tanzania claimed that the country's COVID-19 cases were inflated by the false positive results. The late President Magufuli faulted COVID-19 test kits alleging that the kits were of poor quality. He came to this conclusion after alleged samples from non-human beings, including from papaya and goats

[83] Iddy Ramadhani Magoti, 'Responding to the Covid-19 Pandemic in Tanzania: The Role of Solidarity, National Unity, and Peace' (*Kujenga Amani*, 9 July 2020).

[84] Veronica Masubo, 'COVID-19 in Tanzania: Is Business as Usual Response Enough?' (*International Growth Centre (IGC)*, 2 July 2020).

[85] 'Tanzania: Government and Institution Measures in Response to COVID-19.' (*KPMG*, 15 April 2020).

[86] Since April 2020, the government of Tanzania stopped to issue "official data on the COVID-19 situation in the country despite repeated calls from the WHO and Centers for Disease Control and Prevention (CDC) Africa". *See* Allan Kangwerema and others (2021), 'The Challenge of Dearth of Information in Tanzania's COVID-19 Response' 3 *Journal of Global Health Science* 2 <https://e-jghs.org/DOIx.php?id=10.35500/jghs.2021.3.e20> accessed 10 October 2022; WHO, 'WHO Director-General's Statement on Tanzania and COVID-19' (*World Health Organization*, 20 February 2022) <https://www.who.int/news/item/20-02-2021-who-director-general-s-statement-on-tanzania-and-covid-19> accessed 11 October 2022. Official data and updates on COVID-19 situation in Tanzania resumed in June 2021.
See Amy S Patterson (2022), 'The Tanzanian State Response to COVID-19: Why Low Capacity, Discursive Legitimacy, and Twilight Authority Matter', (UNU-WIDER) WIDER Working Paper 2022 <https://www.wider.unu.edu/node/239863> accessed 11 October 2022.

[87] Kangwerema and others, *supra* note 86, 1.

were secretly tested "positive".[88] This led to the suspension of the Head of the Government Chemist Laboratory. Further, an investigation Committee was constituted to investigate the quality of the kits and the operations of the laboratory.[89]

Moreover, the government did not provide opportunity for experts and other stakeholders to participate to determine appropriate responsive measures. Instead most of the implemented responsive measures were largely defined by the executive. Scientific advices were not a priority in the measures to control and prevent the spread of COVID-19. For instance, on April 2020, President Magufuli announced three days of national prayers against COVID-19. The President further recommended steam inhalation[90] and a drinking made from lemon and ginger as treatment for COVID-19.[91]

The President went further by sending a plane to Madagascar to collect herbal mix which had not yet undergone internationally recognised scientific testing, alleging that it was a cure for COVID-19.[92] On June 2020, the then President went steps ahead declaring the country to be COVID-19 free[93] and downplayed masks wearing.[94] The Government approach to COVID-19 was also characterised by strict control over information sharing.[95] The existing laws were applied strictly to obstruct sharing of information, especially information contradicting or criticising the Government's approach to COVID-19.

In early 2021, after the death of President Magufuli, the Government of Tanzania took a U-turn on COVID-19 Policy. The Government announced that COVID-19 exists and urged people to take precautionary measures. President Magufuli's predecessor, Samia Suluhu Hassan emphasised that

[88] Reuters Staff, 'President Queries Tanzania Coronavirus Kits after Goat Test' *Reuters* (3 May 2020) <https://www.reuters.com/article/us-health-coronavirus-tanzania-idUSKBN22F0KF> accessed 10 October 2022.

[89] Jerry Fisayo-Bambi, 'Tanzania: Goat, Paw Paw, Jackfruit Test Positive for Coronavirus [Morning Call]' *Africannews* (6 May 2020).

[90] Alphonce Shiundu, 'Fact-Checking Tanzanian President John Magufuli on Inhaling Steam to Treat COVID-19' (*Africa Check*, 6 May 2020).

[91] 'Implications of Tanzania's Bungled Response to Covid-19' (*CSIS*, 26 May 2020) <https://www.csis.org/analysis/implications-tanzanias-bungled-response-covid-19> accessed 10 October 2022.

[92] Reuters Staff, *supra* note 88.

[93] Kangwerema and others, *supra* note 86, 2.

[94] Patterson, *supra* note 86, 1.

[95] 'Implications of Tanzania's Bungled Response to Covid-19', *supra* note 91.

Tanzania cannot isolate Herself from the rest of the world.[96] She therefore, appointed a committee of experts to advise the Government on necessary measures to take to prevent and control the spread of COVID-19 in the Country.[97]

The Committee recommended Tanzania to align with global health practices on measures to prevent and control the spread of COVID-19. In particular the Committee recommended resuming issuing official figures on the spread of COVID-19 and to prioritise vaccines to 'frontline workers and vulnerable people'.[98] Thus from July 2021, Tanzania began administering COVID-19 vaccines. However, the uptake stalled, "largely due to vaccine hesitancy, misinformation and/or disinformation, and lack of community engagement".[99]

4.2 South Africa's Response to COVID-19

South Africa is one of the African countries that responded swiftly and extensively to COVID-19. The first case of COVID-19 in South Africa was confirmed on 5 March 2020.[100] "Subsequent cases were confirmed in the days that followed among citizens who had travelled to Italy on a ski trip".[101] On 15 March 2020, State of National Disaster was declared in accordance with Section 27(1) of the Disaster Management Act.[102] This was followed by stringent measures to contain, control, mitigate and prevent further spread of COVID-19 in the country.[103]

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[96] Priya Sippy, 'Tanzania's New Leader Is Making up for Lost Time in the Fight against Covid' (*Quartz Africa*, 7 May 2021) <https://qz.com/africa/2006013/tanzania-president-samia-hassan-issues-new-COVID-19-restrictions/> accessed 11 October 2022.

[97] The Citizen, 'Tanzania COVID-19 Expert Committee Formed, Says President Suluhu' *The East African* (19 April 2021).

[98] Africannews, 'Tanzania: Expert Committee Recommends COVID-19 Figures Re-Publication' (*Africannews*, 25 June 2021).

[99] 'U.S. Government GlobalVAX Support Contributes to Rapid Rise in Tanzania's Vaccination Coverage' <https://www.usaid.gov/sites/default/files/2023-01/Tanzania-Impact-Brief-covid-19_1.pdf> accessed 23 September 2024.

[100] Ruth D Carlitz and Moraka N Makhura (2021), 'Life Under Lockdown: Illustrating Tradeoffs in South Africa's Response to Covid-19', 137 *World Development*, 2.

[101] Ibid.

[102] Regulations relating to COVID-19 2020, *supra* note 55; Nico Steytler and Jaap De Visser (2021), 'South Africa's Response to Covid-19: The Multilevel Government Dynamic', in *Federalism and the Response to COVID-19* (Routledge India) 201.

[103] *See* Regulations relating to COVID-19, *supra* note 55.

Between 26 March 2020 and 5 April 2022, the Government of South Africa adopted a five-level risk-adjusted strategy 'alert system' composed of five alert levels, "with Alert Level 5 representing a high COVID-19 spread and low health system readiness (high risk), and Level 1 representing a low COVID-19 spread with high health system readiness (low risk)".[104] In practice, most stringent restrictions were imposed for higher alert level (i.e., Level 5), while softened restrictions were imposed for lower alert levels.[105] Other measures that were instituted by the Government of South Africa were lockdown, restrictions on national and international travel, limitation on public and private gatherings and events, closure of premises and facilities for social services, physical distancing, hand washing and sanitising, use of face coverings, isolation of persons confirmed to have been infected and quarantine of individuals suspected of infection, contact tracing, testing, treatment, and vaccination.[106]

These measures were implemented at the national level and they were largely in compliance with the IHR and recommendations issued under the Regulations. There were also specific set of directions to be implemented in specific provincial and local governments. Moreover, municipalities and provinces were required to develop COVID-19 "Response Plans and establish special disaster management structures".[107] The implementation of measures against COVID-19 was overseen by various organs established under different laws and other ad hoc bodies including the National COVID-19 Command and Control Council (NCCC).[108]

5. Implications of the Tanzania and South Africa Legal Frameworks for Pandemics

Measures that a country adopts to address a pandemic may have various social and economic impacts. Although the pandemic such as COVID-19 by itself,

[104] Petronell Kruger and others (2021), 'South Africa: Legal Response to Covid-19' in Jeff King and others (eds), *The Oxford Compendium of National Legal Responses to Covid-19* (Oxford University Press) <https://oxcon.ouplaw.com/display/10.1093/law-occ19/law-occ19-e6#law-occ19-e6-div2-3> accessed 18 September 2024.

[105] Devanand Moonasar and others (2021), 'Covid-19: Lessons and Experiences from South Africa's First Surge', 6 *BMJ Global Health*, 3.

[106] Regulations relating to COVID-19, *supra* note 55; Kruger and others, *supra* note 104; M Modisenyane and others (2022), 'Covid-19 Response in South African Communities: Screening, Testing, Tracing and Movement Modelling', 112 *South African Medical Journal* 366; Moonasar and others, *supra* note 105, 3.

[107] Steytler and Visser, *supra* note 102, 202.

[108] Moonasar and others, *supra* note105, 1.

has impacts on the economy (especially where a significant part of the budget is set to address it), the approach that is adopted by a country to address the pandemic may also increase the severity of the pandemic on the economy of an individual person and the country at large. For instance, to address COVID-19, a total lock down which was implemented by the South Africa Government resulted to income loss among many individuals especially self-employed and casual workers.[109] Moreover, despite the fact that Tanzania did not implement total lockdown, it was significantly affected too, especially because the neighbours and many of the countries implemented total lock down including closing their boarders. Thus during COVID-19 Tanzania faced among others 'drop in tourists, decrease in exports, and decreased remittances'.[110] Individual persons were equally affected due to closure of business.

Many pandemic outbreaks are trans-boundary; affecting more than one country. Thus, cooperation among states is necessary. This is the essence of IHR, which provide a framework for collaboration between states of the world to prevent and control pandemics. In spite of the fact that IHR provide binding obligations to the State parties, their implementation depends mostly on the effective national frameworks. The Regulations themselves emphasize that States have "the sovereign right to legislate and to implement legislation in pursuance of their health policies" and that when exercising this right they should uphold the purposes of IHR.[111] Effectiveness in this regard is determined by a number of key factors which include effective national legal and institutional frameworks and the political environment.

This leads to the conclusion that the implementation of IHR cannot be uniform across Member States. There were many criticisms to IHR Member States in relation their responses to COVID-19 pandemic.[112] Tanzania, for instance, was seen by many to have ignored public health regulations

[109] World Bank Group (2022), 'The Economic Impacts of the COVID-19 Crisis', in World Development Report 2022 <https://www.focus-economics.com/countries/south-africa/>.

[110] Henseler M, Maisonnave H and Maskaeva A (2022), 'Economic Impacts of COVID-19 on the Tourism Sector in Tanzania' *3 Annals of Tourism Research Empirical Insights* 100042.

[111] International Health Regulations 2005, *supra* note 12, Art 3(4).

[112] Joelle Grogan (2022), 'COVID-19, The Rule of Law and Democracy: Analysis of Legal Responses to a Global Health Crisis', 14 *Hague Journal on the Rule of Law*, 350.

instituted under the IHR.[113] In response, the Government argued that the country's largest population depends on constant movements in search of their basic needs[114] and stated that implementing some health measures to contain COVID-19 would result in starvation.[115] On the part of South Africa, the situation was different. South Africa acted swiftly to respond to COVID-19 in compliance with the IHR. Measures that were implemented took into considerations the recommendations that were issued by WHO under the IHR.[116]

Decision-making is key in preventing and controlling the pandemics. It is often acceptable that the executive often dominate decision-making during emergency situations.[117] However, this domination is tolerable where there are effective "safeguards and democratic controls".[118] Without these safeguards, the executive is likely to operate above the law by dictating prevention and responsive measures to pandemics without being accountable or answerable anywhere.

For instance, the laws in Tanzania vest wide discretionary powers to the Minister responsible for health; including powers to make various by-laws and regulations for proper implementations of the Public Health Act[119], powers to notify the public about existence of infectious diseases[120], powers to declare notifiable diseases[121], power to declare infectious diseases[122], power to declare epidemic, endemic or pandemic disease[123]; and many others. However, there are no control mechanisms such as parliamentary oversight or judicial review, to make sure that the Minister does not abuse these powers.

[113] Fergus Kell, 'Tanzania Evades COVID-19 Lockdown, but Restrictions Persist' (*Chathamhouse*, 21 May 2021) <https://www.chathamhouse.org/2020/05/tanzania-evades-covid-19-lockdown-restrictions-persist> accessed 23 February 2024.

[114] Wilbard Kombe and others (2022), 'Understanding the Impact of COVID-19 Partial Lockdown in Tanzania: Grassroots Responses in Low-Income Communities in Dar Es Salaam', 7 *Urbanisation*, 31.

[115] Fergus Kell, *supra* note 105, 104.

[116] 'COVID-19 Response in South Africa - Country Brief' (*WHO | Regional Office for Africa*) <https://www.afro.who.int/countries/south-africa/publication/covid-19-response-south-africa-country-brief> accessed 20 September 2024.

[117] Grogan *supra* note 112, 350.

[118] ibid.

[119] *See* the Public Health Act, secs 143 and 171.

[120] Id., sec 9.

[121] Id., sec 17.

[122] Id., sec 20.

[123] Id., sec 25.

Moreover, as appointee of the President (the head of the executive), the Minister is not free to implement what s/he believes to be right, particularly if it may not please the appointing authority. During COVID-19 pandemic, for instance, public officials, including the Deputy Minister of Health, who contradicted the President's position about COVID-19 position, were fired from their posts.[124] On the other hand, those who supported the President's advice were promoted to various posts.[125] Thus the current state of the laws of Tanzania does not only strengthen the executive domination in decision making pandemics, but also makes the executive the final decree issuer. As demonstrated in sub-section 4.1, for example, during COVID-19 President Magufuli was the final authority to decree responsive and mitigation measures to be implemented by the Government.

On the other hand, South Africa's laws limit the exercise of discretionary powers by allowing broad participation of various stakeholders in decision-making and the implementation of measures for addressing pandemics. For instance, the Disaster Management Act establishes various advisory forums from the local level to the national level with the role of assisting in decision-making. These forums are participatory and involve stakeholders from various sectors including non-governmental and international organisations.[126] This framework ensures that decision-making during pandemics is not influenced by the executive or one individual. To wit, the strategies that were adopted in the National Plan for COVID-19 Health Response of 2020 promoted greater participation of various stakeholders and the public at large.[127] Moreover, a Risk Communication and Community Engagement Working group was established to ensure constant communication with the population on COVID-19 pandemic.[128]

During the time of pandemic, transparency and accountability on the part of government officials and responsible institutions is also necessary.

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[124] Robert Macdonald, Thomas Molony and Victoria Lihiru (2023), 'The Reception of Covid-19 Denialist Propaganda in Tanzania' 49 *Journal of Southern African Studies* 708–709; Victoria Lihiru, Robert Macdonald and Thomas Molony, 'COVID-19 and Tanzania's 2020 Elections', *African Elections During the Covid-19 Pandemic Project: Working Paper* (2021) 8 <https://aecp.sps.ed.ac.uk/wp-content/uploads/2021/06/COVID-19-and-Tanzanias-2020-Elections.pdf> accessed 20 September 2024.

[125] Lihiru, Macdonald and Molony, *supra* note 124, 8.

[126] *See* Sections 5(1), 37(1) and 51(1).

[127] National Department of Health, *National Plan for COVID19 Health Response* (2020).

[128] Moonasar and others, *supra* note 105, 3.

Transparency requires disclosure of sufficient information to encourage public participation in decision-making and compliance with the laws and regulations.[129] It encourages emergency of alternative solutions to address a problem encountered by the society.[130] Transparency also helps to build and strengthen public trust between the citizens and the state.[131]

On the other hand, accountability puts limit on the government. It ensures that government powers are not abused by making the government officials answerable to the parliament (through checks and balances), the public or any other established organ.[132] Thus existence of a legal framework that promotes transparency and accountability is vital in preventing and controlling pandemic. Existence of this legal framework ensures openness of the government's plans and their execution and it further prevents abuse of powers by government officials.

With regard to Tanzania, laws relating to the use of social media were used to defeat transparency and accountability during COVID-19 pandemic. These laws enabled the prosecution of persons who criticised the President and his government.[133] Most of the laws criminalise sharing of information that is considered to be false or misleading. For instance, the Cybercrimes Act of 2015 criminalises dissemination that is regarded to be false.[134]

Furthermore, the Media Services Act of 2016[135] and the Electronic and Postal Communications (Online Content) Regulations of 2020 (as amended in 2021)[136] criminalise false or misleading information. The Media Services Act makes it a criminal offence to publish information with seditious intention.[137] The Act defines seditious intention to include an intention to "bring hatred or contempt or to excite disaffection against the lawful authority

[129] Lina Miftahul Jannah and Muhammad Yasin Sipahutar (2022), 'Government Transparency During the COVID-19 Pandemic: Good Information Governance?' (KnE Social Science) 140 <https://knepublishing.com/index.php/KnE-Social/article/view/10546> accessed 23 February 2024.

[130] Ibid.

[131] Grogan, *supra* note 112, 357.

[132] Andreas P Kyriacou, 'Defining Accountability', *Background paper prepared for Aids Accountability International (AAI) workshop on* 2008.

[133] Macdonald, Molony and Lihiru, *supra* note 124, 703.

[134] *See* Section 16.

[135] *See* the Media Services Act, *infra* note 137, Sections 47, 50 and 51.

[136] *See* item 10 of the Third Schedule to the Electronic and Postal Communications (Online Content) Regulations, 2020 (as amended in 2021).

[137] Media Services Act, No. 12 of 2016, sec 53.

of the Government" or "raise discontent or disaffection amongst people".[138] The Media Services Act further criminalises publications of "false statement, rumour or report which is likely to cause fear", alarm or disturb public peace.[139] Moreover, the Access to Information Act of 2016 imposes prison terms on officials who release exempted information[140] thus putting limits on information that can be accessed by the public.

During COVID-19 the above laws limiting transparency and access to information were strictly applied to threat and prosecute persons sharing COVID-19 related information through social media or other media, in particular, sharing of information that contradicted information issued by the Government.[141] Sharing of information that criticised government's measures against COVID-19 was equally penalised under the provisions of the above laws.[142] For instance, in April, 2020 a number of Tanzanians including journalists were arrested and charged with spreading COVID-19 information that was considered to be "unacceptable" before the eyes of the executive. Among them, a person was arrested and charged with "allegedly spreading COVID-19 misinformation over his remarks about the worsening coronavirus situation in Arusha".[143] In another case a person was arrested over a post on social media which alleged that the Government of Tanzania was hiding the number of COVID-19 cases.[144]

Newspapers and media organisations were also fined and their licences were suspended for some months for transmitting information considered to be false and misleading. For example, *Mwananchi*, a daily newspaper had its online licence suspended for six months for posting 'a photo of President Magufuli out shopping and surrounded by a crowd of people'.[145] The post triggered online discussion on the way the Government of Tanzania was handling COVID-19 and the breach of social distancing guidelines.[146] Therefore, in response to the public criticisms, the Government banned online

[138] Id., sec 52.
[139] Id., sec 54.
[140] Access to Information Act, No. 6 of 2016, sec 6(6)(a).
[141] Charlotte Cross (2021), 'Dissent as Cybercrime: Social Media, Security and Development in Tanzania' (2021) 15 *Journal of Eastern African Studies*, 449.
[142] Ibid.
[143] CIPESA Writer, 'Tanzania Tramples Digital Rights in Fight against COVID-19' (*CIPESA*, 19 October 2020) <https://cipesa.org/2020/10/tanzania-tramples-digital-rights-in-fight-against-COVID-19-as-elections-loom/> accessed 21 October 2022
[144] Ibid.
[145] Ibid.
[146] Ibid.

services offered by the newspaper. Moreover, since more than ninety percent of the members of the parliament were from the ruling party, parliamentary checks and balance was less probable.

In contrast, South Africa's legal framework puts in place safeguards to ensure transparency and accountability during pandemics. The laws create institutions and task them with the role of ensuring sharing of information during pandemics. For instance, the Disaster Management Act requires the National Disaster Management Centre, among other responsibilities, to disseminate disaster-related information to the public.[147] Moreover, as pointed earlier, during COVID-19, the Risk Communication and Community Engagement Working Group was created to further strengthen public information sharing about COVID-19.

With regard to accountability, apart from the Parliament, the Court in South Africa plays a critical role to ensure accountability. The Parliament and the Court also exercised their oversight functions during COVID-19. The Parliament, in particular, "issued a statement emphasising that the role of Parliament remains indispensable during [the] period of national lockdown and the extended period of social distancing".[148] The statement further pointed out that "beyond parliamentary committee meetings, [Parliamentary] oversight functions would be fulfilled by individual [Members of Parliament] 'carrying out constituency work in various communities and holding the Executive accountable for implementing measures designed to overcome the state of disaster."[149]

Moreover, upon the creation the National Coronavirus Command Council (NCCC),which was intended to be a consultative and coordinating forum to ensure effective communication over the national response to Covid-19, the Western Cape High Court was invited to determine the "legality, legitimacy, … accountability and … constitutionality" of NCCC.[150] It was argued before the Court that the establishment of the NCCC was an attempt to circumvent executive accountability, and further fell outside of the President's constitutional powers and was *ultra vires* (i.e. beyond the scope and mandate embodied in) the Disaster Management Act.[151] Although, the case was

[147] *See* Section 17(1). *See* also the Public Health Act, *supra* note 54, sec 17.
[148] Kruger and others, *supra* note 104, paragraph 36.
[149] Ibid.
[150] Id., paragraph 37.
[151] See *Duwayne Esau and Others v Minister of Co-Operative Governance and Traditional Affairs and Others* (611/2020) [2021] ZASCA 9 (28 January 2021); Kruger *et al*, supra note 104, paragraph 37.

dismissed, it depicts the existence of active oversight mechanisms to ensure transparency and accountability.

6. Conclusion

Law plays a central role in preventing and responding to pandemics. Without having an effective legal framework for pandemics, implementation of prevention and mitigation measures rests in the discretion of the executive. The Tanzania legal framework for pandemics makes the executive the final decision maker as far as the prevention and response to pandemics are concerned. Moreover, it does not enhance transparency and accountability in preventing and controlling pandemics. Most of the measures that were implemented during COVID-19 pandemic were mainly executive orders that were issued according to the integrity of the head of the executive. Such a situation resulted in restrictions on access and sharing of information and limiting public participation.

The South African legal framework (unlike Tanzania's), puts emphasis on broader participation of various stakeholders in the control and prevention of pandemics. The South African framework further, discourages bureaucracies while assigning distinct and specific obligations to various authorities from the national to the local level. Therefore, Tanzania can draw a lesson from South Africa, particularly on the aspect of participation of stakeholders, transparency and accountability which are necessary elements for effective prevention and control of pandemics. ■

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