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## ASSESSING THE EFFETIVENESS OF THE LAWS IN PROTECTING THE RIGHT TO BE FORGOTTEN IN TANZANIA

BY

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### Abstract

In the digital age, the proliferation of online data has transformed how personal data is collected, stored and disseminated. This shift has led to increasing concerns about privacy and the potentials for misuse of personal data. The right to be forgotten, as a remedy empowers individuals to request the removal of their personal information from the internet, has emerged as a crucial aspect of data protection and privacy rights. Further, the right to be forgotten is initially recognized in the European Union through the *General Data Protection Regulation (GDPR)*, this concept has inspired discussions around the need for similar protections on other jurisdictions, including Tanzania. In Tanzania, the digital landscape surrounding data protection has evolved significantly, particularly with the enactment of the *Personal Data Protection Act, 2022*. This law aims to regulate the processing of personal data and safeguard the privacy rights of individuals. However, the effectiveness of the law in addressing the right to be forgotten remains uncertain. Therefore, this article seeks to assess the existing legal regime governing the right to be forgotten and challenges facing effective protection of the right in Tanzania.

**Keywords:** The Right to be Forgotten, Privacy, Right, Data, Confidentiality, Categories of Data and Data Protection.

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### INTRODUCTION

The "right to be forgotten" allow individuals to request the removal or de-listing of certain information from search engines and, in some cases, to demand the deletion of content from websites.<sup>1</sup> More broadly, this right is seen as empowering individuals with greater control over how, when, and to what extent their personal information is shared.<sup>2</sup> Although it is often framed as a privacy right, it pertains to information that was once publicly available, raising important questions about the balance between privacy and freedom of information.<sup>3</sup>

In Tanzania, the rapid growth of the digital era has made online information ubiquitous and seemingly permanent.<sup>4</sup> This shift has transformed how individuals access and recall knowledge, with much of the information now just a click away.<sup>5</sup> Search engines have become indispensable tools, while social media platforms enable global communication.<sup>6</sup> However, the permanence and instant availability of information on the internet also come with significant drawbacks.<sup>7</sup> These platforms can expose individuals to content they may wish to keep private, such as news articles about past mistakes, embarrassing photos, or explicit videos shared by

<sup>1</sup> Hans Graufs and J. Ausloons, *The Right to be Forgotten in Internet Era: ICRI Working Paper Series, Interdisciplinary Centre for Law and ICT, K.U Leuven, 2012, pp. 2-6, at p 5.*

<sup>2</sup> *Loc. Cit. pp. 2-5.*

<sup>3</sup> *Loc. Cit. pp. 3-5.*

<sup>4</sup> *Collaboration on International ICT Policy for East and Southern Africa (CIPEA), Data Governance Regulations in Tanzanian: Gaps, Challenges and Opportunities 2022, pp. 4-5.*

<sup>5</sup> *Loc. Cit. pp. 4-5.*

<sup>6</sup> *Loc. Cit. p 5.*

<sup>7</sup> *Free World Centre Article 16, The "Right to be Forgotten": Remembering Freedom of Expression, 2016, pp. 4-5, at p 5.*



former partners.<sup>8</sup> Whether the information is true, false, outdated, or taken out of context, it can harm individuals and violate key values such as dignity and personal autonomy, which are protected under international human rights law.<sup>9</sup>

Moreover, private companies now collect vast amounts of data on individuals, including online shopping habits, political views, cultural preferences, and browsing history.<sup>10</sup> This has raised concerns about the misuse of personal information, identity theft, and other illegal activities.<sup>11</sup> As a result, many individuals are seeking to regain control over their online identities and personal data.<sup>12</sup> The "right to be forgotten" has emerged as a potential solution to these issues.<sup>13</sup> However, this concept is not explicitly recognized in international human rights frameworks, nor is it clearly defined in Tanzanian law. Its scope varies, ranging from limited rights under existing data protection laws to broader interpretations that include the protection of reputation, honor, and dignity.<sup>14</sup>

This article aims to assess the effectiveness of Tanzanian laws in protecting the right to be forgotten. It begins by exploring the concept's relevance to personal privacy in the digital age. It then reviews the current legal frameworks, highlighting their strengths and weaknesses. Finally, the article examines the practical challenges individuals face when seeking to have their data erased, drawing on case studies and recent legal disputes.

## UNDERSTANDING OF THE KEY TERMS ON THE PROTECTION OF THE RIGHT TO BE FORGOTTEN

### The Right to be Forgotten

The "right to be forgotten" refers to an individual's ability to request the removal or de-linking of personal information from online databases, search engines, and other platforms.<sup>15</sup> This legal concept allows people to control their personal data, particularly in cases where the information may be outdated, irrelevant, or potentially harmful to their reputation.<sup>16</sup> The right is primarily rooted in privacy laws, with the European Union's *General Data Protection Regulation (GDPR)*<sup>17</sup> being one of the most notable legal frameworks to formally establish this right, allowing individuals to ask for their personal information to be erased under certain conditions.<sup>18</sup> This right emphasizes the importance of personal dignity and autonomy in the digital age, where information about individuals is widely accessible and can

significantly impact their lives.<sup>19</sup> Overall, the right to be forgotten underscores the evolving relationship between personal privacy and digital information management in our increasingly interconnected world.<sup>20</sup>

### Data

The right to be forgotten involves the removal or de-linking of personal data that can identify an individual.<sup>21</sup> This aligns with data definitions that emphasize information about identifiable individuals stored electronically.<sup>22</sup> The connection between data and privacy highlights the need for individuals to control how their personal information is used and shared, particularly in sensitive contexts such as criminal records.<sup>23</sup>

### Categories of Data

Under the right to be forgotten, both personal data and sensitive personal data come into play.<sup>24</sup> Personal data includes identifiable information, while sensitive personal data such as health records or criminal history requires more stringent protection.<sup>25</sup> The right to be forgotten particularly impacts sensitive data by allowing individuals to request deletion to safeguard their dignity and privacy.<sup>26</sup>

### Data Protection

The right to be forgotten is a crucial aspect of data protection, which safeguards individuals' privacy and personal information.<sup>27</sup> Legal frameworks, such as the Personal Data Protection Act, establish principles that support individuals' rights to control their data, including its deletion.<sup>28</sup> This is essential in preventing misuse and ensuring that individuals are not unjustly impacted by their past.<sup>29</sup>

### Right

The concept of rights is foundational to the right to be forgotten.<sup>30</sup> This right represents an entitlement granted by law, allowing individuals to seek removal of their personal information from

<sup>19</sup> Free World Centre Article 16, *The "Right to be Forgotten": Remembering Freedom of Expression*, 2016, pp. 4-5, at p 5.

<sup>20</sup> *Loc. cit.* at p 5.

<sup>21</sup> *Oxford Law Dictionary*, (2001), 5<sup>th</sup> Edition, p. 134.

<sup>22</sup> DIOGENESS D. Mganyizi, (2023), *Assessment of Independence of Regulatory Structures Governing Data Protection and Privacy in East Africa: A case Study of Kenya and Tanzania*. *International Journal of Law and Politics Studies*. *Journal Homepage: www.al-kindipublisher.com/index.php/ijlps*. pp 10-16.

<sup>23</sup> Section 3 Cap 44.

<sup>24</sup> Section 3 Act No. 21 Cap 44.

<sup>25</sup> Article 8 of the DATA PROTECTION WORKING PARTY, (2011), Article 29: *Advice Paper on Special Categories of Data ("Sensitive Personal Data")* p 6-8.

<sup>26</sup> Article 8 of the DATA PROTECTION WORKING PARTY, (2011), Article 29: *Advice Paper on Special Categories of Data ("Sensitive Personal Data")* p 6-8.

<sup>27</sup> PAUL Quinn, (2021), *The Difficulty of Defining Sensitive Data in the EU Data Protection Framework*. P 22-24.

<sup>28</sup> CHRISTOPHER Kuner, (2009), *An International Legal Framework for Data Protection: Issues and Prospects*, *Computer Law & Security Review* pp 307-317.

<sup>29</sup> *Loc. cit.* pp 307-317.

<sup>30</sup> EMMANUEL Kant, (1785), *Groundwork of the Metaphysics of Morals* p 57.

<sup>8</sup> *Loc. Cit.* p 5.

<sup>9</sup> *Loc. Cit.* 5.

<sup>10</sup> Hans Graufs and J. Ausloons, *The Right to be Forgotten in Internet Era: ICRI Working Paper Series, Interdisciplinary Centre for Law and ICT, K.U. Leuven*, 2012, pp. 2-6, at p 5.

<sup>11</sup> *Loc. Cit.* pp. 2-6.

<sup>12</sup> *Loc. Cit.* pp. 2-5.

<sup>13</sup> *Loc. cit.* pp. 3-5.

<sup>14</sup> *Loc. cit.* p 5.

<sup>15</sup> Free World Centre Article 16, *The "Right to be Forgotten": Remembering Freedom of Expression*, 2016, pp. 4-5, at p 5.

<sup>16</sup> *Loc. cit.* pp. 4-5, at p 5.

<sup>17</sup> GDR of 2018.

<sup>18</sup> *Ibid.*



public records or databases.<sup>31</sup> It underscores the broader human rights framework, emphasizing personal dignity and autonomy over one's information.<sup>32</sup>

### Privacy

Privacy is central to the right to be forgotten, as it protects individuals from public scrutiny and unwanted disclosure of personal information.<sup>33</sup> This right empowers individuals to control their personal narratives, ensuring they can maintain boundaries around sensitive information that they wish to keep private.<sup>34</sup> It reinforces the principle that individuals have a right to manage how much of their lives are exposed to the public.<sup>35</sup>

### Confidentiality

Confidentiality ties directly to the right to be forgotten, particularly in law enforcement contexts where sensitive information about crime suspects must be protected.<sup>36</sup> The right to be forgotten enhances confidentiality by allowing individuals to request the deletion of information that could lead to stigma or reputational harm, emphasizing the need for legal standards that uphold this right in data handling practices.<sup>37</sup> These summaries illustrate how the right to be forgotten interconnects with key concepts of data, privacy, and individual rights, promoting a framework that empowers individuals to manage their personal information effectively.

## THE RELEVANCE AND STATUS ON THE PROTECTION OF THE RIGHT TO BE FORGOTTEN IN TANZANIA

### An Overview

The right to privacy is a crucial aspect of individual rights in Tanzania, as recognized in the *Constitution of the United Republic of Tanzania, 1977*.<sup>38</sup> However, the legal framework surrounding the right to be forgotten remains underdeveloped. While the *Personal Data Protection Act*<sup>39</sup> offers some recognition of privacy in the context of personal data, it lacks specific provisions directly addressing the right to be forgotten. As Tanzania continues to refine its data protection laws, there is currently no established mechanism for individuals to request the deletion of their personal data from digital platforms.

The existing legal framework struggles to provide effective protection for the right to be forgotten, particularly in the realm of digital media. This article will assess the adequacy of current laws in safeguarding this right, highlighting the recognition of the right

to be forgotten and the challenges that impede its protection. Furthermore, it will propose measures to address the legal shortcomings that hinder effective enforcement of this right in Tanzania. The discussion will focus on the ambiguities within the legal regime and the ongoing challenges posed by the pervasive nature of digital publicity. The legal recognition is discussed as follows:

#### (a) *The Constitution of the United Republic of Tanzania, 1977*

The Constitution of Tanzania serves as the foundational legal document regulating the right to privacy, which can also underpin claims related to the right to be forgotten.<sup>40</sup> It ensures that individuals' privacy regarding personal information is safeguarded against interference, obligating both individuals and government authorities to adhere to principles of lawful and fair treatment, thereby protecting human dignity.<sup>41</sup> As the supreme law of the land, the Constitution explicitly guarantees individual privacy.<sup>42</sup> Article 16(1) states that every citizen is entitled to respect and protection of their person and privacy.<sup>43</sup> This provision requires law enforcement authorities to treat individuals fairly and lawfully.<sup>44</sup> Although Article 16(1) broadly interprets the right to privacy, it is not absolute and may be subject to limitations based on public interest, national security, and public morality, complicating the implementation of the right to be forgotten.<sup>45</sup>

Additionally, Article 18(c) protects private communications from interference that could threaten individual privacy and prohibits unlawful surveillance by law enforcement that may infringe upon privacy in these communications.<sup>46</sup> These constitutional provisions empower the government to establish laws governing personal data, ultimately promoting the welfare of the people.<sup>47</sup> The Constitution provides a crucial framework for protecting privacy as a fundamental right and lays the groundwork for other rights.<sup>48</sup> This article will focus on the legal regime and the challenges related to the protection of sensitive personal data concerning crime suspects in Tanzania, highlighting the complexities and limitations within the current framework.

#### (b) *The Personal Data Protection Act, 2022*

The Act was enacted to establish principles for the protection of personal data, setting minimum requirements for its collection and processing.<sup>49</sup> Its fundamental objectives include safeguarding the collection and use of sensitive personal data and ensuring that such practices adhere to established principles.<sup>50</sup> The Act aims to create a legal and institutional framework for the protection of sensitive personal data while granting rights to data subjects concerning the

<sup>31</sup> GEORGE Paton, (1972), *A textbook of Jurisprudence*, 4<sup>th</sup> Edition. New Delhi: Oxford University Press p 52.

<sup>32</sup> *Loc. cit.* p 53.

<sup>33</sup> *Black's Law Dictionary*, 4<sup>th</sup> Edition, (1971), *supra* at p 155.

<sup>34</sup> NEETHELING, (2005), Vol.122, No. 1 at p 19.

<sup>35</sup> *Loc. cit.* p 19.

<sup>36</sup> CHRISTOPHER Kuner, (2009), *An International Legal Framework for Data Protection: Issues and Prospects*, *Computer Law & Security Review* pp 307-317.

<sup>37</sup> *Black's Law Dictionary*, 4<sup>th</sup> Edition, (1971), *Supra* at p 155.

<sup>38</sup> Article 16 (1) of the *Constitution of the United Republic of Tanzania, 1977*.

<sup>39</sup> Act No. 21 Cap 44 of 2022.

<sup>40</sup> See Preamble Cap 2.

<sup>41</sup> *Ibid* Article 16 (1).

<sup>42</sup> Article 16 (1).

<sup>43</sup> *Ibid* Article 16 (1).

<sup>44</sup> *Ibid* Article 16 (1).

<sup>45</sup> *Ibid* Article 30 (2) and 32 (2).

<sup>46</sup> *Ibid* Article 18 (c).

<sup>47</sup> *Ibid* Article 18 (c) and 16 (1).

<sup>48</sup> *Ibid* Preamble Cap 2.

<sup>49</sup> Cap 44 Act No. 21 Long Title.

<sup>50</sup> Long Title of the *Personal Data Protection Act, 2022*.



processing of their information.<sup>51</sup> However, it does not explicitly and comprehensively address the right to be forgotten.

Nonetheless, certain provisions within the Act may indirectly support this right. For instance, Section 38 allows individuals to request the correction or deletion of personal data that is inaccurate, irrelevant, or no longer necessary for the purpose for which it was collected. This provision aligns with the core concept of the right to be forgotten, as it enables individuals to seek the removal of outdated or harmful information.<sup>52</sup> However, this right is primarily limited to cases of inaccuracies or irrelevance and does not automatically cover all instances where individuals may wish to have their data removed, such as those related to reputation damage or past media publications.<sup>53</sup>

The Act also establishes the Personal Data Protection Commission, which is tasked with registering entities and handling complaints regarding violations of sensitive personal data and privacy.<sup>54</sup> The Commission has the authority to investigate and resolve such complaints and take action against breaches that may harm an individual's reputation.<sup>55</sup> Additionally, it plays a crucial role in educating the public about data protection, conducting research on technological advancements in data processing, and developing cooperative strategies with international data protection authorities.<sup>56</sup> It advises the government on effective data protection implementation and fulfills various functions to achieve its objectives.<sup>57</sup>

The Act outlines guidelines and principles for data protection, emphasizing that data must be collected fairly, lawfully, transparently, and for specific purposes, while ensuring accuracy, integrity, confidentiality, and accountability. It defines the rights of data subjects, including the right to consent and the right to be informed about how their personal data is collected and shared.<sup>58</sup> Notably, Section 33(2) (b) permits data collection without informing the data subject when the personal data is directly involved in an investigation.<sup>59</sup> This provision allows law enforcement to collect sensitive personal data, which can impact the right to privacy. In the case of *Tito Magoti vs. AG*,<sup>60</sup> the interpretation of Sections 23(c) and (e) led to concerns about uncertainty due to the lack of prescribed procedures, limiting the right to privacy.<sup>61</sup> The court ordered amendments to these sections to eliminate the ambiguity in the law.<sup>62</sup>

#### (c) *The Cybercrimes Act, 2015*

The Act was enacted to regulate offenses committed in cyberspace and through sophisticated information communications, providing

mechanisms for comprehensive investigations and criminalizing unauthorized access, use, and disclosure of data. It establishes a framework for protecting data against misuse.<sup>63</sup> While the Act does not explicitly recognize the right to be forgotten, individuals can utilize its provisions to seek redress for the unauthorized publication or disclosure of their personal information online.<sup>64</sup>

Section 21 of the Act prohibits the disclosure of sensitive personal information related to criminal investigations.<sup>65</sup> The primary aim of the Act is to safeguard individuals' data privacy from threats that could damage their reputation.<sup>66</sup> However, this emphasis on privacy rights presents challenges, particularly concerning the right to be forgotten, as the Act focuses more on addressing criminal activities related to data breaches and cybercrimes rather than on individual privacy rights related to data removal. Concerns have been raised about how confidentiality is maintained, especially regarding the publicity generated by online platforms. This issue is central to this article, which explores the legal framework and the challenges that affect the effectiveness of the law in protecting the right to be forgotten in Tanzania.

#### (d) *The Tanzania Communication Regulatory Authority Act, 2003*

The Act was established to regulate telecommunications, broadcasting, postal services, and the allocation of radio spectrum, as well as electronic technologies and other information and communication technologies (ICT).<sup>67</sup> Its goal is to coordinate the protection of privacy concerning sensitive personal data particularly that related to crime suspects, ensuring that individual privacy is upheld.<sup>68</sup> The Act requires service providers to maintain confidentiality and prohibits the unlawful disclosure of customer information to any personal or investigative authority, as stated in Section 24.<sup>69</sup> While it emphasizes protecting sensitive personal information from unauthorized surveillance by investigative authorities, it still permits lawful investigations.<sup>70</sup>

The Act provides direct oversight for all licensed institutions handling sensitive personal data, including telecommunications companies like Vodacom, Tigo, Airtel, and Halotel.<sup>71</sup> It also regulates broadcasting activities to safeguard privacy rights and outlines essential guidelines to ensure the confidentiality of individual and customer communications.<sup>72</sup> Section 17 establishes procedural requirements that allow officers to compel individuals under their authority to provide sensitive personal data to government authorities in writing.<sup>73</sup> If there is noncompliance, a

<sup>51</sup> Long Title of Act No. 21 Cap 44.

<sup>52</sup> Long Title of the Personal Data Protection Act, 2022.

<sup>53</sup> Section 38 of the Act No. 21 Cap 44.

<sup>54</sup> Section 7 of the Act No. 21 Cap 44.

<sup>55</sup> Ibid section 7.

<sup>56</sup> Ibid section 7.

<sup>57</sup> Ibid section 7.

<sup>58</sup> Ibid Part IV of the Act No. 21 Cap 44.

<sup>59</sup> Section 33 (2) of the Act No. 21 Cap 44.

<sup>60</sup> *Tito Magoti Vs AG No. 18 [2023] pp. 18-20 at p 18.*

<sup>61</sup> *Supra Tito Magoti Vs AG No. 18 [2023] pp. 18-20 at p 18.*

<sup>62</sup> Act No. 21 Cap 44.

<sup>63</sup> Long Title Act No. 21 Cap 172.

<sup>64</sup> Ibid Long Title Act No. 21 Cap 172.

<sup>65</sup> Ibid section 21 Act No. 21 Cap 44.

<sup>66</sup> Ibid Long Title Act No. 21 Cap 44.

<sup>67</sup> Long Title Act No. 12.

<sup>68</sup> Long Title Act No. 21.

<sup>69</sup> Section 24 Act No. 12 of 2003.

<sup>70</sup> Ibid Act No. 12.

<sup>71</sup> Ibid long Title Act No. 12.

<sup>72</sup> Ibid Long Title Act No. 12.

<sup>73</sup> Ibid Section 17.





police officer with a warrant may investigate sensitive information from the relevant authority.<sup>74</sup>

**(e) The Electronic and Postal Communications Act, 2022**

The Act was enacted to regulate and enhance electronic communications and postal services in Tanzania.<sup>75</sup> It grants the Tanzania Communications Regulatory Authority (TCRA) the authority to oversee online content, including data protection and privacy issues.<sup>76</sup> This Act provides a framework for regulating sensitive personal information and safeguarding individual privacy.<sup>77</sup> It establishes the Central Equipment Identification Register for the registration of detachable SIM cards and built-in SIM card mobile phones.<sup>78</sup>

Additionally, the Act defines the responsibilities of electronic communications and postal service providers, including their agents and customers, while governing content regulation.<sup>79</sup> It also covers the issuance of postal communication licenses, competition practices, and outlines offenses related to electronic and postal communications, along with transitional provisions and amendments.<sup>80</sup>

The Act emphasizes the duty of confidentiality for all service providers, restricting the disclosure of customer information to unauthorized individuals.<sup>81</sup> Several subsidiary regulations support this framework, such as the Electronic and Postal Communication (Online Content) Regulations, which govern the handling of sensitive personal data related to crime suspects. Regulation 11 specifically prohibits unauthorized or unlawful surveillance and disclosure of sensitive personal data.<sup>82</sup> The TCRA is responsible for overseeing the preservation of all personal information, including sensitive data.<sup>83</sup> The Act collaborates with the TCRA to ensure that sensitive personal data remains confidential and protected.<sup>84</sup> While individuals may utilize this Act to address harmful content or request takedowns, it does not explicitly include provisions for the right to be forgotten.

**(f) The Media Services Act, 2016**

The Act was enacted to regulate the publication of information by media outlets in Tanzania.<sup>85</sup> Its primary focus is on promoting responsible journalism and establishing professional standards within the media sector.<sup>86</sup> The Act outlines the rights and responsibilities of journalists, sets legal and ethical guidelines for journalistic practice including accuracy, objectivity, and fairness in reporting and establishes mechanisms for addressing complaints

and defamation related to media publications.<sup>87</sup> This Act provides civil remedies for defamation when media publications harm an individual's reputation through false or malicious statements.<sup>88</sup>

However, the remedies are limited, as the law does not include mechanisms for removing defamatory content from digital platforms or archives, which would align with the right to be forgotten. Section 53 of the Act allows individuals to demand a correction if a media outlet publishes incorrect or misleading information about them.<sup>89</sup> The law requires that the media outlet publish the correction promptly.<sup>90</sup> While this provision helps individuals address factual inaccuracies and mitigate harm from misinformation, it does not facilitate the complete erasure of information as the right to be forgotten would entail, thus limiting individuals' control over their personal data's removal.

Additionally, Section 54 grants individuals the right to respond if they feel that a media publication has misrepresented them. The media must publish this response in a way that rectifies the harm caused.<sup>91</sup> Similar to the right to correction, this provision allows for counteracting misrepresentation but does not extend to the deletion of personal information or past publications.<sup>92</sup> This limitation may perpetuate the availability of outdated or defamatory information published by the media, posing challenges for the right to be forgotten, as the Act does not explicitly grant individuals the right to request the deletion of their personal information.

**(g) The Personal Data Protection Commission**

The Personal Data Protection Commission was established under Section 6 of the Personal Data Protection Act to regulate and monitor sensitive personal data, ensuring compliance by data controllers and processors.<sup>93</sup> The Act requires the registration of these entities and empowers the Commission to receive, investigate, and resolve complaints regarding violations of sensitive personal data and privacy.<sup>94</sup> It also conducts inquiries and takes action against breaches that may harm an individual's reputation.<sup>95</sup>

Additionally, the Commission is tasked with educating the public about data protection and privacy, conducting research on advancements in data processing technology, and developing cooperative strategies with international data protection authorities.<sup>96</sup> It advises the government on effective data protection implementation and carries out various functions to achieve its objectives.<sup>97</sup> As an independent body with corporate status, the Commission has the authority to initiate legal action or be sued for violations of the data privacy principles established by the Act.

<sup>74</sup> *Ibid* Section 17.

<sup>75</sup> See Long Title of the *Electronic and Postal Communications Act, 2022*.

<sup>76</sup> *Ibid* long title of the Act.

<sup>77</sup> *Ibid* see Long Title of the Act, 2022.

<sup>78</sup> See Long Title of the Act, 2022.

<sup>79</sup> *Ibid* see Long Title of the Act, 2022.

<sup>80</sup> *Ibid* see Long Title of the Act, 2022.

<sup>81</sup> *Ibid* see Long Title of the Act, 2022.

<sup>82</sup> See Cap 306.

<sup>83</sup> See Cap 306.

<sup>84</sup> See Cap 306.

<sup>85</sup> See Long Title of the Act No. 12.

<sup>86</sup> *Ibid* see Long Title of the Act No. 12.

<sup>87</sup> *Ibid* see Long Title of the Act No. 12.

<sup>88</sup> *Ibid* see Long Title of the Act No. 12.

<sup>89</sup> *Ibid* section 53 of the Act No. 12.

<sup>90</sup> *Ibid* section 53 of the Act No. 12.

<sup>91</sup> Section 54 of the Act No. 12.

<sup>92</sup> Section 54 of the Act No. 12.

<sup>93</sup> Section 6 Act No. 21Cap 44 of 2022.

<sup>94</sup> *Ibid* section 7 Act No. 21Cap 44.

<sup>95</sup> *Ibid* section 7 Act No. 21Cap 44.

<sup>96</sup> *Ibid* section 7 Act No. 21Cap 44.

<sup>97</sup> Section 7 Act No. 21Cap 44 of 2022.



Recently, a Data Protection Board was formed under Section 8 of the Act, appointed by the President.<sup>98</sup> This board consists of a chairperson, a vice-chairperson, and five members selected by the relevant minister, with the Director-General of the Commission serving as the secretary. The board's responsibilities include overseeing the Commission's functions, providing strategic guidance, formulating policies, and maintaining operational standards.<sup>99</sup> The establishment of the Board enhances oversight of the Commission's daily activities in protecting privacy and sensitive personal data, including information related to crime suspects in Tanzania.<sup>100</sup> This article focuses on the legal recognition of sensitive personal data concerning crime suspects, evaluating the effectiveness of the legal framework governing this data, and identifying challenges to its protection. It operates under the assumption that the current legal regime is inadequate in safeguarding the sensitive personal data of crime suspects.

#### (h) The Judiciary

The judiciary is one of the three branches of government established by the *Constitution of the United Republic of Tanzania*, as outlined in Article 107A, which defines its authority to dispense justice.<sup>101</sup> The Constitution emphasizes several key principles in the administration of justice: first, justice must be administered impartially and without discrimination; second, it should be delivered within a specified or reasonable timeframe; third, reasonable compensation must be awarded where appropriate; fourth, the judiciary has a duty to promote and enhance dispute resolution; and fifth, court proceedings should not be hindered by unnecessary technicalities.<sup>102</sup>

The fundamental role of the judiciary is to interpret laws enacted by Parliament and ensure that justice is served.<sup>103</sup> It possesses the power to establish legal precedents (case law) that lower courts can reference, particularly in human rights cases, including those involving privacy rights violations.<sup>104</sup> Through its interpretations, the judiciary plays a crucial role in promoting and protecting human rights related to privacy in Tanzania.

In the case of *Tito Magoti vs. AG*,<sup>105</sup> the court examined sections 23(3) (c) and (e) of the Act, which permit the collection and processing of personal data under specific circumstances.<sup>106</sup> These provisions indicate that compliance may not always be practical or could prejudice the lawful purpose of data collection. However, the court found these criteria to be overly broad and unclear, leading to legal uncertainty and potential violations of privacy rights, as the Act does not clarify what constitutes lawful purposes. Consequently, the High Court ordered the respondent to amend these provisions to eliminate ambiguity.<sup>107</sup> In summary, the

judiciary plays an instrumental role in interpreting issues that affect individuals' privacy and in promoting the right to privacy. This article focuses on the protection of sensitive personal data related to crime suspects in Tanzania, operating under the assumption that the current legal and institutional frameworks are inadequate in safeguarding this data.

## Legal Challenges Imped Effective Protection of Sensitive Personal Data Related to Crime

### Legal Challenges Imped the Legal Framework toward Effective Protection of the Right to be Forgotten in Tanzania

#### (i) Lack of Explicit Legal Provisions

The absence of specific legislation in Tanzania that explicitly recognizes or enforces the right to be forgotten. While Section 38 of the Act provides to individuals the right to request the correction or deletion of personal data that is inaccurate, irrelevant, or no longer necessary for the purpose for which it was collected. This provision aligns with the core idea of the right to be forgotten, where individuals can seek to have outdated or harmful information removed.<sup>108</sup> However, this right is more limited to case of inaccuracies or irrelevancies and does not automatically cover all instances where an individual may want their data removed from public access such as due to reputation damage or past media publications.<sup>109</sup>

*Personal Data Protection Act, 2022* and section 54 of the Act grants an individual the right to apply when they feel that a media publication has unfairly represented them.<sup>110</sup> The reply must be published in a manner that rectifies the harm caused.<sup>111</sup> Like the right to correction, this provision only allows for counteracting misrepresentation but does not extend to the deletion of personal information or past publications.<sup>112</sup> *The Media Service Act, 2026* contain provisions that relates to data protection and media conduct, neither provides a clear mechanism for individuals to request the deletion of their personal data from public records or online platforms.<sup>113</sup> The fragmented framework in Tanzania like the *Tanzania Communications Regulatory Authority Act, 2003* and others do not coherently address the right to be forgotten, leading to gaps and inconsistencies in protecting individual's rights regarding to their personal data. this deficiency creates a range of issues that complicate the ability of individuals to control their personal data and seek redress when their privacy rights are violated.<sup>114</sup> Additionally, due to he lacks of clear definition and scope of the right to be forgotten acts as absence of no formal recognition without legal provisions, the right lacks forma recognition in Tanzanian laws. Means no defined law recognize or acknowledge the right to be forgotten leading to confusion about its existence and applicability.

<sup>98</sup> Section 8 Act No. 21 Cap 44 of 2022.

<sup>99</sup> Ibid section 8 Act No. 21 Cap 44.

<sup>100</sup> Ibid section 3 Act No. 21 Cap 44.

<sup>101</sup> Article 107 (A) Cap 2.

<sup>102</sup> Ibid Article 107 (A) Cap 2

<sup>103</sup> Article 107 (A) Cap 2

<sup>104</sup> Article 16 (1) Cap 2.

<sup>105</sup> *Tito Magoti vs. AG*, No. 18 of 2023.

<sup>106</sup> *Supra Tito Magoti vs. AG*, No. 18 of 2023.

<sup>107</sup> Ibid section 8 Act No. 21 Cap 44.

<sup>108</sup> Act No. 21 Cap 44.

<sup>109</sup> Section 38 Act No. 21 Cap 44.

<sup>110</sup> Ibid Act No. 21 Cap 44.

<sup>111</sup> Section 54 Act No. 21 Cap 44.

<sup>112</sup> Ibid Section 54 Act No. 21 Cap 44.

<sup>113</sup> Act No. 12.

<sup>114</sup> Long Title Act No. 12 Cap 44.



### (ii) *Balancing Privacy with Public Interest*

Article 30(2) of the *Constitution of the United Republic of Tanzania, 1977* is a significant challenge is a balance of public's right to access information and individual's privacy rights.<sup>115</sup> Media outlets may resist removing information especially when it pertains to matters of public interest, such as criminal records or public figures. This tension complicates the implementation of the right to be forgotten. Additionally, current defamation laws may offer remedies for reputational harm but do not provide a framework for the removal of past information that individual wish to erase, thus the right to be forgotten in protecting personal reputation.<sup>116</sup> The term public is often difficult to define, especially when considering what should be retained in public records and what should be forgotten.<sup>117</sup>

Matters that affect political figures, corporate wrongdoing or public safety could be argued as being in the public interest.<sup>118</sup> However, individuals seeking to have their personal data erased might feel that retaining such information infringes on their right to privacy. This situation where public interest is not clearly defined, media outlets and courts may error on the side of caution, retaining information that might otherwise be forgotten, thus weakening the individual's protection under the right to be forgotten.

### (iii) *The Presence of Limitation Clauses in the Laws*

The Constitution, as the foundational law of the land and other legislations includes limitation clauses on the Bill of Rights, including the right to privacy.<sup>119</sup> These "claw back clauses" restrict available constitutional rights and freedoms, leading to potential infringements on privacy. For instance, phrases such as "in accordance with the laws," "by virtue of the law," and "for public purposes and national security" serve to limit the implementation of the right to be forgotten.<sup>120</sup> Consequently, it is noted that privacy rights are not absolute due to these derogatory provisions.<sup>121</sup> In reference to Mbunda in his work has critiqued the provisions of Articles 30(2) and 31, noting that they effectively act as a shadow over all legislation, granting excessive power to state authorities under the guise of public interest.<sup>122</sup> This has led to the perception that privacy is merely a secondary right.<sup>123</sup> Thus, this article concludes that claw back clauses significantly hinder the effective protection of the right to be forgotten toward effective implementation in Tanzania.

<sup>115</sup> *The Constitution of the United Republic of Tanzania, Cap 2.*

<sup>116</sup> *The Constitution of the United Republic of Tanzania, Cap 2.*

<sup>117</sup> *Privacy International. Tanzania Human Rights Defenders Coalition, Collaboration on International ICT Policy in East and Southern Africa (CIPESA) stake Holder Report Universal Periodic Review: The Right to Privacy in the United Republic of Tanzania, 2015, pp. 3- 7 at p 6.*

<sup>118</sup> *Coalition, Collaboration on International ICT Policy in East and Southern Africa (CIPESA). State of Internet Freedom in Tanzania: An Investigation into the Policies and Practices Defining Internet Freedom in Tanzania, 2014, pp. 3-8 at p 7.*

<sup>119</sup> *Article 12- 29 of the Constitution of the United Republic of Tanzania, 1977.*

<sup>120</sup> *Ibid Article 30 (2) and 32 (2) of Cap 2.*

<sup>121</sup> *Ibid Article 30 (2) and 32 (2) of Cap 2.*

<sup>122</sup> *Scholar MBUNDA Fredrich, (1998). "Limitation clauses and Bill of Rights in Tanzania" Vol.4(2) Lesotho Law Journal p 153*

<sup>123</sup> *Loc. cit. p 153.*

### (iv) *Presence of Legal Literacy to the Public Concerning the Right to be Forgotten*

The study found that many citizens in Tanzania lack legal knowledge and awareness regarding their right to privacy especially when it comes to the right to be forgotten, particularly concerning the protection of sensitive personal data related to publicity of the online platforms.<sup>124</sup> This article explores with various literatures and documentary reviews revealed that most of citizen in Tanzania do not recognize the right toward data privacy as a constitutional right.<sup>125</sup> Although a few literatures acknowledged it as a fundamental right enshrined in the constitution, majority citizens are unaware of its significance in protecting sensitive personal data against online publicity, largely due to inadequate implementation.<sup>126</sup> The lack of public awareness acts as a key factor hindering effective protection of the right to be forgotten. The article came up with the position that, the community's lack of education on the right and privacy contributes to the loophole toward abuses of the right to be forgotten by the online platforms in Tanzania.

### (v) *Balancing Freedom of Expression and the Right to Privacy*

The *Constitution of the United Republic of Tanzania, 1977* provides the right of expression under Article 18 and privacy rights Article 16(1) are a central to determining the effectiveness of the right to be forgotten.<sup>127</sup> These two rights often come into conflict because they present different, but equally important. Freedom of expression allows individuals and media to communicate ideas, report on events and share information.<sup>128</sup> Privacy on the other hand gives individuals the right to control their personal information and, in some cases, remove it from public access.<sup>129</sup> The right to be forgotten arises when individual seek to remove or delist information that is irrelevant or harmful, which sometime may conflict with public right to access information.

When these two rights clashes, the outcome depends on how courts or regulator balance them. In many cases, freedom of expression is given greater weight, especially when the information at issue serves the public interest, for instance news of public figures or historical events.<sup>130</sup> This can weaken the effectiveness of the right to be forgotten, as many privacy requests are denied in favor of free speech.<sup>131</sup> For instance, the situation gained prominence the 2014 decision by the Court of Justice of the European Union (CJEU) in the Google Spain case.<sup>132</sup> In this landmark ruling, the

<sup>124</sup> *PIUS Msekwa, (1977). The Report of the Judicial System Review Commission at Dar Es Salaam pp 24-28.*

<sup>125</sup> *Loc. cit. pp. 24-28.*

<sup>126</sup> *Loc. cit. pp. 24-28.*

<sup>127</sup> *Cap 2.*

<sup>128</sup> *Ibid Article 18.*

<sup>129</sup> *Article 16(1) of the Constitution of the United Republic of Tanzania, 1977.*

<sup>130</sup> *Free World Centre Article 16, (20116), The "Right to be Forgotten": Remembering Freedom of Expression pp 4-5.*

<sup>131</sup> *Loc. cit. pp. 4-5.*

<sup>132</sup> *Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González, C-131/12, Court of Justice of the European Union (CJEU), delivered on May 13, 2014.*



CJEU determined that data protection principles extend to the publication of search results by search engines. It established that individuals in the EU have the right to request the removal of search results linked to their name from search engines.<sup>133</sup>

## RECOMMENDATIONS

This Article discussed on the assessing the effectiveness of the laws toward the governance of the right to be forgotten in Tanzania. This article is on the focuses on the nature and the legal challenges facing effective protection of the right to be forgotten in Tanzania. The following are the recommendations towards the solutions to the problems;

### To the Legislature

- To enact or amendments of data protection laws to include explicit provisions to recognize and governing the right to be forgotten in Tanzania, this will allow individuals to request that search engines remove information about them that appears when their name is searched. It can also involve requests to website hosts to delete specific content. The current laws do not provide sufficient governance and legal recognition concerning the right to be forgotten to ensure effective regulation of individual's privacy as the existing laws do not provide enough legal coverage on effectiveness. Therefore, there is a need to amend the laws to insure they provide effective legal coverage towards legal recognition and effective protection of the right to be forgotten in Tanzania.
- Amendments of the data protection laws to include the provision that defines the term public interest in Tanzania, the laws are silent when it comes to the term public interest. To avoid unclear, ambiguity and legal uncertainty amendment is inevitable by providing the coverage and including to its entirely interpretation section or provisions that explains the meaning of "public interest" the clarity with providing specifically what amount to public interest because its broader term will set limits, as well as to establish legal consequence towards the breach of privacy right by the law enforcers against surveillances to crime suspects.
- To amend the existing data protection laws to include the provisions that regulate and provides remedies to who are affected by unlawful publication incurred by the online platforms. The existing remedies should be utilized, including those provided by privacy and defamation laws, as well as the terms and conditions set by intermediaries, rather than acknowledging the "right to be forgotten."
- Amendment of the Constitution of the United Republic of Tanzania 1977 and other data protection laws legislations to accommodate current existing challenges associated by development of technology by removing limitation clause (claw backs) that limits to access the

right to be forgotten. For instance, for the public interest, according to the law, for the purpose of the law, by virtue of the law and for the national security. These claw back clauses limits individual's privacy.

- Amendment of the data protection laws that governs the right to be forgotten in Tanzania to include specific provision that provide direct and clear requirement for judicial authorization that will set minimum procedural requirements must be adhered to requests including; firstly, only courts or independent adjudicatory bodies should determine the validity of "right to be forgotten", secondly, data publishers should be informed of these requests and given the opportunity to challenge these request, thirdly, de-listings should be restricted in scope, including geographical limitations, fourthly, only relevant service providers, public authorities, and courts should publish transparency reports regarding the "right to be forgotten."

### To the Government

- To establish regulatory institutions in every regions to spread awareness to the public concerning the protection of the right to be forgotten to enable effective regulating of privacy rights against unlawful publications. That is to say, the involvement of data protection regulatory authority and the government toward the spread of awareness concerning governance of the right to be forgotten in order to let them aware with the right against unlawful publication exercised by the online platforms and search engines.

## CONCLUSION

The right to be forgotten, as enshrined under the Personal Data Protection Act, 2022 marks a significant shift in the balance between the protection of personal privacy and freedom of expression, especially within Tanzanian mass media landscape. The Act provides individuals with the opportunity to reclaim control over their personal data, particularly when it has been disseminated publicly, often without consent. While this right offers much needed relief to individuals whose information has been misused or retained beyond its relevance, its implementation faces several challenges. The Tanzanian context presents unique hurdles, such as the lack widespread awareness of these right, technological limitations in enforcing data deletion and the media's vested interest in maintaining historical records for journalistic purposes.

Furthermore, balancing this right with the constitutional guarantee of freedom of expression and public's right to know poses complex legal ethical dilemmas. Nevertheless, the enforcement mechanisms outlined in the Act offer a critical step toward realizing the objectives of the right to be forgotten. To ensure the effective implementation of the right, it is essential for lawmakers, regulators and the media to collaborate ad establish clear guidelines strengthening the regulatory framework, investing in

<sup>133</sup> Loc. cit.





public awareness campaigns and fostering culture of responsible data management.

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