

## THE UNITED REPUBLIC OF TANZANIA

### ARTICLE 19's Submission to the UN Universal Periodic Review

*For consideration at the twelfth session of the UPR Working Group, October 2011*

#### **Executive Summary**

1. ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19) is an international, non-governmental human rights organisation established in 1986 that works around the world to protect and promote the right to freedom of expression and information, including by making submissions to the UN on countries' performance in implementing established freedom of expression standards. ARTICLE 19 has observer status with ECOSOC.
2. With this submission, ARTICLE 19 seeks to make a constructive contribution to the preparation process of the UPR for the United Republic of Tanzania (Tanzania). Since the particular expertise of ARTICLE 19 lies in protection and promotion of freedom of expression and freedom of information, we focus on the Tanzania's compliance with its international human rights obligations on these rights. Specifically, we would like to highlight the problems with **restrictive legislation related to freedom of expression; media censorship and other interferences to media freedom; violence against journalists** and media workers and insufficient legal framework on **freedom of information**.
3. We also note that situation in semi-autonomous **Zanzibar** remains more restrictive than on the mainland and specific concerns on Zanzibar are also highlighted.

#### **Restrictive legislation related to freedom of expression**

4. The Tanzanian Constitution guarantees the right to freedom of expression but does not explicitly provide for the freedom of the press. This constitutional guarantee is, however, insufficiently implemented in domestic legislations and there are several restrictive laws that limit freedom of expression and the ability of the media to function effectively. ARTICLE 19 is concerned about the following legislation in particular:
  - **The 1976 Newspaper Act**, applicable only on Tanzania mainland, remains a major impediment to media freedom in the country. Among the most problematic provisions are the imposition of a fine and a jail sentence of up to four years on any person who prints or publishes a newspaper without registering it with the Registrar of Newspapers or who furnishes the Registrar with false information regarding the paper's particulars. The Registrar enjoys wide discretionary powers with regard to the registration process. It also permits any police officer "to seize any newspaper, wherever found, which has been printed or published, or which he reasonably suspects to have been printed or published" in violation of the Law. It also gives the Minister for Information powers to ban or close down newspapers "in the public interest" or "in the interest of peace and good order". The **Zanzibar** counterpart to this law is the 1988 **Registration of News Agents, Newspapers and Books Act** that is even more sweeping and restrictive in its provisions. For example, it provides for the licensing of journalists and the establishment of a government-controlled "advisory board" to oversee the private print media.

- The union level **National Security Act of 1970**, is a draconian piece of legislation which should be completely repealed and replaced by legislation in line with international human rights standards. It gives the government absolute scope to define what should be disclosed to or withheld from the public and makes it a punishable offence in any way to investigate, obtain, possess, comment on, pass on or publish any document or information which the government considers to be classified. This includes documents or information relating to any public authority, company, organisation or entity which is in any way connected with the government, including the ruling party. Any official or contractor to any government agency or department who might have been a source of any such information is also liable to prosecution. Anyone who receives or communicates any classified matter is also guilty of an offence. And it is no defence that an accused person could not reasonably have known that it was a classified matter. The penalty for the any of these offences is imprisonment for up to twenty years. In addition, anyone who has accessed or is suspected of having accessed a “protected place” can be charged with espionage and sabotage. A protected place means anywhere so designated by the union President or the government. The Act further threatens freedom of expression by criminalising contact with outside bodies, that could include international news agencies, trade unions and other international bodies, "for a purpose prejudicial to the safety or interest of the United Republic" and "directly or indirectly useful to a foreign power", unless the accused can prove that the contrary is the case. The burden of proof is placed with the defendants. The Act also provides sweeping powers to search, seize and arrest and detain with or without warrants on the grounds of suspicion alone. Journalists’ right to protection of sources is seriously affected by the Act since any refusal to provide information or the provision of false information to investigators is punishable by a term of imprisonment to five years.
- **The 1945 Tanganyika Penal Code**, that is still applicable to the mainland, criminalises the use of abusive and insulting language likely to cause a breach of peace (art. 89/1a). It also criminalizes defamation and insult. The consequences of application of these provisions are severe. For example, it was reported that in 2009, *Mwanahalisi* newspaper faced bankruptcy after it was ordered a fine of app. US\$2.2 million for a 2008 article alleging that lawmaker Rostam Aziz had been involved in a corrupt electricity deal. In another case in August 2009, the editor and owner of the newspaper *Changamoto* were ordered to pay US\$1 million to Reginald Mengi, a Tanzanian media mogul, for defamation. Some defamation cases are dealt with by bodies such as the Media Council of Tanzania (MCT) or the Media Owners Association of Tanzania but they have been criticized for their arbitrary verdicts and excessive fines that forced some media outlets to close.
- Other laws limiting press freedom in the country include **the 1989 Civil Service Act** (which curtails access to information prevents any commissioner or civil servant from disclosing information received during the course of government employment without the express consent of the permanent secretary of the relevant ministry or department), **the 1970 Film and Stage Act** (curtails the independence and creativity of individuals as it prohibits taking part or assisting in making a film unless the minister has granted permission and prohibits the making of “home movies” by individuals) and **the 1965 Public Leadership Code of Ethics Act** (restricts the investigative role of media and does not allow the media to investigate and report on the property holdings of public leaders. Also, **the 1962 Regions and Regional**

**Commissioners Act** and the **1962 Area Commissioner Act** have been used against journalists who expose malpractice and maladministration in public offices.

- There are no constitutional or legal provisions for the protection of journalists' sources at either the union level or in Zanzibar. On the contrary, the legal provisions which do exist all undermine what is increasingly acknowledged within international law to be a vital aspect of the right to freedom of expression and information.
5. ARTICLE 19 has repeatedly criticized these laws as being fundamentally incompatible with international and regional standards on freedom of expression and the Tanzanian Constitution. Their urgent and comprehensive review is necessary. In particular, a restriction provided for on grounds of national security is not legitimate if its genuine purpose or demonstrable effect is to protect government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest. Also, any restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. Governments may not prevent journalists or representatives of intergovernmental organizations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violation of human rights or humanitarian law have been committed.

#### **Censorship and other interferences to media freedom**

6. The Tanzanian authorities have used the powers granted to them by the above discussed restrictive laws unsparingly, despite some support in favour of media freedom expressed by the President. For example:
- The offence of sedition is often been employed against opposition politicians noted for their criticism of the government and leaders of the CCM, the Tanzanian ruling party. In October 2008, a three-month ban was imposed on newspaper *MwanaHalisi* for publishing an article that alleged that senior government officials were plotting to unseat President Jakaya Kikwete in the 2010 election. The article said former Prime Minister Edward Lowasa and one of the President's own sons, Ridhwani, were involved in the plot to ensure Kikwete becomes the first Tanzanian president to serve only one term in office.
  - In November 2009, a freelance journalist Jumbe Ismailly was interrogated by police and accused of defaming a regional politician. He was released hours later and told that he was part of an ongoing investigation.
  - In 2009, the government also shut down one blog for posting an allegedly doctored photo of the president. There are also reports that officials monitor internet content and activity with a view of taking restrictive actions against them.
  - On 11 January 2010, there was a 90 days sales and distribution ban imposed on the leading independent and investigative weekly, Swahili *Kulikoni*. The decision was issued in response to a story (published in November 2009) that that alleged cheating in the national exams for the Tanzania People's Defense Forces.

- In April 2010, the Tanzanian police arrested the opposition Democratic Party (DP) chairman, Rev Christopher Mtikila on allegations of possessing seditious documents.
- During the October 2010 election campaign, the Permanent Secretary of the Ministry of Information, Sethi Kamuhanda, visited print media houses to warn them that the government would ban any media that portrayed the government negatively. During the same period, the country's security forces issued a press statement warning the media against reporting on matters perceived sensitive to national security.
- It has been also reported that the Government continues to withhold advertising from critical newspapers and those that favour the opposition. Private firms that are keen to remain on good terms with the government allegedly follow suit, making it difficult for critical media outlets to remain financially viable. In 2009, the Minister of Information explicitly acknowledged muzzling with media by calling four editors into its offices for allegedly distorting government statements, criticizing the president without offering supporting evidence, and printing misinformation about a parliamentary debate.
- Freedom of media in Zanzibar is of a particular concern. Although the residents can receive private broadcasts from the mainland, the only daily paper, *Zanzibar Leo*, is published by the government. The only private weekly, *Zanzibar Wiki Hii*, avoids critical coverage of the leadership. The Television Zanzibar and the radio station *Sauti ya Tanzania-Zanzibar* are under government control. It has been documented that other small private radio stations and newspapers often have close connections to ruling party politicians. In 2009, there was one attempt to launch a new newspaper on Zanzibar, but Zanzibar officials denied it registration. The newspaper received approval from mainland officials and operated from the mainland. There have been also various other instances of interference with media freedom in Zanzibar - journalists are also often harassed and intimidated. For example, in October 2009, journalist Mwinyi Sadala was arrested while investigating a cholera outbreak in Karakana. When he reportedly refused to give police his camera, it was confiscated and Sadala was charged with taking pictures without the permission of the permanent secretary of the Ministry of Health and Social Welfare.

### **Violence against journalists and media workers**

7. ARTICLE 19 is also concerned about a number of cases when journalists and media workers were attacked for carrying their journalistic activities. For example,
  - On 5 January 2008, Saed Kubenea, owner and managing editor of *MwanaHalisi*, and Ndimara Tegambwage, a consultant editor, were assaulted by several attackers in their newsroom. At least three men armed with machetes, knives and iron bars attacked Kubenea and Tegambwage and sprayed a chemical believed to be acid on Kubenea's face. It was alleged that the reason for the attack was to stop the newspaper from investigative journalism. A Tanzania Intelligence Service officer in Dar es Salaam was arrested in January 2009 for involvement in the attack. It was also reported that Kubenea was the victim of an arson attack on his car and for a year has been receiving regular death threats on his mobile phone where the caller

has tried to scare him into ending his investigative reports into public funds mismanagement.

- On 22 December 2009, five assailants attacked Frederick Katulanda, a journalist from *Mwananchi Communications*, in his home in Mwanza. Allegedly, Katulanda's investigation into funds that were allegedly embezzled from a government account was the reason for the attack. The suspects demanded the journalist to turn over documents he had received in connection with an investigation into funds allegedly stolen from a government bank account. It was also reported that in May 2009, a journalist working for the British Broadcasting Corporation was forced to go into hiding after he received death threats for reporting on the role of witch-doctors in persecuting albinos.
- There were reports of Zanzibar journalists being harassed and threatened. For example, in October 2009 journalist Mwinyi Sadala was arrested while investigating a cholera outbreak in Karakana. The police seized his camera and erased all the photographs before returning it, and the case against him was later withdrawn

### **Freedom of information**

8. Article 18 of the union Constitution guarantees every person the right to freedom of expression, but also the right to seek, receive and impart information. The Zanzibar Constitution explicitly protects only the right to receive information, not the right to seek or impart it. There is no legislation in Tanzania at either the union-level or in Zanzibar through which the right to information can be realised in practice. Moreover, as already noted above, various legislations (such as the National Security Act) gives the authorities on both the mainland and Zanzibar, unfettered discretion in deciding what official information should or should not be disclosed to the public. Various reports documented that the track record of responses to requests for information from governmental institutions are very poor. Even in cases where information is available, it requires considerable time and effort to obtain it and culture of secrecy is prevalent.

### **Recommendations**

9. In the light of foregoing, ARTICLE calls upon the Human Rights Council to urge the union government and its Zanzibar counterpart to work together to adopt and implement a comprehensive programme freedom of expression reform, which embraces both the mainland and Zanzibar. This should include the following recommendations:
  - Immediately abolish the draconian legislations – in particular the 1976 Newspaper Act and the 1970 National Security Act and replace them by legislations which are in line with the international human rights standards;
  - Repeal the provisions of the criminal law on sedition and other restrictive media regulations that violate the international standards of the right to freedom of expression;
  - Drop all prosecutions of journalists and media under these restrictive laws;
  - Adopt comprehensive legislation that would grant media the right to protection of sources;
  - Thoroughly, promptly and effectively investigate all unresolved cases of violence against journalists and bring those responsible to justice;
  - Adopt comprehensive legislation on access to information in compliance with international standards.