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**UNIVERSAL PERIODICAL REVIEW FREEDOM OF EXPRESSION JOINT
REPORT FOR
SUBMISSION TO THE HUMAN RIGHTS COUNCIL**

UNIVERSAL PERIODIC REVIEW MECHANISM APRIL 2016

REVIEW OF THE UNITED REPUBLIC OF TANZANIA

List Of Freedom Of Expression Stakeholders

1. Media Institute of Southern Africa (MISA) Tanzania Chapter
2. Media Owners Association of Tanzania –MOAT
3. Media Council of Tanzania -MCT
4. Legal and Human Rights Centre- LHRC
5. Tanzania Human Rights Coalition-THRDC
6. JAMII MEDIA
7. Free Media Ltd
8. Tanzania Media Fund- TMF
9. Nola

EXECUTIVE SUMMARY

- I. The Universal Periodical Review (UPR) is a State-driven process which involves a review of the human rights records of all UN Member States. The ultimate aim of the mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur. The United Republic of Tanzania as a UN member state underwent the first circle of the UPR on 3rd, October 2011. The State considered all the 153 recommendations, accepted 107 in full, 33 in part and the remaining 4 were referred for further consideration or rejected. Each country is normally reviewed every four and a half years.
- II. Out of 107 accepted recommendations only 5 has to do with the freedom of information & expression and that of the media. Members of the group dedicated their time. Owing to the importance of the process, on July 13th, 2015, the THRDC convened a validation meeting for one of the thematic groups named Freedom of Expression. The session brought together media stakeholders in the country with the objective being to take a proactive role and follow up the implementations of the said recommendations. Generally all five recommendations falling under this thematic are partially implemented.
- III. The United Republic of Tanzania is scheduled for the 2nd cycle of UPR review in April 2016, Geneva. During the review a detailed report on the situation of human rights in Tanzania will be released to report a general overview of the most critical human rights issues in Tanzania. In this period between the first review and the second cycle is the implementation period, CSOs ought to engage in countrywide consultations with various civil society groups and independent experts to ensure their active participation in the UPR process.

METHODOLOGY AND CONSULTATIONS

- IV. This joint submission has been prepared by a Coalition of 10 CSOs and media institution in Tanzania after consultation with several NGOs, Governmental agencies and officials, academia, media and members of the Community at the grass-root level by way of conferences, meetings, workshops, seminars and training on UPR. This Report has been validated by key stakeholders of freedom of expression in Tanzania at the Double View Hotel in Dar es Salaam on 11th September 2015. We therefore wish to submit the following report on the situation of ongoing violations freedom of expression in Tanzania to the attention of the OHCHR, for its consideration in the UPR of the United Republic of Tanzania
- V. The Government of Tanzania made a commitment to adopt a right to information (access to information) law giving individual a right to access information held by public authorities. In 2013 the president of the United Republic of Tanzania Jakaya Kikwete announced publicly that in 2014 Tanzanian government will enact access to information law to enable more transparency and accountability in the country. However, his promise was not met in 2014 and instead he promised again during a regional meeting of Open Government Partnership held in May 2015 Dar es Salaam that will accent the media and information related bills before he left his office in October.

KEY ISSUES AND RECOMMENDATIONS

A. The Use of Old Repressive Laws

1. The media environment is restricted by the selective implementation of laws with draconian provisions, some dating back 39 years. For instance, the Newspaper Act of 1976 (*Cap. 229, R.E. 2002*), *The Prison Act*, and the National Security Act of 1970, *Cap.47 [R.E 2002)* have been named “draconian and widely enforced laws”¹ and have been used to ban independent newspapers, prosecute and imprison journalists who write articles critical to government actions.
2. Authorities use longstanding draconian laws to charge journalists with sedition and libel and to impose bans on and suspend independent newspapers.
3. In September 2013, the Minister for information suspended Mwananchi and Mtanzania newspapers for three weeks and three months respectively. The ban was contained in Government notice No. 333 of Friday, September 27. The newspapers were punished for allegedly publishing seditious stories, which the government said were likely to provoke incitement and hostility with the intention of influencing the public to lose confidence in state organs and create disharmony.² The newspapers closure was announced on September 28, 2013, that is precisely one year after an indefinite ban of *Mwanahalisi* in the preceding year 2012. Following this ban, 50 Civil society organizations in the country jointly condemned the ban and perceived such acts as a way for the government to threaten “wananchi” (citizens), to instil fear to the community to silence human rights activists; media houses as well human rights defenders in the country.³ To prove HRDs claims against repressive laws, in 2015 the court ordered the government to free Mwanahalisi Investigative paper by allowing it to resume its activities.
4. On February 26, 2013, the Government through the Tanzania Communication Regulatory Authority (TCRA) announced a six months suspension to two religious radios, *Kwa Neema FM* and *Imani FM*.
5. The East African newspaper was also banned after publishing a cartoon associated with the president by famed cartoonist Godfrey Mwampembwa (“GADO”).⁴
6. It is undisputed that the move towards banning and suspension of media is a total violation of Article 18 of the Constitution of the Republic of Tanzania and Article 18 (1) (2) and the Zanzibar Constitution of 1984 through its 2010 issue.
7. This act denies majority of Tanzanians the right to receive information and thus reduce accountability by government leaders. Either, this stance denies the right to employment to journalists of respective newspapers, staff, distributors as well as their families.

Recommendations- The government is urged;

8. To amend or repeal all old draconian laws as they infringe freedom of expression, right to access information and that of the press.
9. To observe the constitutional and international treaties guaranteeing the freedom of press, opinion and expression specifically Article 18 of the constitution of the United Republic of Tanzania provides for the respect of freedom of expression

¹ See <https://www.washingtonpost.com/news/opinions/wp/2015/02/17/tanzanian-government-shuts>

² see <http://www.monitor.co.ug/News/National/Tanzania-government-bans-two-newspapers/-/688334/2011728/-/ksy5nfz/-/index.html>

³ <http://sikika.or.tz/wp-content/uploads/2013/10/Preess-Statement-Banning-of-Newspapers.pdf>

⁴ See <https://www.washingtonpost.com/news/opinions/wp/2015/02/17/tanzanian-government-shuts>

and the media and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) which Tanzania is a member state.⁵

10. To exhaust other remedies by using other organs such as the court and MCT to file its complaints against media outlets instead of issuing a ban.
11. To understand that media personnel religious institutions, human rights activists, and civil societies have only one objective, to monitor the role played by the government. Thus closing one among them is a threat and contrary to the principles of human rights.
12. To decriminalize defamation and libel against journalist

B. Passing of New Repressive laws

13. As we understand the effort of the government in bring up laws on freedom of expression and freedom of the press the problems lie in the content of the proposed Bills and the laws passed which seem to favor the government than the public.
14. In the mid of 2015 there have been three (3) bills/laws which have been passed of under the certificate of urgency which affects Freedom of expression and opinion in one way or another. The ways and means Government used to enact them through parliament have received criticism from various information and media stakeholders including some of the legislators. These laws include Cybercrime Act of 2015, Statistics Act of 2015, and Whistleblower Act of 2015.
15. Although Access to information and Media Services Bills were tabled for the first time during the 19th parliamentary session, media stakeholders managed to block them from being tabled for second and third time during the 20th parliamentary session. The reasons were backed by the fact that the bills lacked international and national standards regarding the right to information and media stakeholders were not involved in the process as required.
16. The Media service Bill has very restrictive provisions, similar to those in the Newspaper Act which aim to restrict Media activities and curtail the independence of the media. Also the Bill has Sections which obliged all private media to hook up at twenty hours with Tanzania Broadcast Cooperation for news.. If passed into law, the Bill would replace the Newspaper Act (1976) and the Tanzania News Agency Act (1976).
17. On 1 April 2015, the Parliament of Tanzania passed the Cybercrimes Act which criminalises information seen as false, misleading, inaccurate or deceptive. The Act prohibits citizens or agencies from obtaining computer data protected against unauthorised access without permission. The Act came into operation of 1st of September 2015. It prohibits the publication of information or facts in a computer system which is false or misleading. It empowers police or law enforcement officers to storm premises and confiscate a computer system or device and computer data if the police law enforcement officers believe that such information can be used as evidence to prove an offence has been committed.
18. Under the Cyber law the police are equally given the right to search devises like cell phones, laptops or a computer if they believe they contain information that can be used as evidence to prove a crime has been committed. The officer does not need a court order to conduct searches except in cases where the person in possession of such information does not cooperate or if force is needed.

⁵ Article 19 ICCPR states that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.” This right carries certain duties and responsibilities and may be subject to certain restrictions only as provided by the law.”

19. Generally the Act infringes right to privacy and freedom of expression online and does not provide protection of human rights. Civil Societies went to the court of law seeking court support by challenging that draconian provision.

Recommendations-the Government is urged;

20. To ensure that any attempts to reintroduce the Media Services and Access to Information Bills are preceded by extensive engagements with the media, civil society and ordinary citizens and replace all draconian provisions by enabling provision. Public opinions and views from independent media and civil society should be taken into account and factored into the two Bills.
21. Amend or repeal all restrictive provisions of the Cyber crimes Act which are unconstitutional and replace them with progressive sections that will guarantee freedom of expression and the media in line with international standards.
22. To create a participatory environment for the public and key stakeholders during law making process especially the laws that affect freedom of expression and access to information.

C. Assault and murder of Journalists

23. The working environment for journalists in Tanzania is not favorable as it was established by the Human rights Defenders Coalition during its visits to 16 Press Clubs across the country.⁶ Findings indicate that journalists in Tanzania face harassments, threats, detention, death, torture, defamation, suspension from their employment, denial of freedom of movement and the ban of news papers. This is, despite the government's repeated statements over its support towards the freedom and access to information. This has affected their work as intermediaries to the public.
24. There have been circumstances whereby journalists have been physically assaulted and the perpetrators not been brought to face charges. Protests that have taken place over the last two years in rural areas have not been fully covered by journalists because of excessive use of force by the authorities who also prevent the media from accessing court rooms where protesters are tried for their role in the protests.
25. Ahead of the elections planned for October 2015, restrictions on the media increased and the authorities attempted to push through stringent media laws. Journalists have also been threatened by both state and non-state actors.
26. In January 2013, journalist Issa Ngumba a reporter with Radio Kwizera was discovered dead in the Kajuhuleta forest in the north western region of Tanzania with a bullet wound in his body.⁷ The bullet wound and other injuries to his body indicate he was murdered. He had been reported missing on 5 January 2013.
27. On 2 September 2012, Journalist Daudi Mwangosi of private television station Channel 10 TV was killed during confrontations between police and protesters in the region of Iringa. The demonstrations had been organised by the political party Chadema in Nyolo against a police directive banning political parties during the national consensus in Tanzania. As the police dispersed the protesters Daudi had intervened asking why journalist Godfrey Mushi was arrested. He was physically

⁶ THRD-Coalition is a network or organizations with a shared aim of protecting human rights defenders as they go about their missions. See <http://www.thrd.or.tz/home>.

⁷ "Journalist shot, hanged in Western Tanzania," *Daily Monitor*, <http://www.monitor.co.ug/News/World/Journalist-shot--hanged-in-western-Tanzania/-/688340/1661442/-/va2awkz/-/index.html>, accessed 25 August 2015.

- assaulted and a tear gas canister fired at him at very close range. He was also Chair of the Iringa Press Club. Murder charges were instituted against the officer who fired the tear gas but the case has not been concluded. In addition six other officers involved in the confrontations with Daudi have not been held accountable for their offense.
28. Sadly, the State has never filed any charges let alone take disciplinary measures against the six police officers whose pictures or footages above indicate that they were involved into the brutal attack. Shockingly as it may be, the then Iringa Regional Police Commander Michael Kamuhanda was promoted to a deputy commissioner of police leaving a little to be desired for as if anything, accountability should have begun with him.
 29. In March 2013, the Chair of the Tanzania Editors Forum Absalom Kibanda was physically assaulted while on his way home from work and his vehicle was vandalised. He was taken to Mubimbili Hospital in Dar es Salaam and later transferred to a hospital in Johannesburg, South Africa for treatment for injuries sustained during the attacks. Absalom was attacked because of his journalistic activities. He had previously been accused of sedition following the publication of an article in the Tanzania Daima newspaper in which he criticised the authorities for preventing a protest organised by an opposition political party. He is also editor of the Swahili language newspaper *Tanzania Daima*.
 30. On March 05, 2013 Eliah Ruzika a Chanel Ten Reporter was harassed and arbitrary arrested by police officers while on duty gathering information in Dar es Salaam. The photographer was shooting video clips at a meeting by the TANZANIA –ZAMBIA RAILWAY AUTHORITY (TAZARA) employees in Dar es Salaam.
 31. In June 2015 a radio station namely Coconut FM was raided by people who covered their faces estimated to be 20. These people raided the radio station based in Unguja targeting to arrest a journalist namely Ali Mohamed who had prepared a special programme discussing chaos in the voters registration centers in Zanzibar and how citizens were intimidated by the Fracas1.
 32. On 18th September 2014, journalist Joseph Isango, Shamimu Audsi and a photojournalist Yusuf Badi suffered injuries while on duty at the police headquarters in Dar es Salaam. The police used excessive force as they barred journalists from covering the summoning of the chairman of the main opposition party at the police headquarters.
 33. On 3rd August 2015 Tanzania Communication Regulatory authority (TCRA) suspended Kyela community radio due to political pressure.

Recommendations-The government is urged

34. To create a legal framework that can directly protect rights of journalists. This could be by means of creating provisions that recognize and protect media and journalist in the Constitution of the country and other forms of legislation.
35. The government should raise awareness and provide civic education to citizens on the proposed draft constitution before the referendum which has provisions for protection of journalists.
36. To bring into justice the perpetrators of journalists attacks and killings.
37. Conduct training workshops to police officers on human rights, human rights defenders protection and non use of excessive force in the course of their duties.
38. To ensure that Police Force observe and protect the rights of journalists when undertaking their duties in different parts of the country.

39. To create criminal system that provides an independent investigation organ to investigate all cases involving journalists who died or assaulted when on duty.

D. Disregard of citizens opinion in the process of constitutional review

40. The constitutional review process which started officially in 2012 aimed at solving inter alia the problem of the so called “outdate and severely patched “⁸ constitution to conforms to the current global socioeconomic and political environment respecting human rights standards and monitoring misuse of public funds and embezzlement for the wellbeing of the whole Tanzanian society.
41. Throughout the whole process of constitution making especially at the initial stages, freedom of expression and opinion was upheld and people were free to give their views to the constitutional review commission on the draft constitution.
42. The constitutional review commission, which was required to collect, analyzes and evaluates people’s views and opinion throughout the country and completes its task by handling the draft constitution to the constituent assembly.
43. When it came to the constituent assembly to discuss the proposed draft, citizen’s opinions were disregarded to a large extent leading to the current proposed draft which leaves out a lot of citizens’ opinions.
44. On, 4th August, 2014, the Dodoma Regional Commissioner suspended all CSOs, to conduct public meetings on the current constitution-making process. The reason behind this ban was Constituent Assembly sessions that were going on in Dodoma.
45. Legal and Human Rights Center (LHRC) conducted a big bang campaign aimed at empowering the community to understand the contents of the First and Second Draft Constitutions drafted by the Constitutional Review Commission. The campaigns were conducted at the national, regional and district levels. However, the Regional Commissioners in Kilimanjaro, Geita, Rukwa and Kagera banned LHRC from conduct the campaign in their respective areas.⁹
46. Members of the press faced a number of limitations to report on the constitutional assembly whereby media outlets were sometimes shut out during coverage of Constitutional debates as was indirect threats for private broadcaster like ITV for airing live Constitution making dialogue.

Recommendations-the Government is urged;

47. To understand that the constitution is not a government project, but most important a means by which citizens can participate in determining the State’s political status and its economic, social, and cultural development and thus the need for Tanzanians to take this process seriously.
48. To allow CSOs, Human rights defenders, Activists and journalists to offer civic education on the content of the draft constitution.
49. The government should continue to respect the right to assemble throughout the Constitution making process.

⁸ t has been argued that one among the reasons for initiating a constitutional review process is because of many amendments made to the current constitution since its promulgation in 1977. The current constitution has been amended 14 times and the last amendment was on 2005(made under section 4 of the Laws Revision Act, chapter 4 of the laws) on nondiscrimination on the basis of gender. Also see the Constitutional Review Commission report on the United Republic of Tanzania Constitutional Review Process; December 2013 pp 5

⁹ LHRC (2014) Big Bang Campaign Phase II Report, 2014 page 5.

50. The state organs especially the judiciary to be impartial especially when it comes to interpretation of laws and constitutions in matters of public interests.
51. To review the constitution making process to meet the disregarded public opinions collected by Constitution Review Commission.

E. Independence of Public Broadcasting Institutions

52. Section 6 (2)(j) of the tabled Access to Information Bill protects the interest of the public broadcasting cooperation.
53. The state-owned television station was brought before the content committee of the Tanzania Communication Regulatory Authority; due to misleading reports on its morning programme 'Jambo Tanzania' aired on August 15, 2015. On the material day, a presenter of the Tanzania Broadcasting Corporation (TBC) while reviewing newspapers is said to have misled the public by reading second-lead stories and purporting them to be main headlines.¹⁰
54. Policy Forum's TV and radio spots were removed from TBC for what the broadcaster termed as infringement of its standards of impartiality as set in its election guidelines.¹¹ In struggling with efforts to seek enhanced democratic, transparent and accountable governance and strives to increase informed citizen participation in national policy processes, Policy Forum launched a non-partisan TV and radio advocacy campaign calling for transparency in the mining sector and to inform public discourse so that a more aware citizenry can make informed voting choices during the general elections.
55. According to Policy forum, TBC was not fair because the campaign was not aimed at supporting or opposing any candidate for office and was a call for citizens and leaders alike to support transparency and public engagement in the sector.
56. Reporters of public media are at high risk doing their work at an environment which the public believe that the public media is not for the public interest but for the government and the ruling party. About 10 reporters of public media especially TBC have been attacked and assaulted by hungry citizens in various occasions especially when they go to opposing political coverage.

Recommendations-the government is urged;

57. To ensure that all the media especially public media provides equal opportunities of coverage in all news and events especially during elections times.
58. To amend the Public Media Policy or enact a new Policy and Law that regulates the conduct of the modern public media. Some of these policies were used during single party regime
59. To ensure that leaders or directors of public media neither are nor did presidential appoint but recruited as other normal public servant to avoid conflict of interest and also provide individual and professional independence.
60. The government needs to pass a law changing Tanzania Broadcasting Corporation (TBC) from state broadcaster into Public Broadcaster.

¹⁰ See <http://goo.gl/UwAjtP>

¹¹ Policy Forum is a network of NGOs which strives to increase informed civil society participation in decisions and actions that determine how policies affect ordinary Tanzanians, particularly the most disadvantaged.