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A Written Information Report to the Universal Periodic Review Mechanism on Freedom of Opinion and Expression in Tanzania

Elizka Relief Foundation

An Introduction

The right to freedom of opinion and expression is a fundamental human right. Given the importance of this right for both the individual and the state, the International Bill of Human Rights has stressed it and developed acceptable standards for its practice.

The universal periodic review (UPR) of Tanzania has presented a number of recommendations that were approved by the state. However, has the Tanzanian government really considered these recommendations and implemented them? Do the Tanzanian people really live in an environment that encourages them to claim their rights, or even express their views?

First: Freedom of Opinion and Expression in Tanzanian Law

In the past few years, Tanzania has enacted various laws that may have a negative impact on the enjoyment of freedom of expression. Below are some examples of the legal challenges created by these legislative texts that undermine the enjoyment of the right to freedom of expression.

Cybercrime Act, 2016



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Tanzania's Cybercrimes Act was enacted by the National Council and signed into law on April 25, 2016. The law makes provisions for criminalizing offences related to computer systems and Information Communication Technologies; provides for investigation, collection, and use of electronic evidence. Some provisions of this law pose a real threat to the enjoyment of the right to freedom of expression in Tanzania. For example,

1. The law contains a number of vaguely-defined crimes.
2. Sharing information is criminalized.
3. Supervision shall be codified without appropriate judicial orders.

Statistics Law 2016

This law authorizes the National Bureau of Statistics (NBS) to provide official statistics to the government, business community, and the public at large. Moreover, it authorizes the NBS to play the role of a coordinating agency within the National Statistical System (NSS) to ensure the production of high-quality official statistics.

The Main Criticisms of this Law Include the Following:

1. The provisions for publishing accurate survey data are unnecessarily restricted.
2. The rules appear to be inconsistent with the principles of open government and open data.
3. The Law includes obstacles to reporting violations without any protection of the public interest.



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4. The Law requires approval from the National Statistical Office before statistics are produced or published.
5. The Law restricts the publication or transmission of any controversial statistical information, and makes its publication or transmission illegal and distorts the facts. These limitations ignore the fact that the controversy in statistics is an essential part of the academic and political debate.

Access to Information Act of 2016

This law was approved by the National Assembly on September 7, 2016. It was slightly amended by the draft bill submitted to the Tanzanian Parliament for first reading on June 23, 2016, and it was wholly revised by a draft bill that the government planned to present to Parliament in 2015 under a certificate of urgency that was withdrawn as a result of media and public pressure.

The Main Criticisms of this Law Include the Following:

1. Contrary to most international practices, other domestic laws governing access to information take precedence when they conflict with the provisions of this law.
2. The appeals process tends to be in favor of information holders because it gives the last word for the minister responsible for legal affairs, not the courts.
3. Strong penalties are imposed on information owners who incorrectly release information, which reinforces self-censorship and withholds information.



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Media Services Law of 2017

The National Assembly issued this law on November 5, 2017 with the aim of promoting professionalism in the media industry. This led to the creation of bodies such as the Journalists Accreditation Council and the Independent Media Council. The law seeks to provide a legal framework to regulate media and other related services. The main concerns of this law are the following:

1. Defamation is criminalized with absolute privilege for government employees.
2. Publishing, distributing and importing seditious materials that are excessively loose and vague are criminalized.
3. Publishing false statements, reports or rumors are criminalized and penalties are imposed on perpetrators regardless of their intentions.
4. Ministers are given absolute powers to ban publications.

Electronic and Postal Communications of 2018

These regulations were drafted by the Ministry of Information, Culture, Arts and Sports with the aim of regulating all online content providers with a mandatory requirement to register with the Tanzania Communications Regulatory Authority (TCRA). The regulations were issued on March 16, 2018, and the main criticisms include the following:

1. Mandatory registration of all bloggers, online forums, internet radio and television, social media users, companies and civil society organizations that publish online content



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through TCRA.

2. Regulations prevent online content service providers from posting “false content that is likely misleading” unless a publication has been made with a statement that the content is not realistic.
3. Regulations impose vague restrictions on content providers, which automatically undermines freedom of opinion and the right to publish information and criticize the government and other legitimate forms of expression.¹

On 17 July 2020, the Tanzanian Minister for Information, Culture, Arts and Sports published the Electronic and Postal Communications (Online Content) Regulations, 2020 (2020 Online Content Regulations) which replace the Electronic and Postal Communications (Online Content) Regulations published on 16 March 2018 (2018 Online Content Regulations).

The 2020 Online Content Regulations came into force immediately upon publication. They are, for the most part, similar to the 2018 Online Content Regulations, with certain key exceptions as follows below.

Under the new regulations announced by the Tanzania Communications Regulatory Authority (TCRA), which entered into effect on August 10, 2020, local media must obtain content licenses from the government to broadcast foreign content - and will be held responsible for any perceived "crime" featured in that content. .

¹ KNOW YOUR RIGHTS: Freedom of Expression, Legal And Human Rights Centre, 2018, <https://www.humanrights.or.tz/assets/attachments/1552913246.pdf>



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The warning that local media will be held responsible for any infractions in a content made, organized and produced by a foreign media partner raises particular concerns even more than those raised by the new regulations themselves. Since his inauguration in 2015, President John Magufuli's administration has expanded the definition of "crime" to include nearly anything that conflicts with the president's personal views, from economic statistics to updates on coronavirus, as he has declared the country "coronavirus-free" thanks to prayers by citizens.²

Second: How Tanzania's Security Authorities Respond to Protests and Opposition

- a. In July 2017, Tanzania's main opposition parties called for rallies across the country to protest the government's decision to ban live televised parliamentary debates. The parties described this step, along with the suspension of seven opposition MPs from Parliament, as undemocratic. In response, the Tanzanian police has banned all opposition protests until further notice after security forces used tear gas to disperse a protest rally. Such repressive acts were described "undemocratic" by the government of President John Magufuli.

Police official George Kyando said they were forced to use tear gas to disperse the crowd, "after we received intelligence reports indicating potential violence." The police also said in a statement that they had received intelligence reports revealing the intentions of the opposition parties to

² CHARLES MMASI, TANZANIAN ELECTRONIC AND POSTAL COMMUNICATIONS (ONLINE CONTENT) REGULATIONS, 2020, PUBLISHED, bow mans law ,2020, <https://bit.ly/2ZXwG2y>



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use public gatherings to call for a campaign of chaos in east Africa. "The police shall prohibit all demonstrations and public gatherings until the security situation improves," the statement proclaimed.

- b. On April 25, 2018, Tanzania deployed heavily armed police officers across major towns and cities in a bid to block anti-government protests called by a U.S.-based Tanzanian social media activist.

The banned demonstrations - timed to take place in the anniversary of the union between mainland Tanzania and the Indian Ocean archipelago of Zanzibar - have been organized by self-exiled activist Mange Kimambi.

"Those who plan to demonstrate tomorrow will seriously suffer ... they will be beaten like stray dogs," Gilles Muroto, police chief in Tanzania's administrative capital Dodoma told journalists.

In the northern town of Arusha, an opposition stronghold, police arrested seven people accused of mobilizing fellow Tanzanians to take part in the planned protests.³

- c. In response to the growing public frustration caused by the decline of human rights in the country, individuals and groups have increasingly sought to exercise their rights to peacefully assemble to express their legitimate grievances. Worryingly, the authorities, including members of the government and security services, have resorted to arbitrary arrests, excessive use of force, and intimidation to silence protests and crackdown opposition.

³ Fumbuka Ng'wanakilala, Tanzania police threaten to beat protesters 'like stray dogs' to halt demos, reuters, 2018, <http://reut.rs/3qcUg63>



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In April 2018, Tanzanian activists called for national demonstrations to draw attention to the declining situation of human rights in Tanzania. However, in violation of international standards, the authorities, which require anyone seeking a public meeting to obtain a license, have declared the protests illegal.

The government and police forces responded to these calls for public protests with extreme fanaticism, including hostile statements by senior government officials and police, including threats that protesters "would be beaten like stray dogs." Days before the planned April 26 demonstrations, seven people were arrested in Arusha for their alleged involvement in the protests organizations. The few who dared to take part in the protests were soon persecuted.

- d. Since the beginning of 2018, dozens of members of the political opposition and parliamentarians have been subjected to violent attacks and even death. On February 22, Godfrey Luena, a member of parliament with Tanzania's main opposition party Chama Cha Demokrasia Na Maendeleo (CHADEMA) and a vocal land rights defender, was killed with machetes outside of his home. Luena was a critic of the practice of land grabbing, which illegally dispossesses rural local populations of land.

Third: Freedom of Press and Journalists in Tanzania

- a. Press freedom is under threat in Tanzania; the government has forcibly shut down five publications, four newspapers, and two radio stations. "Tanzania Always" newspaper became the latest media to be shut down for 90 days.



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The government claims that it only bans newspapers responsible for publishing misleading information. However, the fact is that forcibly closed newspapers usually criticize the government or have links to the opposition.

- b. Recent laws on freedom of the press have a broader impact on freedom of expression; it limits free media, electronic communications and public access to data. Under government orders, many newspapers, radio stations and streaming television that criticized the president and the government were fined or suspended.

Tanzania's President John Magufuli has declared the country in early June "coronavirus-free". Nevertheless, many broadcasting stations and streaming televisions have been suspended and fined for allegedly "transmitting false and misleading information" about the country's handling of the outbreak of COVID-19.

Fourth: Freedom of the Internet and Social Media in Tanzania

The Tanzanian government has passed new laws regulating the activities of bloggers, forum directors, and YouTube channels, such as registering their data with the Telecommunications Regulatory Authority, and paying an amount of up to \$ 900, to obtain the publishing privilege. According to these laws, applicants for online content publishing must provide a large set of documents, which include data on the partners on the site and their shares, capital, qualifications of employees and training programs they have undergone, and a tax exemption certificate.



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All these papers represent an obstacle for publishers, but the biggest problem is the \$900, which should be paid to the concerned authorities. Only three or four bloggers in all Tanzania are able to pay \$900 to obtain the privilege of online publishing.

Fifth: how civil society responds to the failure of the Tanzanian government to fulfill the citizens' right to freedom of opinion and expression

- a. In May 2018, 65 civil society organizations around the world wrote a petition and submitted it to the President of the Republic of Tanzania, condemning therein the increasing violations of human rights in Tanzania, topped by the right to freedom of opinion and the right to freedom of association, expression and peaceful assembly in Tanzania, and urging the government to take proactive measures to protect these rights that are deemed essential to civic space and publicly acknowledge the essential role that vibrant civil society and independent media play in creating peaceful and equal societies.
- b. In this petition, organizations lodged an objection on the Electronic and Postal Communications (Online Content) Act, criminalizing a wide range of legitimate forms of freedom of expression on the exhausting and unaffordable, but also pose an arbitrary barrier to the exercise of the right to freedom of expression. We are also very concerned about provisions that give the government the power to revoke a permit if a site or blogger publishes content that is "nuisance" or "causes public anarchy."



ELIZKA RELIEF FOUNDATION

- c. The Media Council of Tanzania and two civil society organizations have filed a lawsuit against the government before the East African Court of Justice, accusing it of restricting media in the country. The Council, the Legal Center and Human Rights Center as well as the Coalition of Human Rights Defenders in Tanzania claim that the Media Services Act of 2017 violates the EAC treaty by restricting the type and content of news that is broadcasted, thus violating the right to freedom of expression.⁴

Recommendations

Elizka Relief Foundation makes a number of recommendations for decision-makers in Tanzania that include the following:

- 1- Abolishing or reformulating all laws related to freedom of opinion and expression, whether in reality or virtually, such as publishing on the Internet.
- 2- Putting an end to the strict approach adopted by the security authorities, which arrests all opposition and critics of government.
- 3- Stopping the crackdown against opposition parties and the arbitrary arrests of their political prisons.
- 4- Allowing the opposition to express their political views through peaceful demonstrations.

⁴ Media council sues Tanzania govt over press freedom, the east African, 2018, <http://bit.ly/30kdQmx>