

UNITED REPUBLIC OF TANZANIA

ARTICLE 19 AND MEDIA INSTITUTE OF SOUTHERN AFRICA-TANZANIA SUBMISSION TO THE OFFICE OF THE HIGHER COMMISSIONER FOR HUMAN RIGHTS ON THE OCCASION OF THE UNIVERSAL PERIODIC REVIEW OF TANZANIA

1:0 About ARTICLE19 and Media Institute of Southern Africa (MISA)-Tanzania

MISA-Tanzania (MISA-TAN) is one of the Media Institute of Southern Africa's (MISA) chapters established in 1996 as non-governmental organization (NGO) with the major objectives to promote a free, independent and pluralistic press in Tanzania.

ARTICLE 19, the Global Campaign for Free Expression an international, non-governmental human rights organization works around the world to protect and promote the right to freedom of expression and information.

With this submission, MISA-Tanzania and ARTICLE 19 seek to assess Tanzania's compliance with its international human rights obligations in respect of media freedom and freedom of expression, in particular:

- Limits on media freedom and freedom of expression through legislation
- Lack of independence and pluralism of media;
- Violation of media freedom through other means; and
- Freedom of assembly, association and intimidation of political opponents;

2:0 Limits on media freedom and freedom of expression through legislation

2.1 There is no political will to enact Freedom of Information Law

Tanzanian citizen's right to obtain and impart information is enshrined in the Constitution. Article 18 of the Constitution states that "every person has the right to freedom of opinion and expression, and to seek, receive and impart or disseminate information and ideas through any media regardless of national frontiers, and also has the right of freedom from interference with his communications".

The government has not shown any willingness to enact and implement a right to information law so that would facilitate the promotion of access to information. In 2007

stakeholders submitted the draft Right to Information Bill for consideration, but four years now government has remained silent on the issue.

2.2 Existence of laws restricting media freedom and freedom of expression

2.2.1 The Newspapers Act, 1976

The Newspapers Act, 1976 (Cap. 229, R.E. 2002) is one of the major media laws that govern print media in Tanzania. The Act contains various restrictions on the type of information that should be published. It proceeds by criminalising certain conducts that would otherwise be treated as civil wrongs (Torts). Defamation, for example, has been criminalized in Tanzania. Courts have used the provisions of the Act to award exorbitant damages to plaintiffs in defamation. Other offences such as sedition, incitement to violence and publication of false news have been created by the Newspapers Act. Media is, therefore, obliged to conduct self censorship in order to avoid the commission of such offences. In so doing, the public could be denied their constitutional right to access information because of increased restrictions.

The Act also empowers the Minister to prohibit publication of newspaper when she/he is of opinion that it is in the public interest or in the interest of peace and good order. The law empowers the President, in his absolute discretion, to restrict importation of publication if he is of opinion that the importation of any publication would be contrary to the public interest.

The Act has been used several times to either suspend or deregister newspapers perceived to be critical to the government. Recent examples include the suspension of *Mwanahalisi* Newspaper on 13th October 2008 and *Kulikoni* on October 13 2009 for 90 days and deregistration of *Leo Tena*.

2.2.2 The National Security Act 1970

The National Security (Classified Matters) Notice, G.N. No. 133 of 1970 made under Section 2(1) of the Act, defines what constitutes classified matters. They include all documents and letters prepared or addressed by or to or on behalf of the Government of

the United Republic of Tanzania or any specified authority and which are marked or stamped with the word "**confidential**" or "**secret**" or "**top secret**". Such words have been used on a number of documents to restrict public access to records and information in custody of the government or any specified authority. The procedure for stamping such documents is not specific. The Act together with Newspapers Act was applied to suspend *Kulikoni* for 90 days on October 13, 2009. On October last year, the two critical newspapers, Mwananchi and Mwanahalisi received warning letters stamped "**confidential**" from the Department of Information Services ordering them to stop publishing incitement information.

2.2.3 The Public Service Act 2002

The Public Service Act (Act No. 8 of 2002), Cap. 298 prohibit disclosure of information by public servants and members of the Public service Commission to unauthorised person. Section 18 (3) requires that the provisions of the National Security Act should apply in relation to that offence. Both the person disclosing information and the person receiving information are criminally liable for an offence under Section 18 (1) and (2) of the Public Service Act. This has made difficult to obtain information from public offices. For instance MISA-TAN survey on the most transparent and secretive government institutions in Tanzania in 2010 discovered that is not easy even to get very basic information such as salary of public officials. Public Service Management when asked about the salary of Minister responded by saying that "the issue of salary is an agreement between the employer and employee".¹

2.2.4 The Public Leadership Code of Ethics Act 1995

According to the Public Leadership Code of Ethics (Declaration of Interests, Assets and Liabilities) Regulations, G. Nos.108 of 1996 and 261 of 2001, members of the public may inspect the Register upon satisfaction of the conditions that a person wishing to make inspection has lodged with the Commissioner a complaint against a public leader; on his assessment, the Commissioner is satisfied that the complaint is genuine, relevant and was made in good faith; and an inspection fee of one thousand shillings has been

¹ A Report on Open and Secretive Public Institutions in Southern Africa, pg 79

paid. (Paragraph 6(1). Paragraph 7 of the same Government Notice, however, prohibits any disclosure of information obtained from the register to other persons. Such a restriction overrides the overall purpose of disclosure as public leaders cannot be accountable to people. The conditions for inspecting the register itself bar public access. One must have, for instance instituted a case against a public leader. A question is how can one institute a case against such leaders and allege corruption or any other issue relating to properties or assets while he/she is not allowed to know the leader's properties at first instance.

Five Organizations – Media Institute of Southern Africa-Tanzania Chapter, National Organization for Legal Assistance, Southern African Human Right NGOs Network, Tanzania Media Women Association and Kivulini Women's Right Organization opened cause number 28/2008 in the High Court of Tanzania to petition the constitutionality of the above provisions. The case that was first mentioned in May 2008 until today is yet to be concluded.²

2.2.5 The Films and Stage Plays Act 1976

The Films and Stage Plays Act (Act No. 4 of 1976), Cap 230 requires that no film should be made or shown without a permit granted by the Minister in charge. A film permit, however, is not necessary for the making of a film by an amateur for private exhibition to his family and his friends. The Act also establishes the Central Censorship Board and Regional Censorship Board. The Board is empowered to examine poster or description thereof and approve them for public exhibition.

2.2.6 National Labour Law

The National Labour Law is one of many acts that can be used to muzzle media freedom and hence freedom of expression in Tanzania through restricting employment or stopping contracts of competent people but who, in the minds of government officials are likely to interfere with their interests by exercising their roles to inform the public. An example is when the management of the Tanzania Broadcasting Corporation refused to renew the

² Miscellaneous Cause No. 28/2008

contract of its former Director, Tido Mhando in December 2010. Mhando was known for positive transformation of the state owned broadcaster into public broadcaster. Mhando himself was not happy with the move because he had previously expressed an interest to renew the contract. The law has also been used in the past to refuse employment of foreign journalists from Kenya, who used to work in Tanzania with Mwananchi Communications, the publisher of one of the most critical newspapers in the country.

2.2.7 National Immigration Law

The law was used in 2001 and 2003 to strip the citizenship of two prominent journalists who have also served in government in different capacities. On June 24, 2003, for instance the editor of the weekly independent newspaper which is now deregistered, “Dira” the late Ali Nabwa’s Passport was confiscated by the Department of Immigration in the semi-autonomous island of Zanzibar and stripped his citizenship. The move came two years after The Chairperson of Habari Corporation, Jenerali Ulimwengu was also stripped his citizenship.

4.1 Harassment and attack of journalists

Despite their noble role to inform the public, journalists in Tanzania still face challenges of being harassed and attacked by security organs, individual thugs and others with ill intention to intimidate them.

In January 5, 2008 people attacked the offices of Hali Halisi and assaulted the Chief Executive and Managing Editor, Mr. Saed Kubenea and the Consultant, Mr. Ndimara Tegambwage. The two senior journalists were seriously injured. In July 18th 2008 Police officers under cover, who identified themselves as Police officers from Central Police, Dar es Salaam, entered and searched Hali Halisi Media House and the residence of the Chief Executive and Managing Editor of Mwanahalisi Newspaper, Mr. Saed Kubenea. On February 18, 2008 two popular online editors were arbitrarily arrested without charge in what observers say was a politically motivated attempt to shutter the site. The, Maxence Mello and Mike Mushi, aged 21 and 18 respectively, hosted the extremely popular *Jambo Forums*, a public discussion site with more than 2,000 members and 6

million hits in February 2008 alone. Police confiscated three computers used to host their Web site, shutting down the site for five days while the equipment remained under police custody.³ In February 13, 2009, the then Tanzanian minister of information, sports and culture, Captain George Mkuchika ordered three newspapers to provide reasons why they published what he called "defamatory" news reports. The three newspapers were "Taifa Letu", "Sema Usikize" and "Taifa Tanzania". In November 19, 2009, Police in Singida region summoned and interrogated freelance journalist Jumbe Ismailly for two hours and nine minutes from 11.00 am to 1.09 pm on allegations of defaming the Regional Commissioner Dr. Parseko Kone. In December 22, 2009 Fredrick Katulanda, 32, the Mwananchi Communications Journalist in Mwanza region was attacked by unknown people, thought to be gangsters.

On Friday 8, January 2010, the government deregistered *Leo Tena* Newspaper and suspended the weekly investigative *Kulikoni* Newspaper for 90 days for allegedly violating journalism ethics. On Sunday, January 31, 2010 the investigative television journalists, Jerry Muro was arrested by police and interrogated for more than five hours on allegations of soliciting bribes. Muro is now facing court case for soliciting bribes.

Between October 11 to October 15, 2010 government threatened to deregister two newspapers – Mwananchi and Mwanahalisi to immediately stop publishing inciting and humiliating news, which tarnish the country and the government, in the name of freedom of expression stipulated in the Constitution. On January 26, 2011 Zanzibari TV journalist, Munir Zakaria, was attacked by a group of Zanzibar Council Municipal Council policemen. Munir, who works with Channel Ten TV station in the semi-autonomous Zanzibar Island was attacked and badly beaten up by the policemen. The journalist was attacked while taking pictures of an evacuation operation by the municipal council at the Darajani area of the island.

3:0 Lack of independence and pluralism of media

3.1 Information is not readily available to citizens

³ <http://www.cpj.org/africa/tanzania>

Tanzania has one of the most vibrant media landscapes in the region, but infrastructure to transport newspapers to rural areas is prohibitive. While internet caters for only 1.5% of the country's population, television is accessed only by 5% of the population, while about 15 million Tanzanians own radio sets. But these people face challenges of limited circulation of newspapers, the low purchasing power of most citizens, the high cost of batteries for radio sets and lack of electricity provision in rural areas and high cost of owning television sets or accessing internet.⁴ The community print media are almost nonexistent and few regional newspapers are not in a language that most citizens could grasp.⁵

There is no law to protect editorial independence of government media from interference by public authority.

There is no law protecting the editorial independence of government owned media such as Tanzania's Standard Newspaper and Tanzania Broadcasting Corporation (TBC). The independence of government media rely heavily on the wishes of an appointing authority. Despite the fact that the board is independent, there is no guarantee that an independent and impartial individual would be appointed to the board of TBC.⁶

3.4 Government does not promote a diverse media

There is a tendency by the government to award high cost adverts to some newspapers and not to others. TBC is competing with other commercial television stations for advertising revenue, giving it unfair advantage with its competitors in the private sector.⁷ Some critical media receive little or no government adverts.

Public broadcaster is not accountable to the public

Both Board Chairperson and Director General of TBC are Presidential appointees. This compromises their discharge of duties especially the loyalty to public issues when they seem to threaten the position of the Government. Minister of Information appoints the

⁴ Africa Media Barometer Report, 2010, pg 22

⁵ Africa Media Barometer Report, 2010, pg 24

⁶ Africa Media Barometer Report, 2010, pg 24

⁷ Africa Media Barometer Report, 2010, pg 26

members of the board. These appointees do not necessarily represent the public. Some public office bearers serve on the board of TBC.⁸

5.0 Freedom of Assembly and Association and Intimidation of political opponents

The right to freedom of assembly is an essential political right. Democracy is made meaningful where citizens assemble without fear of government intimidation or oppression.⁹ The freedom of assembly is a constitutional right. According to Tanzania Constitution “Every person is entitled to freedom, to freely and peaceably assemble, associate and cooperate with other persons, express views publicly and more specially to form or join associations or organizations formed for the purposes of preserving or furthering his beliefs or interests or any other interests”.

But Tanzanians do not enjoy absolute right to freedom of assembly. The right to assembly is controlled by police force as no one is allowed to demonstrate or call any public rally without permission from police. The failure to abide to this requirement can lead to intimidation and sometimes brutal attack by police in a bid to disperse demonstrators. One example is the January 5, 2011 brutal crash of the main opposition party, CHADEMA demonstrators in Arusha which killed two people. Police also arrested CHADEMA chairman Freeman Mbowe and other senior leaders of the party for allegedly taking part in an unlawful demonstration.¹⁰ On January 31, Police Force used tear gases and rubber bullets to disperse Students of Dental Surgery and Medical Doctors at Muhimbili University of Health and Allied Sciences who were demonstrating against their leadership who have introduced a new system of re-sitting exams without engaging students in advance. Police Forces on February 4th dispersed University of Dar es Salaam Students who were organizing themselves to demonstrate to State House to demand an increase of their daily subsistence allowance. There were no casualties but local media reported that 10 students were arrested by police.

⁸ Africa Media Barometer Report, 2010, pg 34

⁹ Tanzania Human Right Report, 2005, LHRC, pg 30

¹⁰ Daily News, January 6, 2011, Front Page.

Recently the Register of Political Parties, John Tendwa was reported by media that he would consider deregistering of CHADEMA if it continues with its approach to hold political rallies and organize demonstrations. The threat by Tendwa was opposed not only by CHADEMA but also some of the ruling cadres including one cabinet Minister.

Recommendations

1. Parliament should enact a progressive access to information law to ensure all persons have a right to access information held by public bodies. The legislation should be supported by guidelines and tool kits for the dissemination of information to civil society and other members of the community to actualize section 18 of the Constitution.
2. Tanzania should immediately repeal the Newspaper Act of 1976, Film Stage and Plays Act, National Security as well as other legislations which contradict the Constitution and the International Standards on Access to Information and by large inhibit freedom of expression in the country.
3. Government should decriminalize freedom of speech and defamation to conform to international standards and best practice. Civil remedies should instead be introduced to arbitrate cases of defamation
4. Government should quickly investigate and make public the attacks on journalists, peaceful protestors and other human rights defenders and prosecute the perpetrators under relevant laws. The circumstances under which police officers who opened fire on peaceful demonstrators' in Arusha in January, 2011 should be investigated and the outcomes made public.
5. Government should review the system of media regulation and repeal all provisions that interfere with media freedom, creates external regulation and move to create and maintain an environment in which the media can operate freely and independent from interference from any quarter.
6. The Government should work on initiatives to increase internet coverage in the country and come up with policies to facilitate widespread use of new media

7. Government should work towards transforming TBC into a serious public broadcaster instead of the current status where TBC is a state broadcaster.

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