



Decriminalisation of Laws Limiting Freedom of Expression in Africa: Tanzania Executive Summary

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EXECUTIVE SUMMARY: TANZANIA

1. INTRODUCTION

This report into the use of laws that criminalise freedom of expression in Tanzania is one of six country research projects into the impact of these laws conducted by the University of Pretoria on behalf of the Freedom of Expression Rapporteur of the African Commission on Human and Peoples Rights. The objective of the study is to assess whether or not the existence of such laws does limit freedom of expression in practice – and if so, the impact these laws have on this.

1.1 KEY FINDINGS

- Tanzania's Constitution does guarantee freedom of expression but it includes a number of limitations to this right, many of which are vague and therefore potentially open to abuse. At the end of 2014, the Constitution was in the process of being reviewed.
- The introduction of multi-party democracy in 1992 resulted in the opening up of the media and the launch of a range of private and community broadcasting, print and online media
- While Tanzania has ratified a number of international and regional instruments relating to freedom of expression, it has not integrated these provisions into its own laws.
- The Government has continued to utilise laws that limit freedom of expression. Cases include:
 - Between 2012 and 2014, the Government banned three publications (one indefinitely, another for 90 days and the other for two weeks) under the Newspaper Act which gives the Minister and President banning powers to promote peace and tranquillity.
 - In 2011 a publisher, editor and journalist were charged with sedition for publishing an article about support by the armed forces for the ruling party. The case was dismissed in January 2014.
 - Several interviewees also highlighted that the wide powers given to government officials to classify documents under the National Security Act is abused to limit access to information on, for example, expenditure by government.
- There have been a range of campaigns over the years to repeal provisions limiting freedom of expression and to introduce an access to information law. While the government has agreed in principle to initiate such processes, it had not by the end of 2014 acted on these commitments.

2. BACKGROUND

2.1 COUNTRY FACTS

Tanzania has a population of about 47 million people according to November 2014 updated statistics from its national statistics bureau. The country is a democratic republic formed through the union of the then Tanganyika and the island of Zanzibar in April 1964. The area now known as Tanzania Mainland gained independence from Britain in 1961 and Zanzibar in 1963. The two merged to form the current United Republic of Tanzania on 26 April, 1964. In

terms of the union agreement, Zanzibar is semi-autonomous and has its own President and Parliament.

In 1965, Tanzania became a one party state, though there were still two distinct parties for the mainland and Zanzibar. In 1977 these merged to form Chama Cha Mapindizi (Party of the Revolution). Until 1992 the CCM was the only legally recognised party. In that year, government changed the Constitution to allow for a multi-party democracy. In 1994 the first multi-party local government elections were held with general elections held in Zanzibar and the Union in 1995. While the CCM won the Union elections with a clear majority, results were close between the party and opposition group Civic United Front (CUF) in Zanzibar and the integrity of the election on the island was contested by the opposition group leading to ongoing tension in subsequent elections held in 2000, 2005 and 2010. Following the 2010 election the current President of Tanzania, Jakaya Kikwete, announced that he would initiate a constitutional review process. A Constitutional Review Commission was set up in 2011. It was dissolved after developing a draft Constitution for parliamentary consideration. A referendum on the draft Constitution is expected to be held in 2015.

While the country is a signatory to many of the international and regional agreements on freedom of expression related issues, it has not amended its laws to reflect commitments made. Courts have however in several instances used the commitments made in determining judgments. The Constitution guarantees freedom of expression and states in Article 18 that everyone has the right to freedom of opinion and expression, to communicate and seek receive and disseminate information. It further states that everyone has the right to be informed of issues of importance to society.

The limitations on these rights are however broad and not specific to freedom of expression. Many of the terms used are not defined leading to concerns that the limitation clauses could be abused. Article 30 sets out limitations on all rights set out in the Constitution including:

- No person may exercise their rights in a manner which interferes with, prejudices or curtails the rights and freedoms of other person or “the public interest”;
- The rights set out do not render unlawful any legislative provisions for the purposes of “ensuring the defence, public safety, public peace, public morality, public health, rural and urban development” or to enhance public benefit.
- The rights cannot limit any laws enacted to promote or preserve “the national interest in general”.

2.2 OVERVIEW OF MEDIA

The introduction of multi-party democracy in 1992 was followed by the opening up of the media and the launch of a range of private broadcasting, print and online media.

There are more than 30 daily papers. All but two of these are privately owned. Global Publishers has the most titles (six) and sells about 300 000 papers per week. The most read newspaper is in Kiswahili (Mwananchi). There are two national public broadcasting radio stations, three national commercial radio services and another 80 regional and district community and privately owned stations. Tanzania has one national public television channel (launched in 2001), 11 commercial services (four with national coverage) and 14 community based

television channels. Internet media is growing in the country and there were over 5 400 registered Tanzanian domain names by mid-2012.

Self-regulation of the media is well established in the country and media organisations have established the Media Council of Tanzania (MCT) which has developed a range of codes of ethics for editors and managers, journalists, the broadcast media, public relations officers and photographers. These include provisions on editorial independence from owners and managers of the media.

2.3 LAWS THAT IMPACT ON FREEDOM OF EXPRESSION

The Newspaper Act of 1976 gives the Minister and/or the President the power to prohibit publication of any newspaper if s/he is of the “opinion that it is in the public interest or in the interest of peace and good order so to do”¹. The law also states that the government can ban or suspend newspapers for public interest, peace and good order.² Ignoring such orders is a criminal offence. A person who ignores it is liable for a fine of up to US\$12 and/or imprisonment for up to four years. A person who sells or distributes a banned publication can be fined up to US\$6 and/or be sentenced to up to two years in prison.

Offence/Provision	Details	Law	Penalties
Sedition	Sedition is defined as causing disaffection among people or discontent with the state. A publication is not seditious if it is aimed at showing government has been “misled or mistaken”, is aimed at remedying any defects in law, among other things.	Sections 31 & 32 Newspaper Act of 1976	A fine of US\$6 and/or two year sentence for publishing seditious statements for first offence and a fine of US\$9 and/or three year imprisonment thereafter. A printing machine used to print a seditious publication can be seized. For possession of a seditious publication the penalty is up to US\$3 and/or one year in prison.
Publication of false news	The clause states that the publication of false news “likely to cause fear and alarm to the public” is an offence.	Section 36, Newspaper Act of 1976	A fine of up to US\$9 and/or three years in prison.
Criminal defamation	The law criminalises publication of material deemed defamatory to an individual or foreign dignitary.	Newspaper Act of 1976	US\$6 and/or imprisonment for up to two years in prison.
Incitement to violence	The law declares illegal publication “without lawful excuse” of material deemed to incite violence	Section 37, Newspaper Act of 1976	A fine of up to US\$9 and/or three years in prison
Corruption	The law bars any discussion debate on a corruption matter under investigation	Prevention and Combating of Corruption Bureau Act no 21 of 2007	A fine of \$ 60 and/or 1 year imprisonment.
No publication of classified material	Publication of classified material is banned. Classified material is broadly defined as that which has been declared classified by an authorised officer. Lack of knowledge that material is classified does not constitute a defence.	Section 5, National Security Act, 1970	Imprisonment for up to 20 years
Raising discontent among different classes of people.	This includes inciting discontent, intimidation and/or uttering words that may injure the religious feelings	Penal Code, 1945	A fine of up to US\$62,50 and or up to one year imprisonment

¹ Newspaper Act 3 of 1976 sec 25

² Newspaper Act 3 of 1976 sec 25

	of others		
Contempt of court/revealing of sources	Contempt of court can be used to compel journalists to reveal their sources	Penal Code, 1945	Fine of US\$0.50 and/or six months imprisonment
Casting prisons in a band light	Bans publication of sketches or photographs of any prison, communication with a prisoner or publication of false information about the behaviour of any prisoner or administration of a prison.	Prisons Act of 1967, section 83	Fine of US\$1 and/or up to six months in prison.
Breaching the peace	A regional or district administrator may arrest any person they believe is likely to breach the peace or “disturb the public tranquillity”.	Regional Administration Act, 1997, sections 7 & 15	Arrest on suspicion

3. LAWS IN PRACTICE

3.1 SUMMARY OF KEY CASES CHALLENGING THE LAWS

In 1993, politician and human rights activist Rev Christopher Mtikila, won a Constitutional challenge against legislation which allowed for police to bar a meeting and using insulting language “likely to cause breach of the peace”. He and three others were being charged under provisions of the Newspaper Act, Police Force Ordinance and the Political Parties Act. The Court struck down provisions of legislation which compelled political parties to get permission from the police to hold a meeting stating that parties should only have to notify the police. The judgment further stated that it was clear statements made at the meeting were figurative.

Despite this ruling, however, police have continued to require that permission for meetings and gatherings be sought and the legislation has not been amended.

3.2 SUMMARY OF KEY CASES WHERE LAW HAS BEEN USED

The Tanzanian government has used powers to ban publications under the Newspaper Act three times between 2012 and 2015:

- In July 2013 the government banned kiSwahili weekly paper Mwanahalisi indefinitely stating that three articles published were seditious, and promoted violence. The Government Gazette banning the publication did not give further detail on which articles it referred to. The publishers launched an online publication in December 2014.
- In September 2013, the Minister announced a ban on two daily newspapers – Mtanzania for 90 days and the country’s biggest newspaper Mwananchi for two weeks. In a gazetted notice of banning the Minister stated that Mwananchi had quoted a document marked confidential on new salary structures for civil servants and that a story entitled “Muslims pray under tight security” was illustrated with a picture of a police dog which the government said was aimed at inciting hatred between the police and Muslims. Mtanzania, according to the gazette, had regularly published emotive stories implying the government was slow in combating terrorist attacks.
- In 2011 the publisher, editor and a journalist from Mwananachi were charged with sedition for publication of an article on the armed forces. The case was dismissed in January 2014 as the magistrate found that the state’s case was vague and there was no evidence that the article had caused members of the defence force to disobey orders. The magistrate stated that the publisher, editor and journalist were exercising their right to freedom of expression.

Several of those interviewed highlighted that they are often threatened with use of the laws which has a chilling effect on freedom of expression. Several interviewees also highlighted that the powers to declare information “classified” under the National Security Act is used often to hinder transparency.

3.3 ADVOCACY INITIATIVES IN THE COUNTRY

There have been a number of initiatives by a range of different organisations to decriminalise freedom of expression, including Lawyers for Human Rights, the Media Council of Tanzania (MCT), Media Owners Association of Tanzania (MOAT), the Media Institute of Southern Africa Tanzania branch (MISA-TAN), the Tanzania Editors Forum (TEF) and the Tanzanian Media Womans’ Association (TAMWA). These have included campaigns against the Newspaper Act, calls for a new media law to be introduced reinforcing and protecting freedom of the media, lobbying for an Access to Information Law and campaigns against the banning of publications. The self-regulator, the Media Council of Tanzania, is also actively involved in advocating for the introduction of laws protecting freedom of expression and of the media.

One of the major joint campaigns by these organisations was in response to a Freedom of Information Bill introduced for discussion in 2006. The Bill included provisions on freedom of the media and access to information and proposed the introduction of a statutory regulator to replace the MCT. It also repeated some of the provisions limiting freedom of the media currently included in the Newspaper Act. Following widespread awareness raising by the NGOs, government agreed to introduce a separate Access to Information Bill. The revised Bills had not by the end of 2014 been made public.

4. IMPACT OF LAWS

Interviews were conducted with 22 people to ascertain the impact of and views on laws relating to freedom of expression. Interviewees included:

- Three editors of private newspapers,
- Several journalists, including from the state and private media;
- A member from the Media Council of Tanzania;
- Eleven Members of Parliament including both ruling party and opposition members and three from Zanzibar. MPs from the ruling party requested anonymity.
- A Parliamentary Committee Clerk.
- A magistrate.
- A police officer.
- Directors of two human rights organisations’ and
- Two law lecturers.
- Private Advocate

A full list of interviewees is provided in an Appendix to this summary.

All those interviewed indicated that the Newspaper Act in particular infringes on freedom of expression, while some highlighted other laws as also impacting on this right. MPs interviewed could not all name laws that limit freedom of expression but generally were aware that these are in place. They did however state that they are aware that such laws are used citing the 2007 temporary banning of an education NGO which had criticised the government’s implementation

of educational policies and a 2012 abduction and torture of the chairperson of the Medical Association of Tanzania during a strike by doctors.

Eight of the eleven MPs interviewed said they believed that opposition parties are particularly targeted by police and the state.

4.1 EXPERIENCES OF LAWS

The managing editor of Mwanachi newspaper, Absalom Kibanda, reflected on being charged for sedition along with a journalist and the publisher of the newspaper in 2011. He said he was held for one day at the time of being charged, though the journalist had been detained for a week. He said that until the case was dismissed in January 2014, he had had his movements restricted and his travel documents were taken away. He said in the interview that editors and journalists definitely tempered speech to avoid prosecution or banning of publications.

The acting manager of the Guardian Weekend Edition, Rodgers Luhwago, agreed that there is self-censorship in the media stating that his newspaper sometimes ignored stories or avoided certain sources and columnists in fear of being charged. Luhwago stated that he is particularly cautious about news involving government and the police force. Election coverage, he stated, was another area of caution. He said that editors face pressure from owners, advertisers and politicians not to cover certain stories.

Journalist Jerry Murro said in addition to the Newspaper Act, the broad powers of classification in the National Security Act really hampered freedom of expression and the media's ability to hold those in power to account. He said that the Corruption Act further limited reporting and noted that he had been charged under this law while working for the Tanzanian Broadcasting Corporation for running a story about corruption among traffic officers in 2010. The case was dismissed in 2011. He was dismissed following his prosecution. He said that while facing charges he had had to report regularly to the police station and court. He said that the case has affected his job opportunities as he is viewed with suspicion and had affected him financially as he had paid the legal fees himself.

Murro said that over 70% of newspaper advertising revenue came from government and this made publishers particularly cautious of stories that might threaten this revenue.

A Zanzibarian journalist from the state media who also requested anonymity stated that most media on the island is either owned by the state or by politicians. This, he said, affected the objectivity of media and editor's he said often sanctioned journalists writing stories critical of the owners. He said that he had received a letter of warning from his editor cautioning about writing anti-government stories after he had written a story on alleged misuse of donor aid. He said that he had also faced management sanction for refusing to cover a false story on government orders. The journalist said that journalists at state media were barred from reporting anything seen to be critical to government and that his stance had resulted in him being denied tuition fees for his studies.

Opposition MP Suzan Kiwanga said in an interview that she was careful about what she said and how she expressed herself after being warned by police several times not to criticise government. She was arrested in 1999 as a member of the Tanzania Labour Party for holding a meeting without permission from police but acquitted 18 months later.

A ruling party MP who requested anonymity said that he is aware of times when the media does not quote politicians in fear that they will be charged under laws restricting freedom of expression.

Tanzania Women's Lawyer Association Executive Director, Tikel Mwambipile, stated however that she did not limit what she said in fear of the laws.

4.2 GENERAL VIEWS ON THE LAWS

The Newspaper Act is seen as the most inhibiting of freedom of expression, given the wide ranging powers granted under this to ban publications and charge individuals for sedition, among other things.

A police officer who requested anonymity further stated that laws prohibiting gatherings without police permission also violated freedom of expression, stating that these were draconian. He said that he is aware of several arrests of human rights activists for participating in such meetings.

Interviewees though also cited the broad powers of classification of government information as problematic, stating that this power is widely used. Members of the self-regulator, for example, stated that complaints about media stories often arrive stamped as confidential in breach of the MCT's requirements that complaints be shared with media organisations accused of breaches. Others also said that information on government expenditure is sometimes classified barring access to information on allegations of excessive spending.

A magistrate interviewed stated in the meanwhile that in his view Government regularly violated citizens' constitutional right to freedom of expression but that the process of suing the state is too cumbersome and therefore there have been very few cases.

Assistant Law Lecturer and researcher on media laws, Laurean Mussa, agreed that the Newspaper Act and National Security Act are the most problematic as one limits reporting and the other access to information. Senior Advocate Magdalena K. Rwebangira cited the Constitution and Penal Code provisions allowing for gatherings to be barred as particularly damaging to freedom of expression. She cited several cases where meetings have been declared illegal or individuals charged for attending such gatherings.

5. RECOMMENDATIONS

There is a need for regional support for ongoing campaigns in Tanzania to reform existing laws and introduce an Access to Information law. Given the constitutional reform process, the research also recommends that the African Union's Freedom of Expression Rapporteur support campaigns to push for stronger provisions protecting freedom of expression in the Constitution in line with International principles agreed to and repeal of necessary provisions of laws, including the Newspaper Act, National Security Act, Penal Code and police acts.

The research further proposes that organisations together where necessary with assistance from the AU engage in strategic litigation to challenge infringements of freedom of expression. The courts have previously giving rulings challenging existing legislative limitations and such action could support campaigns for reform.

Finally, such campaigns should incorporate ongoing support for and strengthening of self-regulatory media structures currently in place.

Interviewees

Managing editor of Mwanachi newspaper, Absalom Kibanda

Eight MPs from the ruling party (including two from Zanzibar) who requested anonymity

MP for CHADEMA, Suzan Kiwanga

MP for CHADEMA, Tundu Lisu

MP for CHADEMA, Joseph Mbilinyi

MP for Civic United Front from Zanzibar, Hon. Mnyaa

Magistrate, Said Msuhya

Police officer who requested anonymity

A Zanzibarian journalist working for state media who requested anonymity

Director of Advocacy and Reforms at the Legal and Human Rights Centre, Harod Sunguisa

Chief Editor, the Guardian on Sunday, Rodgers Luhwago

Journalist Jerry Murro from the Tanzanian Broadcasting Corporation

Tanzania Women's Lawyer Association Executive Director, Tikel Mwambipile

Assistant Law Lecturer and researcher on media laws, Laurean Mussa

Senior Attorney, Magdalena K. Rwebangira

Ruaha University Dean of Faculty of Law, Dr. Lilian Mihayo Mongella

