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Controversial Media and Information Laws close Avenues of Free Expression in Tanzania

The recent legal changes in Tanzania including the Cybercrimes Act, the Statistics Act as well as the Draft Media Services Bill have been met with harsh criticism from civil society groups and the international community for their restrictive provisions, which are said to compromise or violate fundamental human rights and hinder the development of a broader civil society.

'Every person has a freedom of opinion and expression of his ideas; has out right to seek, receive and, or disseminate information and ideas regardless of national boundaries; has the freedom to communicate and a freedom with protection from interference from his communication [...].'¹

Needless to say, the Constitution of The United Republic of Tanzania recognises both freedom of expression and the right to privacy as key democratic rights. However, the country is currently undergoing major legal changes with the recent passage of the Cybercrimes Act and the Statistics Act. Signed in 2015, both of these acts have increasingly attracted criticism from media stakeholders and civil society for their legal setbacks and restrictive provisions.

In the meantime, the Tanzanian government postponed tabling the Draft Media Services Bill in response to a public outcry and the numerous concerns raised that in its present form it would close down democratic space and curtail freedom of expression.

While the government of Tanzania posits that these laws are essential to facilitate access to information and regulate the media sector, the political opposition inside the country as well as national and international human rights advocates shed light on their severe impacts, particularly on the right to privacy and the ability of the media to operate freely.

Going quiet with the Cybercrimes Act 2015

With the coming into force of the Cybercrimes Act in April 2015, Tanzania became the fifth African nation to introduce a cybercrimes law following Kenya, South Africa, Nigeria and Zambia.² Endorsed on the ground that cyber-related crimes such as the distribution of sedition messages and classified government documents on social media platforms increased in frequency,³ Section 16 of the Cybercrimes Act criminalises the publication of 'false, decep-

¹ The Constitution of The United Republic of Tanzania (1977), Article 18 as of 2005 <http://www.judiciary.go.tz/downloads/constitution.pdf> Accessed 5 June 2016

² *BBC News*, 'Letter from Africa: Tanzania's cybercrime law', October 18, 2015 <http://www.bbc.com/news/world-africa-34517711> Accessed 5 June 2016

³ *Daily News - Tanzania*, 'Cyber-related offences on the decline, Parliament told', June 7, 2016, p.2

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itive, misleading or inaccurate' information, data or fact.⁴ It thereby confers power to law enforcement officers to search and seize computer systems, data and information without previous court order.

In October 2015, at least three people were brought to trial under the Cybercrimes Act.⁵ Moreover, during last year's general election eight staff members of the biggest opposition party CHADEMA were charged under Section 16 of the Cybercrimes Act because of having allegedly published 'inaccurate and unverified data' through social networks and the party's internal election management system.⁶ In 2016, there was another related case where a student's Facebook post resulted in him having to appear in court after being accused of spreading misleading information on political affairs in Zanzibar.⁷

Proponents of the Cybercrimes Act reiterate that cyber-related offences in Tanzania have declined by 60 percent since the Act came into force.⁸ They tend to claim that it has helped to track abuse on the internet by pointing out that before the enactment of the law, there were 459 cases on the distribution of pornographic materials, six offences related to incitement, 117 offences on internet abuse and nine cases on the distribution of confidential state documents compared to one offence related to pornography and two on the distribution of classified government documents between October and May this year.⁹ Accordingly, the driving force behind the adoption of the Cybercrimes Act was the intention to protect people from abuse such as online fraud.¹⁰

Others, in contrast, go much further. Like Tanzania's Prime Minister, Kassim Majaliwa, they underline that the country is directly affected by global security threats and that the Cybercrimes Act is not just about freedom of expression, but also plays an increasingly important role in the fight against terrorism.¹¹ Some have gone as far as suggesting that the Cybercrimes Act could even be a reaction to the Arab Spring and the government's attempt to prevent a similar civil uprising by regulating freedom of expression.¹²

However, human rights defenders have repeatedly voiced that the Cybercrimes Act has granted excessive authority to the police and law enforcement officers and underline the great potential to abuse the law to persecute government critics. Not only are the police and law enforcement officers empowered to storm the premises of news agencies and confiscate or inspect electronic devices after an offence has been reported. They are also given the right to search cell phones, laptops or computers should there be 'reasonable grounds' to suspect that evidence is contained to prove a crime has been committed.¹³ As a result, searching and seizing computer systems, data and information without previous court order may seriously infringe the right to privacy as provided under Article 16 of the Constitution.

⁴ Cybercrimes Act Bill Supplement, February 20, 2015, *Gazette of the United Republic of Tanzania* 8:96

⁵ Freedom House, Freedom of the Press 2016 Tanzania <https://freedomhouse.org/report/freedom-press/2016/tanzania> Accessed 20 June 2016

⁶ Tanzania Human Rights Defenders Coalition, 'Report on the situation of human rights defenders in Tanzania', Cybercrimes Act 2015 Recorded Cases, 2015, p.28

⁷ Karama Kenyunko 'University student charged in court over Facebook post', *The Guardian*, May 18, 2016

⁸ Hilda Mhagama, 'Tanzania: Law Reduces Cyber Crime By 60 Per Cent', *All Africa*, January 22, 2016 <http://allafrica.com/stories/201601250502.html> Accessed 5 July 2016

⁹ *Daily News*, 'Cyber-related offences on the decline, Parliament told', June 7, 2016, p.2

¹⁰ Hilda Mhagama, 'Tanzania: Law Reduces Cyber Crime By 60 Per Cent', *All Africa*, January 22, 2016 <http://allafrica.com/stories/201601250502.html> Accessed 5 July 2016

¹¹ Freddy Macha, 'Minister cautions on cyber security', *The Citizen*, May 19, 2016 p.6

¹² African Media Barometer, 2015: 14

¹³ Cybercrimes Act Bill Supplement, Section 31, February 20, 2015, *Gazette of the United Republic of Tanzania* 8:96

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Moreover, Section 20 of the Act also deserves mentioning as it prohibits the initiation of the transmission of unsolicited messages, understood as communications that are not requested by the recipient, their relay or retransmission and the falsification of header information contained in such messages.¹⁴ Therefore, although it may be that unsolicited messages are distributed without prior consent of the recipient and can be considered in some instances an intrusion of the recipient's privacy, the fact remains that the unsolicited character of a message is strictly subjective. This makes legal treatment all the more difficult given that it is not always evident whether a crime has been committed or not.

The response from the international community

It may come as no surprise that the European Union Head of Delegation, the Heads of Mission of eleven EU Member States and the Heads of Mission of Canada, Norway, Switzerland and the United States issued on 9 November 2015 a joint local statement in view of Tanzania's Cybercrimes Act and the potential infringement of fundamental freedoms deriving therefrom.¹⁵ They expressed deep regret for the arrest of members of staff of the Legal and Human Rights Centre whose technical equipment was confiscated as they were collecting observations made by national election observers. The arrest was motivated by Section 16 of the Cybercrimes Act, even though the organisation had been accredited to pursue this task by the National Electoral Commission.

Furthermore, the US Millennium Challenge Cooperation cancelled a \$470 million aid project on rural electrification in Tanzania due to the perceived neglect of democratic principles in this year's re-election in Zanzibar and the absence of measures taken by the Tanzanian government 'to ensure freedom of expression and association are respected in the implementation of the Cybercrimes Act.'¹⁶

The Statistics Act: Building greater trust?

On 26 March 2015, the Statistics Bill of 2013 was passed and established the National Bureau of Statistics (NBS) as an autonomous public office under the Ministry responsible for Finance. The Act 'only' attempts to govern 'official statistics' published or approved by the NBS and produced or compiled by the Bureau; government institutions and agencies.¹⁷ Its coming into force generated serious concerns among citizens and agencies about the lack of clarity on its terms. Consequently, the NBS deemed it necessary to reassure the public in a statement of clarification that 'the preparation of the Act has followed regular legislative process, it has been broadly consulted and does not restrict production and publication of statistical data.'¹⁸ Beyond that, it highlights that the Statistics Act does in no way prohibit any person or agency from producing or publishing statistical information. However, should 'official statistics' be considered in government planning and policy-making, they would have to strictly adhere to the set standards and principles.

¹⁴ Cybercrimes Act Bill Supplement, Section 20, February 20, 2015, *Gazette of the United Republic of Tanzania* 8: 96

¹⁵ Delegation of the European Union to Tanzania, 'Joint Local Statement on Human Rights Infringements', November 9, 2015

http://eeas.europa.eu/delegations/tanzania/documents/press_corner/20151109_01_en.pdf

Accessed 8 June 2016

¹⁶ John Aglionby 'US aid agency cancels \$470m Tanzania aid project', *Financial Times*, March 29, 2016 <http://www.ft.com/cms/s/0/465b446a-f5c8-11e5-9afe-dd2472ea263d.html#axzz4G45QGNFM> Accessed 17 June 2016

¹⁷ The Statistics Act (2015), Section 20

<http://parliament.go.tz/polis/uploads/bills/acts/1452062087-ActNo-9-2015-Book-1-10.pdf>

Accessed 10 June 2016

¹⁸ Statement of Clarification on Misconception of Statistics Act 2015 <http://www.nbs.go.tz/nbstz/index.php/english/client-service-charter/88-statement-of-clarification-on-misconception-of-statistics-act-2015> Accessed 10 June 2016

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Although the Statistics Act contains valuable measures such as strengthening the NBS as an autonomous entity with professional independence, the Rapid Analysis of the Tanzanian civil society organisation, Twaweza, highlights the problematic aspects that appear to render activities involving statistics in Tanzania highly risky.¹⁹ Any person or agency intentionally distorting 'official statistics', whether publishing or communicating them as such, commits an offence under Section 37 (5) of the Act.²⁰ The publication and dissemination of statistics is therefore legal only if approval is granted by the NBS. Yet, uncertainty remains in terms of who is allowed to generate statistics, what authorisation is required and what falls under the category of 'unofficial' statistics.²¹

Besides, there is no stated maximum limit for prison terms and fines, creating doubts on whether the severity of punishments matches the gravity of offences. What the Act ignores is that statistical information is controversial in nature and is needed to ensure evidence-based policy making, public accountability and government transparency. As a result, unofficial but notable statistics about Tanzania may not be publishable and prior approval would be required. To indicate an example, although Tanzania has made progress in delivering basic services like health and education and official statistics demonstrate that the primary school enrollment rate is at 94 percent, the poor quality of education is reflected in 'unofficial' statistics.²² Only about a third of the school children at the age of 10 and above are able to read a passage in English from the second-grade syllabus.²³

Against this background, the Statistics Act is said to restrict the freedom of the media and contradict Tanzania's commitment to open government, a multilateral initiative led by the United States to promote government transparency and accountability on a global scale including making information more accessible to citizens.²⁴ In the light of current developments, it may thus be ironic that Tanzania was one of the first African countries to join this initiative in September 2011.

The Media Services Bill: Will the Media be silenced in the future?

The Media Services Bill was tabled under a certificate of urgency alongside the Access to Information Bill in March 2015. However, the long-discussed Media Services Bill, which would come in place of the 1976 Tanzania News Agency Act and the Newspaper Registration Act, was postponed after it provoked harsh criticism from media stakeholders and the civil society. Regardless of Tanzania's 'comparatively well-established self-regulatory body in the form of the Media Council of Tanzania',²⁵ the Media Services Bill would establish in its current form a new Media Services Council with powers to oversee the activities of media outlets and social media contents, license newspapers and, where necessary, inspect media agencies. The Bill would also introduce tough criminal sanctions. Anyone found guilty of vio-

¹⁹ Twaweza Rapid Analysis and Key Questions on Tanzania's Statistics Act, April 15, 2015 <http://www.twaweza.org/go/stats-act-analysis> Accessed 17 June 2016, p.2

²⁰ The Statistics Act, 2015, Section 37 <http://parliament.go.tz/polis/uploads/bills/acts/1452062087-ActNo-9-2015-Book-1-10.pdf> Accessed 10 June 2016

²¹ Twaweza Rapid Analysis and Key Questions on Tanzania's Statistics Act, April 15, 2015 <http://www.twaweza.org/go/stats-act-analysis> Accessed 17 June 2016, p.2

²² Justin Sandefur, 'Five charts that may soon be illegal in Tanzania', *The Washington Post*, April 8, 2015 <https://www.washingtonpost.com/blogs/monkey-cage/wp/2015/04/08/five-charts-that-may-soon-be-illegal-in-tanzania/> Accessed 8 July 2016

²³ Justin Sandefur 'Five charts that may soon be illegal in Tanzania', *The Washington Post*, April 8, 2015 <https://www.washingtonpost.com/blogs/monkey-cage/wp/2015/04/08/five-charts-that-may-soon-be-illegal-in-tanzania/> Accessed 8 July 2016

²⁴ Open Government Partnership: Tanzania <http://www.opengovpartnership.org/country/tanzania> Accessed 15 June 2016

²⁵ ARTICLE 19, 'Tanzania: Media Services Bill', Legal Analysis, 2015 <https://www.article19.org/resources.php/resource/38078/en/legal-analysis:-tanzania--media-services-bill> Accessed 14 July 2016, p.10

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lating its provisions through publishing ‘false statements’ or acting with a seditious intention, would be subject to a fine of not less than TZS 5 million or three years in prison or both.²⁶

Proponents of the Media Services Bill are convinced that it could promote professionalism in the media industry and would purportedly regulate all media activity. Nevertheless, as currently drafted, the Bill is likely to have the exact opposite effect and worsen the climate for free expression in the country, placing superfluous regulations on media outlets, encouraging even greater self-censorship than there already is and limiting the ability of the media to function effectively.

Close to the October 2015 general elections, Damas Kanyabwoya, journalist at The Citizen, one of Tanzania’s leading newspapers, argued in an interview conducted by Freedom House that the Media Services Bill is ‘a step back’ since it provides a framework for the government to govern and control media activities and goes against best practice.²⁷ In a similar vein, the Executive Secretary of the Media Council of Tanzania (MCT), Kajubi Mukajanga, commented that the Media Services Bill ‘appears to be an even worse piece of legislation, as it seeks to also license journalists and introduces draconian penalties for offenders, including hefty fines and jail terms that do not have a stated limit.’²⁸

Following the legal analysis of the international non-governmental human rights organisation, ARTICLE 19, the Bill ‘would make it impossible to practice journalism or run a media outlet without permission from regulatory bodies under the direct control of the government’, while ‘statutory bodies are always at risk of political interference and abuse.’²⁹ Enactment of the bill in its present form would not only restrict the independence and freedom of the media in Tanzania. It would also contravene Article 19 of the Universal Declaration of Human Rights and place Tanzania in clear breach of its international obligation to respect and ensure the right to freedom of expression.³⁰ Section 36 criminalises, for instance, the publication of information that is ‘intentionally or recklessly falsified.’³¹ International law strongly disapproves such ‘false news’ provisions that ‘unduly limit the exercise of freedom of opinion and expression’ and jail sentences imposed on these grounds.³²

A hidden agenda?

One is left wondering what the hidden agenda behind the recent legal changes in Tanzania is. Is it the silencing of government critics? The increase of government control over what the media can or cannot say? Or perhaps the avoidance of figures that would negatively re-

²⁶ Tanzania Human Rights Defenders Coalition, ‘Report on the situation of human rights defenders in Tanzania’, 2015, p.26

²⁷ Freedom House, ‘New Laws Threaten Press Freedom in Tanzania’, July 21, 2015 <https://freedomhouse.org/blog/interview-new-laws-threaten-press-freedom-tanzania> Accessed 14 July 2016

²⁸ The Media Council of Tanzania ‘The Media Services Bill is worse, points out MCT Executive Secretary’ <http://mct.or.tz/index.php/component/content/article/42-news/rokstories/358-the-media-services-bill-is-worse-points-out-mct-executive-secretary> Accessed 14 July 2016

²⁹ ARTICLE 19, ‘Tanzania: Media Services Bill’, Legal Analysis, 2015, <https://www.article19.org/resources.php/resource/38078/en/legal-analysis:-tanzania--media-services-bill> Accessed 14 July 2016, p.5,10

³⁰ The Universal Declaration of Human Rights (1948) <http://www.un.org/en/universal-declaration-human-rights/> Accessed 13 July 2016

³¹ ARTICLE 19, ‘Tanzania: Media Services Bill’, Legal Analysis, 2015, <https://www.article19.org/resources.php/resource/38078/en/legal-analysis:-tanzania--media-services-bill> Accessed 14 July 2016, p.16

³² ARTICLE 19, ‘Tanzania: Media Services Bill’, Legal Analysis, 2015, <https://www.article19.org/resources.php/resource/38078/en/legal-analysis:-tanzania--media-services-bill> Accessed 14 July 2016, p.16

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flect on the government? It seems that the current legal environment in Tanzania can potentially curtail basic human rights as a state of uncertainty prevails over the long-term implications of the recently passed Cybercrimes Act and Statistics Act and the Draft Media Services Bill.

What can be observed for certain, however, is the rapid technology advancement and the trend towards digitalisation. In today's world a lot of information is shared and there is a myriad of platforms for citizens to express themselves more freely. Hope should thus not fade that one day Tanzania's communication laws, policies and practices will be in line with international human rights standards, even if this implies the review of current laws to ensure compliance with the principles of proportionality, judicial authorisation and oversight as regards communication surveillance.

Tanzanians should have access to the information they need to make informed decisions about their future because as once famously said '[o]ur lives begin to end the day we become silent about things that matter.'³³

³³ This quote is undated but tends to be ascribed to Martin Luther King, Jr.