



ARTICLE 19 Individual Submission to the UN Universal Periodic Review of the United Republic of Tanzania

**For consideration at the 25th session of the UPR Working Group
to be held in April/May 2016**

21 September 2015

Executive summary

- 1 ARTICLE 19 welcomes the opportunity to contribute to the second cycle of the Universal Periodic Review (UPR) of the United Republic of Tanzania (Tanzania). This submission focuses on Tanzania's compliance with its obligations under international human rights law to protect and promote the right to freedom of expression and information.
- 2 During the first cycle of its UPR, Tanzania committed to:
 - Guarantee freedom of expression, association and assembly by allowing human rights defenders, political opponents and journalists to express freely their views in line with international human rights law (Netherlands)
 - Work with the media and other stakeholders to ensure that all organs of the State understand and appreciate the constitutional guarantees of freedoms of press and assembly (USA)
 - Adopt a new media law enshrining freedom of the press (Canada)
 - Adopt new legislation that guarantees the freedom of the media as well as the right to information (Norway)
- 3 ARTICLE 19 observes that Tanzania has not made significant progress in implementing the recommendations it accepted during the first cycle. Laws negatively affecting freedom of expression have not been repealed or amended and the space for media to freely operate has become increasingly restricted. Tanzania has also not passed an access to information law despite its commitment to do so during the previous UPR and at the October 2013 London Summit of the Open Government Partnership (OGP).
- 4 This submission addresses the following:
 - Laws restricting freedom of expression
 - Harassment, intimidation and attacks on journalists
 - Participation in public affairs and access to information

Laws restricting freedom of expression

- 5 The Tanzanian Constitution guarantees the right to freedom of expression but this is undermined by various laws. ARTICLE 19 is concerned about the following legislation, in particular.
- 6 The **Tanzanian Cybercrimes Act 2015** was passed by Parliament on 1 April 2015. The Act has drawn much criticism from national and international human rights groups for failing to comply with international and regional freedom of expression standards. While the government of Tanzania has committed to revising it before the end of this parliamentary session, the law remains in place. Key concerns include:

- Procedural safeguards for human rights are markedly absent throughout the Act. In particular, there is no reference to Tanzania's obligations to uphold and protect freedom of expression and the right to privacy under the International Covenant on Civil and Political Rights (ICCPR) and African Charter on Human and Peoples' Rights (ACHPR).
- In general, the Act imposes disproportionate criminal sanctions. Minimum financial and custodial sanctions are imposed throughout the Act, which in effect prevent a court of law from exercising discretion in the balancing of aggravating and mitigating factors during sentencing proceedings. For example, Section 7(2) criminalises the communication, disclosure or transmission of any computer data, program, access code or command to an unauthorized person without any requirement that there be dishonest intent, or that serious harm should result. Furthermore, no public interest defences are available.
- Section 31 confers discretionary power upon law enforcement officials to conduct search without judicial oversight, such as through a warrant, which given the absence of safeguards is a serious infringement on an individual's right to privacy.
- Section 4-7 of the Act allow for the prosecution of whistleblowers, in violation of international standards

7 The **Statistics Act 2015** was passed on 27 March 2015, despite criticism from media stakeholders that the law falls short of regional and international standards. ARTICLE 19 highlights the following concerns:

- Article 37(1)(b) makes it illegal for anyone to share any information (not limited to statistical information) without proper authorisation, which is exceptionally broad and may be abused to illegitimately restrict freedom of expression.
- Article 37(4) makes it a criminal offence to publish or communicate "false" statistical information and Article 37(5) makes it an offence to publish or communicate official statistical information that "may result in the distortion of facts". "False" information is not defined and who or what criteria will be used to determine this is not clear. It is of concern that this ambiguity may be exploited to crack down on news reporting, debate, or the expression of opinions with which the government disagrees.
- Disproportionate financial and custodial sanctions are provided for in the Act. Part (V) Section 37(4) of the Act states that any journalist who commits an offence shall be liable to a fine of not less than TZS 10,000,000 (approx. \$4,600 USD), imprisonment for a term of not less than 24 months, or both. Such a sanction is overly harsh and disproportionate

8 The **1976 Newspaper Act** continues to be used to curtail freedom of expression and media freedom. ARTICLE 19 highlights several issues of concern relating to the Act:

- It imposes a fine and jail sentence of up to four years on any person who prints or publishes a newspaper without registering it with the Registrar of Newspapers or who furnishes the Registrar with false information regarding the paper's particulars. International standards do not permit the registration of print media, as this may be abused to undermine media independence, in particular where it is enforced through disproportionate criminal sanctions.
- It authorises any police officer "to seize any newspaper, wherever found, which has been printed or published, or which he reasonably suspects to have been printed or published" in violation of the Law (Section 22). Such broad powers to seize publications amount to a serious form of prior censorship and would rarely be justified under international human rights standards.

- It gives the Minister for Information powers to ban or close down newspapers “in the public interest” or “in the interest of peace and good order” (Section 25). Such powers are clearly disproportionate under international law.
 - Articles 31, 32, and 35 contain several provisions of sedition. Article 32 specifically says if found guilty of sedition, a journalist may be jailed for up to 3 years or fine of approximately \$9,000USD.
- 9 The Zanzibar counterpart to this law is the **1988 Registration of News Agents, Newspapers and Books Act** is even more sweeping and restrictive in its provisions. It legislates the licensing of journalists and the establishment of a government-controlled “advisory board” to oversee private print media.
- 10 The government has routinely used the 1976 Newspapers Act to intimidate the media. For example:
- Tanzanian authorities banned circulation of the privately owned regional weekly *The East African* on 21 January 2015 citing the newspaper's lack of registration, as required by the 1976 Newspaper Act. Local journalists have stated that they believed the paper was shut down because of its critical coverage of the government.
 - In September 2013, the Minister for Information banned *Mwananchi* and *Mtanzania* newspapers for fourteen and ninety days, respectively. It was stated that the newspapers were sanctioned for allegedly publishing “seditious” stories deemed likely to provoke incitement and hostility with the intention of influencing the public to lose confidence in state organs and create disharmony.
 - In July 2012, the Ministry of Information indefinitely suspended the leading critical weekly, *MwanaHalisi*. It was suspected this was due to its in-depth coverage of a 2012 physicians’ strike, and the paper’s implication of a security officer in the brutal abduction and attack of a protest organiser. The ban was finally lifted by the High Court on 4 September 2015 stating the Minister for Information, Dr. Fenella Mukangara, had breached procedures, as the newspaper was not given the right to be heard before it was banned.
- 11 In May 2015, the Tanzania government published the **Draft Media Services Bill 2015**, which was to replace the 1976 Newspapers Act and the Tanzania News Agency Act. Stakeholders said the bill was draconian and two months later the government withdrew it to allow for consultation.
- 12 The Draft Media Services Bill would not have addressed the deficiencies of existing legislation. For example, it would make it impossible to practice journalism or run a media outlet without permission from regulatory bodies under the direct control of the government. This would have a severe chilling effect on political debate, further compounded by tough criminal sanctions for vaguely-worded offences of “sedition” and publishing “false statements”. Enactment of the Bill would have placed Tanzania in clear breach of its international obligation to respect and ensure the enjoyment of the right to freedom of expression.
- 13 **Criminal defamation**, abuse and insult laws are found in Article 89/1a of the Penal Code. Criminal defamation is a disproportionate restriction on freedom of expression, and is most often abused by those in power to limit legitimate criticism. The African Court on Human and People’s Rights decision *in Konate v Burkina Faso*, has also ruled that there is inconsistency of criminal defamation laws with Article 9 of the African Charter on Human and Peoples’ Rights (African Charter), guaranteeing the right to freedom of expression. Redress for defamation should therefore be provided through the civil law, as this is a more proportionate and adequate mechanism for the protection of individuals’ reputations.

- 14 The **National Security Act of 1970** is problematic in terms of restrictions to freedom of expression for the following reasons:
- The Act gives the government wide discretion to define what should be disclosed or withheld from the public and makes it a punishable offence to investigate, obtain, possess, comment on, pass on, or publish any document or information which the government considers to be classified. This includes documents or information relating to any public authority, company, organization, or entity which is in any way connected with the government, including the ruling party.
 - Any official or contractor to any government agency or department who might have been a source of any such information is also liable to prosecution.
 - Anyone who receives or communicates any classified matter is also guilty of an offence. Further, it is no defence that an accused person could not reasonably have known that it was a classified matter. The penalty for any of these offences is imprisonment for up to twenty years.
 - The Act also provides sweeping powers to search, seize and arrest and detain individuals, with or without warrants, on the grounds of suspicion alone.
 - Journalists' right to protection of sources is seriously affected by the Act since any refusal to provide information or the provision of false information to investigators is punishable by a term of imprisonment of up to five years.
- 15 The **1989 Civil Service Act** provides excessive restrictions to access to information since it prevents any commissioner or civil servant from disclosing information received during the course of government employment without the express consent of the Permanent Secretary of the relevant ministry or department.
- 16 The **1970 Film and Stage Act** excessively restricts the freedom of expression and creativity of individuals as it prohibits taking part or assisting in film-making unless the relevant Minister has granted permission. Further, it prohibits the making of "home movies" by individuals.
- 17 The **1965 Public Leadership Code of Ethics Act** restricts the investigative role of media and unduly prohibits investigations and reports on the property holdings of public leaders.
- 18 The **1962 Regions and Regional Commissioners Act** and the **1962 Area Commissioner Act** have been used against journalists who expose malpractice and maladministration in public offices, in the public interest.
- 19 ARTICLE 19 has repeatedly criticized these laws as being fundamentally incompatible with international and regional standards on freedom of expression and the Tanzanian Constitution. Their urgent and comprehensive review is necessary.

Harassment, intimidation and attacks on journalists

- 20 During its first UPR, Tanzania committed to guarantee freedoms of expression, association and assembly by allowing human rights defenders, political opponents and journalists to express freely their views in line with international human rights law.
- 21 However, journalists have continued to report cases of harassment and intimidation in the course of their work. For example:
- On 2 September 2012, Channel Ten television journalist, Daudi Mwangosi was killed when police opened fire into a crowd who had gathered to witness the opening of a Chama cha Demokrasia na Maendeleo (Chadema) Party office in Nyololo village, Mufindi South.

Mwangosi was reporting on the event when one of the teargas canisters that had been fired into the crowd exploded next to him, seriously injuring his stomach and killing him. Authorities have filed murder charges against Pacificus Cleophace Simoni, the junior officer who fired the canister, and the case is pending.

- Chairman of the Tanzania Editors Forum, Absalom Kibanda, was seriously attacked at the gate of his home at approximately 1am on 6 March 2013. As a result of the attack he lost an eye. It is thought that the attack was related to Kibanda's work as a journalist.
- On March 2014, Christopher Kidanka, editor and publisher of the monthly *Africa Tomorrow* magazine reported having received anonymous threats. The threats came after he published an investigative story on poaching in Tanzania.
- On 20 September 2014, Joseph Badi (*Habari Leo*), Josephat Isango (*Tanzania Daima*) and Shamim Ausi (*Hoja Newspaper*) were injured by police officers when covering a story involving Freeman Mbowe, Chairman of Chama Cha Demokrasia na Maendeleo (Chadema Party). Mbowe had been summoned to the police headquarters for questioning for allegedly making a "seditious" statement during the Party's congress.

Participation in public affairs and access to information

22 During its first UPR, Tanzania promised to adopt new legislation to guarantee freedom of the media as well as the right to information. However, on 27 June 2015, the government withdrew the Access to Information Bill 2015 pending further deliberations by stakeholders. The bill had been scheduled for its second reading in Parliament.

23 The Access to Information Bill, in its most recent form, raised concerns because:

- It proposed a minimum 15-year prison sentence for any government official who releases information that is subject to a number of overly-broad and vaguely-defined exemptions. Those exemptions include disclosures that are "not justified in the public interest", that "infringe commercial interests" or that "significantly undermine the operations of the Tanzania Broadcasting Association". These clauses had the potential to generate fear, and create a clear disincentive for officials not to provide information.
- The bill proposed a minimum five-year prison sentence for the offence of publicly sharing information received from an "information holder", defined as a public authority or private organisation that receives public funds or possesses information related to public health, the environment, human rights, or illegal activities. The bill would further allow such "information holders" to demand fees and would not prohibit officials from refusing to provide requested information.

Recommendations

24 In light of these concerns, ARTICLE 19 calls upon Member States to put forward clear and strong recommendations to the government of Tanzania to:

- i. Immediately repeal all laws infringing on freedom of expression including the Newspaper Act of 1976, Film Stage and Plays Act, National Security Act, and any other legislation which contradicts the Constitution and the international standards on freedom of expression and access to information
- ii. Amend the Cyber Crimes Act and Statistics Act to ensure they conform to international standards of freedom of expression
- iii. Abolish all sedition offences in their entirety
- iv. Decriminalise defamation and insult to conform to international standards and best practice, including repealing or amending Article 89/1a of the Penal Code. Instead civil remedies should be introduced to arbitrate cases of defamation
- v. Investigate harassment and attacks against journalists in order to bring those responsible to justice

- vi. Enact a progressive access to information law to ensure all persons have a right to access information held by public bodies