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LEGAL AND HUMAN RIGHTS CENTRE
LHRC
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Tanzania: Freedom of Expression in Peril

Joint Situation Note

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Cover photo: A man reads on March 23, 2017 in Arusha, northern Tanzania, the local English-written daily newspaper «The Citizen», whose front title refers to the sacking of Tanzanian information Minister after he criticised an ally of the president. Tanzania's President, aka «The Bulldozer» sacked his Minister for Information, Culture and Sports, after he criticised an ally of the president: the Dar es Salaam Regional Commissioner who had stormed into a television station accompanied by armed men. © STRINGER / AFP

TABLE OF CONTENTS

Introduction

For more than a year, Tanzania has been the scene of an unprecedented crisis illustrated by serious hindrances to the rights and freedoms of journalists, human rights defenders, political opponents and ordinary citizens. Through the adoption of a draconian normative framework and the abusive use of the police and justice apparatus, the Tanzanian government has showed a fierce intention to silence any form of criticism or opinion deemed dissident. In about a year, at least eight media houses or radios have been banned[1] ; at least 27 journalists and human rights defenders have been arbitrarily arrested and detained or have faced judicial harassment (see *Annex II*), 32 ordinary citizens have been arrested and some of them charged for having publicly or privately criticized the President or his government (see *Annex III*). This repression also affected the political opposition, with harassment and politically-motivated charges.

This crisis is unprecedented in its nature and scale. In this joint paper, FIDH and LHRC provide an analysis on the implementation of a repressive legal framework and its impacts (*see Annex I*). Our organisations address detailed recommendations to the authorities of Tanzania to ensure that they uphold their human rights obligations and commitments, including citizens' freedom of expression, right to information and right to privacy.

A political climate marred with increasing tensions and violence

John Magufuli, former Minister and member of the ruling party, *Chama Cha Mapinduzi* (CCM), was elected President of Tanzania in October 2015 following an election perceived as being the most competitive in the history of the country. The election was marked by the unprecedented raise of *Chadema*, the main opposition party, which obtained 40% of the vote and won 70 seats in the 367-seat Parliament (up from 48 seats in 2010 and 11 in 2005). This election was also marked by the electoral dispute in the semi-autonomous island of Zanzibar – which elects its own president – over allegations of fraud. More than 100 members of the opposition Civic United Front (CUT) were arrested for protesting against the nullification of the results and the re-run of the election. Despite the protests, and complaints over excessive use of force by the police, these elections were re-convened in October 2016. They led to the victory of CCM which won by 91%, amid a generalized boycott by the opposition.

Since Magufuli reached power, concerns over an increased clampdown of the political opposition, whether by intimidation or judicial harassment, have been on the raise. In June 2016, Magufuli banned all political rallies until the next general election in 2020, following peaceful protests organised by opposition parties to denounce increasing restrictions against them. Magufuli's ban was followed by further protests, under the banner *UKUTA* (Alliance against dictatorship in Tanzania), which in turn led to his decision to extend the ban to internal party meetings.

While these two bans were lifted by September 2016, they however marked Magufuli's first months of presidency and illustrated what will soon become his fierce disapproval of any form of criticism, including within his own political formation. In March 2017, he announced the discharge of 12

1 Newspapers : Mawio, Mseto, Mwananchi, the East-African ; radio stations : Magic FM, Radio Five ; TV channel : ITV and Clouds TV.

leaders of CCM who had disapproved the non-inclusion of the former Prime Minister, Edward Lowassa, on the list of potential candidates for the presidential elections. The 12 were discharged over allegations of sabotage.

The political climate in Tanzania has reached a turning point since the disappearance, since November 2016, of Mr. Ben Saanane, a young political activist from the opposition party CHADEMA. Mr. Saanane was known for publicly and regularly criticising the government through social media. Despite the actions undertaken by his family, at the time of writing this briefing paper, his whereabouts remain unknown and the authorities had undertaken no significant actions to find him.

Authorities harassed several members of the main opposition party Chadema. The police arrested Ms Halima Mdee, chairperson of Chadema's women's wing, on July 4th, and charged her with insulting the president on July 10, 2017, and release her on a 10 million shillings bond (about $4,400).[2] She was charged of doing so after holding a press conference slamming Magufuli for saying that teen mothers should stay out of school.

Similarly, on July 20th, 2017, the police arrested Tundu Lissu, chief whip of Chadema and president of Tanzania's bar association, after he held a press conference where he criticized Magufuli. The police charged him on July 24th with sedition. He was released on bail on July 27th.[3]

A draconian normative framework resulting in increasing repression

The Tanzanian government introduced between 2015 and 2016 four laws resulting in increasing restrictions to the freedom of the press and the freedom of expression : the Cybercrimes Act (2015), the Statistics Act (2015), the Media Services Act (2016), and the Access to Information Act (2016). In the run-up to the 2015 elections, CCM pushed for the adoption of the Cybercrimes Act and the Statistics Act, in a context where the ruling party had been confronting in the past few years a growing political opposition and a stronger press and civil society. The Media Services Act and the Access to Information Act, were adopted following Magufuli's election.

The adoption of these laws has led to an increased control of journalists, in print and online publications, any data published, and online posts of private citizens. The Tanzanian government justified the adoption of these laws by a need to regulate the media sector, partly in order to facilitate the access to information and to improve journalism standards. The Statistics Acts and the Access to Information Act criminalize the publication of any statistical information without prior authorization from the National Bureau of Statistics, and allows the government to withhold information for "the public interest". The Cybercrimes Act and the Media services Act contain the provisions most susceptible to be used to repress dissent voices. The Cybercrimes Act criminalises the publication of "*false, deceptive, misleading or inaccurate information*", and has already been used to repress journalists or citizens who had been too critical to the government (see below section II). The Media Services Act creates a *de facto* licensing of journalists and newspapers and a regulation body controlled by the government, in violation of international norms. Although not used yet, this act has the potential to impose a total control over media

2 *See* http://www.dailynews.co.tz/index.php/home-news/51617-dc-orders-mdee-arrest-detention
3 *See* http://allafrica.com/stories/201707270205.html

houses and journalists by putting a disproportionate pressure on them, threatening them with bans, fines and even prison terms if the government disagrees with their publications.

More concerning even, the government has been using the Cybercrimes Act to legally harass private citizens who criticized it on private online platforms such as What'sapp or Facebook. In one case, a citizen calling President Magufuli an "idiot" on his Facebook page was condemned to a fine of 7 million shillings (US$ 3,200) or three years or imprisonment. He was released after agreeing to pay the fine.[4]

The scope of this repression, attacking journalists, civil society organisations, citizens in their private conversations, shows the government's inability to hear critics and his determination to erase any critical voice. In the 2017 Reporters Without Borders report, Tanzania was ranked 83rd out of 180 countries, down a dozen places from 2016.

Moreover, even if these acts have been used widely to repress dissent voices, older acts like the Newspaper Act of 1976 or the Electronic and Postal Communications (EPOCA) of 2010 have also been used like never before in the same way.

This trend also affected the work of the government with several international organizations, as proved by the expelling of Ms Awa Dabo, head of the United Nations Development Program, accused of the "deteriorating performance" of her office, driven by "strained relations". Local media have linked this decision with Ms Dabo's alleged criticism of controversial elections in Zanzibar.[5]

In an effort to challenge the legality of the Media Services Act, the Legal and Human Rights Centre (LHRC), the Media Council of Tanzania and Tanzania Human Rights Defender's Coalition filled an application before the East African Court of Justice of Justice on January 11, 2017. The three organisations highlighted several sections of the Media Services Act, arguing that they were a threat to the freedoms of expression and of information, thus violating Tanzania's obligations under the East African Treaty. As of June 2017, no hearing date had been fixed.

4 *See* https://advox.globalvoices.org/2016/04/18/tanzanias-cybercrime-act-makes-it-dangerous-to-insult-the-president-on-facebook/

5 *See* http://www.bbc.com/news/world-africa-39710372

I. Dissenting voices have become targets of the authorities

Ever since the Cybercrimes Act was published, it has been used as a tool to harass dissent voices. The most emblematic case concerns Jamii Media**,** a news and social networking platform created by Maxence Melo that has become Tanzania's top whistle-blowing website. But this harassment touches indiscriminatingly media houses, NGOs, and citizens.

The Jamii Media case

Jamii Media has more than 2,4 million users, 28 million mobile subscribers and up to 600,000 people using its online forum every day, and became Tanzania's top social platform as well as safe forum for whistle blowers, where several corruption scandals were unveiled or alleged. The Committee to Protect Journalists (CPJ) noted that the website is notable for its function as a "cathartic tool where even disgruntled politicians go and upload sensitive documents".[6]

The increasing allegations made the government eager to control and eventually stop the Forum. In January and February 2016 and according to Section 32 of the Cybercrimes Act, the police issued eight letters asking Jamii Media to disclose the IP address of several of its users linked to the allegations of corruption scandals in the oil and banking sectors.[7]

Jamii Media went to court in April 2016 to challenge these demands and specifically the Sections 32 and 38 of the Cybercrimes Act that might infringe the right to be heard, and the rights to privacy and to freedom of expression, as well as the right of Tanzanians to use the internet as stipulated in Article 30(3) of the 1977 Constitution. Section 32 allows the police to order anyone to disclose data required for a criminal investigation, and Section 38 tackles court proceedings. In March 2017, the High Court declared Sections 32 and Section 38 to be constitutional. Jamii Media intends to make an appeal to the decision of the Court of Appeal.

Since Demceber 2016, the government started a campaign of judicial harassment against the heads of Jamii Media under the Cybercrimes Act and the Electronic and Postal Communications Act, 2010 (EPOCA).

The Observatory for the Protection of Human Rights Defenders (FIDH - OMCT) denounced the judicial harassment against M. Maxence Melo, managing director of Jamii Media and co-founder of Jamii Forum and M. Mike Mushi, director of Jamii Media.

6 *See* https://www.irishtimes.com/news/world/africa/mobile-phones-serve-as-conduit-to-freer-media-alternatives-in-kenya-1.2243137

7 *See* https://www.opennetafrica.org/tanzania-court-deals-a-blow-to-intermediary-liability-rules/

The Observatory for the Protection of Human Rights Defenders

URGENT APPEAL – THE OBSERVATORY

TZA 001 / 0617 / OBS 061
Judicial harassment / Release on bail
Tanzania
June 9, 2017

The Observatory for the Protection of Human Rights Defenders, a partnership of FIDH and the World Organisation Against Torture (OMCT), requests your urgent intervention in the following situation in Tanzania.

Description of the situation:
The Observatory has been informed by reliable sources about the judicial harassment faced by Mr. **Maxence Melo**, Managing Director of Jamii Media, and Mr. **Mike William**, who is a shareholder of Jamii Media. Jamii Media promotes freedom of expression through JamiiForums.com while ensuring the privacy of citizens who seek to engage in online discussions on current affairs and human rights issues in Tanzania.

Since 2010, the government of Tanzania has enacted several laws putting additional barriers to online freedom of expression and to the work of human rights defenders. **Among these new laws, the Cybercrimes Act, which came into force in September 2015, has been used as a tool to censor dissent voices and journalists and to further restrict the right to freedom of expression**. It is within this context that the two human rights defenders are facing judicial harassment.

Messrs. Melo and William are due to appear on July 4, 5, and 6, 2017 before the Kisutu Resident Magistrate Court in relation to three criminal cases, which seem to be aiming at sanctioning their human rights activities.

Mr. Maxence Melo was arrested on December 13, 2016 by the Tanzania Police Force and further held in custody on allegations of complaints from people claiming to be affected by some posts and discussions held on JamiiForums. The Tanzania Police Force then asked Mr. Melo to provide them with data of online users who had engaged in so-called “controversial debates” over several alleged “corruption deals” on the JamiiForums website between May 10, 2015 and December 13, 2016 (basis for court case number 456) and between April 1, 2016 and December 13, 2016 (basis for court case number 457). Mr. Melo refused to provide such information, arguing that it would run counter digital privacy and confidentiality laws, and in particular Article 18 of the Constitution of Tanzania, guaranteeing the right to privacy.

On December 15, 2016, the police searched both the premises of Jamii Media and Mr. Maxence Melo's home without any warrant. Furthermore, the police interrogated some

Jamii Media staff members at their office premises in Mikocheni, Dar es Salaam, and later at the Central Police Station.

The police kept Mr. Melo in custody for more than 48 hours without interrogation and in absence of charges against him, in violation of Tanzanian legislation, which sets a four-hour limit for police interrogation without charges.

It is however only on December 16, 2016, that the Resident Magistrate Court of Dar-es-Salaam at Kisutu indicted Mr. Maxence Melo under three sets of charges: "obstruction of a police investigation" under the 2015 Cyber Crimes Act; "not complying with an order of disclosure of data" (cases 456 and 457); as well as "managing a domain not registered in Tanzania" in contravention of the requirements of the Electronics and Postal Communications (2010) Act (case 458). Mr. Maxence Melo was eventually granted bail on December 19, 2016 pending trial.

On May 2, 2017, during a hearing in case 456, the Senior State Attorney had brought as a witness a Deputy Zonal Crime Officer (ZCO), who had received one of the complaints against information posted on JamiiForums. The witness related that after receiving the complaint, the ZCO opened a file to investigate allegations of defamatory/false information posted on JamiiForums. The witness further alleged that on February 23, 2017, the police department sent a letter to Jamii Media requesting the disclosure of the IP address of the user who posted the investigated information. In response, Jamii Media's lawyers asked for the provision which would enable the police to request such private data as well as details on the alleged offence(s) committed. The witness then pointed out that since Jamii Media did not provide the information requested, the ZCO proceeded with the arrest of Mr. Maxence Melo on December 13 2016, and added another shareholder to the case-file, Mr. Mike William, on February 9, 2017, under accusations of intentionally and unlawfully refusing to provide information required for a criminal investigation. The next hearing is set for July 5.
[*EDIT: the hearing was postponed to August 7th, 2017*]

Through the cross-examination, the witness admitted that there was no mention of the Cybercrimes Act in the letters sent from the police department under the ZCO supervision which were requesting information on JamiiForums. The witness also admitted that according to the Cybercrimes Act, when the police does not obtain the requested data, it needs to seek a remedy in Court before proceeding to any arrest. The hearing was postponed to the next day, when the defence counsel was able to perform a cross-examination of the witness. On that day, defence counsel pointed out that Mr. Maxence Melo's arrest was illegal, and questioned why Mr. Mike William was added to the case. The hearing was postponed to May 8, 2017, again to June 6, 2017.
[*EDIT: the hearing was postponed again to August 10th, 2017*]

Besides, on May 3, 2017, during a hearing in case 458 under which Messrs. Maxence Melo and Mike William are facing charges of "management of a domain not registered in Tanzania" under the 2010 Electronics and Postal Communications, the Manager of the Tanzania Network Information Center (tzNIC) admitted that JamiiForums is registered twice under the institution database, and that the registration met the requirements of the Tanzanian web domain ".tz" (dots-tz), but that they were "not using the domain in the

actual sense", without providing any more explanations. The witness further admitted that no law makes it mandatory for companies such as JamiiForums to use the registered domain (.tz) instead of a generic (.com) domain. The next hearing is set for July 6, 2017. [*EDIT: The hearing was postponed to August 10th, 2017*]

The Observatory expressed its concerns over the judicial harassment of Messrs. Maxence Melo and Mike William, which seems to be aiming at sanctioning their human rights activities and particularly their actions against restrictive provisions of the Cybercrimes Act.

Some ordinary citizens who posted online or in WhatsApp groups messages critical of the authorities also turned out to become the targets of harassment, including judicial harassment. Since the election of President Magufuli more than 30 individuals got either charged under Section 16 of the Cybercrimes Act or another act or got harassed, for example by being remanded for hours or days without charge, for criticizing the government on social media, on WhatsApp and Facebook, or publicly.

Since 2015, a number of other media houses and journalists got harassed, with at least twenty-four journalists or editors arrested and remanded, among whom several were charged under the Cybercrimes Act (S*ee list in Annex II*).

Newspapers and radio stations were banned under charges such as "inciting news" or publishing fake documents under the Cybercrimes Act.

In January 2015, **The East African**, a weekly regional newspaper, was banned for a year by a letter from the government for "lacking proper registration" under the 1976 Newspaper Registration Act, despite the fact that it had been in circulation for twenty years. It is alleged that this decision to ban the East African followed the newspaper's publication of a cartoon criticizing the former Tanzanian President. The East-African was allowed to resume publication one year later, in January 2016.[8]

In January 2016, **Mawio**, Tanzania's biggest weekly investigative newspaper, was banned under the Newspaper Act 1976 only two months after President Magufuli reached power, for allegedly inciting violence in some of its articles. Jabir Idrissa and Simon Mkina, two of Mawio's editors were briefly detained, which led the owner of the newspaper to denounce the government's use of force and attempts on freedom of speech. Mr. Saed Kubenea, distributor of the newspaper, indicated that "Mawio has been writing a number of analytical and investigative news about what is happening in Zanzibar, and the government is not happy with that".[9] While a court overturned the ban in March 2016, Mawio got banned again in June 2017 under Article 59 of the 2016 Media Services Act which allows authorities to "prohibit or otherwise sanction the publication of any content that jeopardizes national security or public safety. This time, the authorities banned Mawio

8 *See* https://www.washingtonpost.com/news/opinions/wp/2015/02/17/tanzanian-government-shuts-down-the-eastafrican-newspaper-over-a-cartoon/

9 *See* http://www.thecitizen.co.tz/News/Govt-bans--Mawio---suspends-27-stations/1840340-3037140-u46k0qz/index.html

for 24 months, on the ground that it published an article linking two former Tanzanian Presidents to alleged misconduct in mining deals.[10]

In August 2016, the weekly newspaper **Mseto** was also banned for three years for breach of the Newspapers Act after it published an article implicating a senior government official in corruption.[11] The newspaper had published a story that claimed the deputy minister for Works, Transport and Communication, Eng Edwin Ngonyani, had implicated President John Magufuli in corruption during elections. This ban is based on Section 25(1) of the Newspapers Act which states that, "Where the Minister is of the opinion that it is in the public interest or in the interest of peace and good order so to do, he may, by order in the Gazette, direct that the newspaper named in the order shall cease publication as from the date specified in the order."

Similarly, several radio stations were affected. In August 2016, then Information Minister Nape Nnauye announced the immediate and indefinite ban of **Radio Five** and **Magic FM** on the grounds that they had aired seditious content, without giving further details. They were later able to resume broadcasting.[12]

Over the past recent months, increasing cases of arbitrary arrests and detention of journalists have also been documented by the Tanzania Human Rights Defenders Coalition.[13] On November 4th, 2016, the police arrested and remanded two journalists of **Clouds FM** and **Star TV** investigating miners who were evicted in Mazigamba area for four hours. On July 14th, two journalists of the newspaper **Mwananchi** writing about the way police officers' conduct their duty were summoned and questioned. On April 24th, the police arrested and remanded a journalist from **Channel Ten** for reporting about a demonstration. On October 8th, 2016, the police remanded for two days Cosmas Makongo, a journalist from **ITV** for reporting about hunger in the District of Kyerwa Kagera.

In March 2017, Dar es Salaam regional commissioner Paul Makonda went to the headquarters of **Clouds Media** with six armed men to pressure the staff into airing a video undermining a popular local pastor opposed to him.[14] The station refused to air the video, and Information Minister Nape Nnauye ordered an investigation and advised sanctions against Commissioner Makonda. Instead of following this necessary measure of accountability for an attack on the freedom of the press, President Magufuli fired Minister Nnauye, and warned the media in a speech on March 24th: ""I tell media owners: be careful, watch it! If you think you have that kind of freedom … not to that extent."[15]

This effort to silence the media might result in a gradually increasing self-censorship from the journalists, fearing to be harassed or fearing their media would be banned or suspended like it happened with the newspapers Mseto or the East African.

10 *See* https://qz.com/1009353/magufulis-government-has-shut-tanzanian-newspaper-mawio-for-two-years/

11 *See* http://www.theeastafrican.co.ke/news/Tanzania-bans-Mseto-newspaper-for-three-years/2558-3340844-nvpdvy/index.html

12 *See* https://cpj.org/2016/08/tanzania-bans-two-radio-stations.php

13 *See* Situation Report, 2017 - http://thrdc.or.tz/download/situation-report-2017/

14 *See* http://www.thecitizen.co.tz/News/Makonda-in-hot-water-over-night-Clouds-raid-/1840340-3856500-gakd6sz/index.html

15 *See* http://mtega.com/2017/03/be-careful-watch-it-translated-excepts-from-speech-of-president-magufuli/

II. Human Rights Defenders and ordinary citizens are also in the sights of the authorities

The Legal and Human Rights Centre (LHRC), FIDH member organisation in Tanzania, and the Tanzanian Civil Society Consortium on Election Observation (TACCEO) monitored the 2015 elections mainly through election observation centres to collect and analyse information regarding election incidents. They had been granted an official permission from the National Election Commission to observe the campaigns and the elections. On October 29th, 2015, one of the election observation centres of LHRC and TACCEO in Dar es Salaam was attacked by the police. 36 staff and volunteers were arrested and interrogated, before being released. Moreover, the office equipment and the personal belongings of the persons arrested were seized: 3 laptops, 24 desk computers, 25 office phones and 36 personal phones. The police claimed that the persons were arrested under Section 16 of the Cybercrimes Act for collecting and disseminating election results.[16]

This incident, although the most serious, is not the first one experienced by these organisations. On March 7th, 2015, the police attacked and battered LHRC/TACCEO observers in Njombe region.[17]

In July 2016, the Tanzania Human Rights Defenders Coalition (THRDC) documented seven cases of harassment in Loliondo against activists protesting land grabbing. The police arrested them on accusation of espionage.[18]

On 21st July 2016, an advocate from LHRC, Mr. Shilinde Ngalula, was hired to represent these human rights defenders. When he tried to meet with the detainees, after nine days of arbitrary arrest without charges, the police denied them the right to meet with their lawyer. The police threatened Mr. Ngalula and questioned him about who sent him, and arrested him later that day on the same allegations of espionage as his clients. He was later released on bail, but four of the activists were charged. The government failed to prosecute the case, which was ultimately thrown out by the court.

Most recently, Mr. Ole Ngurumwa Onesmo, National Coordinator of the THRDC, and Mr. John Baraka, Coordinator of the Tanzania Students Networking Programme (TSNP), were briefly detained and prevented from attending a book launch[19]. On June 3, 2017, Sauti ya Watetezi wa Haki Vyuoni (The Voice of Human Rights Defenders in Universities), a book that illustrates the harassment tactics used to remove human rights defenders from positions in higher education institutions in Tanzania, authored by Alphonce Lusako[20], the General Secretary of TSNP was

16 *See* http://protectionline.org/2015/11/04/tanzania-arrest-38-human-rights-defenders-tacceo-election-observation-center/

17 *See* http://www.thecitizen.co.tz/News/national/Police-beat-up-two-observers--CBOs-quit-BVR-monitoring-/1840392-2647752-ha9mw3z/index.html

18 See Situation Report 2016 - http://thrdc.or.tz/resources/publications/

19 *See* the Observatory Urgent Appeal **TZA 002 / 0617 / OBS 062** published on June 9, 2017.

20 Mr. Lusako got expelled from the University of Dar es Salaam in 2011 without motive. He was re-admitted by the same University through the Tanzania Commission for Universities (TCU), and got expelled again on January 26, 2017. He has lodged a case to challenge the decision of the University and his case is still pending in the High Court of Tanzania.

launched at the Blue Pearl Hotel in Dar es Salaam. Both human rights defenders were prevented from entering the hotel, without an authorisation letter from the police. The police arrested Mr. Baraka and Mr. Onesmo and charged with criminal trespass as the Blue Pearl Hotel filed a complaint stating the men had forced the hotel to host the launch event. Messrs. Onesmo and Baraka were released on bail that same day, with instructions to report to the police[21]. When contacted by Mr. Onesmo on June 6th, the Blue Pearl Hotel indicated they were unaware of any criminal complaints against Messrs. Baraka, and Onesmo. However, on June 7th, Blue Pearl representatives confirmed that they had filed a complaint at the direction of an "unknown authority", despite the facts that they had freely agreed to host the event, had received the payment agreed upon for hosting it and was issued the corresponding receipt. The Police informed Mr. Onesmo that they would expedite the investigation to compel Blue Pearl to provide evidence.

21 *See* THRDC Press statement, June 3, 2017: http://thrdc.or.tz/press-statement-on-the-arrest-of-the-national-coordinator-of-the-tanzania-human-rights-defenders-coalition-thrdc-mr-onesmo-olengurumwa-and-mr-bara

Recommendations

FIDH and LHRC call upon the Tanzanian authorities to:

Guarantee the rights and freedoms of human rights defenders, journalists and other individuals

- Release all human rights defenders, journalists, or citizens arbitrarily arrested and detained for making use of their freedom of expression, right to information or right to privacy ; drop all charges against them or ensure that those facing prosecution benefit from to fair trial ;
- Drop all charges against Messrs. Maxence Melo and Mike Mushi and ensure that all judicial proceedings against them are carried out in full compliance with their right to a fair trial as protected under regional and international law ; Put an immediate end to all forms of harassment against them.
- Guarantee, in all circumstances, the fundamental rights and freedoms of journalists, human rights defenders, and citizens, as provided for in the United Nations Declaration on Human Rights Defenders, the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, the Universal Declaration on Human Rights and other relevant regional and international human rights instruments ratified by Tanzania ;
- Ensure that prompt, independent and transparent investigations into cases of violations of the rights of journalists and human rights defenders, including threats, physical assault and other forms of violence, are carried out and that those responsible are brought to justice ;
- Put an immediate end to the public stigmatisation of journalists and human rights defenders and recognise their necessary role for the strengthening of democracy and the rule of law in Tanzania, and create a safe and enabling environment so they can carry out their activities freely and without hindrance and intimidation;

Conform the national law with Tanzania's regional and international human rights obligations

- Repeal all provisions within the national legal framework that are contrary to Tanzania's regional and international human rights obligations related to freedom of expression and access to information ;
- Put an end to the abuse use of the Cybercrimes Act, 2015 to harass human rights defenders, journalists and other individuals;
- Amend the Cybercrimes Act, in particular its section 16 which provides for publication of false information in order to ensure that it does not unreasonably limit freedom of expression;
- Amend the EPOCA 2010, and the Cybercrimes Act, 2015, in order to state specifically the circumstances under which law enforcement agencies may order services providers to disclose their subscribers' information;
- Draft and pass, after a comprehensive consultative process, a data protection and privacy law that would guarantee the privacy of citizens' information and offer legal recourse to citizens when their data is illegally accessed or compromised;
- Take all necessary measures to implement the provisions of the ACHPR Model Law on Access to Information in Africa.
- Respect the values and human rights principles enacted in the East-African Treaty,
- Issue a standing invitation to all the Special Rapporteurs of the United Nations and of the African Commission on Human and Peoples' Rights;

Annex I - Analysis - Tools for repression: the Media Services Act and the Cybercrimes Act

I. A. The Cybercrimes Act

Presented and put to vote in a rush and without a proper consultation of civil society, the Cybercrimes Act was adopted in the months before the 2015 elections, as the leading party CCM was experiencing an unprecedented strong political opposition. Indeed, the CCM had been facing corruption allegations that have plagued it, especially ivory trafficking scandals but without concrete evidence being publicly available. In this context, the Cybercrimes Act came as a way to block the publication and diffusion of any information regarding these scandals as well as any other critical voices, leaving the government in control of the public narrative.

Presented as a tool to defend citizens against cybercrimes, the Cybercrimes Act tackles cyber bullying and cybercrimes, but also unsolicited messages (i.e. spam), illegal interception of communications, and publication of false information. The dangerously broad scope of the text led to strong criticism from opposition politicians and human rights defenders,

The text acts as a tool for repression in several ways. First and mainly, it gives a broad power to the authorities to assess information published and forbid it: Section 16 criminalises the publication of "false, deceptive, misleading or inaccurate information". The wording chosen, broad and subjective, covers almost any information not coming directly from official statements. In other words, not only does it make the work of journalists, public figures, politicians incredibly difficult - especially in situations where facts can be hard to verify -, but it also make vulnerable anyone using social media. And in fact, Section 16 has been the most used to harass the media, civil society, and individuals, with at least 56 persons charged under this section for exercising their right to freedom of expression.

This section violates international and regional standards of freedom of expression, as any individual sharing a post on social media or private media like What'sapp and inadvertently containing false, deceptive, misleading or inaccurate information could be prosecuted. On this particular topic of fake news, the Human Rights Committee indicated that the "prosecution and punishment of journalists for the crime of publication of false news merely on the ground, without more, that the news was false [is a] clear violation of Article 19 of the [ICCPR]"[22]

Second, the Cybercrimes gives even junior police officers the power to search and/or seize any computer equipment or data, including the content of messages. This includes demanding information from internet service providers and mobile phone networks. As an example, this allowed police forces to raid a LHRC/TACCEO election observation centre. Moreover, Section 10 criminalises the unlawful dealing or possession of a device, including a computer program or a password, that is designed or adapted for the purpose of committing an offence. The phrasing of this section is too vague, and does not specify what offences are covered by it. Moreover, it does not require an intention to commit the offence. Thus, this section criminalises the possession of a device that is capable of 'committing an offence', which is so broad it could include any type of computing machine or software program. This would potentially affect any person possessing a computer, even if this person does not intend to commit an offence,

Section 15 criminalises the impersonation of another person through a computer system, but without

22 Human Rights Committee, Concluding Observations on Cameroon, November 4, 1999, CCPR/C/79/Add. 116

a requirement of unlawfulness, dishonest intent, or serious harm resulting from this offence. Thus, humoristic impersonation of a public figure for comedy or political critic is criminalised, seriously undermining freedom of the media to use this way of criticizing any public figure. As an illustration, when the TV channel TBC broadcast a sketch involving President Trump and President Magufuli, nine persons got suspended by the TV channel direction who also apologized, fearing further legal consequence.

Fourth, Section 20 states that "a person shall not, with intent to commit an offence under this Act initiate the transmission of unsolicited messages; relay or retransmit unsolicited messages, or falsify header information in unsolicited messages. "Unsolicited message" is defined in the Act as "any electronic message which is not solicited by the recipient". This offence is punishable with a fine of 3 million shillings or three times the value of undue advantage received, whichever is greater, or to imprisonment of a term of not less than one year or both. In other words, any email that was not asked for by the recipient could fall into this category, as well as newsletters, spams, and any other emails sent to a large audience. The severity of the punishment is thus not adequate (disproportionate) at all with the harm committed.

Finally, additional to the specific negative features seen above, we can add that on the general the act lacks procedural safeguards, with no mention of Tanzania's obligations to protect freedom of expression, contains disproportionate sanctions, very broad language, a liability of Internet Service Providers, and a lack of protection for whistleblowers.

The numerous problematic provisions contained in the Cybercrimes Act make it a dangerous tool for the Tanzanian government to use against any critical voice, and has been used as such. It is urgent and crucial that Tanzania immediately amend or repeal this law and drop all political charges based on this act.

I. B. Controlling the media: The Media Services Act

The Media Services Act (MSA) was enacted by the Parliament on November 5th, 2016 and assented by the President on November 16th, 2016. While not used yet to its capacity, it has the potential to impose a draconian control over journalists via a system of accreditation and over media houses and any information published. There has not been a proper consultation of civil society in the process of making this Act. On the general, it is based on very broad definitions which thus creates a dangerously broad scope of application of the act, and imposes heavy fines and prison terms for the offences created. On the specific, it contains many worrying provisions.

The first problematic provision which creates a way of controlling the media concerns the obligations of media houses. In fact, a media house should not "undermine the national security of United Republic; or lawful investigations being conducted by a law enforcement agent; (…) hinder or cause substantial harm to the Government to manage the economy." This provision is supported by Section 8 which provides for the licensing of a person who intends to publish, sell, offer for sale, import, distribute or produce print media. The use of these two sections offer broad power to the government to suspend or cancel the license of a media house, would it reveal any information that would even indirectly talk about a topic that would fall in the economic field, which touches to almost any political, social, or economic topics. The broad scope of this provision actually allows the government to use politically motivated charges to harass any media houses, would it disagree with its publications. These dispositions thus undermine the independence of media houses, as it creates an unreasonable pressure on them.

These dispositions also go against the article VIII of the Declaration of Principles on Freedom of Expression in Africa, which states that "1. Any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression, 2. Any print media published by a public authority should be protected adequately against undue political interference."

the Act creates a Journalists Accreditation Board, replicating the media houses licensing system to

journalists. The Minister of Information appoints and may remove at any time the seven members and four of them are government representatives, which seriously compromises its independence. The Board can cancel the accreditation of a journalist if it finds that he committed gross professional misconduct as prescribed in the code of ethics for journalist profession, created by an Independent Media Council, also created by this Act and composed of all the accredited journalists. The Board also has the power to impose heavy fines to journalists for non-compliance to their rules. As an example, practicing journalism without a licence is punishable by " a fine of not less than five million shillings but not exceeding twenty million shillings [US$2,240-8,970] or to imprisonment for a period not less than three years but not exceeding five years or to both". Nothing justifies the strictness of these rules, which makes it easy for the government to totally control who gets to be accredited or not. This constitutes an enormous pressure for journalists, who as a consequence are very prone to self-censorship. This also goes against international standards : in their 2003 Joint Declaration, the UN, the Organisation of American States, the African Commission on Human and Peoples' Rights and the OSCE mandates for the protection of freedom of expression stated that "individual journalists should not be required to be licensed or to register". Moreover, in 2009, the African Commission on Human and Peoples' Rights examined a complaint against an accreditation requirement for journalists in Zimbabwe, and ruled that:

> "*The Inter-American Court found that compulsory licensing aimed at controlling journalists was a violation of Article 13 of the American Convention. By applying the same logic, and analogy to the conditions stipulated for compulsory accreditation under AIPPA [the Zimbabwean Act], without which, one could not practice journalism, the African Commission finds that section 79 of AIPPA constitutes a violation of Article 9 of the African Charter*"

Another way for the government to ensure it can block any critics towards it is the reinstitution of the crime of defamation, punishable "unless the matter is true and it was for the public benefit that it is published". Defamation is thus reinstated, but should be applicable to all persons and organisations and not to the media alone. Any defamation legislation should be integrated in the civil law, and not in a media act. Moreover, the Board is in charge of assessing the defamation claims brought to it, but is also a government-controlled organ, which makes it inappropriate according to the Article IX (2) of the Declaration on principles on Freedom of Expression :

> « *Any regulatory body established to hear complaints about media content, including media councils, shall be protected against political, economic or any other undue interference. Its powers shall be administrative in nature and it shall not seek to usurp the role of the courts.* »

Criminal defamation also violates the freedom of expression enshrined in Articles 18 of the Tanzanian Constitution, 19 of the ICCPR and 9 of the African Charter. Finally, the African Court held that defamation should be criminalized only in limited circumstances and that imprisonment for defamation violates the right to free speech guaranteed in Article 9 of the African charter (See Lohé Issa Konaté v. Burkina Faso, App. No. 004/2013, Judgment of December 5, 2014.)

Another concerning provision created by the Media Services Act and similar to what is contained in the Cybercrimes Act is the criminalization of "fake news", or "information which is intentionally or recklessly falsified in a manner which threatens the interests of defence, public safety, public order, the economic interests of the United Republic, public morality or public health or is injurious to the reputation, rights and freedom of other person; information which is maliciously or fraudulently fabricated; any statement the content of which is threatening the interests of defence, public safety, public order, the economic interests of the United Republic, public morality or public health; or injurious to the reputation, rights and freedom of other person; statement knowingly to be false or without reasonable grounds for believing it to be true; a statement with maliciously or fraudulent intent representing the statement as a true statement; or prohibited information". These offences are punishable to a fine of not less than five million shillings but not exceeding twenty million shillings [US$2,240-8,970] or to imprisonment for a period not less than three years but not exceeding five years or to both. This broad definition allows for the prosecution of virtually any opinion paper or post. The UN Human Rights Committee condemned such provisions as they "unduly limit the exercise of

freedom of opinion and expression". Indeed, several courts ruled against this kind of provisions, including in Antigua and Barbuda, Canada, Uganda and Zimbabwe.

Similarly, the Act criminalises publications likely to cause fear or alarm, including rumour, with up to 6 years of prison term. A similar disposition has been declared unconstitutional by the Ugandan Supreme Court in 2004, and read: "[T]he right to freedom of expression extends to holding, receiving and imparting all forms of opinions, ideas and information. It is not confined to categories, such as correct opinions, sound ideas or truthful information… [A] person's expression or statement is not precluded from the constitutional protection simply because it is thought by another or others to be false, erroneous, controversial or unpleasant… Indeed, the protection is most relevant and required where a person's views are opposed or objected to by society or any part thereof, as 'false' or 'wrong'."

Finally, the Act criminalises seditious intentions, with a fine between five and twenty million shillings or to imprisonment for a term between three years and ten years or to both. We already saw that the Tanzanian government was tough on political meetings and keen to repress any kind of political organisations. The criminalisation of seditious intent in such a broad language would likely be used to politically charge anyone the government would like to silence. In similar situations, this kind of provisions have been used to erase dissent voices, and the Court of Appeal of Nigeria ruled in 1983 against the provisions on sedition, inherited from the Colonial Criminal Code Act:

> "Those in public office should not be intolerant of criticism. Where a writer exceeds the bounds, there should be a resort to the law of libel where the plaintiff must of necessity put his character and reputation in issue. Criticism is indispensable in a free society."

The Act also provides for the control of publications. Part VIII gives power to the Minister The criminalisation of seditious intent in such a broad language would likely be used to politically charge anyone the government would like to silence. In similar situations, this kind of provisions have been used to erase dissent voices, and the Court of Appeal of Nigeria ruled in 1983 against the provisions on sedition, inherited from the Colonial Criminal Code Act:

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The Act also provides for the control of publications. Part VIII gives power to the Minister of Information "in its absolute discretion" to prohibit the importation of a publication and to prohibit the publication of any content that jeopardizes national security or public safety. This provision violates article 19 of the Universal Declaration of Human Rights. While this falls under the permissible restrictions - for the respect of the rights or reputations of others, the protection of national security or of public order or of public health or morals - giving an absolute discretion to the Minister for this decision, without any checks and balances, goes against the accepted democratic standards. The Constitution of the United Republic of Tanzania, at its Article 18, states that "Every person (…) has a right to seek, receive and, or disseminate information regardless of national boundaries".

Despite the fact that the MSA has not been used yet against media houses or journalists, it contains seriously dangerous provisions that could give the government almost absolute and discretionary powers to ban newspapers and journalists, and thus totally control what gets published in Tanzania.

Annex II – List of journalists and human rights defenders harassed in 2016 and 2017

(Source : 2016 Situation Report of Tanzanian Human Rights Defenders Coalition).

Journalists

i) In July 2016, two editors at *Mawio*, **Jabir Idrissa** and **Simon Mkina**, were questioned by the police about the paper's coverage of Zanzibar. They were set free on bail the next day after the Tanzania Editors Forum pressed for their release. The editors have been ordered to report daily to a local police station until further notice. No formal charges have been filed against them.

ii) On July 14th, 2016, Editor of *Mwananchi* **Frank Sanga** and journalist **Elias Msuya** were summoned by the police to make statement concerning an article published in the newspaper with regard to the way police officer conduct their duty.

iii) On July 12th, 2016, **Maxence Melo**, director of *Jamii Media*, owner of *JamiiForums* was summoned under section 10 (2) charged for obstruction of police investigation under section 10 (2) A of the Criminal Procedure Code. *Jamii Media* has been issued with over 10 demand letter from the police under the *Cybercrime Act* demanding them to disclose information on their clients as service providers.

iv) On June 20th, 2016, journalists **Mussa Robinson Mkama** and **Prince Newton** were arrested by police and charged under section 36(1) of the *Newspaper Act* for publishing news that was likely to cause fear and alarm to the public or to disturb peace because of an article they published.

v) On April 1st, 2016, District Commissioner (DC) of Iringa Richard Kasesela ordered two journalists of *Ebony FM* radio station to be arrested, on the ground that they imitated him in an April fool. The journalists are **Neema Msafiri** and **Edwin Dugange**. They were later released.

vi) On April 6th, 2016, journalist of *Radio Free Africa* and *Mwananchi* **Baraka Tiluzilamsomi** was arrested and remanded for 7 hours by Chato DC for entering an hospital without permission.

vii) On April 9th, 2016, *Mwananchi* journalist **Baraka Rwesiga** was arrested by Chato Police on the order of DC of Ntarambe on the ground that he entered an hospital without permission.

viii) On April 24th, 2016, **Wilbroad Sumia,** a journalist of *Chanel Ten,* was arrested as he was taking pictures for an article in malangali Rukwa. Police officers seized his camera. The police later apologized and released him.

ix) On September 1st, 2016, the police temporarily restricted **seven journalists** from doing their job in Shinyanga include THRDC member Stephen Wanganyi.

x) **Jumbe Ismail**, a *Chanel Ten* journalist, was arrested and remanded for reporting about a demonstration.

xi) On October 8th, 2016, journalist **Cosmas Makongo** of *ITV* was arrested on the order of DC of Kyerwa Kagera region on the ground that he was reporting news about hunger. He was released after for two days.

xii) On November 29th, 2016, journalist **Msafiri Sajito** was arrested on order of DC of Kibaha Assumpter Mshama, and ordered to apology for the news he issued.

xiii) On November 4th, 2016, Handeni DC - who was once a journalist with ITV - instructed police to arrest and remand journalists covering issues related to small miners who were evicted in Mazigamba area Nyasa village. Two journalists were arrested and remanded for four hours : **Saleh Masoud** of *Clouds FM*, and **Mackdonald Mollel** of *Star TV*.

xiv) On December 3rd, 2016, journalist **Anotory Tumaini** was arrested and harassed by the police because he took pictures of the police apprehending a prisoner. They took him into prison and tried

to fabricate a case.

Human Rights Defenders

xv) **Sepuk Daniel Maoi,** community human rights defender, was charged with Espionage and Sabotage, in accordance with section 3 of the National Security Act, and possession of unauthorized public documents, in accordance with section 6(2) of the National Security Act.

xvi) **Samwel Nan'giria,** director of an NGO network, was charged with Espionage and Sabotage in accordance with section 3 of the National Security Act

xvii) **Maanda Ngoitiko** was also charged with Espionage and Sabotage in accordance with section 3 of the National Security Act.

Annex III – Citizens harassed

Name and date	Facts	Charges	Outcome
1. Benedict Ngonyani, (24), student at the Dar es Salaam Institute of Technology October 2015	Published on Facebook that General Mwamnyange was suffering from food poisoning	« spreading misleading information », under Section 16 of the Cybercrimes Act	The hearing of the case took place on November 27th, 2015, where Ngonyani accepted over disseminating the stated information but denied charges read against him.
2. Israel William (20) October 2015	Disseminated false information against the Tanzania Communication Regulatory Authority (TCRA)	publishing and disseminating false information, under EPOCA	Denied the charges.
3. Sospeter Jonas, Dodoma October 2015	Posted a picture of John Maliga on Facebook and said that the Pinda (the former Prime Minister) will only become a gospel preacher.	Section 16 of the Cybercrimes Act	Charged in primary court in Dodoma. Released on bail after he paid a bail of 1 million Tsh.
4. George Aloyce Kimaryo, hotelier October 2015	Published information that the Chief of Defence Forces (CDF), General Davis Mwamunyange had been poisoned by state organs.	Section 16 of the Cybercrimes Act	The person was reported to have been remanded until November 3rd, 2015.
5. Advocate Shilinde Ngalula July 2016	Represented one of his client in court.	Providing false information under Section 16 of the Cybercrimes Act	In progress
6. Dr. Oscar Magava, lecturer at Mkwawa University College of Education September 2016	Allegedly insulted President Magufuli in a Whatsapp message. Police declined to reveal the content of the message he was accused of sending.	Cybercrimes Act	Unknown
7. Isaac Habakuk Emily April 2016	Referred to President Magufuli as an imbecile with his Facebook account	Section 16 of the Cybercrimes Act	Sentenced to 7 million shillings (USD 3,200) or imprisonment for a term of three years. The court reduced the punishment after a plea

			by Abakuki's lawyer. He was then required to pay Sh7 million only in two installments. Paid fine and was released.
8. Naila Aminel	Used abusive language against Martha Sebarua	Section 23(1) and (3) of the Cybercrimes Act	Convicted and sentenced to 3 years imprisonment or a fine of 5 million shillings (USD 2,200)
9. Bob Chacha Wangwe	Published false information on his Facebook account - a statement to the effect that Zanzibar was a colony of Tanganyika	Section 16 of the Cybercrimes Act	Pending in court.
10. Leonard Kyaruzi	Sent a post on a WhatsApp group criticizing the manner in which President Magufuli was running the country. He stated that the either lacked good advisors or was mentally retarded.	Section 118(a) of the EPOCA	Unknown
11 to 14. Godfrey Soka Deo Soka Monika Soka Leila Sinare[23]	Disseminated a voice clip on What´sapp.	Section 16 of the Cybercrimes Act	Released on bail as the investigation is still ongoing.
15. Emmanuel Elibariki, going under the name as a rapper of Nay wa Mitego[24] March 26, 2017	Arrested in Morogoro and detained for releasing a song officials considered offensive to the administration.	Not charged	A day later, the artist was released on the orders of the information minister, Harrison Mwakyembe.
16. Yericko Nyerere, blogger and political activist	Published a post on Facebook reading: "While voting today you should remember Mwangosi's death and torture to Ulimboka, Kibanda and our National Service youths. If you remember these you will make the right decision."	Section 16 of the Cybercrimes Act	Unknown.
17 to 20. Four staff members of Swiss port company at the Julius Nyerere International Airport were arrested by the military on December 8th, 2015	They are allegedly reported to have taken pictures of military tools at the airport and to have disseminated it via social media.	The military spokesperson Cornel Ngemela Lubinga said they will be charged for using social media to disseminate the pictures.	Unknown.
21. Leonard Mulokozi June 21, 2016	Posted a message that reads: "Does this mean Magufuli doesn't have advisors? Is he unadvisable? Or is he just a fool? He's foolish, this fellow. He doesn't consider the applicable laws before opening his mouth. Or does he suffer from an illness like that of Mnyika?"	Investigation ongoing.	Ongoing, bond of Sh5 million (about $ 2,200)
22. Saimon Sirikwa, tourist guide February 2017	Wrongly translated a tourist's comments in a video he posted on Facebook	Section 16 of the Cybercrimes Act	Ongoing

23 *See* https://advox.globalvoices.org/2015/11/11/four-tanzanians-charged-for-publishing-political-information-on-whatsapp/

24 *See* https://qz.com/945629/john-magufulis-tanzania-is-one-which-hurts-press-freedom-and-journalists/

23. to 32. Ten persons including Methew Oletiman, Yanick Ndoinyo, Ndima Timan, Chairman of Mundorus village, Mr Joshua Mako, Director of Ngorongoro Network of NGO Mr Samweli Nangiria, Mr Supuk Olemao, Mr Clinton Kairung July 20, 2016	Allegedly participated in espionage in collaboration with Swedish blogger, Ms Susana Nurduland, and shared various articles of pastoralist defenders voices on the Loliondo land grab via her blog.	Unknown.	Ongoing

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For FIDH, transforming societies relies on the work of local actors.
The Worldwide movement for human rights acts at national, regional and international levels in support of its member and partner organisations to address human rights abuses and consolidate democratic processes. Its work is directed at States and those in power, such as armed opposition groups and multinational corporations.

Its primary beneficiaries are national human rights organisations who are members of the Movement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organisations and actors of change.

The Legal and Human Rights Centre (LHRC) is a private, autonomous, voluntary non-governmental, non-partisan and non-profit sharing organization envisioning **a just and equitable society**. It has a mission of empowering the people of Tanzania, so as to promote, reinforce and safeguard human rights and good governance in the country.

The broad objective is to create legal and human rights awareness among the public and in particular the underprivileged section of society through legal and civic education, advocacy linked with legal aid provision, research and human rights monitoring.

Underpinning its vision of empowering the people of Tanzania, so as to promote, reinforce and safeguard human rights and good governance in the country, LHRC's long-term goal for this project is to support the amendment/repealing of the all laws hindering freedom of assembly, association, expression and access to information in Tanzania among other oppressive laws.

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ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement

FIDH was established in 1922, and today unites 184 member organisations in 112 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

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Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.