

# KAMPENI YA UHURU WA KUJIELEZA NA UHURU WA KUKUSANYIKA



**“BILA UHURU WA KUJIELEZA NA KUKUSANYIKA  
HATUWEZI KUENDELEA”**



## Press Statement on Joint Campaign on Freedom of Expression and Freedom of Assembly

The joint campaign we are launching today seeks to safeguard the freedoms of assembly and expression. The campaign is organised by the Legal and Human Rights Centre (LHRC), through its UHAKIKI Project, in collaboration with 8 partners: Policy Forum, Twaweza, TGNP, Tanzania Centre for Democracy, WiLDAF, MCT, Tanzania Editors Forum, and the Commission for Human Rights and Good Governance. The Commission for Human Rights and Good Governance (CHRAGG), Media Council of Tanzania (MCT), Policy Forum, Tanzania Centre for Democracy (TCD), Tanzania Editors Forum (TEF), Tanzania Gender Networking Program (TGNP Mtandao), Women in Law and Development in Africa (WiLDAF).

The campaign emphasizes *“Bila uhuru wa kujieleza na kukusanyika, hatuwezi kuendelea”* (“Without freedom of expression and freedom of assembly there can be no development”).

### Freedom of Expression

The concepts of freedom of expression and access to information are the core pillars for democracy. Democracy is a ruling system which adheres to the rule of law, and the principles of human rights.

The people’s right to freely express their opinions is a key part of democracy. This freedom goes together with media freedom and the right to seek and receive information. Without freedom of expression there is no democracy.

Freedom of expression is protected by international standards, these include:

- Article 19 of both the UNDHR and the ICCPR, guarantees the freedom of expression to everyone and at the same time protects individual’s privacy.
- The African Charter on Human and People’s Rights (1981)
- Declaration of Principles on Freedom of Expression in Africa

Freedom of expression is also guaranteed under Article 18 of the United Republic of Tanzania Constitution.

Since 2015, a number of laws have been passed which restrict freedom of expression across Tanzania. These include the Statistics Act 2015, Media Services Act 2016 and the Cybercrime Act 2015.

The Statistics Act limits debate, prevents people and agencies from publishing their own statistics, and stifles the freedom of expression through the threat of imprisonment and fines.

The scope of the Media Services Act is too broad and not clear with reference to “media houses”, “media services”, “media outlets”, and “publications”. The definition of a journalist is also not clear and could include bloggers and those posting on social media. There is a fear that the practical application of the accreditation and licensing procedure will place undue restrictions on the freedom of expression.

The accreditation of journalists is in fact a licensing system which is not in compliance with international standards. In the 2003 Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression it makes clear that “individual journalists should not be required to be licensed or to register,” and that “there should be no legal restrictions on who may practise journalism.”

The Act introduces extensive restrictions on media operations which limits editorial independence.

Finally the Act creates an offence for the publication of false statements which is a vague term open to abuse.

Turning to the Cybercrime Act the most problematic provision is also the offence of publishing false information. This has a very broad definition of ‘information’. It has already been used to bring proceedings against a number of individuals for expressing opinions on private WhatsApp groups, personal Facebook pages, and also 36 TACCEO/LHRC staff and volunteers for collecting and disseminating election results.

Moreover the Tanzania Perception Index Report 2016 on Civil and Political Rights indicates that the freedom of expression scored C which is below average.

In addressing the situation as partners we recommend that the above laws be reviewed and reformed so as to ensure that they comply with Constitutional and international standards.

## Freedom of Assembly

This freedom is also found under common Article 20(1) in both the Constitution of the United Republic of Tanzania (1977) and the Constitution of Zanzibar (1984) as ‘Every person has freedom, to freely and peacefully assemble, associate and cooperate with other persons, and for that purpose, express views publicly and to form and join with associations or organizations formed for purposes of preserving or furthering his/her beliefs or interests or any other interests.’

Article 20 UN Declaration on Human Rights (1948), Article 21 International Covenant on Civil and Political Rights (1968), and Article 11 African Charter on Human and Peoples' Rights (1981) all provide that individuals have a right to assemble.

This freedom is a pillar of democracy, but a number of human rights reports including the LHRC's perception index (2016), show that the freedom of assembly is under a two-pronged attack from both political statements and the police. In the perception index report it scored a D which is poor.

As partners we have decided to organise this campaign so as to address the following challenges:

1. **Arbitrary limitations to assembly:** While each individual has the freedom to assemble, authorities have the power to use their discretion to limit this freedom under specific conditions. Assemblies are restricted without adequate reasoning, leading to suspicions around the motivations for such denials. There is little official data available in Tanzania on the right to assembly, which makes it difficult to have a nuanced understanding of how the accessibility to this right has changed over time. Civil society and the media however have reported incidents of arbitrary denial of this right by police.
2. **Unaccountable denial of assembly:** As highlighted above, the law allows for the limitation of assemblies under certain conditions. While maintaining public order and security concerns are cited by the police as a reason for denying assembly, specifics are not provided. Often confidential 'intelligence sources' is cited. Furthermore, denial of assembly is provided informally rather than in officially written notices. Further citizens have little understanding on how to appeal such denials and may be unwilling to appeal to higher authorities due to the link between the police and the appealing authority. Also, there is little avenue to hold the authorities to account.
3. **Misunderstanding of terms and responsibilities:** The Police Force and Auxiliary Service Act 2002 ("Police Act") outlines procedures the police must follow in the policing of public assemblies and processions. The terms "assembly" and "procession" are not defined in the Police Act. The Act does state that an assembly of three or more people, who do not obey orders to disperse when requested, would be classified as an "unlawful assembly". This renders the right to assemble at the discretion of the police officers in charge of the area, which is reliant upon their knowledge and understanding of the law, as well as their potential political bias. As such, it is viewed as a 'favour' to let people assemble rather than a political and civil 'right'.
4. **Arbitrary use of force:** The law stipulates that the state has obligations to support Freedom of Assembly. This means that Tanzanian authorities must facilitate the exercise of the freedom. These obligations cover the facilitation of peaceful assemblies and a duty to take reasonable and appropriate measures to enable lawful demonstration to proceed peacefully. There are however incidents reported across Tanzania where use of force has been excessive at demonstrations and the police have not fulfilled these obligations.
5. **Lack of clarity over the use of public space:** Freedoms can be restricted depending on the type of public space requested. Assemblies appear to be more difficult to hold in

cities and urban areas and more easily authorised in rural and areas with less public and media profile.

In addressing the situation as partners we have a number of recommendations:

1. Protection of freedom of assembly as constitutional rights by strengthening the security afforded to people when they assemble for civil, political and economic activities.
2. Implementation of the Police Force and Auxiliary Act needs to adhere to international standards. The Act could also be amended so that assembly is clearly defined.
3. Police should adhere to the laws and fulfill their obligations to facilitate peaceful assemblies and ensure measures are in place to enable lawful demonstrations to proceed peacefully. Police should provide security in line with the Constitution, national and international law avoiding excessive use of force.

In this campaign we call upon the government to realise the importance of people to assemble in promoting development. We believe that “without freedom of assembly and freedom of association there can be no development”. People must be allowed to peacefully assemble and associate with others so that they can share their opinions on issues affecting their lives. They can freely discuss the different development agendas for the betterment of the country.

Issued by:

The Executive Secretary, Media Council of Tanzania

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Director of Advocacy and Reforms, Legal and Human Rights Centre

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On 1<sup>st</sup> March, 2017