



Thematic Brief on

Freedom of Expression

A briefing by the Legal and Human Rights Centre
(LHRC)



Key Message:

Freedom of Expression is a fundamental right within a democratic state. This right is promoted by the constitution but limited in practice under specific laws. LHRC recommends the enactment of a law to ensure Freedom of Expression is fully protected as provided under the Constitution.

Freedom of Expression (FoE) is constitutionally protected but limited. The right to FoE includes the right to seek, receive and impart information and ideas. It has a broad scope. In terms of imparting information and ideas, it includes the right to express oneself orally, in writing, or through any means of communication including electronic means.

FoE also includes the right to seek and receive information from others, including the right to obtain and read newspapers, listen to broadcasts, surf the Internet, and participate in and listen to discussions in public and private forums.

FoE is promoted in the Constitution of

the United Republic of Tanzania of 1977, Article 18. In addition, it is encouraged in international legal frameworks such as Article 19 of the Universal Declaration of Human Rights (UDHR), Article 19 of the International Covenant on Civil and Political Rights (ICCPR), and Article 9 of the African Charter on Human and People's Rights (ACHPR). The ICCPR outlines the restrictions placed on seeking, receiving and imparting information. This means that FoE can be restricted by the State so long as the restriction meets the following test:

1. The interference must be in accordance with a law or regulation;
2. The legally sanctioned re-

3. The restriction must be necessary for the protection or promotion of the legitimate aim: The impact of restrictions must be proportionate – the harm/limitation of FoE must not outweigh the benefits in terms of the interest protected.

While the ICCPR provides a useful overview of these restrictions, these restrictions have not been further detailed in the Constitution of the United Republic of Tanzania of 1977.

Issues to be Addressed:

There are a number of important issues to resolve in order to ensure that FoE is upheld and protected for the citizens of Tanzania.

1. Absence of laws to protect FoE as provided by the Constitution:

As noted in the 2015 Tanzania Human Rights Report by LHRC, 'Despite the constitutional guarantee and protection, there is currently no law in Tanzania safeguarding the constitutional guarantee of right to information' Neither is there a legislation to safeguard other components of this right. This is an important component of protecting FoE. Legislation is required to define the roles and responsibilities of the State and the citizens, and to provide the infrastructure needed to provide guidance on how to deal with the infringement of this right. Efforts have stalled since 2006 to enact a law to protect this freedom. As noted in the 2015 Tanzania Human Rights Report, the constitutional review process was an opportunity to rectify the shortcomings of the law but this process has also stalled. The absence of laws means that FoE is not safeguarded in Tanzania as it should be.

1. This includes only the following legitimate aims: (1) respect for the rights and reputations of others, or (2) protection of national security, public order (*ordre public*), public health or morals.

2. Too many laws that limit FoE:

On the contrary there are a number of existing laws which are seen to undermine FoE in Tanzania. These include the Newspaper Act, 1976, the Zanzibar Newspapers Act (1976), National Security Act (1970), Civil Services Act (1989), Public Code of Ethics (1995), Tanzania Broadcasting Act (1993), Public Services Act (2002), the Tanzanian Communications Regulatory Authority (2002) and most recently the Cyber Crime Act (2015) and the Statistics Act (2015). The Tanzania Human Rights Reports provide analysis on each of these laws. These laws favour the government without considering the public interest and are considered to violate FoE as provided under Article 18 of the Constitution. A number of these laws were enacted during a different political context. The media landscape however has changed in Tanzania over the past ten years with the proliferation of the Internet, mobile phone and social media technology. Their relevance needs to be reconsidered during the Constitutional review process.

3. Cyber Crime Act has created fear among people who use social media and the Internet for oversight and advocacy activities:

The Cyber Crime Act (2015) is not only a hindrance to FoE but also an obstacle to development. The criminalisation of cyber activities creates fear amongst those involved in monitoring and advocacy on human rights. It also isolates the constitutional rights to seek, receive and publish information. While the regulation of cyber activities is recognised important (in preventing illicit and illegal activities), the Cyber Crime Act places too much emphasis on the criminalisation of cyber activities and not enough stress on regulation and protection of legitimate activities. As noted in the 2015 Tanzania Human Rights Report, 'the law also contains controversial provisions relating to criminalisation of sharing of information, extensive police powers of speech and seizure, surveillance without judicial authorisation as well [as] numerous vaguely defined offences.' There is a risk that this Act is having an impact on the activities of CSOs to use ICT, such as mobile phone technology, in their advocacy and government oversight activities.²

The Web Index (thewebindex.org) an international index, exists to measure the extent to which a country's citizens enjoy rights to information, opinion, expression, safety and privacy online. In 2014, Tanzania ranked 67 out of 86 countries on issues related to freedom of expression and openness in terms of Internet access and youth which is more limited compared to Uganda, Kenya, and Nigeria.³ This was made prior to the enactment of the Cyber Crime Act and the Electronic and Postal Communications Act which are likely to have a negative impact on this ranking.

4. Freedom of the media is being attacked:

An important issue affecting FoE is freedom of the media. In Tanzania the quality of media reporting is often under scrutiny, and sensationalist reports can affect citizens' opinions on the reliability of media reporting. In 2014, Afrobarometer – which conducts public opinion surveys on democracy and governance in Africa – indicated an increase in the number of citizens in Tanzania who felt that the government should control what the media publishes, compared to two years earlier (26% in 2012 and 44% in 2014). This trend is worrying. There is a risk that this data could be used to justify political aims to further restrict freedom of the media. Instead, the focus should be on improving the quality of media reports to strengthen the opinion of citizens on the importance of an independent media. Furthermore, as highlighted above, laws exist which affect the freedom of media.

2. For further information and analysis on the Act, please see analysis by the Collaboration on International ICT Policy in East and Southern Africa (CIPESA) report.

3. Please see <http://thewebindex.org/about/> for more information about the Index and the data.

Instead, the focus should be on improving the quality of media reports to strengthen the opinion of citizens on the importance of an independent media. Furthermore, as highlighted above, laws exist which affect the freedom of media. As noted in the 2015 Tanzania Human Rights Report, *The East African* newspaper was banned by the government in January 2015, citing section 6 of the Newspaper Act that deals with registration. The ban was issued following a number of articles that were published, which were critical of the government.

5. The Statistics Act threatens the collection, use, and dissemination of independent statistics:

As highlighted in the 2015 Tanzania Human Rights Report, that a number of issues of concern with the Statistics Act (2015), namely (a) creating uncertainty around who can generate statistics and the authorisations required, (b) the rules around the dissemination of statistics, (c) obstacles to whistle blowing without protection, and (d) restrictions on the publication of communication of contentious statistical information.⁴ There is a risk that the Statistics Act could be used as a political tool to censor data that is unfavourable to the government. The Act can also restrict research being undertaken by civil society and independent researchers.

6. Access to information is still limited despite efforts to make more information public:

The government has made commendable efforts to make information more public. However, this information is not updated regularly and can be difficult to access. The Collaboration on ICT Policy for East and Southern Africa (CIPESA) produced a report on access to information that noted that this information is not regularly updated, is often in non-reusable formats and may not necessarily meet language requirements.

Key Opportunities and Messages

1. Drafting of bills related to FoE need to be revised in a participatory process:

In order for Article 18 of the Constitution (which relates to Freedom of Expression) to be truly meaningful there is a need to enact laws that facilitate its full implementation and protection. Laws need to recognise the right, duties and responsibilities towards protecting FoE of both government and citizens. This does not require starting from the beginning, as bills have already been drafted. However, these should be reviewed and revised in a public and consultative manner to ensure they address the current context.

The movement to enact new laws was first started by the Coalition of Civil Society in 2000. As part of this process the Coalition drafted bills including an Access to Information Bill. The government adopted the idea of an Access to Information Bill, however during the drafting process; some of the suggestions were not taken into consideration. In 2015, the Access to Information Bill was made ready for Parliament but both the process and the bill itself were criticised. Media and civil society stakeholders did not feel they had been considered during the process –they wanted to have an independent body to oversee the process' conduct, but the law did not provide for this. Judicial powers were also given to the executive block and taken away from the Judiciary. In the end, the bill was not enacted. Given the strengths and weaknesses of the process, there is an opportunity to start it over again and ensure participation and an inclusive process.

Bills should not be placed under 'a certificate for urgency' which allows the government to fast track the process, as was done with the Access to Information Bill. This does not allow for enough time for civil society to oversee the process. In the case of the Access to Information Bill, we recommend that the participatory process should be led by the Media Council of Tanzania with legal assistance from LHRC.

4. Please see p. 62

2. Amend protocols and repeal laws:

If new bills that relate to FoE are brought to the table and enacted into law, then these laws should have provisions that repeal other provisions in existing laws limiting FoE. We also recommend that the Newspaper Act is repealed all together as it is archaic and restrictive.

3. Reform the Cyber Crime Act and Statistics Act:

Given the issues with the Cyber Crime Act we recommend it be reformed. If a new bill to safeguard FoE were to be enacted it could include the positive components of the Cyber Crime law that focus on the regulation of cyber activity. An alternative option is to amend the law in order to shift its focus to the regulation of cyber activities, with a specific section on offences.

As highlighted above, there are a number of concerning elements of the Statistics Act. Parliament and the Law Reform Commission need to focus efforts on revising this Act to provide further clarification around the uncertainties within the law.

4. Create a provision to establish a defence to institutions and members of the institutions to safeguard their freedom of speech

We recommend that Parliament through its Parliamentary Committee for Legal and Constitutional Affairs introduces a defence clause related to the definition of 'public interest' and 'public cause' in the law, as 'public interest' has been put forward as a reason for denying freedom of speech in the past. This could come in the form of a provision within a new law on FoE, or any Act promoting FoE.

5. Enact a law to establish a self-regulatory body to listen to and decide on issues of professionalism and ethics in the media

Our message to the government and parliament is to support the efforts of media stakeholders in setting up a media regulatory body. This is to increase the professionalism of the media industry as a whole, and which is likely to reduce the negative opinions around media content. This could therefore improve public opinion of the media. It is additionally important that the powers of this regulatory body remain among media stakeholders themselves to avoid it becoming a political tool.

6. Invest more in making updated public information public and accessible:

For any democratic nation, freedom of speech is fundamental for development. Information acts as a bridge between the public and the state. We need prompt and accurate information. We urge the government to strengthen its efforts in ensuring that all public information is made available, updated, and accessible to the public.

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