

State of Internet Freedoms in Tanzania

2014

An Investigation Into The Policies And Practices
Defining Internet Freedom in Tanzania



Tanzania



Credits

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Introduction

Tanzania is a low income level country located in East Africa with an estimated population of 44.9 million¹ and a Gross National Income (GNI) per capita of USD 570 as of 2012.² The country has enjoyed more political stability than its neighbours but current president Jakaya Kikwete's government has lately attracted wide spread criticism particularly over stifling media freedom and failure to fight corruption. The Global Corruption Barometer 2013 ranked Tanzania the fourteenth most corrupt country out of 107 surveyed countries.³

Tanzania was one of the first five countries in Africa to join the Open Government Partnership (OGP) in 2011. It has since set up an open data portal (www.opengov.go.tz) to spearhead open governance, including through the release of open data on sectors such as health, education and water.

However, the country has come under attack for stifling freedom of expression and assembly. While an increasing number of Tanzanians are using online and offline media to critique the government's performance, the government is increasingly becoming intolerant of these critical voices. Many journalists have been intimidated and harassed for questioning the government's democratic credentials, while some political and social rallies and demonstrations have been repressed. The crackdown on offline media has seen more citizens take to online platforms to voice their concerns and to hold their leaders accountable.⁴ The increased crackdown on traditional media houses and journalists bodes badly for the online community. The absence of an access to information law puts many users at risk of criminal charges, while out dated legislation such as the National Security Act of 1970 severely limit the publication of government information. The country's lack of a data protection and privacy law makes it easier for the state to monitor users' online actions with a view to curtailing their freedom of expression.

Background to ICT Use

Internet penetration continues to grow in Tanzania with the regulatory body reporting an increase in users from 7.5 million in 2012 to 9.3 million in 2013. With a teledensity of 61 phones per 100 inhabitants, mobile subscriptions stood at 27.6 million while fixed lines were at 607,822 as of December 2013.⁵

Tanzania has four licensed international gateway operators, six mobile phone providers, two fixed telephone providers, and over 40 Internet Service Providers (ISPs).⁶ The state-owned Tanzania Telecommunications Company Limited (TTCL) offers both data and voice services.

¹ National Bureau of Statistics, *Tanzania in Figures 2012*, http://www.nbs.go.tz/takwimu/references/Tanzania_in_figures2012.pdf

² World Bank, *Tanzania Data*, www.data.worldbank.org/country/Tanzania

³ Transparency International, *Global Corruption Barometer 2013, Tanzania*, <http://www.transparency.org/gcb2013/country/?country=Tanzania>

⁴ *Internet rights and democratization*, Global Information Society Watch, *Tanzania report (2011)*,

<http://www.giswatch.org/en/country-report/freedom-expression/tanzania>,

⁵ Tanzania Communications Regulatory Authority (TCRA), *2013 Telecom Statistics*,

<http://www.tcra.go.tz/images/documents/telecommunication/telecomStatsDec13.pdf>

⁶ ITU Tanzania Telecommunications

Overview, <http://www.itu.int/ITU-D/finance/work-cost-tariffs/events/tariff-seminars/djibouti-08/9-Tanzania%20Overview-EN.PDF>

Since 2009, the Tanzania government has been laying a national broadband backbone that links to international submarine fibre at the Dar es Salaam port with an aim to increase usage of ICT for equitable and sustainable socio-economic and cultural development of Tanzania.⁷ This initiative aims to establish a Point of Presence in all the country's administrative districts; facilitate the implementation of e-government initiatives; and make ICT related services particularly internet affordable and readily available. The initiative also seeks to provide equal access to the backbone network for all licensed operators to allow for the creation of an open and competitive delivery of ICT services. The project is being implemented with the support of the Chinese government at an estimated cost of US\$ 152 Million.^{8 9} As of May 2014, the network stretched over 7,560 km across the country, connecting 34 regional headquarters.¹⁰

Meanwhile, the National Information and Communications Technologies Policy, 2003 seeks to enhance economic growth and social progress through ICT.¹¹ The policy focuses on ten main areas: Strategic ICT leadership; ICT infrastructure; ICT Industry; Human Capital; Legal and Regulatory Framework; Productive Sectors; Service Sectors; Public Service; Local Content; and Universal Access.

Nonetheless, low literacy levels and low levels of infrastructure roll out still limit access to ICTs especially the internet. Although there are no official statistics on the number of women accessing ICTs in Tanzania, reports are emerging on some initiatives which encourage women to use ICT tools, especially the internet and mobile telephones, to access health and financial services.¹²

⁷ National Fibre ICT Optic Cable Network (NICTBB), <http://www.nictbb.co.tz/index.php>

⁸ Tanzania Communications Minister Updates on NICTBB, <http://www.telegeography.com/products/commsupdate/articles/2012/03/28/tanzanian-communications-minister-updates-on-nictbb-rollout/>

⁹ Kikwete: Fibre-optic network to cover all districts next year. <http://archives.in2eastafrika.net/kikwete-fibre-optic-network-to-cover-all-districts-next-year/>

¹⁰ NICTBB Network Map, <http://www.nictbb.co.tz/map.php> and Tanzania Telecommunications Company Ltd, 2014, <http://webmail.sata-sec.net/downloads/stobm/Presentations/TTCL%20NICTBB%20-%20STOBM%20-%202014%20SOUTH%20AFRICA%20-17th%20FEB%202014.ppt>

¹¹ National Information and Communications Technologies Policy 2003, <http://www.tzonline.org/pdf/ictpolicy2003.pdf>

¹² Innovative use of mobile phones for women's empowerment in Tanzania, GISWatch, 2013; <http://www.giswatch.org/en/country-report/womens-rights-gender/tanzania>

Relevant Agencies

The **Tanzania Communications Regulatory Authority (TCRA)** was established by the TCRA Act no. 12 of 2003¹³ as an independent body for regulating telecommunications, broadcasting and postal services; and the management of radio spectrum, covering electronic technologies and other ICT applications. It merged the former Tanzania Communications Commission and the Tanzania Broadcasting Commission. The Act gives TCRA the powers to: monitor the performance of regulated sectors; facilitate the resolution of complaints and disputes; and consult with other regulatory institutions discharging functions similar to those of the authority in Tanzania and elsewhere. Its roles also include licensing and regulating the communications sub-sectors. TCRA became operational on November 1, 2003.

The TCRA Act also established a “**contents committee**” to be “responsible for regulation of broadcast content transmitted by any broadcasting station or any electronic communication media as a broadcasting service.” The committee has the powers and functions determined by the Authority to monitor and regulate broadcast content and monitor broadcasting ethics compliance (Sections 25, 26 and 27). According to the Media Council of Tanzania, the law under which TCRA was established is not categorical about how the agency ought to intervene in regulating content generated on the internet, particularly on moral and ethical issues such as pornography. Nonetheless, the Council suggests that TCRA should be doing more to regulate such content.¹⁴

The **Media Council of Tanzania (MCT)**¹⁵ is an independent body aimed at promoting freedom of the media, professional standards and accountability. Established in 1995, it was set up as an alternative to the intention by the government to establish a body to regulate and control the media. The council receives and mediates complaints including press freedom violations such as denial of access to information, threats, harassment, murder and confiscation of property.

Tanzania Internet Service Providers Association (TISPA)¹⁶ was established in 2005 to bring together the technology community to “collectively make the internet accessible to as many people as possible”. Its membership consists of 24 Internet and ICT solutions service providers.¹⁷ Among its functions is to champion measures and initiatives aimed at increasing and expanding access to internet services and raise public awareness in matters relating to usage of the internet.¹⁸

The association operates the Tanzania Internet eXchange (TIX) whose aim is to provide a local facility for the exchange of internet traffic in the country. Currently, there are 26 internet service providers connected to it.¹⁹

The **National Computer Emergency Response Team (CERT)** was established under section 124 of the Electronic and Postal Communications Act (EPOCA) of 2010. The CERT is meant to coordinate responses to cyber security incidents at the national level and cooperate with regional and international entities involved with the management of cyber security incidents.

¹³ Tanzania Communications Regulatory Authority Act 2003, <http://www.tcra.go.tz/images/documents/policies/Tanzania%20Communications%20Regulatory%20Act-2003.pdf>

¹⁴ Media Council of Tanzania (MCT), State of the Media Report 2012, <http://www.mct.or.tz/index.php/downloads/category/5-State%20of%20Media?download=68:state-of-media-report-2012>

¹⁵ Media Council of Tanzania (MCT), <http://www.mct.or.tz>

¹⁶ Tanzania Internet Service Providers Association, <http://tix.or.tz/tispa/>

¹⁷ TISPA Members, <http://tix.or.tz/tispa/members.html>

¹⁸ TISPA Constitution, http://tix.or.tz/tispa/docs/TISPA_Constitution.pdf

¹⁹ Tanzania Internet eXchange (TIX), Peers, <http://tix.or.tz/peers.html>

Policy and Regulatory Environment

Freedom of Expression and Access to information

Article 18 of the Tanzanian Constitution²⁰ and Article 18 of the Constitution of semi-autonomous Zanzibar²¹ guarantee the right to freedom of opinion and expression and the rights to seek, receive and impart information. The same articles give citizens the right “to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society”. Freedom of association and assembly are also provided for in the Constitutions.

Despite these constitutional guarantees, the absence of an access to information law gives the Tanzania government discretionary power to dictate what information citizens can or cannot access. The National Security Act of 1970²² gives the government powers to define what information should be disclosed to or withheld from the public. The Act makes it a punishable offence to in anyway investigate, obtain, possess, comment on, pass on or publish any document or information which the government considers to be classified. Classified information as provided in Section 2 (1) is defined as “any information or thing declared to be classified by an authorised officer”.

Section 4 of the 1970 Act provides for punishment of public officials who release or retain information that has been identified as classified. Those found guilty of this offense are liable on conviction to imprisonment for a term not exceeding 20 years. Without specifying types of mediums, Section 5 criminalises unauthorised communication of classified matter or causing the leakage of such classified matter to unauthorised persons. The penalty is imprisonment for up to 20 years.

In 2006, the Tanzania government drafted a Right to Information (RTI) Bill.²³ The bill made provisions for the right to information, the promotion and protection of privacy of individuals, the protection of journalists and confidential sources, media operations and the protection of minors. However, it was criticised by media rights activists, who cited a number of inconsistencies in the bill and called for the separation of the media services from right to information aspects.²⁴ They drafted their own Right to Information Bill²⁵ and a Media Services Bill.²⁶ Activists presented the alternative RTI bill to government in August 2007 and the Media Services bill in October 2008. To-date, no substantive reviews have been made to the proposals made in the alternative bills.

However, in February 2013, Deputy Minister for Information, Youth, Culture and Sports, Amos Makalla, announced that the government had decided to shelve the draft 2007 RTI bill pending further research. In the meantime, the government was considering tabling a Media Service Bill in Parliament.²⁷ In early May 2014, Constitutional and Legal Affairs minister Dr.

²⁰ The Constitution of the United Republic of Tanzania (Cap. 2) <http://www.judiciary.go.tz/downloads/constitution.pdf>

²¹ The Constitution of Zanzibar, <http://www.wipo.int/edocs/lexdocs/laws/en/tz/tz028en.pdf>

²² Tanzania National Security Act, 1970, http://www.tanzania.go.tz/egov_uploads/documents/NATIONAL_SECURITY_ACT_sw.pdf

²³ Freedom of Information Bill, http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/tanzania/draft_foi_bill_2006.pdf

²⁴ Commonwealth Human Rights Initiative, Stakeholders Reject the Draft Freedom of Information Bill, http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/tanzania/stakeholders_reject_draft_foi_bill.pdf.

²⁵ Development Partners Group (DPG), Stakeholder's Draft Proposals For The Right To Information Bill,

2007, http://www.tzdpdg.or.tz/uploads/media/Stakeholder_s_Draft_Proposals_for_the_Right_to_Information_Bill_2007.rtf

²⁶ MCT Stakeholders' Proposals on Media Services Bill, 2008,

<http://www.mct.or.tz/index.php/downloads/category/7-Media%20Laws?download=13:stakeholders-proposals-on-the-draft-media-services-bill-2008>

²⁷ Kaijage . F, Government shatters hope on Right to Information Bill, <http://www.ipppmedia.com/frontend/index.php?l=50772>

Asha-Rose Migiro announced that a ministerial paper proposing for the RTI bill had been developed.²⁸ Nonetheless, the Tanzania government has taken positive steps in releasing information to the public and announced plans to undertake a multi-stakeholder approach in preparing the Right to Information bill.²⁹

Meanwhile, the country is going through a constitutional review process with the draft constitution³⁰ currently being debated by the Constituent Assembly. Section 29 1 (b) provides for the observation of access to government information. It states that “every person has a right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society, execution by the state authority of national policies and social, development activities and other matters of social importance.”

Section 30 of the draft constitution calls for freedom of information and the media, stating that “every person has the freedom to seek, receive and use news and information and disseminate that information; and start mass media and other means of information dissemination regardless of national boundaries.” Sub-section 2 calls for media freedom, stating “The mass media shall be free and shall also have the right to receive, use and disseminate the information which they get; the responsibility of dissemination of news and information to the people; and respecting and protecting human dignity, respect, freedom and esteem of the people against the information that they use, prepare and disseminate.” Still, sub-section 3 requires “the government and its institutions, civil societies and individuals to have the responsibility of providing information to the public about how they discharge their responsibility.” However, they “shall have to observe the conditions of the law of the land to be enacted for that purpose and for the intent of safe guarding national security, peace, public ethics, justice, humility and freedom of other people.”

Freedom of the Press

The Newspapers Act, 1976 (Act No. 3/76)³¹, which governs the media in Tanzania sets limitations on what news agencies can report on. Whereas this law is not explicit on internet media, it describes publication as “all written and printed matter, and any gramophone or other record, perforated roll, recording tape or wire, cinematography film or other contrivance by means of which any words or ideas may be mechanically produced, represented or conveyed, and everything whether of a nature similar to the foregoing or not, containing any visible representation or by its form, shape or other characteristics, or in any manner capable of producing, representing or conveying words or ideas and every copy or reproduction of any publication.”

The Act provides for the registration of all press organs and requires press owners to sign an affidavit, swear before a magistrate and register in the office of the Registrar detailing the name/title of the newspaper, physical address, the names and places of residence of the owners (Section 6).

The Act further gives the minister responsible for information, powers to “exclude” any newspaper or class of newspapers from the operation of all or any of the provisions of registration “either absolutely or subject to, such conditions as he may think fit” (Section 5).

²⁸ *The Guardian*, Ministry prepares access to public information bill, <http://www.ippmedia.com/frontend/?l=67534>, May, 05, 2014

²⁹ IPP Media, Chikawe: Media will have say in freedom of information legislation, <http://www.ippmedia.com/frontend/index.php?l=51034>, February 09, 2013

³⁰ Tanzania Draft Constitution, http://www.constitutionnet.org/files/tanzania_draft_constitution_2013-english.pdf

³¹ Tanzania Newspapers Act, 1976, <http://polis.parliament.go.tz/PAMS/docs/3-1976.pdf>

Under Section 9 of this Act, publishers are required to send daily copies of newspapers and any supplements to the Registrar of Newspapers. Failure to comply with sections 5, 6 and 9 can result in a fine of up to TZShs 20, 000 (US\$ 12) or a prison term not exceeding four years or both.

The line minister may prohibit the publication of any newspaper if he or she is of the opinion that doing so would be in the “public interest or in the interest of peace and good order to do so.” According to Section 25 (1), he/she “may by order in the Gazette direct that the newspaper named in the order cease publication as from the date (here in after referred to as “the effective date”) specified in the order.” Section 22 gives any police officer the powers to seize any newspaper printed or published wherever found, or if he believes it to have been printed or published, in contravention of the Act, with or without a warrant.

Sections 36 and 37 of this Act prohibit the publication of “any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace” and incitement of violence, respectively. Offences are punishable with a fine not exceeding TZShs 15,000 (US\$ 9) or imprisonment for a term not exceeding three years or both.

Section 38 further calls for the punishment of unlawful publishing “by print, writing, painting, effigy or by any means otherwise than solely by gestures, spoken words or other sounds” of any defamatory matter concerning another person, with intent to defame that other person. Persons found guilty of this offence are liable to a fine not exceeding TZShs 10,000 (US\$6) or to imprisonment for a term not exceeding two years or both.³²

Although the Act is meant for print media, the provisions may apply to online media as many newspapers have evolved to digitally produce their content. Critics of this law have argued that it is needlessly restrictive and contradicts the spirit of press freedom and freedom of expression. It also gives a single minister unrestricted powers to ban the publication of particular newspapers on the pretext of protecting public interest when, “public interest” is not defined in the statute.³³

The Information and Broadcasting Policy, 2003 requires everyone wishing to establish blogs or websites to register with the registrar of companies and also get a licence from the TCRA. Media freedom activists have argued that this should not apply to the internet, which is not a broadcast medium and does not rely on scarce public frequencies. It therefore cannot be treated in the same manner as radio and television broadcasters.³⁴

Data Protection and Privacy

Tanzania’s Constitution, under Article 16 (1), provides for the right for personal respect and protection, privacy of self and of family and matrimonial life, and respect and protection of residence and private communications. Further, Article 18(c) of the Constitution guarantees citizens the “freedom to communicate and a freedom with protection from interference from

³² The Newspaper Act, 1976; Section 47

³³ The East and Horn of Africa Human Rights Defenders Project Civil society concern at ban of newspaper in Tanzania, <http://www.defenddefenders.org/2012/08/civil-society-concern-at-ban-of-newspaper-in-tanzania/>

³⁴ Article 19, Note on the United Republic of Tanzania; Information and Broadcasting Policy, <http://www.article19.org/data/files/pdfs/analysis/tanzania-information-and-broadcasting-policy-f.pdf>

his communication.” Section (2) of Article 16 requires state authorities to “lay down legal procedures regarding the circumstances, manner and extent to which the right to privacy, security of his person, his property and residence may be encroached upon.”

Section 17 of the [Tanzania Communications Regulatory Authority Act No. 12 of 2003](#)³⁵ gives the authority power to obtain information, documents and evidence related to communications in the performance of its functions. Under sub-section (1), it states that “Where the Authority has reasons to believe that a person is capable of supplying information, producing a document or giving evidence that may assist in the performance of any of its functions, any officer of the Authority may, by summons signed by the a Director General or Secretary of the Authority served on that person, require that person, (a) to furnish the information in writing, signed by him, in the case of a body corporate, signed by a competent officer of the body corporate; (b) to produce the document to the Authority; (c) to appear before the Authority to give evidence.” This provision may be misused by state agencies to compel ISPs to release user information to government.

Failure to comply with the above provision may result in the issuance of a warrant “authorising a police officer to enter into any premises believed to contain or into which a document is kept or hidden and conduct search and make copies or take extracts of documents there in.”

Meanwhile, the [Electronic and Postal Communications Act \(EPOCA\) of 2010](#),³⁶ which replaced the Tanzania Communications Act No.18/1993 and Tanzania Broadcasting Services Act No.6/1993, mandates the regulatory authority to [keep a database of all subscriber information](#). Under Section 89 it states “Every subscriber information shall be kept within the Authority”. Section 91 of the Act calls for the monitoring and supervision of all subscriber information and also requires that [all application services providers submit to the Authority once a month a list containing their subscribers’ information](#). Sub-section 4 grants the authority power to issue guidelines on the specific details of subscribers’ information to be submitted. The Act is silent on the purpose of the subscriber information collection or how the database is maintained and protected to ensure citizens’ rights to privacy. Moreover, the absence of a Data Protection and Privacy law makes subscriber information vulnerable to state abuse.

The EPOCA Consumer Protection Regulations 2011³⁷ and EPOCA Licensing Regulations, 2011³⁸ provide for the registration of SIM cards. According to Section 10 (2) of the Consumer Protection Regulations, any person who owns or intends to use a detachable SIM card or built-in SIM card mobile telephone shall be obliged to register that SIM card with their respective service providers or authorised distributors, agents or dealers. Service providers are required to get the “full name of the potential subscriber; identity card number or any other document which proves identity of the potential subscriber; and residential and business or registered physical address, whichever is applicable; and where the potential subscriber is a legal

³⁵ Tanzania Communications Regulatory Authority Act 2003,

<http://www.tcra.go.tz/images/documents/policies/Tanzania%20Communications%20Regulatory%20Act-2003.pdf>

³⁶ The Electronic and Postal Communications Act (EPOCA) of 2010, <http://www.tcra.go.tz/images/documents/policies/epoca.pdf>

³⁷ The Electronic and Postal Communications (Consumer Protection) Regulations, 2011,

<http://www.tcra.go.tz/images/documents/regulations/consumerProtection.pdf>

³⁸ The Electronic and Postal Communications (Licensing) Regulations, 2011, [Http://www.tcra.go.tz/images/documents/regulations/licensing.pdf](http://www.tcra.go.tz/images/documents/regulations/licensing.pdf)

person, obtain and fill in a relevant form accompanied with a certified copy of certificate of registration or incorporation; business license; Tax Payer Identification Number Certificates; and where applicable, the Value Added Tax.”

Under Section 130 (1) of the EPOCA Act, an operator who fails to register a subscriber receives a penalty fine of TZShs 3 million (US\$1,849) or 12 months imprisonment or both. Individuals’ use of an unregistered SIM card is also an offence, which carries a fine of TZShs 500,000 (US\$ 307) or a jail term not exceeding three months. Changes in ownership of SIM cards also have to be reported.

Section 120 of the Act criminalises unlawful interception of communications.³⁹ However, section 121 (2) allows “an officer, employee or agent of any network facilities provider, network service provider, application service provider or content service provider whose facilities or services are used in communications, to intercept, disclose, or use those communications in the normal course of his employment while engaged in any activity which is a necessary incident to the performance of his facilities or services or to the protection of the rights or property of the provider of the facilities or services” for the purposes of service quality control and check. The provider is not allowed to intercept communications for observing or random monitoring.

Service provider’s employees or agents are also required under Section 98 to maintain the confidentiality of their customer information. Access to customer information may only take place by an authorised person or where such information is required by any law enforcement agency, court of law or other lawfully constituted tribunal.⁴⁰ Unlawful interception and unauthorised disclosure of information is an offence punishable upon conviction with a fine of not less than TZShs 5million (US\$ 3,047) or imprisonment for a term not less than 12 months, or both.

Protection of consumer information is also provided for under Section 6 of the EPOCA Consumer Protection Regulations 2011, which calls for a licensee to protect against improper or accidental disclosure of consumer information. A licensee is forbidden from transferring information to any other third party except as permitted by any terms and conditions agreed with the consumer, or with permission of the Authority, or by other applicable laws.

Lawful interception of communications is provided for under Section 31 of the Prevention of Terrorism Act (2002).⁴¹ Under subsection 1, “A police officer may for the purpose of obtaining evidence of the commission of an offence under this Act, apply, *ex parte*, to the Court, for an interception of communications order.” Issuance of an interception warrant is subject to the written consent of the Attorney General (Subsection 2). The court may make an order:

- (a) requiring a communications service provider to intercept and retain a specified communication or communications of a specified description received or transmitted, or about to be received or transmitted by that communication service provider;

³⁹ EPOCA, 2010: Section 120, “Any person who, without lawful authority under this Act or any other written law; intercepts, attempts to intercept, or procures any other person to intercept or attempt to intercept any communications; or discloses, or attempts to disclose to any other person the contents of any communications, knowingly or having reason to believe that the information was obtained through the interception of any communications in contravention of this section; or uses, or attempts to use the contents of any communications, knowingly having reason to believe that the information was obtained through the interception of any communications in contravention of this section, commits an offence.”

⁴⁰ The Prevention of Terrorism Act, 2002, http://www.immigration.go.tz/downloads/Tanzania_Prevention%20of%20Terrorism%20Act202002%20.pdf

⁴¹ The Prevention of Terrorism Act, 2002, http://www.immigration.go.tz/downloads/Tanzania_Prevention%20of%20Terrorism%20Act%202002%20.pdf

- (b) authorising the police officer to enter any premises and to install on such premises, any device for the interception and retention of a specified communications of a specified description and to remove and retain such device, if the Court is satisfied that the written consent of the Attorney General has been obtained as required and that there are reasonable grounds to believe that material information relating to the commission of an offence under this Act, or the whereabouts of the person suspected by the police officer to have committed the offence, is contained in that communication or communications of that description.⁴²

This Act further allows for the use of any communications intercepted, including from outside of the country, to be admissible in proceedings for any offence under the Act.⁴³

In April 2014, the Minister for Communication, Science and Technology, announced government's plan to enact a Cyber security Act, Data Protection Act and the Electronic Transacting Act by end of 2014 in efforts to tackle cyber crime.⁴⁴

Intermediary Liability

Section 118 of the EPOCA 2010, provides for liability of both users and intermediaries for the transmission of "obscene, indecent, false, menacing or false" communications with intent to "annoy, abuse, threatens or harass another person."⁴⁵ The penalty for offenders is a fine not less than TZShs 5million (US\$ 3,047) or imprisonment for a term not less than twelve months, or both. Repeat offenders may be liable to fine of TZShs 750 (US\$ 0.5) for every day of repeat offense after conviction.

The Tanzania Evidence Act, 2007 provides for admissibility of electronic evidence in criminal cases.⁴⁶ It states that "in any criminal proceedings, information retrieved from computer systems, cover networks or servers; or operations, the records obtained through surveillance of means of preservation of information including facsimile machines, electronic transmission and communication facilities; the audio or video recording of acts or behaviours or conversation of persons charged, shall be admissible in evidence." It has been argued that ISPs could be summoned by court to give evidence in court by revealing names and other details of the clients.⁴⁷

⁴² The Prevention of Terrorism Act, 2002, Section 31, Subsection 3

⁴³ The Prevention of Terrorism Act, 2002, See; Section 31, Subsection 4

⁴⁴ IPP Media, Data Protection and cyber laws ready by year-end, <http://www.ippmedia.com/frontend/?l=67133>, 21st April 2014

⁴⁵ The article reads: Any person who- (a) by means of any network facilities, network services, applications services or content services, knowingly makes, creates, or solicits or initiates the transmission of any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person; (b) initiates a communication using any applications services, whether continuously, repeatedly or otherwise, during which communication may or may not ensue, with or without disclosing his identity and with intent to annoy, abuse, threatens or harass any person at any number or electronic address; (c) by means of any network services or applications service provides any obscene communication to any person; or permits any network services or application services under the person's control to be used for an activity described in section 117 (3), commits an offence and shall, on conviction, be liable to a fine not less than five million Tanzanian shillings or to imprisonment for a term not less than twelve months, or to both and shall also be liable to fine of seven hundred and fifty thousand Tanzanian shillings for every day during which the offence is continued after conviction."

⁴⁶ Section 40 of the Evidence Act, 2007, http://www.tanzania.go.tz/egov_uploads/documents/EVIDENCE%20ACT.pdf

⁴⁷ Tanzania Legal News, ISP Liabilities in Tanzania, <http://tanlex.wordpress.com/2010/06/11/isp-liabilities-in-tanzania/>, April 04, 2014

Internet Freedoms Violations

On September 27, 2013 two newspapers were shut down, with orders to also stop publishing online. Mwananchi and Mtanzania newspapers were closed for two weeks and three months respectively on allegations of “publishing seditious stories that were allegedly aimed to provoke discontent between the government and public.”⁴⁸ Mtanzania was sanctioned for writing stories that accused the government of not doing enough to prevent a recent spate of acid attacks on Zanzibar. Mwananchi’s stories were about government salaries, which had been based on leaked information and another story concerned police providing increased security at local mosques, which the government felt was insulting to Tanzanian Muslims.⁴⁹ The country’s Director of Information, Assah Mwambene, announced that he would temporarily ban the Mwananchi paper, because of stories intended to influence “the citizens to lose confidence in state organisations.”⁵⁰ Although Mwananchi planned to continue publishing its online edition, on October 1, 2013 it was ordered to stop under threat of further sanctions.⁵¹

Like neighbouring Kenya, Tanzania has been battling hate speech via ICT. According to the TCRA director general, Prof John Nkoma, “as the communication sector grows, there is also a huge misuse of the platforms in the name of freedom of speech.” According to him, there had been an “escalation of unhealthy discussions about religions, incitements and other provocative statements through various communication platforms.”⁵² As such, the regulator in August 2013 launched a social media campaign to curb hate speech and to promote “positive use” of ICT in the country. The campaign called “Futa Delete Kabisa” (Delete all hate messages) is aimed at reducing incitements through use of mobile phones, social media, radio, televisions and other channels of communication which the Authority said were threatening the country’s peace. The campaign further “aims to promote self-regulation” and “discourage hate messages in all communication platforms.”⁵³

Earlier in July 2012, government indefinitely banned Mwanahalisi for allegedly publishing two seditious stories alleging that state intelligence officers were involved in the kidnap and torture of the Medical Association of Tanzania head, who had led a nationwide doctors’ strike. The ban was cited under section 25 (1) of 1976 The Newspaper Act.⁵⁴ The online version of Mwanahalisi (<http://www.mwanahalisi.co.tz/>) remained accessible but was last updated in 2012. Human rights activists called for the amendment of the Act.⁵⁵

In 2011, there were reports that the Tanzania government was “cloning” the [jammiforums.com](http://www.jamiforums.com) website in an attempt to control content it produced.⁵⁶ Government refuted these allegations. JamiiForums.com is a website that publishes and discusses topics ranging

⁴⁸ Media Council Press Release, Media Council condemns closure of two major newspapers, <http://www.mct.or.tz/index.php/component/content/article/62-press-release/257-media-council-condemns-closure-of-two-major-newspapers>, September 30, 2013

⁴⁹ Chris Oke, Tanzanian government bans nation’s largest newspaper, <http://speakjhr.com/2013/10/tanzanian-government-bans-nations-largest-newspaper/>, October 12, 2013

⁵⁰ Ibid

⁵¹ The Citizen, Government now bans ‘Mwananchi’ website, <http://www.thecitizen.co.tz/News/Government-now-bans-Mwananchi-website/-/1840392/2014814/-/item/0/-/ph66mgz/-/index.html>, October 02, 2013

⁵² Anne Robi, TCRA Decries Bad Language in Networks, Daily News, <http://archive.dailynews.co.tz/index.php/local-news/20614-tcra-decries-bad-language-in-networks>, August 1, 2013

⁵³ Facebook, <https://www.facebook.com/pages/Futa-Delete-Kabisa/159279144263159?id=159279144263159&sk=info>

⁵⁴ Committee to Protect Journalists (CPJ), Tanzanian authorities ban weekly indefinitely, <http://www.cpj.org/2012/07/tanzanian-authorities-ban-weekly-indefinitely.php>, July 30, 2012

⁵⁵ East African Horn of Human Rights Defenders, Civil society concern at ban of newspaper in Tanzania, <http://www.defenddefenders.org/2012/08/civil-society-concern-at-ban-of-newspaper-in-tanzania/>, August 3, 2012

⁵⁶ Karen Allen, African jitters over blogs and social media, BBC News, www.bbc.co.uk/news/world-africa-13786143#story_continues_1, June 16, 2011

from politics and economics to societal issues in Tanzania and beyond. On a number of occasions, the forum has come under attack by the government over allegations that it was working to “undermine” the ruling party and the government.⁵⁷ In April 2011 the forum’s hosts reacted with a press release reassuring their members that the government allegations were intended to threaten and deter the online community from exercising their freedom of speech and association.⁵⁸ The forum’s hosts had also, on a number of occasions, been interrogated by the authorities over content that irked the government.

In February 2008, the two founders and editors of Jamii forums then referred to as Jambo Forums, Maxence Mello and Mike Mushi⁵⁹ were detained and interrogated for 24 hours in Dar es Salaam, in what observers of the case say was a politically motivated attempt to shut down their site.⁶⁰ The forum, at that time had more than 2,000 members and 6 million hits. Police confiscated three computers used to host their website, shutting down the site for five days while the equipment remained under police custody.⁶¹ The editors were released after 24 hour interrogations. However, no reports are available as to whether their computers were returned to them.

Earlier in February, 2009, the government had shut down one blog (www.zeitamu.com) for posting an allegedly doctored photo of the president and black mailing prominent people. The blog owner, Malecela Peter Lusinde, was arrested and charged in Tanzania, although it was not clear under what law he was charged.⁶² As of May 2014, the website was still accessible, however with content not related to the original site information.

⁵⁷ FikraPevu Political Paranoia? Tanzania’s Ruling Party threatens online social media, JamiiForums Press

Release, <http://www.fikrapevu.com/political-paranoia-tanzanias-ruling-party-in-fear-of-online-social-media/>, April 19, 2011

⁵⁸ *Ibid*

⁵⁹ FikraPevu, Meet the brains behind ‘JamiiForums’, <http://www.fikrapevu.com/meet-the-brains-behind-jamiiforums/>, October 24 2012

⁶⁰ Balancing Act, Tanzanian Government detains two website editors, Issue no 395,

<http://www.balancingact-africa.com/news/en/issue-no-395/internet/tanzanian-government/en#sthash.AHUhqz70.dpuf>,

⁶¹ *Ibid* 61

⁶² J. Nambiza Tungaraza, Tanzania: Blogger arrested for publishing manipulated images of the president, Global Voices Online, June 19, 2009, <http://globalvoicesonline.org/2009/06/19/tanzania-blogger-arrested-for-publishing-manipulated-images-of-the-president/>

Recommendations

- Need to amend legislative frameworks that place heavy sanctions on violators of laws such as the Electronic Postal and Communications Act, 2010, and the Newspaper Act, 1976. Also amendments of these policies should allow for the free flow of information across all media platforms.
 - Need to maintain a pre-emptive legal framework that can keep pace with the rapidly changing telecommunication technology. Most of the legal and regulatory frameworks apply only to offline mediums of communication. Areas such as data and privacy protection, computer related fraud and crimes, access to information rights, security and privacy of e-transactions need utmost attention.
 - Strong advocacy for protection of users' digital rights and freedom of expression both online and offline needs to be undertaken by both civil society and media activists.
 - Undertake capacity building for both online users and enforcement agencies in exercising digital rights.
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