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# State of Internet Freedom in Tanzania 2016

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Charting Patterns in the Strategies African  
Governments Use to Stifle Citizens' Digital Rights

December 2016



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Africa



## State of Internet Freedom in Tanzania | 2016

### Charting Patterns in the Strategies African Governments Use to Stifle Citizens' Digital Rights

#### Credits

This research was carried out by the Collaboration on International ICT Policy for East and Southern Africa (CIPESA) as part of the OpenNet Africa initiative ([www.opennetafrika.org](http://www.opennetafrika.org)), which monitors and promotes Internet freedom in Africa.

The report presents the findings of a study on what the government in Tanzania is doing to inhibit citizens' access to ICT, for example content blocks, censorship, filtering, infrastructure control, law-making, court cases; using ICT activity and data to monitor citizens; and how government bodies and functionaries are using propaganda, impersonation, threats, cloning, and other tactics to shape online content in their favour. Other country reports for Burundi, Democratic Republic of Congo, Ethiopia, Kenya, Rwanda, Somalia, Uganda, Zambia and Zimbabwe as well as a regional State of Internet Freedom in Africa 2016 report, are also available. The research covers legal and policy developments, as well as on abuses and violations of internet freedom over 12 months prior to November 2016.

CIPESA recognises the contribution of Jamii Media.

The research was conducted with support from Facebook and Google.

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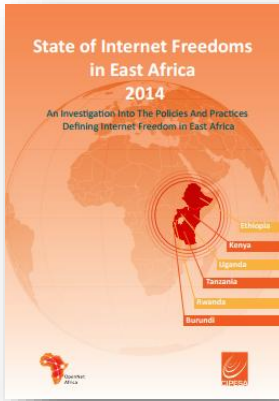
State of Internet Freedom in Tanzania 2016: Charting Patterns in the Strategies African Governments Use to Stifle Citizens' Digital Rights

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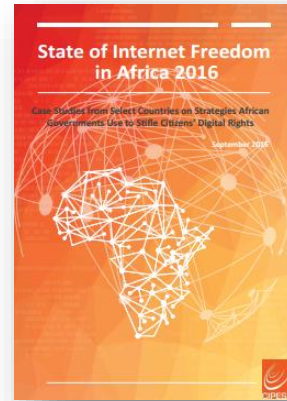
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## 1. Introduction

The government of Tanzania has in the last five years sought to control access and use of ICT by enacting laws which limit freedom of expression via the internet. Laws such as the Cybercrimes Act, 2015, the Statistics Act, 2015, the Electronic and Postal Communication Act, 2010 and the Media Services Act, 2016 have provisions that limit freedom of expression, right to information and privacy online.

In October 2015, Tanzania elected Dr. Pombe Magufuli under the ruling Chama Cha Mapinduzi (CCM) political party, which has been in power since 1961. Following his election, the president has taken tough measures against corruption in an effort to improve governance in the country.<sup>1</sup> However, he has also been criticised for his intolerance for criticism, which has resulted in the prosecution of numerous social media users.<sup>2</sup>

The October 2015 general elections saw widespread adoption of ICT in electoral processes. For the first time ever, a Biometric Voters Registration (BVR) system was used to register voters.<sup>3</sup> Meanwhile, ICT also played a greater role in the campaign processes of candidates and political parties. Online platforms including websites, Facebook, Twitter and Instagram were used to publicise agendas and manifestos. Conversely, the same platforms were used to spread false information and mudslinging political opponents. Indeed, prior to the elections, the Tanzania Communications Regulatory Authority (TCRA) promulgated new guidelines for blogs and other online content providers. Under the rules, online media are required to register with the TCRA, take steps to ensure balanced election coverage, edit controversial user comments and online discussions, and give the right to reply to aggrieved parties and candidates.

During the tallying process, media houses aired various reports by the opposition party (CHADEMA) accusing the ruling party CCM of election malpractice and interception of results during online transmission from constituencies to the Electoral Commission. Ruling party officials denied the allegations and instead accused CHADEMA of the same. The ICT team of CHADEMA was later arrested by the police and charged with the offence of publishing the presidential election results contrary to the Elections Act, 1985.<sup>4</sup>

Meanwhile on October 29, 2015, the offices of the Tanzania Civil Society Consortium on Election Observation (TACCEO) who were monitoring the election process and human rights issues were raided by armed police officers. Three laptops, 24 desktop computers and 25 phones were confiscated. A total of 36 staff and volunteers were arrested but later released after interrogation at the Central Police Station in Dar es Salaam on charges of publishing false information contrary to Section 16 of the Cybercrime law and the Elections Act. The raid and arrests took place hours before the National Electoral Commission (NEC) announced the winner of the presidential election.<sup>5</sup> The seized equipment and devices remained in

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<sup>1</sup> What has Tanzania's Magufuli done during his year in office?, <http://www.bbc.com/news/world-africa-37822740>

<sup>2</sup> Tanzania civil servants' social media ban, <http://www.bbc.com/news/world-africa-35764354>

<sup>3</sup> Biometric Voter Registration Launces in Tanzania, <http://www.tanzaniatoday.co.tz/news/biometric-voter-registration-launches-in-tanzania>

<sup>4</sup> Chadema volunteers charged with publishing wrong results, <http://www.thecitizen.co.tz/tanzaniadecides/Chadema-volunteers-charged-with-publishing-wrong-results/-/2926962/2933186/-/6kxx4e/-/index.html>

<sup>5</sup> Arrest of 38 Human Rights Defenders at TACCEO Election Observation Centre, <http://protectionline.org/2015/11/04/tanzania-arrest-38-human-rights-defenders-tacceo-election-observation-center/>

police custody for nine months until their release on July 18, 2016.<sup>6</sup> As of August 2016, investigations remained ongoing but there had been no court proceedings on the case.<sup>7</sup>

In a sign of worsening freedom of association and assembly, in August 2016, Tanzanian police issued a statement banning political meetings on allegations of inciting violence.<sup>8</sup> The ban was lifted a month later, with the police stating that the meetings no longer posed a security threat.<sup>9</sup> However, there are reports of kidnap, torture and arbitrary arrest of critical journalists. In March 2016, local journalist and Deutsche Welle correspondent Salma Said was abducted by unknown individuals upon arrival at the local Julius Nyerere International Airport. She was released after two days.<sup>10 11</sup> In some instances journalists have been harassed and beaten by the police in the course of discharging their functions. On September 18, 2014, journalists Josephat Isango, Shamimu Ausi and a photojournalist, Yusuf Badi, suffered injuries while on duty at the police headquarters in Dar es Salaam. The police used excessive force as they barred journalists from covering the appearance of the chairman of the main opposition party at the police headquarters for questioning on unspecified charges.<sup>12</sup>

In order to promote internet freedom in the country, there is a need to understand what the state of internet freedom is, what the obstacles are, which stakeholders are most at risk, and what tactics the government and other actors use to curtail internet freedom. This report therefore discusses the factors influencing ICT use in Tanzania and how laws and policies affect internet freedom. The report focuses on the controls initiated by the government to inhibit citizens' access to ICT, such as internet shut downs, censorship, law-making, court cases against internet users, and surveillance. Further, the report investigates how government bodies and functionaries are using propaganda and online activism to shape online content in their favour. The report concludes with a series of recommendations to address current challenges to internet freedom.

The research results presented in this report focus on recent legal and policy developments, as well as on abuses and violations of internet freedom over the 12 months period to November 2016. However, in order to establish trends on strategies of information controls used by the government of Tanzania, the study takes an interest in practices over the last five years.

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<sup>6</sup> Interview with LHRC personnel

<sup>7</sup> *ibid* and Investigation on LHRC workers nears completion, <http://www.dailynews.co.tz/index.php/home-news/43979-investigation-on-lhrc-workers-nears-completion> as accessed on 29th August 2016.

<sup>8</sup> Policy Prohibit Party Meetings As "Defiance Day" Anxiety Rises, <http://allafrica.com/stories/201608250175.html>

<sup>9</sup> Police Waive Ban on Internal Party Meetings, <http://allafrica.com/stories/201609230063.html>

<sup>10</sup> The Media Council of Tanzania, <http://www.mct.or.tz/index.php/42-news/rokstories/417-salma-breaks-down-emotional-ly-as-she-narrated-her-abduction>

<sup>11</sup> Mtembezi, <http://mtembezi.com/index.php/2016/03/19/zanzibar-mwandishi-wa-habari-wa-dw-atekwa-sauti-yake-yasikika-akiwa-amefichwa/>

<sup>12</sup> Mpekuzihuru, <http://www.mpekuzihuru.com/2014/09/vurugu-makao-makuu-ya-polisi-waandishi.html>



## 2. Research Methodology

The research presented in this report was conducted through a mixed methods approach. Researchers based in Tanzania interviewed key informants who were purposively selected. The informants were chosen on the basis of their knowledge about issues related to or affecting internet freedom in the country. They included activists and human rights defenders that are advancing free expression and association, as well as some of those who had been victims of abuses and violations. Others were internet and telecom service providers, regulators, law enforcement officials, and journalists. In total, 20 key informants were interviewed for this report.

In addition, policy analysis was conducted so as to generate an understanding of the laws that affect digital rights. The analysis took an interest both in policies and laws that have been used to curtail internet freedom and those that could potentially be employed in curtailing freedom of expression and access to digital technologies. Besides the existing laws, an analysis was done of relevant Bills currently under consideration by Parliament. Moreover, document review was done, including of open access sources such as media articles and secondary research reports, as well as analysis of records such as court orders and regulatory decisions, some of which are not readily available in the public domain. Specifically, reports of Civil Society Organizations (CSOs) such as the Tanzania Human Rights Defenders Coalition (THRDC) and Legal and Human Rights Centre (LHRC) concerning the rights to privacy and freedom of expression were reviewed.

## 3. Country Context

### 3.1 ICT Access

Tanzania has recorded a gradual increase in citizens' access to ICT. According to the Tanzania Communications Regulatory Authority (TCRA) Quarterly Statistics reports of June 2016, there were 39.2 million mobile and fixed telephone subscribers, representing a penetration rate of 79%.<sup>13</sup> The regulator reported a total of 17.2 million internet users as at the end of 2015, translating into a 34% penetration.<sup>14</sup> There are seven telecoms operators in the country - Airtel, Zantel, Halotel, Vodacom, Tigo, TTCL and Smart. In addition, there are 30 Internet Services Providers registered with the Tanzania Internet Services Providers Association (TISPA).<sup>15</sup>

The Universal Communications Service Access Fund established in 2006 is aimed at ensuring availability of communication services in rural and urban under-served areas.<sup>16</sup> As at August 2016, the fund had provided over US\$ 36 million to operators for infrastructure set-up in rural areas. Internet connectivity has been extended to schools and hospitals in at least 10 regions across the country.<sup>17</sup> About 12 million

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<sup>13</sup> TCRA, 2016 more at <http://www.tcra.go.tz/images/documents/telecommunication/CommStatMarch16.pdf> as accessed on 20th July 2016.

<sup>14</sup> *ibid.*

<sup>15</sup> Tanzania Internet Service Providers Association (TISPA), Members as at August 2016, [http://tispa.or.tz/?page\\_id=24](http://tispa.or.tz/?page_id=24)

<sup>16</sup> See section 4(1) and 6 (a) of the Universal Communications Service Access Act, 2006

<sup>17</sup> Universal Communications Services Access Fund, Rural Telecommunication Project August 2016, <http://www.ucsaf.go.tz/files/publications/attachments/7a3147aad8bedd6e5a0aeec341f253f4.pdf>

Tanzanians live on less than US\$1 per day, or below the poverty line,<sup>18</sup> while nearly one third of the population is illiterate.<sup>19</sup> This, coupled with the high cost of internet services (on average, 1GB per month costs US\$ 4), and high acquisition costs of equipment and devices, are among the factors that hinder greater citizens' access to ICT.

As of April 2016, Tanzania had a total of 123 licensed radio stations, 24 television stations and 881 print media outlets. In July 2016, the Minister for Information, Culture and Sports de-registered 473 newspapers and magazines on grounds that they had been inactive for three consecutive years.<sup>20</sup> The following month, two radio stations - Radio 5 and Magic FM - were suspended from air on allegations of broadcasting content that incited violence and public disorder.<sup>21</sup> The TCRA Content Committee later reinstated Magic FM after it issued an apology. Meanwhile, Radio 5 was banned for three months and handed a penalty of US\$ 2,200.<sup>22</sup>

### **3.2 Laws and Policies Affecting Internet Freedom**

The Cybercrimes Act, 2015, the Statistics Act, 2015, the Electronic and Postal Communications Act, 2010, Prevention of Terrorism Act, 2002, News Paper Act, 1976, and the proposed Media Services Bill 2015 remain the major legislations affecting internet freedom in Tanzania.

The Cybercrimes Act, 2015, hurriedly passed before the general elections in October 2015 is aimed at "criminalizing offences related to computer systems and Information Communication Technologies".<sup>23</sup> Since its enactment, a number of Tanzanian netizens have fallen foul of the law.<sup>24</sup> There are also allegations of harassment of service providers by the police and regulatory authority to disclose subscriber information pursuant to the provisions of the Act.<sup>25</sup>

Section 16 of the Cybercrimes Act prohibits the publication of false information. It states: "Any person who publishes information, data or facts presented in a picture, text, symbol or any other form in a computer system where such information, data or fact is false, deceptive, misleading or inaccurate commits an offence, and shall on conviction be liable to a fine not less than three million shillings or to imprisonment for a term not less than six months or to both." Since the Cybercrimes Act was effected without enabling regulations detailing implementation procedures, the Act remains open to interpretation by enforcement officers, who purportedly act in the interests of influential individuals and

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<sup>18</sup> The World Bank, Tanzania Economic Update May 2016, <http://documents.worldbank.org/curated/en/302151467992051044/pdf/105764-NWP-ADD-SERIES-PUBLIC-MAY-19-11AM-DC-TIME-8th-Tanzania-Economic-Update-Report-FINAL.pdf>

<sup>19</sup> Unicef country statistics, [http://www.unicef.org/infobycountry/tanzania\\_statistics.html](http://www.unicef.org/infobycountry/tanzania_statistics.html)

<sup>20</sup> Newspapers, Magazines Taken off State Register, <http://dailynews.co.tz/index.php/home-news/51650-473-newspapers-magazines-taken-off-state-register>

<sup>21</sup> Tanzania Bans Two Radio Stations, <https://cpj.org/2016/08/tanzania-bans-two-radio-stations.php>

<sup>22</sup> Tanzania Penalises Two Radio Stations for Sedition, <http://www.theeastafrican.co.ke/news/Tanzania-penalises-two-radio-stations-for-sedition>

<sup>23</sup> The law can be retrieved at [www.tcra.go.tz/index.php/legislation](http://www.tcra.go.tz/index.php/legislation)

<sup>24</sup> Is Tanzania Becoming an Internet Freedom Predator?, <http://cipesa.org/2016/04/is-tanzania-becoming-an-internet-freedom-predator/>

<sup>25</sup> For instance, the proprietors of Jamii Media which hosts the popular Jamii Forums discussion platform have been issued with several disclosure demand orders for user information including IP addresses by the police purporting to act under the Cybercrimes Act, 2015



not according to the law.<sup>26</sup> The law gives a police officer in charge of a police station the power to issue an order for the collection of data relating to information subject to a criminal investigation.

Further, Section 31 of the Prevention of Terrorism Act, 2002, gives a police officer powers to intercept communications for purposes of obtaining evidence for commission of an offence of terrorism upon issuance of a court order. Under the same Act, court may order a service provider to intercept or retain specific communications. Similarly, police officers may be authorised under the law to enter any premises and to install any device for the interception and retention of communications.

Under the Statistics Act, 2015 it is an offence for a “radio station, television station, newspaper or magazine, website or any other media” to publish “false statistical information” or for an “agency or person” to publish “official statistical information which may result in the distortion of facts. This is provided under the provisions of sections 37 (4) and (5) of the Act. Additionally, the Statistics Act imposes harsh penalties on those found guilty of publishing misleading and inaccurate statistics or statistics not approved by the National Statistics Bureau. The punishment is a one-year jail term and a fine of 10 million Tanzania Shillings (US\$ 4,586).

In August 2016, the government tabled the Access to information Bill 2016, ten years after it was first drafted.<sup>27</sup> The proposed law has a number of positive features, including its relatively broad scope, fairly narrow regime of exceptions and the fact that it allocates an oversight role to the independent Commission for Human Rights and Good Governance. At the same time, it has a number of weaknesses and fails to come up to the standard of many of the newer generation of right to information laws. Besides, it suffers from a lack of detail in relation to requesting and appeals procedures and it includes only a small number of promotional measures.<sup>28</sup>

In reference to online surveillance, The Prevention of Terrorism Act, 2002, The Intelligence and Security Services Act, 1996, the Criminal Procedure Act, 1985 and the Electronic and Postal Communication Act, 2010 govern government’s monitoring and interception of communications. Section 31 of the Terrorism Act states that “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.” Moreover, section 31(4) of the same Act allows the admissibility as evidence of any communications intercepted, including from outside of the country, in proceedings for any offence under the Act.

The Tanzania Intelligence & Security Services Act, 1996 charged the Tanzania Intelligence & Security Service (TISS) with the duty to collect information by investigation or otherwise, to the extent that it is strictly necessary, and analyse and retain, information and intelligence in respect of activities that may on reasonable grounds be suspected of constituting a threat to the security of Tanzania, or any part of it.<sup>29</sup> Section 18 outlines the powers to investigate and conduct interception of communications which permit the Tanzanian intelligence service to enter into arrangements with various other actors including any

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<sup>26</sup> Interview with Jamii Media official, July 2016

<sup>27</sup> Tanzania Access to Information Bill, [http://parliament.go.tz/polis/uploads/bills/1466686784-A%20BILL%20-THE%20ACCESS%20TO%20INFORMATION%20ACT,%202015%20\(2\)%20\(FOR%20PRINTING\).pdf](http://parliament.go.tz/polis/uploads/bills/1466686784-A%20BILL%20-THE%20ACCESS%20TO%20INFORMATION%20ACT,%202015%20(2)%20(FOR%20PRINTING).pdf)

<sup>28</sup> Center for Law and Democracy, Tanzania; Analytical note on the Draft of Access to Information Bill drafted for UNESCO

<sup>29</sup> Phone Interceptions: Tanzania to Land in Court, [http://www.businesstimes.co.tz/index.php?option=com\\_content&view=article&id=3588:phone-interceptions-tanzania-to-land-in-court&catid=1:latest-news&Itemid=57](http://www.businesstimes.co.tz/index.php?option=com_content&view=article&id=3588:phone-interceptions-tanzania-to-land-in-court&catid=1:latest-news&Itemid=57)

person, local government or other authority, any police force or other policing organisations as well as foreign governments or international organisations of states with the sole authorisation of the Minister made responsible for the TISS, as well as the Minister of Foreign Affairs in the case of engagement with foreign governments and organisations. Exercising this power, TISS can intercept any communication on the grounds of national security.<sup>30</sup>

The Criminal Procedure Act, 1985 grants powers to police officers to investigate the facts and circumstances of a case where there is reason to suspect the commission of an offence.<sup>31</sup> Further, section 10(2) of the 1985 Act specifically provides for the police officers' powers, by order in writing, to require the attendance of any person (natural or legal) who from information given or in any other way appears to be acquainted with the circumstances of a case, or who is in possession of a document or any other thing relevant to the investigation of a case to attend or to produce such document or any other thing.

The Electronic and Postal Communication Act, 2010 does not expressly provide for interception of communication. However, the existence of interception powers can be implied from Section 120 of the Act which states that 'no person, without lawful authority under the EPOCA or any other written law, can intercept, attempt to intercept, or procure any other person to intercept or attempt to intercept any communications. Applications for authorisation to intercept communications are made to the Director of Public Prosecutions (DPP). There are no publically available records of such applications.

Mandatory SIM card registration has been in effect in Tanzania since 2011 pursuant to Section 93 of EPOCA. This enables the government to request hundreds of subscribers' data annually from telecom companies, as has been documented in Vodafone's transparency reports for 2014<sup>32</sup> and 2015.<sup>33</sup> Collection of personal data is also conducted through voter registration by the National Electoral Commission (NEC) and the obtaining of a National identity card by the National Identification Authority (NIDA).

Currently, Tanzania does not have a data protection and privacy law. In 2014, the Ministry of Communications, Science and Technology announced it would draft a privacy law as part of its cyber security initiative. Nevertheless, personal data and privacy are still safeguarded by provisions of Article 16 of the Constitution, which provides for a right to privacy. Among other things, the provisions prohibit unnecessary and unreasonable interference with personal communication. Furthermore, regulation 6(2)(e) of the Electronic and Postal Communication (Consumer Protection) Regulations, 2011 protects customer data from unwanted disclosure.

There are several ongoing civil society efforts challenging the laws which have implications for user rights online. In September 2015, the Tanzania Human Rights Defenders Coalition (THRDC) filed a landmark case challenging the constitutionality of some of the provisions of the Cyber Crime Act. THRDC argues that some provisions of the law infringe articles of the constitution on freedom of expression, right to

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<sup>30</sup> Privacy International, CIPESA and THRDC, The Right to Privacy in Tanzania, Universal Periodic Review, 25<sup>th</sup> Session, [http://cipesa.org/?wpfb\\_dl=212](http://cipesa.org/?wpfb_dl=212)

<sup>31</sup> Read section 10 of the Criminal Procedure Act, 1985

<sup>32</sup> Vodafone, 2014, Law Enforcement Disclosure Report Legal Annexe, Tanzania, [http://www.vodafone.com/content/dam/vodafone-images/sustainability/downloads/vodafone\\_law\\_enforcement\\_disclosure\\_report.pdf](http://www.vodafone.com/content/dam/vodafone-images/sustainability/downloads/vodafone_law_enforcement_disclosure_report.pdf), Pages 80 - 82

<sup>33</sup> Vodafone, 2015, Law enforcement disclosure: legal annexe, Tanzania, [http://www.vodafone.com/content/dam/vodafone-images/sustainability/downloads/law\\_enforcement\\_disclosure\\_report\\_2015\\_update.pdf](http://www.vodafone.com/content/dam/vodafone-images/sustainability/downloads/law_enforcement_disclosure_report_2015_update.pdf), Pages 95 – 98.

information, and privacy.<sup>34</sup> However, a decision has not been made to-date. In this case, did not challenge the provisions of section 16 of the law which prohibits the publication of false information.<sup>35</sup>

Jamii Media, after being issued with eight letters demanding the disclosure of the Internet Protocol (IP) address of users, went to court in April 2016 to challenge these demands by the law enforcement agency. The users whose identities authorities sought were linked to bringing to light corruption scandals in the oil and banking sectors. According to legal representatives of Jamii Media, the disclosure notices indicate a bias towards protecting notable figures implicated in the scandals or against whom users have used profanities.<sup>36</sup> In its petition, Jamii Media challenged the arbitrary letters from the police force and specifically the provisions of Section 32 and 38 of the Cybercrime Act that might infringe the right to be heard, and the rights to privacy and freedom of expression as provided for under the constitution. Initially, the government responded by raising six preliminary points of objection against the Jamii petition. The government argued, among others, that the petition was frivolous and vexatious and that it ought to be struck out. In a ruling regarding these preliminary objections, all six objectives were overruled and the main case proceeded.<sup>37</sup>

## 4. Results

### 4.1 Using and Abusing Courts of Law to Stifle Internet Freedom

The Cyber Crimes Act passed in September 2015 has already been used against 10 social media users.<sup>38</sup> For example, in October 2015, Benedict Angelo Ngonyani was charged for “spreading misleading information” after he posted on Facebook that Tanzania’s Chief of Defence Forces, General Davis Mwamunyange, had been hospitalised following food poisoning.<sup>39</sup> In the same month, Sospiter Jonas was charged with “misuse of the internet” after posting on Facebook content stating that Tanzanian Prime Minister Mizengo Pinda “will only become a gospel preacher”.<sup>40</sup> In October 2015, four communication volunteers of opposition party Chama Cha ma Demokrata na Maendeleo (CHADEMA) were charged for publishing “inaccurate” election results on Facebook and Twitter.<sup>41</sup> In one of the latest incidents, a lecturer at Mkwawa University college of Education was arrested in September 2016 for allegedly insulting resident Magufuli in a Whatsapp message. While confirming the detention of the lecturer, police declined to reveal the content of the message he was accused of sending.<sup>42</sup>

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<sup>34</sup> THRDC Progressive Report 2015

<sup>35</sup> Interview with Advocate Jebra Kambole

<sup>36</sup> Interview with the Jamii Media Attorney.

<sup>37</sup> See more at <http://www.jamiiforums.com/threads/jamiiforums-yashinda-mapingamizi-yaliyowekwa-na-ofisi-yamwanasheria-mkuu-wa-serikali-ag.1101852/>

<sup>38</sup> Tanzanian lecturer charged with insulting president on WhatsApp, <http://www.reuters.com/article/us-tanzania-president-idUSKCN11T14C?il=0>

<sup>39</sup> Cyber crime case involving student adjourned, <http://dailynews.co.tz/index.php/home-news/45785-cyber-crime-case-involving-student-adjourned>

<sup>40</sup> Man charged over Pinda internet jibe, <http://www.thecitizen.co.tz/News/Man-charged-over-Pinda-internet-jibe/-/1840340/2913954/-/1jf9kn/-/index.html>

<sup>41</sup> Chadema volunteers charged with publishing wrong results, <http://www.thecitizen.co.tz/tanzaniadecides/Chadema-volunteers-charged-with-publishing-wrong-results/-/2926962/2933186/-/6kxx4e/-/index.html>

<sup>42</sup> Hakimu Mwafongo, Varsity lecturer arrested for insulting Magufuli online, <http://www.thecitizen.co.tz/News/Varsity-lecturer-arrested-for-insulting-Magufuli-online/1840340-3391526-i3itquz/index.html>

**Table on arrests and court cases related to internet use<sup>43</sup>**

There are several cases which have been filed by the government against persons who are alleged to have acted contrary to the Cybercrimes Act, 2015 and the Electronic and Postal Communication Act, 2010. Some of the cases are presented in the table below:

Case	Offences Charged	Law cited	Status/Outcome
Republic v. Isaac Habakuk Emily	Charged with referring to President John Pombe Magufuli as an imbecile via his Facebook account	Section 16 of the Cybercrime Act 2015.	Convicted and sentenced to a fine of 7 million shillings (US\$ 3,200) or imprisonment for a term of three years. He paid the fine and was released.
Republic v. Naila Aminel	Use of abusive language against one Martha Sebarua.	Section 23 (1) and (3) of the Cybercrimes Act, 2015	Convicted and sentenced to 3 years imprisonment or a fine of 5 million shillings (US\$ 2,200).
Republic v. Bob Chacha Wangwe	Publishing false information on his Facebook account - a statement to the effect that Zanzibar was a colony of Tanganyika	Section 16 of the Cyber Crimes Act, 2015	Still before courts of law
Republic v. Leonard Kyaruzi	The accused was arrested and reprimanded following his post on a WhatsApp group criticising the manner in which President Magufuli was running the country. He claimed the president either lacked good advisors or was mentally retarded	Section 118(a) of the Electronic and Postal Communications Act, 2010.	Unknown
Republic v. Leyla Sinare & Others	It was alleged that the accused persons disseminated false information through a WhatsApp group known as 'sport group.' However, the details of false information could not immediately be found.	Section 16 of Cyber Crime Act	Unknown
Republic v. Yericko Nyerere	This blogger was accused of publishing false information which could provoke violence in the country during the electoral process	Section 16 of the Cyber crime Act	Case ongoing before courts of law
Republic v. Benedicto Ngonyani	A student of Dar es Salaam Institute of Technology (DIT), he was accused of publishing information on Facebook that the Chief of Defence Forces was suffering from food poisoning.	Section 16 of the Cybercrime Act	Filed constitutional petition challenging section 16

<sup>43</sup> Sources from the THRDC protection desk and corroborated by various private and public sources

Case	Offences Charged	Law cited	Status/Outcome
Republic v. Israel William	Charged with two counts of publishing and disseminating false information against the Tanzania Communication Regulatory Authority (TCRA) which he allegedly committed on September 10 and October 5, 2015.	Electronic and Postal Communication Act (EPOCA)	Unknown
Cyber crime case against Dr. Oscar Magava	A lecturer at Mkwawa University college of Education was arrested in September 2016 for allegedly insulting President Pombe Magufuli in a Whatsapp message. While confirming the detention of the lecturer, police declined to reveal the content of the message he was accused of sending	Cyber Crime Act	Unknown
Cybercrime allegations	Maxence Melo, Director of Jamii Media was summoned and issued a letter indicating intention to sue him for criminal liability for failure to comply with disclosure notices.	In the letter, police put Melo on notice under Section 22 of the Cybercrimes Act 2015 for obstruction of investigations.	Case underway in courts of law
Republic V. Shilinde	Advocate Shilinde was arrested on July 22, 2016 in Loliondo and charged with providing false information using the internet.	Section 16 of the Cybercrime Act	Case in progress

## 4.2 Online Surveillance

The capacity of the Government of Tanzania to conduct surveillance of communications is largely unknown. The US State Department Human Rights Report of 2014 for Tanzania noted that state actors used to monitor telephones and correspondence of some citizens and foreign residents. The actual nature and extent of this practice were unknown<sup>44</sup>. There is speculation amongst citizens that government conducts some snooping on communications over social media platforms such as WhatsApp especially of individuals spreading false or defamatory statements against government or president. In a recent incident, a message allegedly from TCRA that went viral demanded that the recipient surrenders to a police station on allegations that their number was used to spread false and defamatory statements against the president.<sup>45</sup> In another case, the opposition Member of Parliament for Arusha (CHADEMA), Godbless Lema, was arrested and reprimanded by the police on allegations of publishing online statements which were construed as incitement.<sup>46</sup> Such incidents have instilled fear among citizens that the government is monitoring their activities online and consequently people are not free to express their views fearing the merciless hand of the authorities.

Meanwhile, emails released by WikiLeaks, from the Italian surveillance malware vendor Hacking Team, revealed an exchange between representative from the Tanzanian President's Office and Hacking Team.<sup>47</sup> An email from the government representative expressed interest in visiting Hacking Team's office with a view of purchasing its Galileo surveillance system.<sup>48</sup> This surveillance technology has the ability to bypass encryption, take control of a user's device and monitor all activities conducted on the device.

According to the 2015 Vodafone Law Enforcement Disclosure Report, in 2014 Tanzania's government made 933 requests for local subscribers' data. However, it is not possible to compare this figure to that for the previous year, as Vodafone reported that the figure of 98,765 which it had previously given for 2013 was erroneous. Regarding interception, Vodafone stated that it had not implement the technical requirements necessary to enable lawful interception and therefore had not received any agency or authority demands for lawful interception assistance.<sup>49</sup>

There was no evidence found of telecom companies and Internet Service providers (ISPs) aiding government efforts in surveillance. However, through the Cybercrimes Act, 2015 and the Electronic and Postal Communication Act, 2010 the government can request these services provider to disclose subscriber information for the purpose of investigation or prosecution of an offence.

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<sup>44</sup> [US State Department, Tanzania 2014 Human Rights Report, Available at http://www.state.gov/documents/organization/236626.pdf](http://www.state.gov/documents/organization/236626.pdf)

<sup>45</sup> This message was shared in various social medias such as Whatsapp, Instagram and Facebook.

<sup>46</sup> Read more at <http://www.tanzaniatoday.co.tz/news/lema-akamatwa-na-polisi>

<sup>47</sup> Wikileaks, <https://wikileaks.org/hackingteam/emails/emailid/11776>

<sup>48</sup> Galileo is a remote control system which allows to take control of a target and to monitor them even if they are using encryption. Hacking Team sells it as a tool to "bypass encryption, collect relevant data out of any device, and keep monitoring your targets wherever they are, even outside your monitoring domain." For more information: <https://www.hackingteam.it/images/stories/galileo.pdf>

<sup>49</sup> Vodafone, Country-by-country disclosure of law enforcement assistance demands 2015, [http://www.vodafone.com/content/index/about/sustainability/law\\_enforcement/country\\_by\\_country.html](http://www.vodafone.com/content/index/about/sustainability/law_enforcement/country_by_country.html)



### 4.3 Control and Blockages

In January 2016, the government ordered Mawio newspaper's website to cease operation immediately, following a ban on the print version of the newspaper.<sup>50</sup> The action was taken under the provisions of Section 25(1) of the Newspaper Act, 1976 on grounds that the newspaper was publishing inciting news. The statement issued by the Minister of Information, Sports and Culture did not provide specific details on the content which led to the banning the newspaper.<sup>51</sup> In 2013, government used this law to bar Mwananchi - the country's largest selling newspaper - from publishing both in print and on its website for 14 days after accusing the paper of publishing confidential government information and inciting Muslims.<sup>52</sup>

During the elections period, popular online discussions forum Jami forums went down twice as platform users shared election results as obtained from polling stations across the country. But it is not clear if the government had a hand in the site's take down, and if it did, how. The forum unexpectedly went offline and was inaccessible for a couple of hours before it was restored by its administrators. The administrators suspected government involvement given past allegations by state officials that the platform was affiliated to the opposition party CHADEMA. Back in February 2008, the forum's founders were detained and interrogated for 24 hours in Dar es Salaam, in what observers said was a politically motivated attempt to shut down the site. Although they were released after one day, police confiscated three computers used to host their website, shutting down the site for five days while the equipment remained under police custody.<sup>53</sup> Furthermore, in 2011, it was reported that Jamii Forums was cloned by the Tanzania government to disrupt conversations of members associated with the opposition.<sup>54</sup>

### 4.4 Activism and Propaganda

There is no evidence of state sponsored online activism and propaganda in Tanzania. However, some of the respondents stated that unnamed law enforcement officials used fake online identities to spread propaganda in favour of the government. The main online forums on social and political matters are JamiiForums and FikraPevu, both run by the privately owned Jamii Media.

Civil society organisations remain at the forefront of efforts to push back against government control and surveillance. The Legal and Human Rights Centre (LHRC), the Tanzania Human Rights Defenders Coalition (THRDC) has issued various reports outlining laws which infringe the right to privacy and freedom of expression and how government has used them to curtail citizens' rights.

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<sup>50</sup> Government Bans Mawio, Suspends 27 Stations, <http://www.thecitizen.co.tz/News/Govt-bans--Mawio---suspends-27-stations/1840340-3037140-u46k0qz/index.html>

<sup>51</sup> Visit <http://mwanahalisionline.com/gazeti-la-mawio-lafungiwa-maisha/> as accessed on 29<sup>th</sup> August 2016.

<sup>52</sup> Government now bans 'Mwananchi' website, <http://www.opennetafrica.org/government-now-bans-mwananchi-website/>

<sup>53</sup> Balancing Act (2009); Tanzanian Government detains two website editors; Issue no 395, <http://www.balancingact-africa.com/news/en/issue-no-395/internet/tanzanian-government/en#sthash.AHUhqz7O.dpuf>

<sup>54</sup> Interview with Jamii Media co-founder Maxence Mello, August 2016

## 5. Discussion

This study reveals that internet freedom in Tanzania is to a large extent limited by the government through a number of laws such as the Cybercrimes Act, 2015 and others which inhibit citizens' access to and use of ICT. While the Internet offers great opportunities for citizens to engage and express their views instantaneously, there is inadequate protection of the right to privacy which is essential for individuals to express themselves freely. Government requests for disclosure of subscriber information especially on leading forums for discussion of political matters such as Jamii Forums are among the control mechanisms in place. The requests by law enforcement agencies to service providers are facilitated by the Cybercrimes Act, 2015 and the Electronic and Postal Communication Act, 2010, among other laws which have vague provisions for interception of communications and procedures for compliance with disclosure orders. There is also a lack of transparency in the procedures warranting interception of communications which may lead to the abuse of powers and violation of individual rights.

Reports such as that of the US Department of 2014, the arrest and prosecution of individuals for content posted online as well as the transparency reports by Vodafone, indicate growing government surveillance interest in citizens' activities. Not surprisingly, citizens' confidence in the security of their communications and personal data has progressively dwindled, leading to impediments against the free flow of information, and freedom of expression. The lack of a data protection and privacy law further exacerbates the vulnerability of Tanzanian ICT users.

## 6. Recommendations

### 6.1 Government and policy makers

- (i) The Parliament should amend the Cybercrimes Act, 2015, in order to ensure that it does not unreasonably limit internet freedom. Specifically, the provisions of section 16 of the Act should be amended forthwith; and pending this amendment, the government should cease using the Cybercrimes Act, 2015 to curtail legitimate opinion.
- (ii) The laws providing for interception of communication for the purpose of investigation should be amended to ensure that there is transparency in the procedure of applying for authorisation and implementation of communications interception. Again, the circumstances under which interception is warranted should be narrowed to only those which pose justifiable threat to national security or peace.
- (iii) The Electronic and Postal Communications Act, 2010 and the Cybercrimes Act, 2015 should be amended in order to state specifically the circumstances under which law enforcement agencies may order services providers to disclose their subscribers' information. These laws provide general circumstances which are prone to abuse by unscrupulous law enforcement agencies to the detriment of citizens.
- (iv) Enact regulations of the Cybercrime Act, 2015 after the law has been amended.
- (v) Capacity building in cybercrime and human rights for law enforcement officials in line with the provisions of the law.
- (vi) Through a consultative process, draft and pass a data protection and privacy law that will guarantee privacy of citizens' information and offer legal recourse to citizens when their data is illegally accessed or compromised.

## **6.2 Civil Society**

- (i) Continue sensitisation and awareness raising campaigns for users on the right to privacy, freedom of expression particularly on social media as well as on the legislation that governs use of the internet and related technologies.
- (ii) Build multi-stakeholder coalitions to lobby for the amendment of the draconian laws such as the Cybercrimes Act, 2015 which threaten Internet freedom.
- (iii) Follow the progression of draft laws; make submissions and inputs to bills in order to ensure they uphold the principles of human rights prior to being tabled and passed by the parliament.

## **6.3 Telecom Companies and ISPs**

Telecom companies and other ISPs should protect the privacy of their subscribers, and only share their private communications data on the strength of a court order. In case of government requests for user data, telecoms and ISPs should publish details of these requests, providing details including numbers, information given for the requests and action taken by the telecom/ISP/ intermediary.

This report was produced by the Collaboration on International ICT Policy in East and Southern Africa (CIPESA) under the OpenNet Africa initiative ([www.opennetfrica.org](http://www.opennetfrica.org)) which monitors and promotes internet freedoms in a number of African countries including Ethiopia, Kenya, Rwanda, Burundi, Tanzania, Uganda and South Africa. As part of the project, we are documenting internet rights violations, reviewing cyber security policies and how they affect internet freedoms, promoting information availability and conducting awareness-raising.



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