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GLOSSARY

WORD	DESCRIPTION
ACT	Alliance for Change and Transparency
AG	Attorney General
ACHPR	African Commission on Human and Peoples' Rights
AU	African Union
CCM	Chama Cha Mapinduzi (Party of the Revolution)
CHADEMA	Chama cha Demokrasia na Maendeleo (Party for Democracy and Progress)
CHRAGG	Commission for Human Rights and Good Governance
CID	Criminal Investigation Department
COSTECH	Commission for Science and Technology
CUF	Civic United Front
DPP	Director of Public Prosecutions
EAC	East African Community
EACJ	East African Court of Justice
EU	European Union
HIV/AIDS	Human Immunodeficiency Virus Infection and Acquired Immune Deficiency Syndrome
HRW	Human Rights Watch
HRC	Human Rights Council
HRD	Human rights defender
ICCPR	International Covenant on Civil and Political Rights
IGP	Inspector General of Police
LHRC	Legal and Human Rights Centre
MCT	Media Council of Tanzania

WORD	DESCRIPTION
MP	Member of parliament
NBS	National Bureau of Statistics
NGO	Non-governmental organization
SADC	Southern African Development Community
TAMWA	Tanzania Media Women's Association
TCRA	Tanzania Communications Regulatory Authority
TEF	Tanzania Editors Forum
THRDC	Tanzania Human Rights Defenders Coalition
TLS	Tanganyika Law Society
UN	United Nations
UNGA	United Nations General Assembly

EXECUTIVE SUMMARY

“The state wants to control everyone and everything at the expense of so many things. The state wants to control public and private institutions. It wants to control the economy, agriculture, business, the media, political parties, universities, churches and everyone.”

Harold Sungusia, Advocate and Country Director, Sung Consultants

In November 2019, President John Magufuli will mark four years in office. According to Tanzania’s Constitution, the president can run for one additional five-year term in the 2020 general elections.

The upcoming November 2019 local elections and October 2020 general elections will take place in a climate of mounting fear with growing restrictions on the rights to freedom of expression, association and peaceful assembly. Since President John Magufuli took office in November 2015, the state has applied a raft of repressive laws restricting the rights of opposition politicians, human rights defenders, activists, researchers, journalists, bloggers and other online users. Cumulatively, the application of these laws has had a chilling effect on the rights to freedom of expression, association and peaceful assembly, with people’s censoring actions perceived as critical of government for fear of prosecution or other reprisals.

In July 2016, the civic space in the country closed rapidly after President John Magufuli announced a blanket ban on political activities until 2020, with many lawyers saying that the ban has no basis in Tanzanian law. The ban has also been selectively applied against opposition parties. Since it was instituted, several opposition politicians have been arrested and prosecuted on trumped-up charges in politically motivated trials. In January 2019, Tanzania’s National Assembly amended the Political Parties Act ushering in wide-ranging restrictions on the rights to freedom of association and peaceful assembly.

Restrictions on media freedom have also intensified under the 2016 Media Services Act which enhances censorship, violates the right to information and limits scrutiny of government policies and programmes. Between 2016 and the time of writing this report, the Tanzania government has used the Media Service Act to close, fine and suspend at least six media outlets for publishing reports on allegations of corruption and human rights violations and the state of Tanzania’s economy.

Since 2018, Tanzania’s government has also brought in sweeping powers to police the internet. The Electronic Postal Communications (Online Content) Regulations enacted in March 2018 broadly restricts online content, requires bloggers to register and permit surveillance of cybercafés without judicial oversight. Together with the 2015 Cybercrimes Act, which criminalizes publication of “false” information, these laws undermine privacy of internet users and stifle freedom of expression. While it is too early to know how these new, restrictive laws will be applied and enforced, people are increasingly afraid of freely expressing themselves online.

Tanzania’s government has also sought to control independent research and public access to independent statistical information through the 2015 Statistics Act, creating a dangerous regime of denying citizens anything but a “state-sanctioned truth” While amendments to this law introduced in 2019 remove criminal liability for publishing non-official statistics, Tanzania’s authorities still maintain control on who can gather and disseminate statistical information and determine what is factual and false.

Heavy court fines, bail and bond terms for individuals arrested under many of these laws disproportionately affect poor and marginalized people. The Media Services Act, for example, criminalizes “false news” and “rumours” under sections 50 and 54 by creating the offence of “publication likely to cause fear and alarm” punishable with a fine of 10,000,000 to 20,000,000 Tanzania shillings (between 4,350 to 8,700 USD). The minimum fine is over four times Tanzania’s 2018 per capita income.

Tanzanian government has also repeatedly refused to comply with national and regional courts decisions, including three East African Court of Justice (EACJ) judgments on violations of the rights to freedom of expression and information. The government’s failure to respect and obey such judgments leaves people without recourse for the authorities’ repressive actions.

This report is based on 68 interviews conducted in Tanzania in February and March 2019 and remotely with government, non-governmental officials, lawyers, academics, religious leaders and diplomats, alongside review of documentary evidence.

On 3 October 2019, Amnesty International sent letters to the Inspector General of Police (IGP); the Attorney General (AG); the Director of Public Prosecutions (DPP); the Director General of the Tanzania Communications Regulatory Authority; the Minister for Constitutional and Legal affairs and the Minister for Information, Culture, Arts and Sports summarizing the report’s findings and requesting response to a detailed list of questions. At the time of writing Amnesty International had received no response to these letters or to its other requests for information.

Amnesty International calls on Tanzania’s government to stop using repressive laws to violate individuals’ rights to liberty, freedom of expression and information, peaceful assembly and association. Amnesty International urges the government to fully and effectively respect, protect, promote and fulfil human rights including by immediately and unconditionally releasing individuals arrested or facing prosecution based solely on trumped-up and politically motivated charges, including journalists Erick Kabendera, Maxence Melo, Micke William and politicians Zitto Kabwe, Freeman Mbowe, Vincent Mashinji, John Mnyika, Salumu Mwalimu, Joseph Mbilinyi, Peter Msigwa, Esther Matiko, John Heche, Halima Mdee.

The Tanzania government must remove restrictions that will undermine respect for human rights before, during and after the local and general elections in 2019 and 2020, including repealing or substantially amending the Political Parties Act, the Statistics Act, the Cyber Crime Act, the Media Services Act, the NGO Act and the Economic and Organised Crime Control Act.

Tanzania’s regional and international partners and human rights mechanisms should put pressure on the authorities to ensure that the human rights situation in the country does not deteriorate further including by strongly and publicly condemning the growing human rights violations and abuses and raising individual cases with government officials.

METHODOLOGY

This report is based on research conducted by Amnesty International in Tanzania in February and March 2019, and remotely between November 2018 and September 2019.

Amnesty International interviewed 31 people in Arusha, Dar es Salaam and Dodoma. A further 37 people were interviewed remotely through encrypted voice calls or via email. Interviewees included government officials, non-governmental organizations (NGOs), international non-governmental organizations (INGOs) and representatives of inter-governmental organizations (IGOs), lawyers, academics, representatives of bar associations, religious leaders, and diplomats. In all but two cases, interviews with witnesses were conducted separately. The interviews were conducted in Kiswahili and English.

Amnesty International also analysed 127 documents, including court decisions, national laws, government notices, government orders, written NGO memoranda and media articles. Photos and other audio-visual materials obtained from interviewees and other contacts on the ground were analysed by Amnesty International's information technology experts who confirmed their authenticity and consistency with witness accounts. The verification method included reverse image searches, geolocating content, and review against corroborating evidence.

Amnesty International met with Adelardus Kilangi, Tanzania's Attorney General (AG), Harrison Mwakyembe, the country's Minister of Information, Culture, Arts and Sport on 1 March 2019 to seek their input.

On 3 October 2019, Amnesty International sent letters to the IGP; the AG; the DPP; the Director General of the Tanzania Communications Regulatory Authority; the Minister for Constitutional and Legal affairs and the Minister for Information, Culture, Arts and Sports summarizing the report's findings and requesting response to a detailed list of questions. At the time of writing Amnesty International had received no response to these letters or to its other requests for information.

Amnesty International thanks all individuals who took part in the research. Some expressed fears of reprisals from the Tanzania government. Names and other identifying details have been omitted to protect their identities.

1. BACKGROUND

“Tanzania holds a different perspective of human rights and jurisprudence developed with regards to the rights of individuals versus the rights of the society. Here, the right of the society prevails.”

Adelardus Kilangi, Attorney General of The United Republic of Tanzania.

Tanzania was formed in April 1964 when the Republic of Tanganyika and the People's Republic of Zanzibar united to become the United Republic of Tanzania. The country – comprised of mainland Tanzania and Zanzibar - is divided into 26 regions which are further divided into districts and divisions. Regional commissioners and district commissioners are the principal government representatives within regions and districts respectively.

Until Tanzania signed the African Charter on Human and Peoples' Rights on 31 May 1982 (African Charter) and ratified it on 18 February 1984,¹ it did not have a constitutional bill of rights. Tanzania's Constitution now guarantees the rights to equality, life, personal freedom, privacy and personal security, freedom of movement, freedom of expression, right to information, freedom of religion, freedom of association, and the right to take part in public affairs.

In 1965, the Interim Constitution of the United Republic of Tanganyika and Zanzibar of 1964 (the Union Constitution) was amended to establish a single-party state system. Tanzania has held presidential elections every five years since then but remained a single-party state until 1992. Demands for multi-party democracy began in earnest in 1983 when the ruling party, the Revolutionary Party of Tanzania (Chama Cha Mapinduzi – CCM), offered constitutional amendment proposals for public debate.² Party for Democracy and Progress (Chama cha Demokrasia na Maendeleo - CHADEMA) and the Civic United Front, also known as Chama cha Wananchi (CUF), were the first political parties established in 1992, in addition to the already registered CCM.

The October 2015 general elections were the fifth since the introduction of multi-party politics. John Magufuli was declared the winner and CCM won a landslide majority with 73% of parliamentary seats. He was also elected CCM Party Chairman on 23 July 2016.³ Since the 2015 general elections, over a hundred political opposition members, including members of parliament (MPs), councillors, and other party leaders have defected to CCM. In 2018 alone, seven opposition MPs crossed over to CCM.⁴

1 African Commission on Human and Peoples' Rights (ACHPR), 1990 Periodic report

2 Mohabe Nyirabu, The Multiparty Reform Process in Tanzania: The Dominance of the Ruling Party, Michigan State University Libraries, 2002, p.102.

3 Parliament of Tanzania, MP's Directory - 3rd Edition, February 2019, p.104.

4 The Citizen, “One more CHADEMA MP decamps to CCM, as wave of defection continues,” 7 October 2018, available at: www.thecitizen.co.tz/News/One-more-Chadema-MP-decamps-to-CCM-/1840340-4795768-1ahlhx/index.html

During President Jakaya Kikwete's term, immediately preceding President John Magufuli's, numerous reports, including from the Commission for Human Rights and Good Governance (CHRAGG)⁵ and human rights groups, implicated government security agencies in various human rights violations.⁶ President John Magufuli's administration has introduced many new repressive laws, rules, regulations, and ways of clamping down on dissent.

On 9 August 2019, the British High Commission and the US Embassy in Tanzania issued a joint statement expressing concern over the steady erosion of due process in Tanzania.⁷ The European Union (EU) and its member states on 15 November 2018 also issued a declaration raising concerns about serious human rights violations.⁸

On 17 August 2019, President John Magufuli was inaugurated as the Chairperson of the Southern African Development Community (SADC) during the 39th Ordinary Summit of SADC Heads of State and Government held in Dar es Salaam.

5 Commission for Human Rights and Good Governance (CHRAGG), "CHRAGG - OHCHR UPR Submissions," 2016, paras. 11 – 16, on file with Amnesty International.

6 Legal and Human Rights Centre (LHRC) and Zanzibar Legal Services Centre (ZLSC), "Tanzania Human Rights Report 2014," 2015, pp. 72 – 101, www.humanrights.or.tz/assets/attachments/1504097078.pdf

7 U.S. Embassy in Tanzania, "Joint Statement of Concern over the Erosion of Due Process in Tanzania," 9 August 2019,

<https://tz.usembassy.gov/joint-statement-of-concern-over-the-erosion-of-due-process-in-tanzania/>, also on file with Amnesty International

8 European Council, Council of the European Union, "Declaration by High Representative Federica Mogherini on behalf of the EU on EU-Tanzania relations," 15 November 2018, <https://www.consilium.europa.eu/en/press/press-releases/2018/11/15/declaration-of-hr-federica-mogherini-on-behalf-of-the-eu-on-eu-tanzania-relations/>

2. REPRESSION OF FREEDOM OF EXPRESSION AND INFORMATION

Since President John Magufuli took office in November 2015, the authorities have applied a raft of repressive laws restricting media freedom, offline and online, and other human rights contrary to Tanzania's Constitution and the country's international human rights obligations. Vague and overly broad restrictions are enforced by police and regulatory authorities, who were provided with sweeping powers to censor the media and online content without adequate legal safeguards and judicial oversight. For example, any police officer has powers to seize equipment belonging to media outlets without a court order.⁹ The same law gives the Minister of Information, Culture and Sports powers to determine and "prohibit or ... sanction the publication of any content that jeopardizes national security or public safety"¹⁰ without a court order.

Collectively, these laws shrunk the civic space for discussion of issues of public interests in Tanzania, violate the right to information and undermine privacy of internet users.

Officials' rhetoric reflects the authorities' intolerance of dissent. In March 2017, President John Magufuli cautioned media owners, "Watch it. If you think you have that kind of freedom, [it is] not to that extent."¹¹ Critics have been threatened, intimidated, arbitrarily arrested and prosecuted. Independent groups and individuals, including media, bloggers, researchers, students, NGOs, politicians, and online users, are increasingly afraid to report on political issues or issues touching on human rights for fear of reprisals.

2.1 REPRESSIVE MEDIA LAW

"The Media Services Act affects our work as civil society. We report violations to media outlets, but the law restricts them on reporting," a civil society employee.¹²

MEDIA SERVICES ACT

Enacted in November 2016, the Media Services Act places broad restrictions on media freedom increasing censorship, violating the right to information and limiting scrutiny of government policies and programmes.¹³

⁹ Section 60 of the Media Services Act, 2016.

¹⁰ Section 59 of the Media Services Act.

¹¹ Fumbuka Ng'wanakilala, "Tanzania's president warns journalists that press freedom has limits", Reuters, 24 March 2017, www.reuters.com/article/us-tanzania-media/tanzanias-president-warns-journalists-that-press-freedom-has-limits-idUSKBN16V25S

¹² Amnesty International interview with a civil society representative in Dar es Salaam, Tanzania, March 2019.

¹³ The 2016 Media Services Act replaced the 1976 Newspaper Act.



The 2016 Media Services Act places restrictions on media including radio, television, newspapers and online platforms. © Amnesty International (Illustration: Victor Ndula)

The Act's definition of "media" is broad enough to include radio, television, newspapers and online platforms. Section 7 of the Act restricts media from publishing information that "undermines national security of Tanzania, discloses proceeding of the Cabinet, hinders or causes substantial harm to the government to manage the economy", among others. Such overly broad restrictions go beyond what is permissible under international law and violate the principle of legality including by making it impossible for an individual to gauge what content is prohibited. The Act further criminalizes "false news" and "rumours" under sections 50 and 54 by creating the offence of "publication likely to cause fear and alarm" punishable with a fine of 10,000,000 to 20,000,000 Tanzania shillings (between 4,350 to 8,700 USD), imprisonment of four to six years, or both.¹⁴ The Act gives the government, specifically the DPP, unchecked power to decide what is a state-sanctioned truth or not and clampdown on dissents.

The 2016 Media Services Act criminalizes sedition in broad terms, including "[...] exciting disaffection against the government administration and promoting feelings of ill-will and hostility between people" The Minister for Information, Culture and Sport has used this to prohibit or sanction publication of content or ban media outlets on national security or public safety grounds.¹⁵ Persons convicted of sedition, including those found possessing alleged seditious publications,¹⁶ can be fined 2,000,000 to 10,000,000 Tanzania shillings (between 870 and 4,350 USD) and sentenced to three to 10 years in prison.¹⁷ The Media Services Act is inconsistent with freedom of expression and media freedom and should be repealed.

Sections 52 and 53 of the Media Services Act create unjustified restrictions to the right to freedom of expression. Article 19 of the International Covenant on Civil and Political Rights (ICCPR), Article 9 of the

¹⁴ Media Services Act. Section 54 (1) of the Media Services Act states that "Any person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace commits an offence and shall be liable upon conviction to a fine of not less than ten million shillings but not exceeding twenty million shillings or to imprisonment for a term of not less than four years and not exceeding six years or both."

¹⁵ Section 52 and 53 of the Media Services Act. Section 52 (1) A "'seditious intention' is an intention to (a) bring into hatred or contempt or to excite disaffection against the lawful authority of the Government of the United Republic."

¹⁶ Section 53 of the Media Services Act.

¹⁷ Section 53 of the Media Services Act.

African Charter to which Tanzania is a state party, and Article 18 of the Constitution of Tanzania guarantee the rights to freedom of expression and information.

The ICCPR for example, permits states to impose certain limitations on the exercise of the right to freedom of expression. It also explicitly requires states to prohibit advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. But the ICCPR also sets out strict conditions that all limitations must fulfil in order for restrictions on expression to be lawful. Such restrictions must be set out in law and in a clear and accessible way. They can be imposed only for certain specified legitimate purposes (such as preserving national security, public order or, as in the case of advocacy of hatred, to protect the rights of others). They must be demonstrably necessary (that is, the least intrusive measure that will achieve the specified purpose) and proportionate. And they must not jeopardize the fundamental right to expression itself.¹⁸

Police have authority under the Media Services Act to conduct searches and seize media equipment without court orders making it prone to abuse. Under Sections 58 and 59 of the Act, the Minister of Information, Culture and Sports can sanction publication of media content and prohibit importation of publications.¹⁹ These overly broad provisions allow the Minister to act with unchecked discretion and create further room for abuse including by not disclosing what sanctions can be imposed.

The Act further institutes mandatory accreditation of journalists by a state agency, the Journalists Accreditation Board, paving the way for restrictions on freedom of expression and media freedom. The Journalist Accreditation Board can cancel accreditation based on broad provisions of “gross professional misconduct as prescribed in the code of ethics for journalists’ profession”. Journalists can appeal decisions, but these are first decided by the Minister of Information, Culture and Sports before they have access to judicial recourse to the High Court.²⁰ The Media Services Act also established an Independent Media Council as the regulatory body responsible for upholding ethical and professional standards undermining the Media Council of Tanzania (MCT), an independent, voluntary, non-statutory self-regulatory body established by media in 1995. The Journalist Accreditation Board and the Independent Media Council are not independent since their board members are appointed by, and are accountable to, the Minister.²¹ Accreditation and cancellation of accreditation should be self-regulated by the media through their own code of conduct.

Since the 2016 Media Services Act came into force, the government has shut down, fined and suspended media outlets for publishing or broadcasting allegations of corruption, human rights violations, and reports on the state of Tanzania’s economy. In 2017 alone, the Minister of Information, Culture and Sports used the Act to ban *Mawio*,²² *Mwanahalisi*, *Raia Mwema*, and *Tanzania Daima* from publishing.²³ While speaking to the BBC on 10 July 2019, the Minister for Foreign Affairs and East African Cooperation, Palamagamba Kabudi, defended the government stating that it respects media freedom and media outlets that have been closed, fined or suspended have received sufficient warnings for offences before action was taken against them.²⁴ On 24 October 2017, the Director of Information Services, Hassan Abbasi, issued a public notice banning *Tanzania Daima* for 90 days accusing them of publishing false information.²⁵ He cited four claims that the newspaper published information that was false or that affected the reputation of state officials. In a 22 October 2017 article, *Tanzania Daima* alleged that “sixty-seven per cent of Tanzanians use antiretroviral (ARV)”²⁶ drugs used for HIV treatment. The Tanzanian government could have addressed any alleged factual inaccuracy through a self-regulatory media body²⁷ instead of banning the newspaper. Previously, the Director of Information Services had issued a public notice asking *Tanzania Daima* to apologise to a former

18 Human Rights Committee, General Comment No. 34, note 4, para 21.

19 Media Services Act.

20 Section 10 (3) of the Media Services Act, “a person aggrieved by the decision of the Minister under this Section may seek redress from the High Court.”

21 Sections 11 and 24 of the Media Services Act.

22 Statement from the Director of Information Services, Hassan Abbasi, 15 June 2017, on file with Amnesty International.

23 Freedom House, “Freedom in the world: 2018,” freedomhouse.org/report/freedom-world/2018/tanzania

24 “Profesa Kabudi na Uhuru wa Vyombo vya Habari Tanzania.” BBC News Swahili, 10 July 2019, https://www.youtube.com/watch?v=y_Rd6QiccgY

25 Statement by the Director of Information Services, Hassan Abbasi, 24 October 2017, on file with Amnesty International.

26 “Asilimia 67 ya Watanzania Wanatumia ARV’s.” *Tanzania Daima*, 22 October 2017, p. 3, on file with Amnesty International, unofficial Amnesty International translation from Kiswahili to English.

27 Media Council of Tanzania (MCT) was established by media professions to be an independent, voluntary, non-statutory self-regulatory body.

AG, George Masaju, for misquoting him on the front page on 31 May 2017.²⁸ *Tanzania Daima* apologized in writing the same day.²⁹ The ban on *Tanzania Daima* was thus unjustified.

On 29 September 2017, the Minister of Information, Culture and Sports banned *Raia Mwema*, a Swahili-language newspaper, for 90 days for publishing an article titled “John Magufuli shall fail as President.”³⁰ He accused *Raia Mwema* of publishing false information and for quoting words that the President did not say.³¹ The Minister had previously banned the weekly tabloid, *Mwanahalisi*, for two years on 19 September 2017 alleging that it published false news and information that would undermine national security, stating that the information “[...] intentionally intended to threaten the interest of defence.”³² The ban cites five incidents, including reports on corruption in President John Magufuli’s office from their February 2017 edition.³³ Public officials, including presidents, should be prepared to tolerate more criticism than private individuals. Laws that inhibit legitimate criticism of government officials or presidents violate freedom of expression.



The government has used the law to censor media outlets for reporting on allegations of corruption, human rights violations and on the state of Tanzania's economy. © Amnesty International (Illustration: Victor Ndula)

On 15 June 2017, the Minister also used his powers under Section 59 of the Media Services Act to ban *Mawio* for two years for publishing an article that associated former presidents Jakaya Kikwete and Benjamin Mkapa and Tundu Lissu (a CHADEMA MP) with alleged corruption in the mining sector.³⁴ The article appeared in a 1 – 21 June 2017 edition with photos of the two former presidents on the front page.³⁵ The Director of Information Services argued that these individuals had not been indicted by a committee appointed by President John Magufuli to investigate allegations of corruption in mining, and that the president had warned media outlets against associating the former presidents with corruption.

Mwanahalisi and *Mawio* were still banned at the time of writing. While *Mawio*'s ban officially expired on 15 June 2019, the outlet was yet to receive a new licence to publish despite applying and writing an appeal to the Minister of Information, Culture and Sports to resume publication.³⁶ Regulations 8 (3) and 12 (1) of the

28 Statement by the Director of Information Services, Hassan Abbasi, 31 May 2017, on file with Amnesty International.

29 Statement by the Assistant Editor of Free Media Limited, the publishers of *Tanzania Daima* and *Sayari*, 31 May 2017, on file with Amnesty International.

30 “Urais Utamshinda John Magufuli.” *Raia Mwema*, 27 September - 3 October 2017, on file with Amnesty International, unofficial Amnesty International translation from Kiswahili to English.

31 Statement by the Director of Information Services, Hassan Abbasi, 29 September 2017, on file with Amnesty International.

32 Statement by the Director of Information Services, Hassan Abbasi, 19 September 2017, on file with Amnesty International.

33 Statement by the Director of Information Services, Hassan Abbasi, 19 September 2017, on file with Amnesty International.

34 Statement by the Director of Information Services, Hassan Abbasi, 19 September 2017, on file with Amnesty International.

35 “Zengwe: ufisadi huu kiboko.” *Mawio*, 15 – 21 June 2017, copy of the newspaper on file with Amnesty International.

36 Amnesty International interview with two journalists in Dar es Salaam, Tanzania, August 2019.

2017 Media Services Regulations require all media outlets to renew their licences annually, including by paying an annual licence fee of 1,000,000 Tanzania shillings (an equivalent of 435 USD).³⁷ The Director of Information Services on 23 August 2017 issued a notice to all media outlets to obtain new licences by 15 October 2017 or be barred from publishing.³⁸

Fear of bans and prosecutions have created a chilling effect deterring media from doing their work, and people from exercising their rights to freedom of expression. Journalists fear being targeted and refrain from exercising their human rights. Four newspaper editors interviewed by Amnesty International explained that they had held off publishing articles on corruption allegations and the business interests of ruling party members because of fear of reprisals. They also shared their frustration with the increasing pressure and censorship in Tanzania newsrooms.³⁹

On 27 February 2019, the Tanzania Communications Regulatory Authority (TCRA)⁴⁰ suspended *Citizen* newspaper for a week claiming that they did not follow the Bank of Tanzania's reporting standards on the depreciation of the Tanzania shilling. Three days before, *Citizen* had published an article showing what it considered to be the falling value of the shilling over the last three years. The suspension order stated that *Citizen* had deliberately published misleading information.⁴¹

Beyond arbitrary suspension and threats, journalists in Tanzania have also faced arbitrary arrests, prosecutions and in one extreme case, enforced disappearance.

Minister Palamagamba Kabudi told the BBC on 11 July 2019 that investigative journalist, Azory Gwanda, who disappeared in mysterious circumstances in November 2017, was dead.⁴² He said, "[...] the state is dealing with all those who have unfortunately died and disappeared in Rufiji... it was very painful for someone who was doing his job to pass on."⁴³ Later that day, Minister Palamagamba Kabudi retracted his statement saying "unfortunately some media reports misinterpreted my interview to mean that I purportedly confirmed Azory is dead. In the interview I said, the Kibiti incident was one of the painful experiences that Tanzania went through; some people disappeared, others died."⁴⁴ Amnesty International calls on the Tanzania authorities to launch a thorough, independent and effective investigation into Azory Gwanda's enforced disappearance and ensure those suspected to be responsible are brought to justice in fair trials and without recourse to the death penalty.⁴⁵

On 29 July 2019, police arrested investigative journalist Erick Kabendera. According to information from his lawyer and a family member present during his arrest, six men in plainclothes took him from his home in Mbweni, Dar es Salaam, without informing him of the reasons for his arrest.⁴⁶ The following day, the Dar es Salaam Special Zone Police Commander, Lazaro Mambosasa, announced to the media that Erick Kabendera was under arrest and had been questioned about the validity of his Tanzanian nationality.⁴⁷ A few days later, the police interrogated him about alleged sedition and publication of false information in an *Economist* article he wrote. They held Erick Kabendera for seven days without bringing him before a court, exceeding the 24 hours allowed to bring a suspect arrested without a warrant before a court or to release them on bond or without charge.⁴⁸ His family and lawyers reported to Amnesty International that they were denied access to him for first three days of his detention.⁴⁹

37 First schedule (made under regulations 4 (4), 8(5), 10 (2) (b) and 12 (1) and 28 of the Media Services Regulations, 2017.

38 Statement by the Director of Information Services, Hassan Abbasi, 23 August 2017, on file with Amnesty International.

39 Amnesty International interviews with four newspaper editors in Dar es Salaam, Tanzania, February, March and August 2019.

40 A quasi-independent government body established by the Tanzania Communications Regulatory Authority Act, 2003 which is responsible for regulating the communication and broadcasting sectors in Tanzania.

41 "Tanzania suspends newspaper over story on falling shilling", *The East African*, 27 February 2019, www.theeastafrican.co.ke/news/ea/Tanzania-suspends-newspaper-over-story-on-falling-shilling/4552908-5002264-r1s0fdz/index.html

42 In an interview with the BBC, clip on file with Amnesty International.

43 clip on file with Amnesty International.

44 Tanzania Spokesperson @TZSpokesperson, "unfortunately some media reports misinterpreted my interview to mean that I purportedly confirmed Azory is dead. In the interview I said, the Kibiti incident was one of the painful experiences that Tanzania went through; some people disappeared, others died." 11 July 2019, retrieved from <https://twitter.com/tzspokesperson?lang=en>

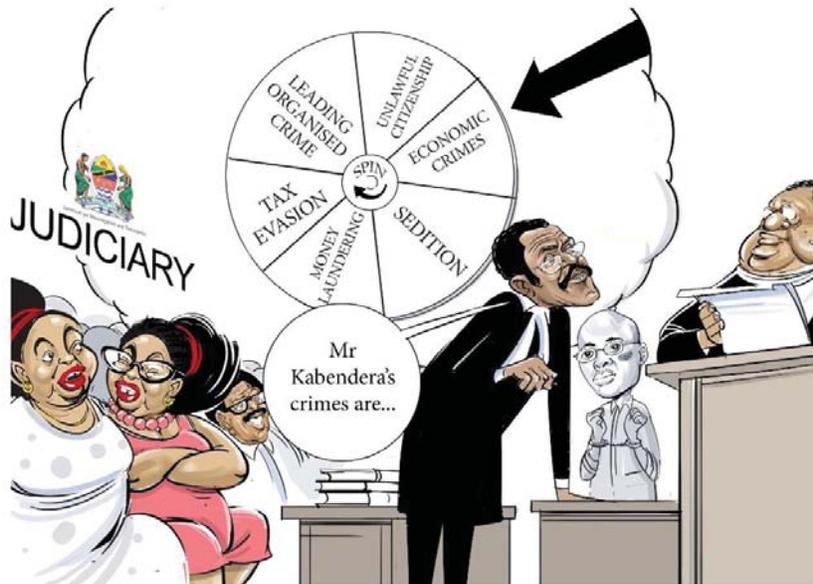
45 Amnesty International, "Tanzania: Justice must be done for death of journalist Azory Gwanda." 11 July 2019, <https://www.amnesty.org/en/latest/news/2019/07/tanzania-justice-must-be-done-for-death-of-journalist-azory-gwanda/>

46 Amnesty International telephone interviews with seven people (three lawyers and four family members), July 2019.

47 Dar es Salaam Special Zone Police Commander, Lazaro Mambosasa recorded speaking to the press, 30 July 2019, www.youtube.com/watch?v=A2s-TiAo7pc

48 Section 32 of the Criminal Procedure Act, 1985.

49 Amnesty International interview with Jebra Kambole, lawyer representing Erick Kabendera in Dar es Salaam, August 2019 and Amnesty International telephone interviews with family members in July and August 2019.



Since his arrest on 29 July 2019, journalist Erick Kabendera has been accused of sedition, publishing false information and economic crimes. © Amnesty International (Illustration: Victor Ndula)

On 5 August 2019 police charged Erick Kabendera in court with three economic crimes,⁵⁰ leading organized crime, failure to pay 173,000,000 Tanzania shillings (more than 75,200 USD) in tax and money laundering.⁵¹ The DPP successfully prevented his bail application⁵² by filing a certificate under Section 36 (2) of the 1984 Economic and Organised Crime Control Act objecting to bail.⁵³ Only offences punishable by death are exempt from bail.⁵⁴

Amnesty International considers Erick Kabendera's arrest and detention to be arbitrary. The UN Human Rights Committee charged with overseeing state parties' implementation of the ICCPR explains that arrests or detention may still be arbitrary despite being legal under domestic laws if they are inappropriate or lack predictability, due process,⁵⁵ reasonableness, necessity and proportionality. The UN Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court also state that arrests resulting from the exercise of people's right to freedom of expression, is arbitrary.⁵⁶

In his first week in detention, police changed allegations against Erick Kabendera numerous times. By the time of this reporting, the court had postponed the hearing against him five times since his arrest on 29 July

50 Leading organized crime contrary to sections 57 (1) and 60 (2) of the Economic and Organised Crime Control Act, 1984.

51 Charge sheet against Erick Kabendera, 5 August 2019, on file with Amnesty International.

52 Section 36 (2) of the Economic and Organized Crime Control Act.

53 Section 148 (4) of the Criminal Procedure Act.

54 Section 32 of the Criminal Procedure Act.

55 United Nations (UN) Human Rights Committee, General comment no. 35, Article 9 (Liberty and security of person), 16 December 2014, CCPR/C/GC/35, para. 12, "An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of 'arbitrariness' is not to be equated with 'against the law' but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. For example, remand in custody on criminal charges must be reasonable and necessary in all the circumstances. Aside from judicially imposed sentences for a fixed period of time, the decision to keep a person in any form of detention is arbitrary if it is not subject to periodic re-evaluation of the justification for continuing the detention."

56 United Nations General Assembly (UNGA), Report of the Working Group on Arbitrary Detention, UN Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, 6 July 2015, A/HRC/30/37.

2019 on grounds that the prosecution needed more time to complete their investigations.⁵⁷ The charges against him are trumped up. Amnesty International is calling for his immediate and unconditional release.⁵⁸

2.2 FAILURE TO IMPLEMENT EAST AFRICAN COURT OF JUSTICE RULINGS

“[...] these [regional courts] overstep and take up legal matters that have not exhausted local remedies,” Adelardus Kilangi, Attorney General of The United Republic of Tanzania.⁵⁹

The EACJ ruled on 28 March 2019 that the 2016 Media Services Act violates freedom of the press, expression and information in the EAC Treaty.

The Legal Human Rights Centre (LHRC) had taken the case to the EACJ without bringing its case before domestic courts but in line with EACJ’s jurisprudence on jurisdiction.⁶⁰ One of the lawyers justified the approach stating that, “the level of appreciation of regional and international issues at the EACJ is high and vivid compared to the national courts.”⁶¹ In the case, Tanzania Principal State Attorney, Silvia Matiku who represented Tanzania government filed a response on 28 February 2017 contending that the EACJ did not have the jurisdiction to entertain the case but lost.⁶²

The EACJ found 16 sections of the law contravened the Treaty for the Establishment of the East African Community (EAC), including sections 50, 52, 53 and 54 relating to publishing seditious information or information likely to cause fear or alarm. The EACJ also ruled that Sections 58 and 59 allowing the Minister of Information, Culture, Arts and Sports to prohibit importation of information and sanction publications contravened the Treaty. The EACJ ordered the Tanzania government to bring the Media Services Act into compliance with the Treaty⁶³ but it had not done so or shown any willingness to do so at the time of writing. Tanzania’s AG, Adelardus Kilangi, told Amnesty International that the government “will not implement decisions of regional and international courts.” The AG added that “[...] these [regional courts] overstep and take up legal matters that have not exhausted local remedies.”⁶⁴

The Tanzanian government has also failed to comply with an earlier EACJ ruling on 21 June 2018 ordering the reopening of *Mseto*, a weekly newspaper. In August 2016, the Minister for Information, Culture, Arts and Sports, had suspended *Mseto* for 36 months using Section 25 (1) of now repealed 1979 Newspaper Act. He stated that *Mseto* had ignored warnings since September 2012 from the Director of Information Services about publishing false news.⁶⁵ The Minister of Information, Culture, Arts and Sports used powers under this section to “prohibit publication for the public interest or in the interests of peace and good order.”⁶⁶ The EACJ ruled that this violated Tanzania’s obligations under the Treaty for the Establishment of the EAC to uphold and protect principles of rule of law, accountability and transparency, among others. At the time of writing, the government had not implemented the judgment. Article 38 of the Treaty for the Establishment of the EAC states that “a partner state or the council shall take, without delay, the measures required to implement a judgement of the court.”⁶⁷ Article 39 gives parties to a case the right of appeal.⁶⁸

57 Amnesty International telephone interview with Jebra Kambole, lawyer representing Erick Kabendera, September 2019 and Amnesty International telephone interviews with trial monitors in September 2019.

58 Amnesty International, “Drop trumped up charges against journalist”, 16 August 2019, available at www.amnesty.org/en/latest/news/2019/08/tanzania-drop-trumped-up-charges-against-journalist/

59 Amnesty International interview with Adelardus Kilangi, Attorney General (AG) of Tanzania, Dodoma, Tanzania, March 2019.

60 *Reference No.2 of 2017 (Media Council of Tanzania, LHRC, THRDC versus the Attorney General of the Republic of Tanzania) at the East African Court of Justice (EACJ)*, p. 12, on file with Amnesty International.

61 Amnesty International interview with a lawyer in the panel that advised on strategy in petition Reference No.2 of 2017 (MCT, LHRC, THRDC versus the AG of the Republic of Tanzania) at the EACJ, in Dar es Salaam, Tanzania, August 2019.

62 *Reference No.2 of 2017 (MCT, LHRC, THRDC versus the AG of the Republic of Tanzania) at the East African Court of Justice (EACJ)*, p. 7, para 13, on file with Amnesty International

63 *Media Council of Tanzania & 2 others v the AG of the United Republic of Tanzania Reference No 2 of 2017*.

64 Amnesty International interview with AG Adelardus Kilangi, Dodoma, Tanzania, March 2019.

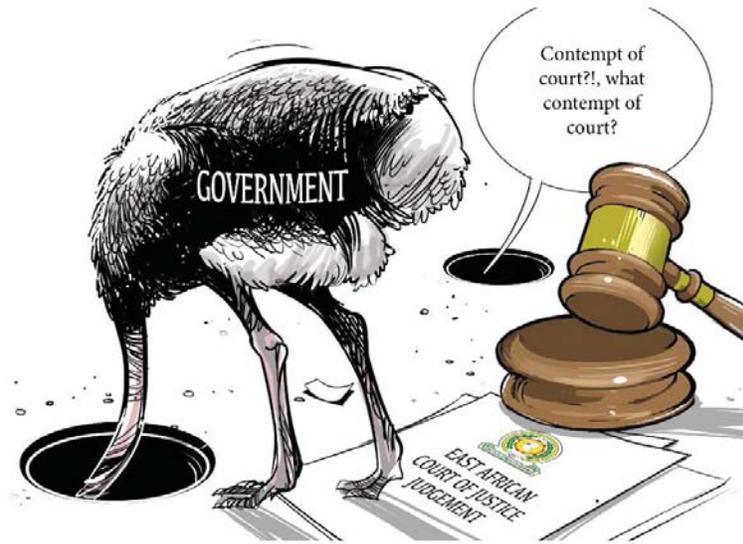
65 Notice to media outlets through the then Minister of Information, Culture and Sports, Nape Mnauye, 11 August 2016, on file with Amnesty International.

66 Notice to media outlets through the then Minister Nape Mnauye, 11 August 2016, on file with Amnesty International. Para. 2, unofficial Amnesty International translation from Kiswahili to English.

67 Article 38 of the Treaty for the Establishment of the East African Community (EAC).

68 Article 39 of the Treaty for the Establishment of the EAC.

While the Treaty for the Establishment of the EAC does not spell out the implications of governments' refusal to comply with judgements of the court, regional and international human rights systems were established to guarantee people access to effective judicial or other appropriate remedies for human rights violations and abuses when national justice systems have failed them. The Tanzanian government's disregard for EACJ court orders demonstrates its lack of respect for human rights and judicial independence.



The Government of Tanzania has refused to comply with three East African Court of Justice judgments on violations of the rights to freedom of expression and information. © Amnesty International (Illustration: Victor Ndula)

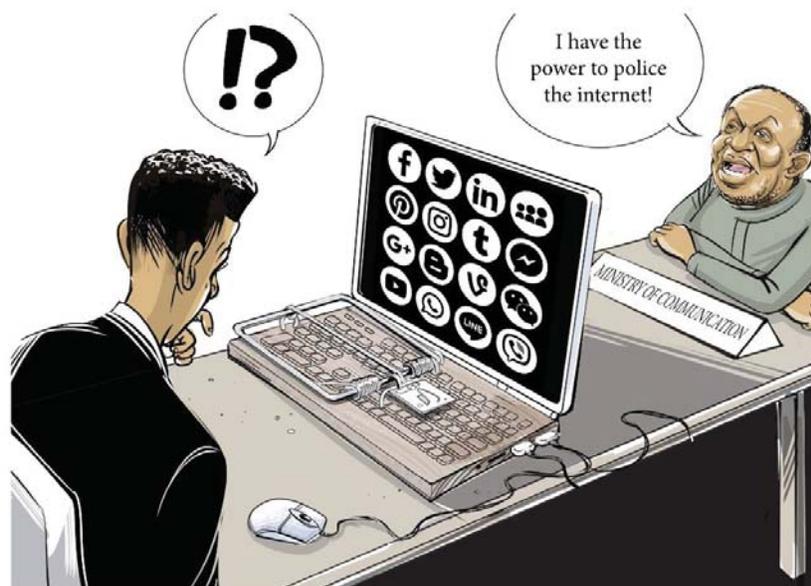
2.3 CURBING ONLINE EXPRESSION, CRIMINALIZATION AND ARBITRARY REGULATION

“Tanzanians are silenced. They cannot speak openly about the political situation in the country. They cannot comment about issues affecting them to the government or among themselves.”

A human rights lawyer⁶⁹

⁶⁹ Amnesty International interview with a human rights lawyer, Arusha, Tanzania, March 2019.

The 2015 Cybercrimes Act violates the right to share and receive information online. It criminalizes publication of “false, deceptive, misleading or inaccurate information”⁷⁰ and insulting and inflammatory rhetoric online. Covering all social media users, this law holds, for example, WhatsApp users liable for the accuracy of information shared in private messages.⁷¹ By using broad language and not clearly defining these offences, it fails to meet the principle of legality in international law.⁷² Sweeping definitions of offences could be interpreted to cover most information except official government statements.⁷³ Like other anti-fake news laws such as provisions in the Media Services Act creating offences relating to media⁷⁴, this gives police powers to decide what they feel is a state-sanctioned truth. It restricts freedom of expression, cultivates online censorship and can be used to suppress dissent.



The 2015 Cybercrimes Act increased censorship of online freedom of expression by introducing and using sweeping powers to police the internet. © Amnesty International (Illustration: Victor Ndula)

Police have unchecked powers to assess published information and forbid it without judicial controls.⁷⁵ Section 20 allows police to demand information from internet service providers and mobile phone networks and search and seize computer equipment or data, including messages.⁷⁶ Similarly, the 2018 Online Content Regulations grant far-reaching powers to the TCRA⁷⁷ enabling them to order the removal of “prohibited content” defined very broadly under the regulations to include content that “uses bad language” and content “likely to mislead or deceive the public.” This runs counter to guidance from the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye,

70 Section 16 of the Cybercrime Act, 2015.

71 Section 16 of the Cybercrime Act.

72 Section 16 of the Cyber Crime Act provides for a general offence of, “publication of false information: any person who publishes information or data presented in a picture, text, symbol or any other form in a computer system knowing that such information or data is false, deceptive, misleading or inaccurate, and with intent to defame, threaten, abuse, insult, or otherwise deceive or mislead the public or concealing commission of an offence, commits an offence, and shall on conviction be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than three years or to both.”

73 Amnesty International interviews with two lawyers, February 2019.

74 Section 50 of the Media Services Act.

75 Section 31, Cybercrime Act.

76 “A person shall not, with intent to commit an offence under this Act initiate the transmission of unsolicited messages; relay or retransmit unsolicited messages or falsify header information in unsolicited messages.” “Unsolicited message” is defined in the Act as “any electronic message which is not solicited by the recipient”.

77 Part 2, Regulation 4 of the Regulations sets out the powers of the Tanzania Communications Regulatory Authority (TCRA).

that “states should refrain from adopting models of regulation where government agencies, rather than judicial authorities, become the arbiters of lawful expression”.⁷⁸

Since 2018, Tanzania’s government has tightened control and censorship of online freedom of expression by introducing and using sweeping powers to police the internet. The Electronic Postal Communications (Online Content) Regulations were adopted in March 2018. They place broad restrictions on online content, require bloggers to register and permit intrusive surveillance of cybercafés without judicial oversight.⁷⁹ Together with the 2015 Cybercrimes Act which criminalizes publication of “false” information, these laws shrink the space for public debate and undermine privacy of internet users. Even if it is too early to draw conclusions on how these laws will be applied and enforced, both currently in initial stages of implementation, there are already instances, as outlined below, that demonstrate how these laws have been used to prevent Tanzanians from freely expressing themselves online on politically sensitive issues.

2.3.1 ENFORCEMENT OF THE CYBERCRIMES ACT

According to the Tanganyika Law Society (TLS), by February 2019, at least 56 people had been charged with offences under Section 16 of the 2015 Cybercrimes Act.⁸⁰ Amnesty International interviewed four individuals who had been charged under this law in concluded and ongoing court cases.

On 10 June 2016, Tanzania’s Criminal Investigation Department (CID) demanded Maxence Melo and Micke William, co-founders of *Jamii Forums*, an independent reporting website, to disclose details of a whistleblower who anonymously alleged on the platform that a commercial bank in Tanzania was responsible for bank fraud.⁸¹ On 16 December 2016, they were charged with non-compliance with this disclosure order under Section 22 (2) of the 2015 Cybercrimes Act and with managing a domain not registered in Tanzania under Section 79 (c) of the 2010 Electronic and Postal Communications Act.⁸² While the Resident Magistrate’s Court at Kisitu in Dar es Salaam acquitted them on 1 June 2018 of obstructing investigations under Section 22 (2) of the Cyber Crimes Act 2015 for refusing to comply with the disclosure order, the court ruled on 23 February 2019 that the two had a case to answer for “not complying with an order of disclosure of data” and “managing a domain not registered in Tanzania” under the 2010 Electronics and Postal Communications Act.⁸³

Maxence Melo told Amnesty International that “I have been in court over 118 times. At times I appear in court at least two times a week in relation to the ongoing two cases”.⁸⁴ The repeated charges against the two and their frequent court appearances bear the hallmarks of judicial harassment where Tanzanian authorities are misusing the criminal justice system to target and harass them.

Amnesty International also interviewed Juvenal Shirima, Bob Wangwe Chacha and Abdul Nondo who were separately arrested and charged with publication of false information under Section 16 of the 2015 Cybercrime Act. They were all university student leaders at the time they were arrested and charged in court.

Tanzania police arrested Juvenal Shirima at Ardhi University on 13 January 2017 and detained him at the Central Police Station for 14 days before he was charged with the offence of publication of false information on 27 January 2017.⁸⁵ The statement quoted in the charge sheet in Swahili states: “[...] I have received information that there are harmful plans that were made and are still being made against Godbless

78 UNGA, Human Rights Council (HRC) Thirty-Eight Session, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 6 April 2018, A/HRC/38/35 para. 68.

79 This Section grants powers to the Minister responsible for communications powers to make regulations following recommendation from the Committee on content related matters.

80 Amnesty International interview with Fatma Karume, then president of Tanganyika Law Society (TLS), Dar es Salaam, Tanzania, February 2019.

81 Official demand made to the Legal Officer of Jamii Forums on 10 June 2016, on file with Amnesty International.

82 Amnesty International interview with Maxence Melo, Dar es Salaam, Tanzania, March 2019 and telephone interviews, April and May 2019; and charge sheet dated 16 December 2016 also available on file with Amnesty International.

83 Amnesty International interview with Maxence Melo, Dar es Salaam Tanzania, March 2019 and telephone interviews, April and May 2019. Court ruling of the Resident Magistrate’s Court at Kisitu dated 23 February 2019 also on file with Amnesty International.

84 Amnesty International interview with Maxence Melo, Dar es Salaam, Tanzania, March 2019 and telephone interviews, April and May 2019.

85 *Criminal case No. 26 of 2017 in the Resident Magistrate’s Court of Dar es Salaam at Kisitu.*

Lema...⁸⁶ Juvenal Shirima was released on a 2,000,000 Tanzania shillings (about 870 USD) on 27 January and later acquitted on grounds that there was no complainant in the case on 3 July 2017.⁸⁷

Bob Chacha Wangwe was charged and convicted on 15 November 2017 by Kisutu Resident Magistrate Court of publishing information through Facebook about Zanzibari politics with the intention of misleading the public on 15 March 2016.⁸⁸ The statement quoted in the charge sheet in Swahili states: “[...] Tanzania is a country that ... inflates the people with hatred ... the outcome of suppressing democracy in Zanzibar is more dangerous than the union itself ... it is impossible for Zanzibar to be a colony of mainland Tanzania for foolish reasons ...”⁸⁹ The prosecution used unpublished information from Bob Chacha Wangwe’s mobile phone gathered by the police’s Cybercrime Unit’s Forensic Department during their investigations.⁹⁰ He was fined 5,000,000 Tanzania shillings (over 2,100 USD) or one and a half years in prison and opted to pay the fine. On 27 March 2019, the High Court quashed⁹¹ the decision⁹² on appeal on the grounds that the court had not properly determined elements of the offence.

On 21 March 2018 Tanzania police charged Abdul Nondo with publication of false information under Section 16 of the 2015 Cybercrime Act and giving false information to a public servant contrary to Section 122 (a) of the 1945 Penal Code.⁹³ Abdul Nondo had sent a text to a friend saying, “I am at Risk.”⁹⁴ Abdul Nondo was acquitted⁹⁵ by the Iringa Resident Magistrate Court on 5 November 2018 after the court ruled that the prosecution had failed to prove that he gave false information.⁹⁶

According to Tanzania’s AG “the Cybercrime Act was designed to deal with online crimes, including financial crime, sharing false information and reckless dissemination of information without thinking about the impact. Ramifications must be heavy.”⁹⁷

2.3.2 REGULATING BLOGGING

Tanzania’s Electronic and Postal Communications (Online Content) Regulations, generally referred to as the “Online Content Regulations”, define bloggers as a writer or group of writers owning and performing the act of blogging and any other acts like blogging.⁹⁸ The regulations define a blog or weblog as a website containing a writer’s or group of writer’s experiences, observations and opinions including current news, events, journals, advertisements and images, video clips and links to other websites.⁹⁹ The regulations require bloggers to register as online content providers and pay 2,500,000 Tanzanian shillings (more than 1,000 USD) in application and initial licence fees, and an annual fee of 1,000,000 Tanzanian shillings (about 435 USD).¹⁰⁰ At over four times Tanzania’s 2018 per capita income of 1,050.7 USD¹⁰¹, these fees are prohibitively expensive.¹⁰² By giving TCRA unchecked discretion to request “such document or information” as they “may require” to support applications, the regulations also place bloggers under undue government scrutiny.¹⁰³

In June 2018, TCRA ordered unregistered bloggers and online forums, including *Jamii Forums*, *Dar Mpya*, *Mwana wa Makonda Media*, *Innowise TZ* and *Fikra Pevu* to suspend their websites or face criminal

86 Unofficial Amnesty International translation from Kiswahili to English.

87 *Criminal case No. 26 of 2017 in the Resident Magistrate’s Court of Dar es Salaam at Kisitu.*

88 *Criminal Case No. 167 of 2016 in the Resident Magistrate’s Court at Kisutu.*

89 Unofficial Amnesty International translation from Kiswahili to English.

90 Amnesty International telephone interviews with Bob Wangwe Chacha, April 2019 and judgement of Criminal Appeal No. 370 of 2018 also on file with Amnesty International.

91 *Criminal Appeal No. 370 of 2018.*

92 *Criminal Case No. 167 of 2016 in the Resident Magistrate Court at Kisutu.*

93 Charge sheet, on file with Amnesty International.

94 Amnesty International telephone interview with Abdul Nondo, April 2019 and charge sheet also on file with Amnesty International.

95 *Criminal Case No. 13 of 2018 in the Resident Magistrate Court at Iringa.*

96 *Criminal Case No. 13 of 2018 in the Resident Magistrate Court at Iringa.*

97 Amnesty International interview with AG Adelardus Kilangi, Dodoma, Tanzania, March 2019.

98 Part 1 of the Electronic and Postal Communications (Online Content) Regulations generally referred to as the Online Content Regulations.

99 Regulation 3 of the Online Content Regulations.

100 Regulation 14 of the Online Content Regulations.

101 World Bank national accounts data, and Organisation for Economic Co-operation and Development (OECD) National Accounts data files, GDP per capita (current US \$), 2019, www.data.worldbank.org/indicator/NY.GDP.PCAP.CD

102 World Bank, The World Bank in Tanzania, 1 April 2019, www.worldbank.org/en/country/tanzania/overview

103 Regulation 14.

prosecution.¹⁰⁴ According to *Jamii Forums*, *Dar Mpya*, and *Mwana wa Makonda Media*, they had to comply with the registration requirements, including paying the fees.¹⁰⁵

Regulating bloggers contradicts recommendations from the then UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression that states should facilitate private, secure and anonymous communications.¹⁰⁶ He stated that anonymity “allows individuals to express themselves freely without fear of retribution or condemnation”, that “restrictions on anonymity have a chilling effect, dissuading the free expression of information and ideas” and also make “individuals more vulnerable to other forms of state surveillance.”¹⁰⁷

2.3.3 CYBERCAFÉ SURVEILLANCE

Since March 2018, cybercafés have been subjected to mass surveillance and mandatory data retention, infringing on people’s rights to privacy and freedom of expression. The Online Content Regulations require cybercafé owners to register users with an identity card and have static internet protocol (IP) addresses for all computers. They also mandate installation of surveillance cameras and retention of images, alongside the user register, for 12 months. In addition, owners must install mechanisms to filter access to prohibited content defined in broad terms such as “false content which is likely to mislead or deceive the public.”¹⁰⁸ Failure to comply is punishable by a minimum 12-month jail sentence, or minimum fines of 5,000,000 Tanzania shillings (almost 2,200 USD), or both.¹⁰⁹ The law does not give a maximum fine leaving this to the court’s discretion.



The Online Content Regulations require cybercafé owners to install surveillance cameras and maintain user registers. © Amnesty International (Illustration: Victor Ndula)

104 Committee to Protect Journalists (CPJ), “Tanzania forces forums, blogs, and streaming websites to comply with draconian regulations”, 12 June 2018, www.cpj.org/2018/06/tanzania-forces-forums-blogs-and-streaming-website.php

105 Amnesty International telephone interviews with four bloggers and two directors of online forums, July 2019.

106 UNGA, HRC, Twenty-Third Session, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/23/40, 17 April 2013, paras. 88 – 90.

107 UNGA, HRC, Twenty-Third Session, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, A/HRC/23/40, 17 April 2013, paras. 23, 49 and 48.

108 Regulation 9, obligations of internet café, Government Notice No. 133, 16 March 2018,

www.tcra.go.tz/images/documents/regulations/SUPP_GN_NO_133_16_03_2018_EPOCA_Online_Content_Regulations_2018.pdf

109 Part 5 of the Online Content Regulations.

These measures constitute unlawful and arbitrary interference with privacy under the ICCPR's Article 17 (1).¹¹⁰ Surveillance should only be applied when necessary and proportionate to protect legitimate interests¹¹¹ subject to judicial oversight and in specific ways for a limited time.¹¹² The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has found that mandatory data retention allows the state to trace internet users¹¹³ and identity disclosure laws at cybercafés are particularly concerning where personal computer ownership is limited.¹¹⁴

Several NGOs including LHRC, MCT, Tanzania Human Rights Defenders Coalition (THRDC), Tanzania Media Women Association (TAMWA), the Tanzania Editors Forum (TEF) and *Jamii Media* (currently *Jamii Forums*) challenged the regulations in court through a judicial review application, including on the grounds that they were arbitrary, ambiguous and passed illegally. The petitioners won a temporary court injunction against implementation of the regulations on 4 May 2018. The Attorney General successfully appealed the decision on three grounds, "that the applicants should have exhausted alternative remedies, such as mediation ... that the judicial review application did not meet rules and standards courts must follow on civil matters,¹¹⁵ [and] that the applicants had no right or capacity to bring the matter to court under the Judicial Review Rules."¹¹⁶ The temporary injunction was overturned on appeal on 28 May 2018. The NGOs then appealed to the High Court at Mtwara but lost on 9 January 2019.¹¹⁷ The judge found that the Minister of Information, Culture and Sports did not exceed his powers or act illegally by promulgating the regulations.¹¹⁸ The judge did, however, find that the Minister of Information, Culture and Sports had exceeded his powers in defining "content" more broadly in the regulations than in their parent law, the Media Services Act.

The regulation's overly-broad and ambiguous definition of content makes it difficult to assess what speech or conduct is criminalised. The judge ordered the removal of the definition of content in the regulations,¹¹⁹ in favour of the narrower definition in the Media Services Act.¹²⁰

Public fears of surveillance are further compounded by President John Magufuli's statements that he monitors communications of senior government officials. Speaking during the swearing-in of cabinet ministers, *The East African* newspaper reported that he cautioned cabinet appointees that he listened to their conversations and this informed the reshuffle: "When I tracked the telephone message communication between the Minister of Health and Zainab Chaula (who was deputy permanent secretary in the Local Government and Regional Administration in charge of Health) I noticed a strain in their working relationship. So, to make their quarrels come to a stop, I decided to place them under the same ministry ...".¹²¹ Unlawful infringements on the privacy of public servants may impede their independence and sends a strong message to other people that no-one is safe from state surveillance.

In November 2013, the Social, Humanitarian and Cultural Committee of the UN General Assembly (UNGA) passed a resolution on privacy in the digital age.¹²² The resolution emphasizes that "[...] unlawful or arbitrary surveillance and/or interception of communications, as well as unlawful or arbitrary collection of personal data, as highly intrusive acts, violate the rights to privacy and freedom of expression and may contradict the tenets of a democratic society."¹²³ In November 2016, the African Commission on Human and Peoples' Rights (African Commission) also adopted a Resolution on the Right to Freedom of Expression on the

110 International Covenant on Civil and Political Rights (ICCPR), Article 17(1).

111 ICCPR, Article 19 (3).

112 A/HRC/41/35 – para. 50 (c).

113 A/HRC/23/40 – para. 66.

114 A/HRC/23/40 – para. 68.

115 The AG submitted that the affidavit in support of the chamber summons was incurably defective for contravening the provisions of Tanzania's civil procedures.

116 Rule 4 of the Judicial Review Rules. Only persons affected by the decision of an authority may approach the court for the remedies under judicial review.

117 *In the Matter of an Application to Challenge the Provisions of the Electronics and Postal Communications (Online Content) Regulations, 2018.*

118 *In the Matter of an Application to Challenge the Provisions of the Electronics and Postal Communications (Online Content) Regulations, 2018.*

119 *In the Matter of an Application to Challenge the Provisions of the Electronics and Postal Communications (Online Content) Regulations, 2018.*

120 "Content" means information in the form of speech or other sound, data, text or images, drawings including cartoon and any other related characters whether still or moving.

121 "President Magufuli reveals why he monitors phone messages of his appointees", *The Citizen*, 9 January 2019, www.thecitizen.co.tz/News/President-Magufuli-reveals-why-he-monitors-phone-/1840340-4927626-cl95csz/index.html

122 UNGA, "The right to privacy in the digital age." A/C.3/68/L.45/Rev.1, 20 November 2013.

123 UNGA, The right to privacy in the digital age, A/C.3/68/L.45/Rev.1, 20 November 2013, para. 8.

Internet in Africa¹²⁴ reaffirming the rights to freedom of information and expression enshrined in Article 9 of the African Charter and in other international human rights instruments and recognizing the role of the internet in advancing human and peoples' rights in Africa.

124 ACHPR/Res. 362 (LIX) 2016.

3. EXCESSIVE INTERFERENCE WITH FACT-CHECKING OFFICIAL STATISTICS

The 2015 Statistics Act regulates and restricts collection, production and dissemination of statistics. Tanzania's authorities now have extensive censorship powers curtailing the right to information and freedom of expression.

In May 2019, the Tanzanian government amended the 2015 Statistics Act through the Miscellaneous Amendments No. 3 of 2019,¹²⁵ made public on 19 June and debated under a 'certificate of urgency' that expedited its passage.¹²⁶ The May 2019 amendments established a five-person "Statistics Technical Committee," appointed by the Minister of Information, Culture and Sports to review unofficial statistics with which the government disagrees.

Before these amendments¹²⁷, only the National Bureau of Statistics (NBS) and NBS-mandated institutions could collect official statistics since NBS prohibited individuals from publicly sharing statistical information intended to invalidate, distort or discredit official statistics.¹²⁸ Interrogating, challenging or casting doubt on official government data was illegal.¹²⁹ Despite the changes, the authorities still have significant powers to control who can gather and disseminate facts. The authorities still determine what is factual and false creating a dangerous state-sanctioned truth.¹³⁰ The Act promotes excessive government interference in information sharing since the Committee has unchecked discretion to direct authors of statistical information to publish corrections.¹³¹

The 2015 Statistics Act is vaguely worded and lacks guidance on determining falsehoods and distinguishing them from errors. Such ambiguous wording is incompatible with international human rights law requirements that restrictions on freedom of expression serve a legitimate interest and are necessary and

125 The law was passed by Tanzania's parliament on 27 June 2019 and signed into law on 30 June 2019.

126 The Miscellaneous Amendments No. 3 of 2019 also made changes to the Companies Act, Copyright and Neighbouring Rights Act, Films and Stage Plays Act, NGO Act, Societies Act, Shipping and Agencies Act and Trustees' Incorporation Act.

127 In September 2018, the government amended the Statistics Act, 2015 criminalizing the dissemination of information not approved by the NBS or publishing "false" statistics.

128 Statistics Act, 2015, Section 24.

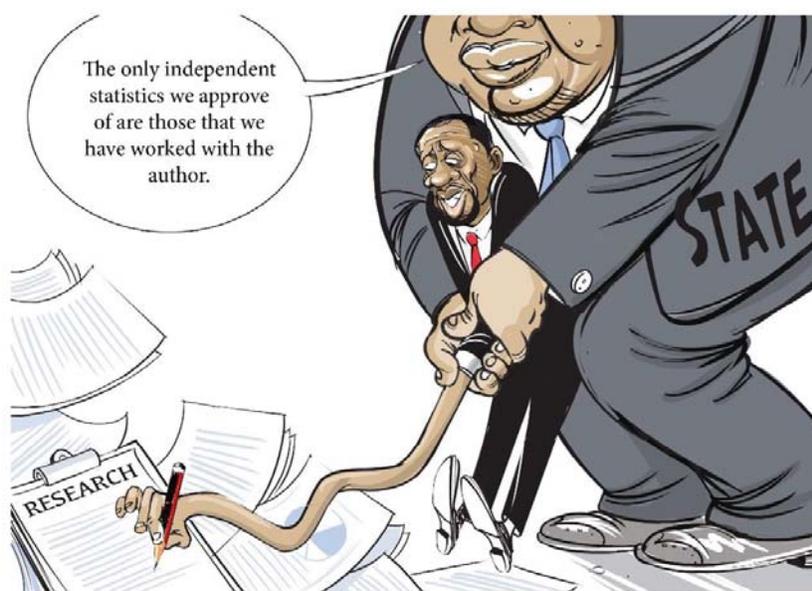
129 Section 24 of the Statistics Act imposed criminal penalties, including a fine of at least 10 million Tanzania shillings (about 3600 British pounds) or a minimum three-year prison term or both, for publishing statistical information without NBS authorization or for publishing "false" statistics.

130 If the government disagrees with published findings it could issue a statement pointing out all areas of disagreement or refer the matter to the Statistics Technical Committee. The Statistics Act currently provides that the Statistics Technical Committee's conclusions should be published and "shall be final and conclusive." If the author withdraws the information before the Statistics Technical Committee's decision, the Committee is empowered to "direct the author to publish his decision to withdrawal and give the reasons thereof..." If the Committee finds fault with any disputed information, it has powers to mandate that corrections be published.

131 Section 24F (b), the Miscellaneous Amendments No. 3 of 2019.

proportionate in protecting that interest. The legislation does not give sufficient clarity for an individual to know how to regulate their conduct violating the principle of legality.¹³²

Before the 2018 amendments to the Statistics Act, *Twaweza*, a research organization promoting citizen agency and government responsiveness, faced intimidation for conducting an opinion poll. Published in July 2018, the poll stated that President John Magufuli's approval ratings had fallen by 41% in his first year in office.¹³³ The Commission for Science and Technology (COSTECH), a parastatal organization that coordinates and promotes research and technology development in Tanzania, wrote to *Twaweza*¹³⁴ asking them to demonstrate why they should not be prosecuted for conducting a survey without a permit.¹³⁵ In a televised interview on 10 June 2018 the then Acting Director General of COSTECH, Amos Nungu confirmed that COSTECH sent this letter.¹³⁶ They accused *Twaweza* of violating Section 11 of the National Research Registration and Research Guidelines that require registration of research projects. *Twaweza*'s Executive Director stated that they had obtained this clearance even though COSTECH is not mandated to regulate opinion polls.¹³⁷ COSTECH's mandate is to coordinate and promote research and technology development activities in Tanzania.¹³⁸ It defines research as "[...] organized and systematic way of findings answers to questions. In doing this a definite set of process and steps are followed. But for research clearance, research is very broadly defined. It includes all activities which involve the gathering of information that enables one to understand some phenomena."¹³⁹



The 2015 Statistics Act allows for government interference in the collection, production and dissemination of statistics. © Amnesty International (Illustration: Victor Ndula)

132 Article 19 and 20 of ICCPR.

133 *Twaweza*, "7 out of 10 citizens approve of the performance of President Magufuli: Approval of the President is higher among older citizens and those with lower education levels", press release, 15 June 2018, [www.twaweza.org/uploads/files/PerformancePoliticsPressRelease-EN-FINAL\(1\).pdf](http://www.twaweza.org/uploads/files/PerformancePoliticsPressRelease-EN-FINAL(1).pdf)

134 COSTECH letter to *Twaweza*, 9 July 2018, on file with Amnesty International.

135 COSTECH letter to *Twaweza*, 9 July 2018, on file with Amnesty International.

136 The acting Director General of COSTECH, Amos Nungu, speaking to the press about the procedures for registering for research, 11 July 2018, www.youtube.com/watch?v=maKxjLbvXhg

137 Amnesty International interview with Aidan Eyakuze, Dar es Salaam, Tanzania, February 2019.

138 Government Circular MPEC/B/10/1 of 4th May 1980 issued by the Ministry of Planning and Economic Affairs.

139 COSTECH, research clearance, 2019, www.costech.or.tz/?page_id=1625

On 14 November 2017, COSTECH banned Human Rights Watch (HRW)'s report *Tanzania: Migrant Domestic Workers in Oman, United Arab Emirates (UAE) Abused* documenting how Tanzanian domestic workers in Oman and the UAE face excessive working hours, unpaid salaries, and physical and sexual abuse. COSTECH also prohibited HRW from holding a news conference launching the report on the grounds that HRW staff had visitors' visas which did not allow them to work in the country.¹⁴⁰

In a 2 October 2018 statement, the World Bank stated that, "if implemented (the Statistics Act) could have serious impacts on the generation and use of official and non-official statistics, which are a vital foundation for the country's development."¹⁴¹ The 2018 and 2019 amendments have created a chilling effect where people have refrained from publishing statistical information because of the risk of criminal penalties. Representatives from *Twaweza*, the *Citizen* newspaper, and four NGOs reported to Amnesty International that they have held off publishing statistics that are critical of the government or ruling party members to avoid state reprisals, including under the Statistics Act.¹⁴² Zephania Ubwani, a senior journalist, explained that they "are now required to request for official data from the NBS even on obvious things like forex values and devaluation of the Tanzania shilling."¹⁴³

Senior government officials confirm these restrictions are in place and indicate that they will continue being implemented.¹⁴⁴ The Minister of Information, Culture, Arts and Sport stated to Amnesty International that the government does not prevent people doing research, but the law prevents private institutions portraying their research findings as official statistics or as more credible than government statistics.¹⁴⁵

140 Human Rights Watch (HRW), *Tanzania: Migrant Domestic Workers in Oman, UAE Abused*, Women Describe Beatings, Exploitation, Harassment, 14 November 2017, www.hrw.org/news/2017/11/14/tanzania-migrant-domestic-workers-oman-uae-abused

141 World Bank, *World Bank Statement on Amendments to Tanzania's 2015 Statistics Act*, 2 October 2018, www.worldbank.org/en/news/statement/2018/10/02/world-bank-statement-on-amendments-to-tanzanias-2015-statistics-act

142 Amnesty International interviews with two journalists and four members of civil society organizations, Dar es Salaam and Arusha, Tanzania, February and March 2019.

143 Amnesty International interview with Zephania Ubwani, *Citizen*, Asusha, Tanzania, March 2019.

144 Amnesty International interviews with Minister Harrison Mwakyembe and AG Adelardus Kilangi, Dodoma, Tanzania, March 2019.

145 Amnesty International interview with Minister Harrison Mwakyembe, Dodoma, Tanzania, March 2019.

4. RESTRICTING SPACE FOR POLITICAL OPPOSITION

4.1 LAWS IMPEDING FREEDOM OF ASSOCIATION

On 29 January 2019, Tanzania's National Assembly amended the Political Parties Act ushering in wide-ranging restrictions on the rights to freedom of association and peaceful assembly. Originally promulgated in 1992, as part of the country's transition to multi-party politics, the Political Parties Act oversaw registration of political parties.¹⁴⁶ Coming ahead of the 2019 local elections and under two years before the 2020 general elections, the amended law closes space for political opposition parties. Four opposition parties have filed a case before the EACJ challenging the law arguing that it contravenes the EAC Treaty.¹⁴⁷

Under the amended law, a government-appointed Registrar of Political Parties has arbitrary powers over political parties' internal affairs. Without defining civic education, the amended Political Parties Act now requires any person or institution within or outside Tanzania that wants to conduct civic education or capacity building of political parties to inform the Registrar 30 days beforehand stating the objective and kind of training, the programme, persons involved, teaching aids and expected results. Such civic education must be approved by the Registrar who has significant scope to prohibit activities.¹⁴⁸ The law allows the Registrar to demand any information that may be required to implement the Act from a political party or a leader.¹⁴⁹ Failure to comply with this provision can lead to fines of one to 10 million Tanzanian shillings.¹⁵⁰ Enabling the Registrar to ask for any information is arbitrary, interferes with the right to privacy and falls outside permissible restrictions under Article 17 of the ICCPR. Article 17 of the ICCPR provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence, as well as against unlawful attacks on his honour and reputation.¹⁵¹

The Registrar also has powers under the law to deregister a political party that fails to submit a written declaration of assets and expenditure, including contributions or donations in cash or kind in the first year of its existence.¹⁵² Section 21 (d) (3) gives the Registrar excessive discretion in applying penalties stating that "[...] any person who contravenes any provision of this Act to which no specific penalty is prescribed, shall be liable on conviction to a fine of not less than three million shillings but not exceeding 10 million shillings [between 1,300 and 4,350 USD] or to imprisonment for a term of not less than six months but not exceeding one year, or to both." Although it is too early to tell how this restrictive law will be applied, on 25 March 2019, the Registrar of Political Parties using Section 19 of the amended Political Parties Act wrote to Alliance

146 Section 5A of the Political Parties Act, 1992 (Cap.258).

147 Applicants include CHADEMA Chairperson, Freeman Mbowe, together with Zitto Kabwe and Seif Sharif Hamad of ACT.

148 Section 5, the Political Parties Act.

149 Section 5B (1) of the Political Parties Act.

150 Section 5B (2) of the Political Parties Act.

151 According to General Comment No. 16 Article 17, (the right to respect of privacy, family, home and correspondence, and protection of honour and reputation), the term "unlawful" implies any interference must be envisaged by the law, and the law itself must comply with the provisions, aims and objectives of ICCPR. The concept of arbitrariness, according to the HRC, guarantees that "even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances."

152 Section 20 of the Political Parties Act.

for Change and Transparency (ACT), an opposition political party, giving it 14 days' notice to defend itself and explain why the party should not be deregistered including for failing to file its 2013 – 2014 financial returns and for allowing its “supporters to act in rage when they burnt a CUF opposition party flag on 19 March 2019.”¹⁵³ This is not an offence under Tanzanian law. The registrar asserted in the notice that ACT is no longer eligible to be a political party under the 1992 Political Parties Act.¹⁵⁴ The Registrar of Political Parties had not deregistered ACT at the time of writing.



Amendments to the 1992 Political Parties Act have closed the space on opposition political parties by granting the Registrar of Political Parties arbitrary powers over political parties' internal affairs. © Amnesty International (Illustration: Victor Ndula)

In response to Amnesty International's concerns, AG Adelardus Kilangi, told the organization that the 1992 Political Parties Act was to “[...] bring some sense or organization, management and ethos in the running of political parties.”¹⁵⁵

4.2 TRUMPED-UP CHARGES AGAINST OPPOSITION POLITICIANS

“A senior police officer cautioned me to avoid trouble by avoiding people through staying at home. He felt sorry for me,” A member of a political opposition party in Tanzania¹⁵⁶

Even before the amended Political Parties Act, opposition politicians faced arbitrary arrest and detention on trumped-up charges.

On 24 June 2016, President John Magufuli placed a blanket ban on political parties organizing political activities and rallies until electioneering period in 2020. Under the ban, the president restricted politicians to

¹⁵³ Letter from the Registrar of Political Parties to Civic United Front (CUF), 25 March 2019, on file with Amnesty International.

¹⁵⁴ Letter from the Registrar of Political Parties to CUF, 25 March 2019, on file with Amnesty International.

¹⁵⁵ Amnesty International interview with AG Adelardus Kilangi, Dodoma, Tanzania, 1 March 2019.

¹⁵⁶ Amnesty International telephone interview with a member of the political opposition, March 2019.

hold their activities in their respective constituencies only.¹⁵⁷ The Tanzania Police Force started implementing immediately.¹⁵⁸ On 26 July 2016 Reuters reported that President John Magufuli's warned politicians not to hold planned nationwide anti-government political rallies slated for 1 September 2016.¹⁵⁹

According to Amnesty International's information, members of the political opposition face obstacles and are prevented from meeting even in their constituencies while politicians from the ruling CCM party can hold rallies and other political activities¹⁶⁰ even outside their constituencies without any prohibitions.¹⁶¹

Through court documents analysed by Amnesty International, several opposition MPs critical of government have subsequently been arrested for alleged illegal assembly. On 18 August 2017, police arrested Ester Bulaya, CHADEMA MP for Bunda, for conducting political activities outside her electoral constituency, though this is not an offence under Tanzanian law.¹⁶² She was remanded for four days before being released on bail to seek medical treatment. On 2 November 2016, the CHADEMA MP for Arusha, Godbless Lema, was arrested right outside the parliament gate in Dodoma.¹⁶³ He was charged with incitement against the government and the head of state¹⁶⁴ on 4 November 2017 for his statements in parliament and public¹⁶⁵ on 22 and 23 October 2016 respectively. Police reported that Godbless Lema claimed that President John Magufuli would not live to see the country's next general elections because of his oppressive rule. In the charge sheet, Godbless Lema is quoted in Swahili as saying, "[...] if President Magufuli continues his habit of suppressing democracy and opposition leaders, there is a day that this country shall be steeped into bloodshed ... Any president who does not respect the rule of law, [and] constitutional guarantees, that president shall lead the nation into the tragedy of bloodshed, people shall be dissatisfied, and if they decide to rise in resistance, neither the police nor the army shall be able to control the lawlessness that shall ensue..."¹⁶⁶

Godbless Lema was detained for four months at Kisongo prison and released on cash bail on 3 March 2017 after winning his bail appeal hearing.¹⁶⁷ The case is still in court.¹⁶⁸ Article 100 of the Constitution of Tanzania states that MPs should not be prosecuted, or subject to civil proceedings, for anything which they say or do in the National Assembly.¹⁶⁹

In 2018, police implemented President John Magufuli's blanket ban on political rallies arbitrarily arresting and detaining prominent politicians who organized rallies. During the year, 11 national level opposition politicians were arrested and charged¹⁷⁰ with participating in unlawful assembly, holding political rallies against the orders of the President, or insulting the President. Their arrests and detention were arbitrary and violate their rights to liberty, freedom of expression and peaceful assembly. Those that have been charged before courts include CHADEMA party officials: chairman Freeman Mbowe, secretary general Vincent Mashinji, deputy secretary general (Mainland) John Mnyika, and deputy secretary general (Zanzibar) Salumu Mwalimu, Mbeya MP Joseph Mbilinyi, Iringa MP Peter Msigwa, Tarime Urban MP Esther Matiko, Tarime Rural MP John Heche and MP for Kawe Halima Mdee.

Joseph Mbilinyi, popularly known as "Sugu" because of his music, was arrested on 3 January 2018 alongside Emmanuel Masonga, CHADEMA Southern Highland Zone Secretary¹⁷¹. He was charged on 16 January 2018 with insulting the president during a political rally on 30 December 2017 at Mwenge primary

157 MCL Digital, "Mikutano ya Hadhara na Maandamano, Vigogo CCM Wamtega Magufuli," Video recording, 12 February 2019, www.youtube.com/watch?v=G2yEtDCJxmQ

158 "Polisi kuhusu tamko la kuzuia mikutano ya kisiasa Tanzania." Ayo TV, 9 July 2016, www.youtube.com/watch?v=E-AkSwZ-1Z8

159 "Tanzania's president threatens crackdown on opposition protesters." Reuters, 26 July 2016, www.reuters.com/article/us-tanzania-politics/tanzanias-president-threatens-crackdown-on-opposition-protesters-idUSKCN10925G

160 MCL Digital, "Mikutano ya Hadhara na Maandamano, Vigogo CCM Wamtega Magufuli," Video recording, 12 February 2019, www.youtube.com/watch?v=G2yEtDCJxmQ

161 Amnesty International telephone interviews with seven members of the political opposition, March, July, August 2019 and interviews with one member of political opposition in Nairobi, Kenya, September 2019.

162 "Stop harassing MPs, rights group tells Tanzania as three arrested for insulting John Magufuli", Standard, 25 August 2017, www.standardmedia.co.ke/article/2001252546/three-mps-arrested-for-insulting-president-magufuli

163 Amnesty International telephone interview with an advocate who represents opposition politicians in July 2019.

164 Charge sheet against Godbless Lema dated 4 November 2016, on file with Amnesty International.

165 Godbless Lema said at a public rally held at Baraa grounds in Arusha that he had a vision where he saw the president's death.

166 Unofficial Amnesty International translation from Kiswahili to English from the charge sheet against Godbless Lema, 4 November 2016, on file with Amnesty International.

167 *DPP v Godbless Jonathan Lema (judgment on appeal in the High Court at Arusha on 3 March 2019)*.

168 Amnesty International telephone interview with an advocate who represents opposition politicians, July 2019.

169 Article 100 of the Constitution of Tanzania: powers and privileges of parliament.

170 Amnesty International telephone interview with Tundu Lisu, November 2018.

171 Amnesty International telephone interview with Joseph Mbilinyi, April 2019.

school in Mbeya. In the charge sheet,¹⁷² the prosecution reports that Joseph Mbilinyi stated in Swahili, “[...] these are the things that Magufuli should have done if wants to be popular ... you cannot be loved (by the people) for throwing LEMA into prison for four months, you cannot be loved by prohibiting SUGU from saying this or that, you cannot be loved for kidnapping people; you have kidnapped ROMA, you have kidnapped BEN SAANANE, and to date we do not know where the poor lad is”¹⁷³ Joseph Mbilinyi reported to Amnesty International that he said President John Magufuli “should own up to God for deteriorating Tanzania’s economy and making Tanzanians’ lives hard.”¹⁷⁴

Joseph Mbilinyi told Amnesty International that he was denied bail after the magistrate ruled that he was protecting him from society which was very angry at what he did.¹⁷⁵ Under Tanzanian law, Joseph Mbilinyi was not charged with a serious offence,¹⁷⁶ and there was no justification for denying him bail. Article 9 (1) of the ICCPR,¹⁷⁷ Article 6 of the African Charter and Article 13 (6) (a) of the Constitution of Tanzania guarantee a person’s right to liberty and security. Article 9 (3) of the ICCPR provides that release from detention may be conditioned by guarantees to appear for trial. The Human Rights Committee has also consistently held that “pre-trial detention should be the exception and that bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the state party”.¹⁷⁸ On 2 February 2018, the Court of Appeal in Tanzania confirmed a High Court decision that the DPP has no powers to issue certificates denying bail to accused persons under Section 148 (4) of the 1985 Criminal Procedure Act.¹⁷⁹

Joseph Mbilinyi and Emmanuel Masonga were later convicted to five months in prison on 26 February 2018¹⁸⁰ for using insulting language contrary to Section 89 of the Penal Code.¹⁸¹ They were both released on presidential pardon on 10 May 2018 just under a month before the end of their sentence.¹⁸² “Since I was released, I am monitored and trailed. Authorities question people they see me talking to. They want to know what I say and if I give money. I am even prevented by the police from going to support fundraisers in my community,” Joseph Mbilinyi told Amnesty International.¹⁸³

According to politicians interviewed, the Tanzanian government has implemented a blanket ban on political activities that seems to target members of opposition political parties only.¹⁸⁴ On 27 March 2018, police charged six CHADEMA politicians, Freeman Mbowe, Peter Msigwa, Salum Mwalimu, John Mnyika, Esther Matiko and Vincent Mashinji with 13 counts of unlawful assembly, conspiracy to commit offences, rioting after proclamation, raising discontent and ill-will for unlawful purpose, incitement to violence and sedition. They were held at Segerea remand prison for seven days before being released on bail on 2 April 2018.¹⁸⁵ The charge sheet was amended on 13 April 2018 to include Halima Mdee, John Wegesa and Esther Bulaya who were later arraigned before the Kisutu Resident Magistrate’s Court in Dar es Salaam.¹⁸⁶ The nine organized and participated in public rallies held in different venues in Dar es Salaam between 1 and 16 February 2018. At the time of writing, the case was still in court.¹⁸⁷

172 Joint charge sheet for Joseph Mbilinyi and Emmanuel Masonga dated 16 January 2018, on file with Amnesty International.

173 Unofficial Amnesty International translation from Kiswahili to English from the charge sheet against Joseph Mbilinyi dated 16 January 2018, on file with Amnesty International.

174 Amnesty International telephone interview with Joseph Mbilinyi, April 2019.

175 Amnesty International telephone interview with Joseph Mbilinyi, April 2019 and with his lawyer, August 2019.

176 Section 89 of the Penal Code, 1945.

177 “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

178 UNGA, Communication No 526/1993 (Application No): UN Doc CCPR/C/59/D/526/1993.

179 *AG vs Jeremia Mtobesya (NO.65 OF 2016) [2018] TZCA 135; (31 January 2018)*

180 Statement released on 10 by the Commissioner General of Prisons, Juma Malewa, on file with Amnesty International.

181 89 (1) Any person who (a) uses obscene, abusive or insulting language to any other person, in such a manner as is likely to cause a breach of the peace; or (b) brawls or in any other manner creates, a disturbance in such a manner as is likely to cause a breach of the peace, is guilty of a misdemeanour and on conviction therefore is liable imprisonment for six months.

182 Letter to members of the press by Commissioner General of Prisons, Juma Malewa, 10 May 2018, on file with Amnesty International.

183 Amnesty International interview with an opposition politician, March 2019.

184 Amnesty International interviews with 19 persons, Dar es Salaam and Dodoma, Tanzania, March - August 2019.

185 Amnesty International telephone interviews with an opposition politician, April 2019, and three telephone interviews with lawyers for opposition politicians, July 2019.

186 Charge sheet against Freeman Mbowe and eight others dated 13 April 2018, on file with Amnesty International.

187 Amnesty International telephone interviews with a politician in April 2019, and three Amnesty International telephone interviews with lawyers for the opposition politicians in July 2019.

While all assemblies require police authorization¹⁸⁸ according to the 2002 Police Force and Auxiliary Service Act (Police Act),¹⁸⁹ Article 21 of the ICCPR, and Article 11 of the African Charter provide greater protection for the right to freedom of peaceful assembly, spontaneous assemblies and call for notification rather than authorization. Participating in, and organizing, assemblies is a right, not a privilege, and does not require state authorization.¹⁹⁰ Article 21 of the ICCPR requires states not to merely permit peaceful assembly, but to actively facilitate it. Further, Section 4 of the 1988 Tanzania Parliamentary Immunities, Powers and Privileges Act protects the right of MPs to hold public assemblies in their constituencies. This law directs that responsible authorities to facilitate MPs in holding meetings.¹⁹¹



Opposition politicians who have called out the government have been accused of raising discontent and ill-will for unlawful purpose, incitement to violence and sedition. © Amnesty International (Illustration: Victor Ndula)

On 23 November 2018, the Resident Magistrate’s Court of Kisumu ordered Freeman Mbowe and Esther Matiko’s detention without bail for violating their 2 April 2018 bail conditions.¹⁹² They had failed to appear in court on 1 November 2018.¹⁹³ They both told the court they had been unwell and out of the country at the time.¹⁹⁴ The two appealed the ruling at the High Court at Dar es Salaam but the DPP prevented the hearing from proceeding as he had lodged a notice of appeal with the Court of Appeal.¹⁹⁵ The Court of Appeal

188 Section 43 of the Police Force and Auxiliary Services Act, 2002 (Assemblies and processions in public places). police must follow in the policing of public assemblies and processions.

189 Section 43 of the Police Force and Auxiliary Services Act outlines what procedures the police must follow in the policing of public assemblies and processions including a written notification that must be provided to the police 48 hours before any procession or assembly in a public place. A police officer in charge of an area who receives the notification can deny a public assembly for specific reasons, for example, if it will cause a breach of the peace, prejudice the public safety, prejudice the maintenance of public order, and if it will be used for any unlawful purpose.

190 Guidelines on Freedom of Association and Assembly in Africa, African Commission on Human and Peoples’ Rights, ACHPR 61, para. 71; Joint Report to the HRC, Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, UN Doc. A/HRC/31/66, para. 21

191 Section 4 of the Parliamentary Immunities, Powers and Privileges Act, 1988: Freedom of members to hold meetings in constituencies.

192 Judgment of the court, Criminal Appeal No. 334 of 2018, 1 March 2019, on file with Amnesty International.

193 *DPP v Freeman Aikael Mbowe and Esther Nicholas Matiko*

194 Amnesty International telephone interviews with a politician, April 2019, and three telephone discussions with lawyers for the opposition politicians, July 2019; judgement in *DPP v Freeman Aikael Mbowe and Esther Nicholas Matiko*.

195 Rule 68 (1) of the Tanzania Court of Appeal Rules, 2009.

dismissed the DPP's appeal on 1 March 2019¹⁹⁶ setting the stage for the High Court to grant bail on 7 March 2019. They were released the same day.¹⁹⁷

Police arrested Zitto Kabwe, Kigoma Urban MP and ACT leader, on 31 October 2018 over a press conference that he held following violence in Kigoma region on 28 October 2018.¹⁹⁸ At the press conference, Zitto Kabwe alleged that 100 people had been killed in violent clashes between herders and police in Kigoma region in October 2018. The charge sheet alleges that Zitto Kabwe said “[...] those who were injured in clashes between the people and the police went to seek treatment at the Nguruka Health Centre, Police got word that there were four people who had sought treatment at the Nguruka Health Centre and they followed them there and killed them?”¹⁹⁹ The police refuted the allegations stating that only two policemen and herders had been killed in the clashes.²⁰⁰ He was released on bail on 2 November 2018 after being charged with inciting violence and seditious offence contrary to Section 52 (1) and 53 (1) of the 2016 Media Services Act.²⁰¹ Instead of investigating the expression itself, the police should have launched an investigation into the allegations made by Zitto Kabwe.

196 Order of the Court of Appeal, *DPP v Freeman Aikael Mbowe and Esther Nicholas Matiko (Criminal Appeal No. 334 of 2018)*, 1 March 2019.

197 Amnesty International telephone interviews with a politician, April 2019, and three telephone discussions with lawyers for the opposition politicians, July 2019.

198 Charge sheet against Zitto Kabwe dated 2 November 2018, on file with Amnesty International.

199 Unofficial Amnesty International translation from Kiswahili to English from the charge sheet against Zitto Kabwe, 2 November 2018, on file with Amnesty International.

200 Charge sheet against Zitto Kabwe dated 2 November 2018, on file with Amnesty International.

201 Amnesty International telephone interview with Zitto Kabwe, and three other Amnesty International telephone interviews with his personal assistant and lawyers, July 2019.

5. CONCLUSION AND RECOMMENDATIONS

In the four years since President John Magufuli became president of Tanzania, the authorities have ramped up repression against peaceful dissents and perceived government critics.

Public officials have responded to criticism by intimidating, harassing, arbitrarily arresting and detaining critics of the government. The authorities have also passed and amended a raft of legislation targeting peaceful political activities and hindering the rights to freedom of expression, association and assembly. Several media outlets have been banned, fact checking, and independent research restricted, and individual bloggers censored through unjustified regulation by the authorities.

Concerns over the misuse of the criminal justice system to arrest and prosecute critics of government are rife, with the government unashamedly using trumped-up charges to suppress dissent and restrict the civic space. The authorities are using legislation to deny individuals their rights to be released on bail or bond. Other individuals have been subjected to multiple baseless charges and perpetual court appearances that amount to judicial harassment. Beyond misusing the domestic criminal justice system, the Tanzania government has also refused to implement three EACJ judgements on its violations of the rights to freedom of expression and information. The government is increasingly disregarding regional and international human rights obligations, leaving people without recourse in the face of violations.

Systematic interference with the rights to freedom of expression, information, association and peaceful assembly continue to have a chilling effect on the political opposition, media outlets, journalists and bloggers. People are now denied their rights to seek, receive and impart information. Poor and marginalized people stand to pay the greatest price for dissent through heavy court fines, bail and bond terms for people arrested under many of these new repressive laws.

With a year until the October 2020 general elections, it is critical that the Tanzanian government end this repression. Amnesty International urges the government to abide by its constitutional, regional and international obligations and commitments to respect, protect, promote and fulfil the human rights of everyone including the rights to freedom of expression, association, peaceful assembly, liberty and media freedom. Amnesty International also urges the United Nation, African Union, East African Community and Southern African Development Community to call on the government of Tanzania to improve and ensure respect for human rights before, during and after the 2020 elections.

5.1 RECOMMENDATIONS TO THE GOVERNMENT OF TANZANIA

TO THE PRESIDENT

- Publicly commit to ensure that the authorities will allow everyone, including political opposition, journalists, researchers, bloggers and other online users, human rights defenders, students and other real or perceived government opponents to freely exercise their human rights including the rights to freedom of expression, association and peaceful assembly and without fear of reprisals;
- Ensure that the authorities immediately lift the blanket ban on political meetings and allow everyone to enjoy their rights to freedom of association and peaceful assembly.

TO PARLIAMENT

Remove all legislative restrictions that will undermine respect for human rights before, during and after the local and general elections in 2019 and 2020 respectively, including by repealing or amending:

- Section 36 (2) of the 1984 Economic and Organised Crime Control Act and any other provisions that contravene Tanzania's constitution, the Criminal Procedure Act and laws guaranteeing the right to fair trial;
- The 2018 Political Parties (Amendment) Act and take remove all obstacles to freedom of peaceful assembly, association and expression;
- Sections 13, 14, 19, 20, 21, 35, 36, 37, 38, 39, 40, 52, 53, 58 and 59 of the 2016 Media Services Act to ensure that it respects human rights, including the rights to freedom of expression and information;
- The 2018 Electronic and Postal Communications (Online Content) Regulations and remove all obstacles to the rights to freedom of expression and information;
- Sections 16 and 29 of the 2015 Cybercrimes Act and remove all obstacles to restricting the rights to freedom of expression and information.

TO THE MINISTER FOR CONSTITUTIONAL AND LEGAL AFFAIRS AND THE ATTORNEY GENERAL

- Ensure the full enforcement and implementation of decisions and orders of national, regional or international courts;
- Ensure the full implementation of the EACJ ruling ordering the Tanzanian government to bring the 2016 Media Services Act into compliance with the EAC Treaty and to honour its obligations to respect good governance and rule of law;
- Issue a standing invitation to the Special Procedures of the United Nations Human Rights Council and to extend an invitation to the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Working Group on Arbitrary Detention;
- Submit, with no further delay, the long overdue report to the United Nations Human Rights Committee under the International Covenant on Civil and Political Rights.

TO THE MINISTER OF INFORMATION, CULTURE, ARTS AND SPORTS

- Ensure that media outlets can operate freely and independently, enjoy freedom of expression and do their work without fear of reprisals.

5.2 RECOMMENDATIONS TO REGIONAL AND INTERNATIONAL PARTNERS AND HUMAN RIGHTS MECHANISMS

TO THE AFRICAN UNION COMMISSION CHAIRPERSON

- Strongly and publicly condemn human rights violations and abuses committed, including civic and political repression in Tanzania by raising concerns about the general situation and individual cases with government officials.

TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

- Issue a public statement strongly condemning and expressing concern over the ongoing human rights violations and abuses including political repression in Tanzania targeting journalists, opposition politicians, and human rights defenders;
- Issue an urgent appeal to the Tanzanian government to immediately and unconditionally release journalist Erick Kabendera and drop the trumped-up and politically motivated charges against journalists Maxence Melo, Micke William and politicians Zitto Kabwe, Freeman Mbowe, Vincent Mashinji, John Mayika, Salumu Mwalimu, Joseph Mbilinyi, Peter Msigwa, Esther Matiko, John Heche, and Halima Mdee;
- Urgently request a country visit to Tanzania to assess the general situation of human rights with a focus on the extent of violations of the rights to freedom of expression, information, association, and peaceful assembly. If, and when, the request for the country visit is granted, the mission should be composed of the commissioner responsible for Tanzania and the relevant special mechanisms of the African Commission, including the Special Rapporteur on the Rights of Human Rights Defenders in Africa and the Special Rapporteur on Freedom of Expression and Access to Information in Africa;
- Urge the Tanzanian government to fully comply with the Commission's Resolution 69 on the Protection of Human Rights Defenders in Africa, the 2002 Declaration on Freedom of Expression, the 2017 Guidelines on Freedom of Association and Assembly in Africa, and the 2003 Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

TO THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

- Put pressure on the Tanzanian government to adhere to the SADC Treaty by respecting the Article 4 (c) principles to act in accordance with human rights, and the rule of law.

TO THE EAST AFRICAN COMMUNITY

- Urge the Tanzanian government to implement EACJ judgements ordering the resumption of *Mseto* and ordering the authorities to bring the 2016 Media Services Act, into compliance with the EAC Treaty and to honour its obligation to respect the principles of rule of law;
- Strongly and publicly condemn human rights violations and abuses including restriction of civic space and political repression in Tanzania by also raising concerns about the general situation and individual cases with government officials.

TO TANZANIA'S DEVELOPMENT PARTNERS

- Strongly and publicly condemn human rights violations and abuses including restriction of the civic space and political repression in Tanzania by also raising concerns about the general situation and individual cases with government officials.

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THE PRICE WE PAY:

TARGETED FOR DISSENT BY THE TANZANIAN STATE

Since President John Magufuli took office in November 2015, the government of Tanzania has applied a raft of repressive laws restricting the rights of opposition politicians, human rights defenders, activists, researchers, journalists, bloggers and other online users. Cumulatively, the application of these laws has had a chilling effect on the rights to freedom of expression, association and peaceful assembly.

Concerns over the misuse of the criminal justice system to arrest and prosecute critics of government are rife, with the government unashamedly using trumped-up charges to suppress dissent and restrict the civic space. Other individuals have been subjected to multiple baseless charges and perpetual court appearances that amount to judicial harassment.

This report calls on the Government of Tanzania to stop the repression of peaceful dissents and perceived government critics.