COMpendium OF Analyses OF
Médìa Relatèd LAws
In Tanzania
COMPRENDIUM OF ANALYSES
OF MEDIA RELATED
LAWS IN TANZANIA

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PREFACE
This compendium is meant to provide an insight to media professionals and the general public on the media related laws. It consists of the laws which deal directly with the media industry and others which in one way or another affect or impact the media industry. The laws which have been analysed in this compendium are the Media Services Act, 2016, the Access to Information Act, 2016, the Electronic and Postal Communications Act, 2010, the Cybercrimes Act, 2015 and the Statistics Act, 2015 and their regulations.

This compendium has adopted both analytical and critical approach whereby provisions of the laws which impact the media industry are critically looked into in each part and section where the specific law is analysed.

This was specifically done to ensure that only provisions which relate to the media industry are analysed. In the same line, the provisions have been analysed briefly to ensure easy understanding for the readers. Also, both principal legislation as well as their subsidiary legislation have been analysed simultaneously in order to capture each and every aspect once and without unnecessary repetition.

Part three of the compendium critically analyses the selected provisions of the media legislation against the international standards of freedom of expression and access to information. This approach has been taken in order to see how the legislations have impacted the freedom of expression and media industry in general. With that objective in mind, few selected provisions from the principal as well as subsidiary legislation have been critically analysed in a bid to show their effect on press freedom.

It is MCT’s sincere hope that media professionals and the general public will find this compendium useful.
Acknowledgment

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PART ONE

Introduction
Article 18 of the Constitution of the United Republic of Tanzania, 1977, as amended from time to time, guarantees the freedom of opinion and expression and the right to seek, receive and impart information as follows:

“18 (1) Every person;
• has a freedom of opinion and expression of his ideas;
• has a right to seek and, or disseminate information regardless of national boundaries;
• has the freedom to communicate with protection from interference in his communication and
• has a right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society.”

This is the genesis of the freedom of expression and right to access information which is the cornerstone of journalism. To ensure that freedom and rights guaranteed under the Constitution are enjoyed, laws are enacted for that purpose. In the Media industry, there is a plethora of laws and regulations, which in one way or another touch on issues relating to media, particularly freedom of expression and access to information.

This compendium consists of the analyses of various media related laws in Tanzania. It is divided into three parts. Part One provides an introduction, Part Two contains an analysis of the laws and Part Three provides a critical analysis of the selected provisions of the law from both principal and subsidiary media legislation. As said earlier, the media industry in Tanzania is governed by a plethora of laws and regulations. There are principal as well as subsidiary legislations. The principal legislations are:

i. The Media Services Act, No.12 of 2016;
ii. The Access to Information Act, No.6 of 2016;
iii. The Electronic and Postal Communications Act, No.3 of 2010;
iv. The Cybercrimes Act, No.14 of 2015, and
As said above, a number of regulations have been promulgated as well to ensure the smooth implementation of the principal legislations: Most notable are the following:

i. The Media Services Regulations, 2017;
ii. The Access to Information Regulations, 2017;
iii. The Electronic and Postal Communications (Online Contents) Regulations, 2018;
iv. The Statistics Regulations, 2017;
v. The Electronic and Postal Communications (licensing) Regulations, 2018, and
vi. The Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations, 2018.

In this compendium, especially on part two the principal Acts/legislations are analysed together with their respective subsidiary legislations. This is meant to ensure that each aspect of law is captured once without unnecessary repetition which is likely to occur if principal legislations and subsidiary legislations are analysed differently. However, Part Three of the compendium takes a different approach whereby each law is analysed separately. Some selected provisions of the laws are critically analysed against the established international standards on freedom of expression and access to information.
PART TWO

Analysis of the Media Related Laws
This part of the compendium contains analysis of the laws and regulations mentioned in part one above. It should be noted that the analysis of the laws in this part is confined only to the provisions which are relevant or relates to the media industry or stakeholders. This is purposely done in order to ensure that the focus of this compendium is not lost. The analysis is done in terms of sub-headings or issues as contained in a particular legislation.

2.1 The Media Services Act, 2016 and Media Services Regulations of 2017
This Act was passed by the Parliament of the United Republic of Tanzania on 5th November, 2016, and assented by the President on 16th November, 2016. The Act promotes professionalism in the media industry, establishes Journalists Accreditation Board, Independent Media Council and framework for regulation of the media services and for other related matters. The Act is supplemented by its regulations known as the Media Services (Regulations) G.N No.18 of 2017.

2.1.1 Who is a Journalist?
Section 3 of the Act defines a journalist as any person accredited as professional journalist under the Act, who gathers, collects, edits, prepares or present news, stories, materials and information for a mass media services whether as an employee of the media house or as a freelancer. In order to be recognised as a journalist, one must be accredited by the Journalist Accreditation Board. It is prohibited for a person to practise as journalist if not accredited by the Board. This is provided under Section 19 of the Media Services Act, 2016.

The law provides for the qualifications that the journalist should have, before being accredited as a professional journalist by the Journalist Accreditation Board. The qualifications are provided under Regulation 17 of the Media Services Regulations, 2017.

2.1.2 Qualifications for Accreditation as Journalist
In order to be accredited as Journalist, one should meet the following
qualifications as provided under regulation 17 of the Media Service Regulations, 2017. These are:-

a. A person must be a holder of diploma, degree or higher diploma in journalism or any other related media studies from the recognized institution offering journalism or Media Studies, or,

b. That person belong to the cadre such as editors, reporters, freelancers, correspondents, producers, radio or television broadcasters, students in media and mass communication or any related fields, members of public with outstanding service for media profession or a foreign journalist.

2.1.3 Application for Accreditation

Accreditation is not an automatic act. The journalist is required to make an application for accreditation to the Board in the manner prescribed by the regulations. This is provided under Regulation 20 of the Media Services Regulations, 2017. When applying for accreditation, a local journalist is required to submit the following documents: a letter from employer, certified copies of academic certificates and three passport-size photographs together with the proof of payment of accreditations fee. A foreign journalist is required to submit the following documents: filled prescribed form, a letter from the relevant media house and proof of payment of prescribed fee together with the certified copy of his/her passport.

2.1.4 Temporary Accreditation and Life Membership Accreditation

Under Regulation 18 of the Media Service Regulations of 2017, students pursuing media related studies are eligible for a temporary accreditation for the purpose of apprenticeship to practise as a professional journalist. To be accredited temporarily, a student is required to submit a student identity card, letter of introduction from the academic institution or letter of recommendation from the relevant media house or any other institution offering space for apprenticeship. The time under which such a student is accredited will be shown on the press card.

Accreditation Board is empowered under Regulation 19(2) of the Media Services Regulations, 2017, to award life membership accreditation on its own discretion and from time to time to any of the following persons: a distinguished member in journalism profession or journalist who had
served in a top level positions for a long time or individuals who have significantly contributed to the development of media industry and journalism profession.

A foreign journalist shall be accredited for a specified purpose for a period not exceeding ninety (90) days. However, if the purpose of accreditation is not completed within 90 days, the said journalist may apply to the Board for extension of further period not exceeding 21 days. This is provided under Section 19(3) and (4) of the Media Services Act, 2016 respectively.

2.1.5 Roll of Journalists

Upon satisfying the qualifications for accreditation as a professional journalist and submission of duly filled forms, documents and fees, the Board of Accreditations is empowered to accredit the concerned individual and enter his name together with his particulars into the Roll of Journalists. Thereafter, the Board is required to maintain such Roll of Journalists until a name of specific journalist is expunged or suspended from such Roll. This is provided under Regulation 21 of the Media Service Regulations, 2017.

2.1.6 Press Card

The Accredited Journalist whose name has been entered in the Roll of Journalists will be issued with the press card as provided under Section 20(1) of the Media Services Act, 2016. The press card is evidence that the holder is an accredited journalist and shows duration of the accreditation. This is provided under Section 20(2) of the Media Services Act, 2016. Legally, the press card is valid for two years save for the life membership accreditation as provided under Regulation 23 of the Media Services Regulations. The conditions which the holder of the press card is required to observe are provided under Regulation 21(2) of the Media Services Regulations, 2017.

The Board is empowered to cancel or withdraw a press card if the journalist has violated professional code of ethics or national laws and policies. This is provided under Regulation 22(a) and (b) of the Media Services Regulations, 2017.

2.1.7 Cancellation of the Accreditation

Accreditation may be cancelled by the Board in two circumstances, subject
to the satisfactory evidence. These are:

i. When a journalist commits gross professional misconduct as prescribed in the code of ethics for journalist profession or

ii. When a foreign journalist does not pursue the purpose under which accreditation was granted.

2.1.8 Meaning and Types of the Media House

The Act defines the term “media house” under the provision of Section 3 to mean any person licensed to provide media services. Media house are categorised into two groups, which are:

i. Private Owned

ii. Public owned

This is provided under Section 6(1) (a) and (b) of the Media Services Act, 2016.

2.1.9 Media and Media Services

And then, “media” is defined under Section 3 to mean the industry, trade or businesses of collecting, processing and dissemination of contents through radio, television or newspaper and includes online platform whereas media services refer those services provided through media.

2.1.10 The Licensing Requirements for Provision of Media Services

For a person to provide media services, he/she must obtain a licence. Depending on the type of media services offered, a licence can be obtained either from the Director of Information Services or Tanzania Communication and Regulatory Authority (TCRA). Print media licences are issued by the Director of Information services under Section 8 of the Act. Other media licences are issued by the Tanzania Communication Regulatory Authority (TCRA) under the Electronic and Postal Communications Act, 2010.

2.1.11 Media and Journalist Freedoms and Rights

After obtaining the licence accordingly, media house/media service providers and journalists are entitled to the following rights:

i. Freedom to collect and gather information from various sources;

ii. Freedom to process and edit information in accordance with the
professional ethics governing journalists; and

iii. Freedom to publish or broadcast news.

These rights and freedoms are articulated under Section 7(1) of the Media Service Act, 2016.

2.1.12 Obligations of the Media Service Licensees

Media houses registered under this Act or any other written laws are obliged under the provision of Section 7(2) to do or observe the following:

i. Public Media House Obligations
   a. To observe universal service obligation;
   b. To provide media services to the Public and the Government; and
   c. To uphold professional code of ethics;
   d. To enhance communication within the Government and between the Government and Public;
   e. To provide public awareness on development matters from the Government and public sector; and
   f. Maintain accountability and transparency in funding.

ii. Private Media House Obligations
   a. To provide media services to the public in accordance with the licensed services area;
   b. To uphold professional code of ethics;
   c. To promote public awareness in various issues of national interest through information dissemination;
   d. To broadcast or publish news or issues of national importance as the Government may direct; and
   e. Maintain accountability and transparency in funding.

Furthermore under Section 7(3) the Media House is required to ensure that, in execution of its obligations, the information issued does not undermine the security of the country, lawful investigation conducted by the lawful enforcement agency, endanger life of a person, involve unwarranted invasion of the privacy, constitute hate speeches, facilitate the commission of the offence, disclose proceedings of the cabinet or infringe lawful commercial interests, hinder or cause substantial harm to the Government to manage economy or damage the information holder position in any actual or contemplated legal proceedings or infringe professional privilege.
BODIES REGULATING MEDIA SERVICES

The Act establishes bodies which are responsible to regulate media services in various aspects. These are: the Director of Information Services Department, Journalist Accreditation Board and Independent Media Council.

a. **Director of Information Services Department**

This is established under Section 4(1) of the Act. The Director is appointed by the President from amongst persons of high integrity and proven academic and professional knowledge in media services, legal or public administration.

The director is the chief spokesman of the Government in all matters relating to its policies and programmes and the principal advisor to the Government in all matters related to strategic communication, publication of news and functioning of the media industry. This is provided under Section 4(2) of the Act.

**Functions of the Director of Information Services Department**

The functions of the Director are provided under the provisions of Section 5(a)-(n) of the Act and these are:

- To coordinate all Government communications units in the Ministries, Local Government Authorities, Independent Departments and Agencies;
- To advise the Government on all matters relating to strategic communications;
- To develop and review information and government communication policies, regulations, standards and guidelines;
- To monitor and evaluate the implementation of information and government communication policies, regulations, standards and guidelines;
- To license print media;
- To coordinate press conferences for government officials;
- To develop and coordinate capacity building of government communication officers in collaboration with immediate employers;
- To coordinate press coverage of national festivals and visiting Heads of State and dignitaries and other issues of national importance;
- To coordinate Government video photographic activities;
• To prepare official portrait of the President, Vice President and the Prime Minister;
• To manage the national portal in collaboration with relevant government agencies, website and other Government communication platforms;
• To coordinate Government advertisements;
• To undertake the collection, processing packaging and distribution of information, news and news materials to newspapers, broadcasting services, news agencies, members of the public and other persons whether in their individual capacity or in a representative capacity; and
• To carry out such other activities associated with strategic communication, collection, processing, packaging of information and distribution of news or news materials as the Government may from time to time direct.

**Powers of the Director to Reject, Cancel or Suspend Print Media Licence**

The Act empowers the Director to reject the application for licence if he is satisfied that the application does not comply with the requirements. He may also cancel or suspend the licence if the holder of the licence does not comply with the requirements of the licence. This is provided under Section 9 (a) & (b) of the Act respectively.

**Challenging the Decision of the Director**

The Licence Applicant (in case of rejection) or a holder (in case of cancellation or suspension) who feels aggrieved by the decision of the Director of Information Services Department may appeal to the Minister within 30 days from the date of that decision. This is provided under Section 10(1) of the Act.

**b. Journalist Accreditation Board**

The Act establishes a board for accreditation of journalists. This Board is established under Section 11 as a board corporate with perpetual succession and common seal, capable of suing and being sued in its own name. However, the Attorney General reserves the right to intervene in any matter instituted by or against the Board. The Board is also capable
of obtaining/acquiring and disposing of both movable and immovable properties in its own name.

Composition of the Board

The Board is composed of seven members appointed by the Minister as provided under the provisions of Section 12(1) & (2) of the Act. The members of the Board are as follows:

i. A senior accredited journalist who shall be Chairman of the Board;
ii. The Director of the Information Service Department;
iii. The Secretary of the Council;
iv. Legal Officer appointed by the Attorney General;
v. One member representing higher learning institutions offering journalism or any other media related studies;
vi. One member representing the public owned media house and
vii. One member representing the umbrella of the private owned media houses.

Functions of the Board

The functions of the Board are stipulated under Section 13(a)-(j) of the Act and these are:

- To accredit and issue press cards to journalist in accordance with this Act;
- To enforce the adopted code of ethics for journalist professionals;
- To uphold standards of professional conduct and promote good ethical standards and discipline among journalists;
- To advise the Government on matters pertaining to the education and training of journalists;
- To set standards for professional education and training of journalists in consultation with the relevant institutions;
- To establish links with similar organisations within and outside the United Republic;
- To prepare training for journalists in consultation with the Council;
- To maintain a roll of accredited journalists;
- To administer the accounts, assets and liabilities of the Board; and
- To carry out such other functions as the Minister may direct.
**Powers of the Board**

The Board is also empowered under Section 14(a)-(d) of the Act to do the following:

- To establish such committees as may be necessary for better undertaking of its functions;
- To suspend and expunge the names of journalists from the Roll of Accredited Journalists;
- To impose fines for non-compliance with the conditions for accreditation and
- To set fees and charges for accreditation.

**c. Independent Media Council**

The Act also establishes the Independent Media Council under Section 24 and 25. Every accredited journalist is a member of the Independent Media Council. The leadership of the council comprises a chairman, vice chairman and two accredited journalists nominated by media associations.

**Functions of the Council**

The Council shall perform the following functions as provided under Section 26(1)(a)-(e) of the Act:

- To set a code of ethics for journalists in consultation with the Journalist Accreditation Board;
- To promote ethical and professional standards amongst the journalists and media enterprise in consultation with the Journalist Accreditation Board;
- To conduct review on performance of media sector; and
- To determine print media content complaints.

**Obligations of the Council**

The Council shall in execution of its functions adhere to the national unity, national security, sovereignty, integrity and public morals as provided under Section 26(2) of the Act.

**Powers of the Council**

The Council has been empowered under Section 27(1) & (2) of the Act to establish such committees as may be necessary for effective discharge
of its functions. The Act goes further to impose mandatory establishment of the Complaints Committee to deal with the print media complaints.

**Print Media Complaints Handling**

The Complaints Committee established under Section 27 is empowered to handle all print media complaints. In case a person is aggrieved by the content of the print media, he is required to report such content to the committee within the period of thirty days from its publication. The complaint shall be in written form. This is provided under Section 28(1) of the Act. The Committee will hear the complaint and make an award thereof. In case one party feels aggrieved by the award of the Committee, such party may appeal to the High Court as provided under Section 29(1) of the Act.

**Minister's Power**

This Act also vests enormous powers to the Minister. Some of his powers are as follows:

- **Power to prohibit importation of a publication**
  This is provided under Section 58 of the Act. Under this section, the Minister has the power to prohibit importation of any publication if, in his opinion, the importation of the said publication is contrary to public interest.

- **Power to sanction or prohibit publication of any content which jeopardises national security or public safety.**
  This is provided under Section 59 of the Act. Generally, the Minister can sanction or otherwise prohibit publication of any content which he opines it jeopardises national security or public safety.

**OFFENCES**

**a. Publication of Defamation**

The Act under Section 37 makes unlawful publication of defamatory matter concerning any person unless the same is true and it was for public benefit that the same had been published.

This law offers a second chance to a person who publishes the defamatory statement only if he made such publication innocently and if he offers to
amend them and the offer is accepted by the defamed person. Where the defamed person accepts the offer and the defaming person amends such publication, then not any legal action, be it civil or criminal, shall be brought against the publishing person (Section 40(1) (a) of the Act).

b. *Sedition*

This offence is provided for under Section 53 read together with Section 52 which defines seditious intention. According to Section 53, any person who does or attempts to do any act or makes an omission with a seditious intention, utters any words, publish, offers for sale, distributes or reproduces any seditious publication or imports any seditious publication commits an offence.

According to Section 52, the publication or statement is said to be seditious if:

- It brings into hatred or contempt or to excite disaffection against the lawful authority of the Government of the United Republic;
- It excites any of the inhabitants of the United Republic to attempt to procure the alteration, otherwise than by lawful means, of any other matter in the United Republic as by law established;
- It brings into hatred, contempt or excites disaffection against the administration of justice in the United Republic;
- It raises discontent or disaffection amongst the people or section of the people of the United Republic or
- It promotes feelings of ill will and hostility between different categories of the population of the United Republic.

c. *Offences relating to media service*

The Act under Section 50(1) makes it an offence for any person who makes use by any means of media service for the purposes of publishing information which is intentionally or recklessly falsified in a manner which threatens the interest of national security and defence or public order or injures the reputation, right and freedom of other persons. Also it is an offence for any person to maliciously and fraudulently publish fabricated information or any statement reasonably knowing that the same is not true or the same is prohibited information.
That any person who commits the offence in relations to such use and publication, shall upon conviction be liable to a fine not less than five (5) million shilling but not higher than twenty (20) million shilling or to imprisonment of not less than three years or both.

d. **Operation without Licence**

The operation of media service without licence, practicing journalism without accreditation and dissemination of false information without justification is an offence under Section 50(2) of the Media Service Act and any person who is found guilty of the same shall upon conviction be liable to a fine of not less than five (5) million shilling but not higher than twenty (20) million shilling or to imprisonment of not less than five years or both.

e. **Offence relating to imported publication**

Under Section 51(1) of the Act, any person who imports, publishes, sells or offers for sale, distribute or produces any publication or any extract of it the importation which is prohibited commits a punishable offence which upon conviction shall be liable to a fine of not less than five but not more than ten million for the first offence or imprisonment to the term of 3-5 years and fine of not less than eight million but not more than twenty million for subsequent offence or imprisonment to the term of between 5 and 10 years.

f. **Publication of false statement which is likely to cause fear and alarm to the public**

Under Section 54(1) of the Act, any person who publishes a false statement which is likely to cause fear and alarm to the public or to disturb public peace commits an offence. In the event of conviction, the person shall be liable to a fine of not less than ten (10) million shillings but not exceeding twenty (20) or imprisonment for a term not less than four (4) years but not exceeding six (6) or to both fine and imprisonment.

2.2 **The Access to Information Act, 2016 and the Access to Information Regulations of 2017**

This Act was passed by the Parliament on 7th September, 2016, and
assented by the President on 23rd September, 2016. This is an Act which provides access to information, defines the scope of the information which the public has the right to access, promotes transparency and accountability of the information holders and other related issues.

**Right to Access Information**

The Act provides under Section 5(1) that every person shall have the right to access information which is under the control of the information holder. This means that the entire public has the right to access information. However, it is important to note that the person has been restricted to a citizen only. In other words, only citizens of the United Republic of Tanzania have unfettered access to information.

**Request for Information**

The Act under Section 5(2) requires the information holder to make information available to the public or any other person upon request. The request shall be made in a prescribed form as provided under Section 10(1) of the Act unless the person is an illiterate in which case he can make the request orally. The form shall disclose sufficient details to enable the information holder to identify the information sought. Also it shall include the name and address of the person seeking information. It should be noted that the person requesting information is not required to disclose or to give reasons for requesting information or provide any other personal details other than name and address. This is provided under Regulation 6 of the Access to Information Regulations, 2017.

After receiving a request for information, the information holder is required to give notice to the person seeking information a notice informing him whether the information sought exists and if it does, whether access to information or part thereof can be given and manner of accessing the said information.

The notice shall be given within the period of thirty (30) days after the date of request. This is provided under Section 11(1) of the Act.

In case the information holder refuses to give access to the information or part of it, he is required to give notice to the person requesting information, setting out reasons for such refusal and right of review of the decision. This is provided under Section 14(a) & (b) of the Act.
**Fees for Accessing Information**

Access to information is not free, the person requesting for information may be charged a reasonable fee which is commensurate to the actual costs of production of the requested information. This is provided under Section 21 of the Act.

**Exempt Information**

Note that not all information can be accessed. The Act has exempted certain type of information. This means that the exempted information cannot be accessed by the public. This is provided under Section 6(1) of the Act. This section empowers the information holder to withhold information under two circumstances:

i. Where the information has been declared exempt under Section 6(2) of the Act and

ii. Where the disclosure of information is against public interest.

However, Regulation 7 of the Access to Information Regulations, 2017, provides that if the information sought is exempted under the Act, access may be granted to part of information which does not contain exempt information and which can be severed from any part which contains exempt information. In other words, this means that if certain part of information can be severed from the exempt information, the person requesting the information shall be granted an access to that part. Information holder should not generally refuse to grant access on ground that the information is exempt.

The information categories that are exempt from public access are listed under Section 6(2) of the Act. These are information which are likely to undermine national defence and security, international relations, impedes due process of the law or endangers the life of any person, undermine lawful investigation, facilitate or encourage commission of an offence, involve unwarranted invasion of privacy of individual, infringe lawful commercial interests, hinder or causes substantial harm to the Government effort to manage economy, undermine Cabinet records, distort or dramatise data of the court or proceedings before conclusion of the case.

Generally, if the information has been held for more than thirty (30) years, it is presumed not to be exempt information, unless the contrary is proved by the information holder. This is provided under Section 6(5) of the Act.
**Review of the Decision of the Information Holder**

If the person requesting information feels aggrieved by the decision of the information holder, he is entitled to apply for review of the decision to the head of the relevant institution. The head of the institution is required to determine the application within 30 days. In case the person is further aggrieved by the decision of the head of the institution, he may appeal to the Minister within a period of thirty days from the date the decision was made.

However, if the information requested was under the authority of the information holder who is under the Minister, the person aggrieved by the decision of the head of institution shall directly apply for review at the High Court instead of the Minister. These are provided under Section 19(1), (2), (3) and (4) of the Act.

**Obligations of the Information Holder**

i. The Act requires every information holder to appoint one or more officers as information officer/officers who shall be in charge of all requests for information and render assistance to a person seeking such information. This is provided under Section 7(1) & (2) of the Act.

ii. The information holder shall maintain all records of information available under his control for not less than thirty (30) years after a date on which the information was generated or the date such information came under his or her control. This is provided under Section 8(1) & (2) of the Act.

iii. The information holder is required to publish certain types of information and make them available to the public. This is provided under Section 9(1) of the Act. This obligation is stressed further by Regulation 3 of the Access to Information Regulations, 2017, where the information holder is required to publish its structure, core functions, nature of its activities and the information it possesses widely and regularly. Under Regulation 5, the information holder is required to publish regularly certain classes of information as soon as they are received or generated regardless of whether there are requests or not made for them. The classes of information which every information holder is required to publish are listed under Regulation 5(2), these are legislation, memorandum or charter for its establishment, its existing policies, rules and procedures, its budgets, its financial accounts of
the information holder, contracts with third parties, its organisational chart, procedure for appealing decision of information holders or its officers.
The information holder has the discretion to publish any other information under his possession apart from that which is required by this Act. This is provided under Section 12 of the Act.

iv. Furthermore, Regulation 10(i) of the Access to Information Regulations, 2017, requires the information holder who is a public authority to organise a press conference to bring to knowledge information of public interest on a monthly basis.

OFFENCES

a. Distortion of Information

Section 18 of the Act restricts the usage of information obtained from the information holder where a person receiving information is required not to distort the information.
The Act further provides that a person who contravenes the requirements of the usage of the information commits an offence and upon conviction shall be liable to imprisonment for a term not less than two (2) years and not exceeding five (5) years. This is so provided under Section 18(2) of the Act.

b. Alteration and Defacement

Also Section 22 makes it an offence for any person who alters, defaces, blocks, erases, destroys, or conceals any information held by the information holder with an intention to prevent disclosure of that information. And upon conviction, the individual concerned shall be liable to a fine not exceeding five (5) million shillings or imprisonment for a term not exceeding twelve (12) months or both fine and imprisonment.

c. Disclosure of the Exempt Information

It is an offence to disclose the information which has been listed as exempt under Section 6(2) of the Act. This is provided under Section 6(6) of the Act. In case the information disclosed does not relate to national security the convicted person shall be liable to imprisonment for a term not less than 3 years and not exceeding five years. However, if the information
disclosed relates to national security, the person shall be charged according to the provisions of the National Security Act.

2.3 The Electronic and Postal Communications Act, 2010 and Its Related Regulations of 2018

This Act was enacted by the Parliament on 29th January, 2010, and assented by the President on 20th March 2010. The Act was enacted with the sole purpose of regulating a comprehensive regime for postal and electronic communication service providers, to establish the central equipment identification register for registration of detachable SIM card and to provide duties of electronic communications and postal licensees, agents and customers, content regulation, issuance of postal communication licences and to regulate competitions and practices.

The Act further provides for offences relating to electronic and postal communications together with consequential amendments and other related matters.

The Act also mandates the Authority to be in charge of all communications such as postal and electronic and their operators in Tanzania. The Authority is defined under Section 3 to mean the Tanzania Communications Regulatory Authority (TCRA) established under the Tanzania Communications Regulatory Act, 2008.

This Act is supplemented by three regulations which are relevant to the media industry and these are: the Electronic and Postal Communications (Licensing) Regulations, 2018, the Electronic and Postal Communications (Radio and Television Broadcasting) Regulations, 2018 and the Electronic and Postal Communications (Online Content) Regulations, 2018.

**Licensing of Radio and Television**

Under Section 4 of the Act, TCRA is empowered to license electronic communication which includes radio and television broadcasting. The Applicant is required to apply by filling a prescribed form as provided under Regulation 4(1) of the Electronic and Postal Communications (Licensing) Regulations, 2018.

**Categories of Licences**

Under this Act, there are six categories of licences issued by the Authority
whereas Section 5(1) provides for network facilities licences, network services licences, application services licences, content services licences, postal and courier services licences and other licences as may be determined by the Authority. With regard to television broadcasting holders of the Network Facilities Licences are allowed to broadcast free-to-air (FTA) channels while the Pay TV operators are generally granted network service licences. In other words there are free-to-air broadcasters and commercial broadcasters.

Obligations of the Broadcasters

The Electronic and Postal Communications (Radio and Television Broadcasting Content) Regulations, 2018, impose certain obligations on the broadcasters. This is provided under Regulations 4 and 5 of the said regulations. There are three types of broadcasters, namely the Public Broadcasters, Commercial Broadcasters and Community Broadcasters.

a. Public Broadcasters’ Obligations as Provided under Regulation 4:

- To provide information, education and entertainment in an independent and impartial manner to the general public;
- To conduct broadcasting services with impartiality, giving attention to the interest and susceptibilities of different communities in Mainland Tanzania;
- To provide and receive from independent producers and other persons material to be broadcast, provided that in acquiring such material, shall have regard to the need to maintain the distinctive character of the public broadcaster and cater for the expectations of audiences who are not generally catered for by other content services providers;
- To provide universal broadcasting services;
- To provide broadcasting content services in accordance with the broadcasting charter and
- To avoid programmes related to nakedness, gambling, violence, superstition or astrology.

b. Commercial Broadcasters Obligations as Provided under Regulation 5:

- To provide a diverse range of programming that reflect the culture,
needs and aspirations of Tanzanians;

• To provide coverage in such areas as may be specified by the Authority;
• To include drama, documentaries and children programmes that reflect the themes and cultural identity of the nation;
• To promote the use of standard Kiswahili and English languages;
• To avoid racial and religious hatred;
• To protect minors from harmful programme content;
• To avoid programmes related to nakedness, gambling, violence, superstition and astrology;
• To provide programmes that promote national peace, unity and tranquility and that do not endanger national security; and
• To avoid defamation and blasphemy

c. **Community Broadcasters’ Obligations as Provided under Regulation 6:**

• To provide broadcasting services that reflect the needs of the people in Tanzanian communities, including cultural, religious and demographic needs;
• To provide programming that is participatory dealing with community issues which are not normally covered by other content services providers covering the same area;
• To provide broadcasting services within the service area authorised by the Authority as specified in the construction permit;
• To provide programmes that inform, educate and entertain target audiences;
• To operate within the parameters of a non-profit making broadcasting station; not be constituted on the basis of political affiliations;
• To undertake to promote national unity, peace, tranquility, social stability and cultural identity;
• To ensure that the provided content adheres to public interest with reference to public policy, national safety and national cohesion;
• To broadcast programmes that are not prejudiced on the basis of race, sex, nationality, religion, disability, age or ethnic background;
• To broadcast news, news briefs or headlines at regular intervals as determined by the Authority;
• To avoid broadcasting of obscene, violence and lascivious matters;
• To make public all their programme sponsors and programmes shall not be influenced by the sponsors;
• To ensure that only proper Kiswahili and English languages are used in all broadcasts unless prior approval of the Authority specifying the reason and period for the use of any other language has been sought and obtained;
• To be guided by the Code of Practice for Community Broadcasting Services as provided by the Authority

OFFENCES

a. Operation without Licence
Section 116 makes it an offence for a person to operate network facilities without obtaining a licence to that effect. In case of conviction, the culpable person shall be liable to a fine of not less than five million Tanzanian shillings or to imprisonment for a term not less than 12 months or both.

b. Transmission of Obscene Content
This is provided under Section 118 of the Act, a person convicted shall be liable for a fine of not less than five (5) million shillings or imprisonment for a term not less than twelve (12) months or both and also to a fine of seven hundred and fifty thousand (750,000) shillings every day after the date of conviction if transmission of the obscene contents continues.

2.4 The Cyber Crime Act, 2015
This Act was enacted by the Parliament on 1st April, 2015 and assented by the President on 25th April, 2015. The Act provides for platforms for investigation, collection and use of electronic evidence. It was enacted to make provisions for criminalising offences on computer system, information communication technologies together with other related matters.

This Act too has an impact in the media industry when it comes to online or electronic publication or broadcasting of the news via the computer system. From technical point of view, this Act provides for various offences which in one way or another affects the media industry. These offences are analysed hereunder.
Publication of False Information
Section 16 of the Act criminalises 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 mislead commits an offence and shall, upon conviction, be liable to a fine of not less than five (5) million shillings or to imprisonment for a term of not less than three (3) years or both.

Transmission of Unsolicited Messages
Furthermore, the Act criminalises any person who, with intent to commit an offence, initiates the transmission of unsolicited messages (any electronic message which is not solicited by the recipient), relay or retransmit unsolicited message or falsify header information in unsolicited messages. This is provided under Section 20 (1) of the Act. Such a person if convicted shall be liable to a fine of not less than three (3) million shillings or three times the value of undue advantage received, whichever is greater or to imprisonment for the term of not less than one (1) year or both.

Unauthorized Access to Data
Offences of this nature are prescribed under Sections 4, 5, 6, 7 and 8 of the Act. They are generally meant to prohibit access to computer data without an authorisation. While this may be fine if looked at casually, as far as investigative journalism is concerned, it may pose a challenge. With this kind of provision in place, it is difficult to embark on investigative journalism, especially the type that could entail accessing computer data.

Publication of Pornography and Child Pornography
Sections 13 and 14 of the Act prohibits publication of child pornography and pornography in general via a computer system. Therefore any publication of a picture, video or sound with pornographic ramifications is tantamount to a criminal offence under these sections and person so convicted shall be liable to fine as well as imprisonment.

Publication of Racists and Xenophobic Materials
This is provided under Section 17 of the Act. The said section generally prohibits publication through a computer system any materials which
are racists and xenophobic or in other words, materials which promotes racism or xenophobia. If convicted of this offence, a person shall be liable to pay a fine of not less than three (3) million shillings or imprisonment for a term not less than one year (1) or both.

Publication of Materials Inciting Genocide and Crimes against Humanity

In the same vein, the Act also prohibits publication of the materials which incite genocide or crimes against humanity. This is provided under Section 19 of the Act. If convicted of this offence, the culpable person shall be liable to receive a fine of not less than three (3) million shillings or imprisonment of not less than one (1) year or both.

2.5 The Statistics Act, 2015 and Its Regulations, 2017

This Act was enacted by the Parliament on 26th March, 2015, and assented by the President on 25th April, 2015. The Act caters for the national statistics system and establishes an independent bureau that shall regulate the country’s statistics. The Act is supplemented by the Statistics Regulations, 2017. These Regulations have made pursuant to the provisions of Section 38 of the Act.

Continuation of National Bureau of Statistics

Under Section 4 (1) of the Act, the Bureau of Statistics established under the earlier Act continues to exist and shall be known by its acronym, NBS. The Bureau is responsible for production, coordination, supervision and dissemination of official statistics and for the custodianship of the official statistics of the country. This is provided under Section 6(1) of the Act. It should be noted that the Bureau is the only body which has the mandate to disseminate official statistics of the country. The statistics or information which the bureau can collect are listed under the third schedule of the Act.

Meaning of Official Statistics

“Official statistics” refers to the statistics produced, validated, compiled and disseminated by the Bureau, Government institutions and agencies. This is provided under Section 20(1) of the Act. Any other statistics which fall outside this definition are not official statistics. However, it should be noted that statistics issued by agencies shall only qualify to be official
statistics if they meet criteria and standards established by the Bureau.

**Joint Collection of Information**

Section 22 of the Act provides for the joint collection of the information whereas the Bureau is authorised to make an arrangement with the agency or employee of the agency to collect statistical information when the need arises. From this perspective, the agency may be the media service agency, an independent journalist working as a freelancer working with a media house. Hence this is where we see the journalists and other media service providers taking part in the collection and gathering of the statistical information for various purposes as indicated in the Act.

The Act makes it clear that, an employee or any independent person engaged in joint collection of information or processing of the collected information to make a secrecy declaration as per the declaration made under Section 14 of the Act. This requirement is precisely articulated under the provision of Section 22 (2) of the Act.

Furthermore, the Act under its Section 30 provides that, where any census or survey is being carried out, any officer or employee authorised by the Bureau may require any person to supply him with particular informational details in a form prescribed and the requested person shall to the best of his knowledge, information and belief, give those details for the purposes of the statistical study. This means that if a journalist is engaged in collection of such statistical information, he will be exercising his profession of gathering and processing the same for the Bureau’s use. He may later choose to go back to the Bureau and request for the access of such information and use it in such a way that is not detrimental to the real owner of information, to the Bureau or the public.

Section 28 of the Act requires the Bureau to take all reasonable steps to make information obtained by it or agent engaged in course of joint collection and processing of the information as confidential in accordance with the Act or any other written laws relating to duty of secrecy.

**Establishment of the Sector Working Group**

The provision of Regulation 3 of the Statistics Regulations, 2017, empowers the NBS to establish a Sector Working Group based on the nature of the statistics to be produced and which consist of members from the sector ministry or ministries and the Bureau. According to the Regulation, the
Chairman of the Sector Working Group shall be appointed by the Director General of the NBS from the sector ministry and the secretary of the Group shall be appointed from the Bureau.

Functions of The Sector Working Group

According to the provisions of Regulation 4(1) the following are functions of the Sector Working Group:

- To facilitate coordination and harmonisation of statistics within the sector;
- To identify skill gaps and propose appropriate capacity building and training programmes for employees within the National Statistical System;
- To serve as a forum for discussion of the issues raised by concerned producers, users and other stakeholders of sectoral specific statistics;
- To advise the Director General on the best way for resources mobilization;
- To identify data gaps and proposed appropriate means of production and;
- To Prepare and submit to the Bureau Sectoral-Medium term and Annual Programmes of statistical survey as input to the National Medium term and Annual Statistical Survey Program respectively.

Application

Production of Official Statistics

Regulation 10 compels any agency or government institution intending to commence a survey to make a written application to the Director General of the Bureau, who may approve in writing for commencement of such survey, subject to the applicant’s fulfillment of the requirements set out in the regulations. Under that arrangement, the collected statistics shall be designated as official statistics once they are approved by the Director General with the official seal before publication.

OFFENCES

Part V of the Act establishes offences relating to publication and usage of information under the Act and impose punishment in form of penalty, fines and imprisonment.
Using Information for Personal Gain
This is provided under Section 37(1) (a) of the Act. This applies to any person who has obtained information in the course of his employment, information which may affect the market value of any share or security, product, etc, and before such information is made public, uses it for personal gain.

Communication of Statistics without Lawful Authority
Section 37 (1) (b) provide that, any person who, without lawful authority, publishes or communicates to any person other than those in ordinary course of employment, any information acquired by him in course of his employment commits an offence which upon conviction shall be liable to a fine of not less than two (2) million or imprisonment to the term of not less than six (6) months or both. This provision applies to a journalist or any other media agency as engaged by the Bureau under Section 22 and therefore they cannot publish or communicate information obtained in such course without first getting the authority from the Bureau.

Compiling for Issue False Information or Statistics
This is provided under Section 37(1) (c) of the Act. This specifically relates to an employee who has deserted his duty and make a willful declaration or statement or compiles for issue statistics or information which is false.

Publication of Statistics without Lawful Authority
Also Section 37(2) makes it an offence for any person who to his knowledge publishes or communicate the information which he believes to be obtained from the Bureau but in contravention with the Act. And upon conviction such person shall be liable to a fine not less than five (5) million shilling or imprisonment to the term of twelve (12) months.

Broadcasting False Statistics or Data Collection

Activity which is Being Undertaken by Bureau
This is provided under Section 37(4) of the Act. This offence can be committed by the Director General of the Bureau, Controller or any other person concerned with the management of the communication media.
In the event that he allows publication of false statistical information or data collection activity that has been undertaken or is on its way of being undertaken by the Bureau, he will be committing an offence under this Act.

**Communication or Publication of Official Statistics**

**Information which May Result in Distortion of Facts**
This is provided under Section 37(5) of the Act. This offence can be committed by an agency or any person. If convicted, the punishment is payment of fines not less than ten (10) million shillings or imprisonment for a term not less than three (3) years or both.

**Publishing or Communicating of Official**

**Statistics without Authorisation of NBS**
This applies to an agency or person allowed by the bureau to process official statistics information. Section 37(6) requires those persons to obtain prior authorisation of the bureau before publishing or communicating such information.
PART THREE
Critical Analysis of the Selected Provisions of the Principal and Subsidiary Media Legislation

3.1 Introduction
This part of the report takes a critical approach of the selected provisions of the media legislation. The provisions are criticised against the established international standards on freedom of expression and access to information. The objective is to show how they may affect the press freedom and media industry in general.

3.2 The Access To Information Act, 2016

3.2.1 The Access To Information Act, 2016 Analysis
This is the analysis report of the Access to Information Act, 2016. This report is divided into seven sections. Section 1 is introduction, section 2 talks about ATI conformity with the International Human Rights Standards, Constitution and good practices on Access to Information Laws, section 3 compares the Access to Information Act and the Information and Broadcasting Policy, 2003 as well as the Open Government partnership, Section 4 compares the extent to which CoRI proposals have been reflected under the Access to Information Act, section 5 shows gaps and weaknesses of the ATI, section 6 provides key recommendations and section 7 concludes.

This Act was passed by the National Assembly on the 7th day of September 2016 and assented by the President on 23rd day of September 2016. According to section 2(1), this Act applies only to Mainland Tanzania. This is an Act to provide for access to information, define the scope of the information which public can access, promote transparency and accountability of the information holders and to provide for other matters pertinent thereto.1

The Access to Information Act is a very small piece of legislation. It has four parts and 24 sections. Part I contains Preliminary Provisions, Part II provides for the Right to Information, part III deals with Access to Information and Part IV provides for General Provisions.

Most of the provisions of this Act are generally fair and conform to the

1 See preamble of the Access to Information Act, 2016.
acceptable standards. However, there are some provisions which do not meet the prescribed standards and therefore they encroach the right to access information as provided under the Constitution of the United Republic of Tanzania and other human rights instruments to which Tanzania is a signatory party. These provisions must be amended in order to ensure unhindered access to information.

Moreover, the Act fails to carry out to the maximum the spirit of the Information and Broadcasting Policy of 2003 of ensuring unhindered access to information. This is because, the Act contains a provision which restricts the right to access information only to citizens, broad exceptions and access fees which are nothing but barriers. Nevertheless the Act conforms to the objectives set out in the Open Government Action Plan of Tanzania for 2014-2016. There are very few provisions which do not reflect the objectives as it can be seen in the analysis below.

Lastly, the CoRI proposals have to a large extent not reflected under the ATI. Only few recommendations and proposals have been taken on board. Therefore, there is a need to lobby for the amendment of the problematic provisions of the Access to Information Act in order to bring them to acceptable standards in alternatively stakeholders may wish to lodge Constitution Petition before the High Court, for the fact that some provisions are contravening the United Republic of Tanzania Constitution.

**International / Regional Standards, Constitution and Good Practice on Access to Information**

It is understood that Government holds information not for itself but rather on behalf of the public and as a result public bodies should provide access to that information. That being the case, as a matter of principle, Access to Information Laws must reflect the fundamental premise that Government is supposed to serve the people.2

A number of international bodies have authoritatively recognized the fundamental and legal nature of the right to freedom of information, as well as the need for effective legislation to secure respect for that right in practice. These include the UN, the Organization of American States, the Council of Europe and the African Union.3

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3 Ibid.
has addressed the issue of freedom of information in each of his annual reports since 1997. Significantly, in his 1998 Annual Report, the Special Rapporteur stated clearly that the right to access information held by the State is included in the right to freedom of expression: “[T]he right to seek, receive and impart information imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems.4

Therefore under International law this right is provided under Article 19 of the International Covenant on the Civil and Political Rights, 1966 and Article 9 of the African Charter on Human and People’s Rights, 1981. These two article give individual right to seek and receive information.5

In 2002, the African Commission on Human and Peoples’ Rights adopted a Declaration of Principles on Freedom of Expression in Africa. The Declaration clearly endorses the right to access information held by public bodies, stating under Article IV(1) that Public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law. It goes further to state that:6

- The right to information shall be guaranteed by law in accordance with the following principles:
  - everyone has the right to access information held by public bodies;
  - everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
  - any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
  - public bodies shall be required, even in the absence of a request, actively to publish important information of significant public interest;
  - no one shall be subject to any sanction for releasing in good faith information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment save where the imposition of sanctions serves a legitimate interest and is necessary in a democratic society; and
  - Secrecy laws shall be amended as necessary to comply with freedom of information principles.

4 Ibid.
5 Ibid.
Everyone has the right to access and update or otherwise correct their personal information, whether it is held by public or by private bodies.

Comparing the provisions of the Access to Information Act, 2016 with this principle, we have found that the Act provides Access only to information held by the public authorities and private registered bodies which utilize public funds. This is provided under section 2(2) (a) & (b) (i) of the ATI. The above principle requires access to information even to private bodies if that information is necessary for the exercise or protection of any right. This is missing as the Act authorizes access only to information held by private bodies which are utilizing public funds.

Furthermore, the above international principle, states that everyone shall have access to information held by public bodies. This means that no discrimination of whatsoever kind is allowed in granting access to information.

Under the ATI Act, 2016 access to information is limited only to the citizens of the United Republic of Tanzania. Section 5(1) states that every person shall have access to information which is under the control of the information holder. However section 5(4) restricts the meaning of person only to the citizens of the United Republic. Therefore, this means that only citizens of the United Republic of Tanzania may have access to information held by public bodies and private bodies funded by the public. This may have far reaching consequences. According to the Citizenship Act, 1995 the term citizen is limited to natural persons only. And for that reason, the Act is ousting juristic/legal persons, organizations, societies, foreigners, international organizations from accessing information in Tanzania. This is a clear violation of the above principle which gives information access to everyone. There is no sound justification for denying non-citizens access to information. The alternative means was only to restrict the kind of information which these individuals may access.

Another principle is the duty or obligation to publish information. This is provided under Article IV (2) of the Declaration on the Principles of Freedom of Expression in Africa, 2002. The principle states that public bodies should be under an obligation to publish key information. “Freedom of information implies not only that public bodies should accede to requests for information, but also that they should publish and
disseminate widely documents of significant public interest. Otherwise, such information would be available only to those specifically requesting it, when it is of importance to everyone. Moreover, publishing information will often be more economical than responding to multiple requests for the same information.8

The scope of the obligation to publish proactively depends to some extent on resource limitations, but the amount of information covered should increase over time, particularly as new technologies make it easier to publish and disseminate information.

Under the ATI Act, 2016 the duty to publish is reflected under section 9(1), however the scope of information required to be published is considered narrow. Good practice shows that, among other things, information holder who are public authorities are required to publish budgets or financial arrangements, contracts with third parties etc. This is not covered under the ATI Act, 2016.

Apart from above Declaration, there is an African Model Law on the Right to Access Information. This is meant to facilitate the adoption of the national legislation which will reflect the acceptable international, regional and sub-regional standards on the right to access information. This model law prescribes minimum standards which should be adopted by the states. Now let’s compare the provisions of the model law and the ATI Act, 2016 in order to see the extent of its conformity.

Section 2(1) (b) of the Model Laws authorizes access to information held by private bodies if that information may assist in protection or exercise of any right. Under the ATI Act, 2016, the only access allowed is to information held by the private bodies which utilize public funds, short of that no access to information is authorized. This is below a prescribed standard. There are instances in which information which is very important for the protection or exercise of the right of an individual is under control of the private body. Therefore it is important to authorize access in such instances as prescribed under the Model law.

The provisions of section 4(1) of the Model Law declare its supremacy over any other laws restricting the access to information. It is stated clearly that this law takes primacy over any other legislation relating to access to information. This is very important in order to safeguards this right against

the possible abuse by the government officials in the pretext of other laws. It is very unfortunate that the ATI Act, 2016 is silent on this aspect. In other words it does not state its supremacy over any other laws regarding to access to information. The possible danger of this omission is to allow some public authorities to hide behind the shadow of other secrecy laws and deny access to certain type of information.

On the duty to publish information the Model law is very broad. Among other things, it requires information holder to publish contracts entered with third parties, budgets and expenditure plans of the information holder. The ATI Act, 2016 falls short of this standard. The duty to publish information under section 9 of the ATI does not include contracts and financial arrangements as required by the Model Law.

Section 8(1) (a) & (b) of the Model law imposes an obligation to information holders to submit to the oversight mechanism annually, a report of the publication plan and annual reports in the implementation of the provisions of the Act. This is missing under the ATI Act, 2016. First the Act does not establish any oversight mechanism. Second, the Act does not impose any obligation on the information holder to prepare and submit an annual report regarding the implementation of the ATI Act. This is a serious omission which may jeopardize the effective implementation of the Act and the right to access to information in particular.

Another important provision of the Model Law is section 12(1), which gives access to information to everyone to access information. The section does not discriminate between the citizens and non-citizens. It gives an equal opportunity to all. This is contrary to what has been provided under section 5(1) & (4) of the ATI Act, 2016. The section in question restricts access to information only to the citizens of the United Republic of Tanzania. Therefore the ATI falls short of this standard.

Moreover, with respect to the manner in which the request to information may be made, the Model Law is very broad. Under section 13 (1), the law states that in requesting information, the request can be made either in writing or orally. So writing is not the strict requirement. However under the ATI Act, 2016 requests for information are generally required to be in a written form. This is because a person requesting information is required to fill in a prescribed form. There is no an alternative means of requesting for information orally.

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9 This is provided under section 7(g)& (f) respectively.
Under section 15(1) of the Model Law, the maximum time for responding to the request has been set to 21 days. The ATI Act, 2016 sets the maximum of thirty days contrary to what has been provided under this law.

Again, with respect to the deferral of access, the Model Law sets a very good standard. Under section 19 (1) (a) & (b), it is stated clearly that, an information officer may defer the access to information, if an only if, the access sought is regarding information which is prepared to be presented to parliament. However the deferral cannot exceed the 5 sitting days of Parliament. This means that, the information holder can defer access for five days only and not otherwise. In addition to that, access can be deferred with respect to information which is supposed to be presented to an official body. Interestingly, the time limit for the deferral is when the information has been presented to that body or after the expiry of 45 days, whichever is later. This is very good as it eliminates the possibility of having an infinite deferral. It is very unfortunate that the provision of section 16 (1) of the ATI Act, 2016 allows the information holder to defer access without prescribing a time limit. This is dangerous; the section may be used tactically to deny access to certain type of information.

In order to facilitate the right to access information, the access should not be expensive. That’s why is being advocated that the access should be free of charge or less expensive in order to afford everyone an opportunity to enjoy this right. Giving effect to that spirit, section 23 (2) of the Model Law states clearly that the information holder may charge the requester of information a reasonable fee consisting of a reasonable reproduction cost incurred by the information holder. This is good as it intends to eliminate the possible malpractices by the information holder of turning this into a lucrative venture of generating income. The section goes further to state that, in case of the information which is in the public interest, no fees should be charged. This is provided under section 23 (b) of the Act. The ATI Act, 2016 contains a fee charging provision. Surprisingly, the Act states only that the information holder may charge fees and stops there. It does not set standards on how to charge the fees neither provides free access to some information as required by the Model Law.

Lastly, Part V of the Model Law (from sections 45-81) establishes an
oversight mechanism which is responsible to oversee the implementation of the law and give practical effect to the right to access information. It is not known for which reasons, why the ATI Act, 2016 does not establish an oversight mechanism. Thorough examination of ATI laws of various countries such as UK, India and South Africa to mention a few show that, an oversight mechanism is important in ensuring an effective implementation of the law and right to access information. ATI laws of all those countries contain a body charged with an oversight roles.

As much as we may not want to believe, this fact remains to be true that the ATI Act, 2016 falls short of the prescribed standards of the African Model Law on Access to Information. Most of the very vital provisions which were designed to ensure effective enjoyment of the right to access information are missing under the ATI. Generally, ATI Act, seems to have been enacted with ulterior motive.

Also, there are other principles known as the Commonwealth Freedom of Information Principles, agreed by the 11th Commonwealth Law Ministers Meeting, Trinidad & Tobago, and May 1999. The principle 2 states that freedom of information legislation should be guided by the principle of maximum disclosure.”10 The principle of maximum disclosure holds that all information held by public bodies should presumptively be accessible, and that this presumption may be overcome only in very limited circumstances. Another aspect of this principle is that the scope of the law should be very broad. Everyone, not just citizens, should benefit from the right and an individual requesting access should not have to demonstrate any particular interest in the information or explain the reasons for the request. Information should be defined broadly to include all information held by the body in question, regardless of form, date of creation, who created it and whether or not it has been classified.11

Under the ATI Act, especially sections 5(1) & 5(4) limits the access to information only to citizens of the United Republic of Tanzania. This is contrary to the established international principles and standards on the right to access information.

Also there is a principle concerning the limited scope of exceptions. This principle states that exceptions to the right to access information should

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be clearly and narrowly drawn and subject to strict “harm” and “public interest” tests.” The regime of exceptions is one of the most difficult issues facing those drafting a freedom of information law and one of the most problematic parts of many existing laws. In many cases, otherwise very effective laws are undermined by an excessively broad or open regime of exceptions. On the other hand, it is obviously important that all legitimate secrecy interests are adequately catered to in the law, otherwise public bodies will legally be required to disclose information even though this may cause unwarranted harm.12

Member states may limit the right of access to official documents. Limitations should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:

- National security, defense and international relations;
- Public safety;
- The prevention, investigation and prosecution of criminal activities;
- Privacy and other legitimate private interests;
- Commercial and other economic interests, be they private or public;
- The equality of parties concerning court proceedings;
- Nature;
- Inspection, control and supervision by public authorities;
- The economic, monetary and exchange rate policies of the state;
- The confidentiality of deliberations within or between public authorities during the internal preparation of a matter.

It is not, however, legitimate to refuse to disclose information simply because it relates to one of these interests. According to the second part of the test, the disclosure must pose an actual risk of serious harm to that interest.

12 Ibid.
The ATI Act contains a number of exceptions under section 6(2) & (3). While some of exceptions are justifiable, others are not. Some are too broad and prone to abuse and others are hard to justify. For instance, under section 6(1) (2) and (3) the information holder may refuse to give access to information, if he determines in accordance with the provisions of the Act, that the disclosure is not justified in the public interest. The Act does not define what a public interest is. This is a broad exception which may be abused. Again, denying access to information relating to foreign relation and activities on the ground that it relates to national security is hardly understandable.

Another principle relates to Facilitation of the Access to Information. This principle states that requests for information should be processed rapidly and fairly and an independent review of any refusals should be available. “Effective access to information requires both that the law stipulate clear processes for deciding upon requests by public bodies, as well as a system for independent review of their decisions.13 Requests are normally required to be in writing, although the law should also make provision for those who are unable meet this requirement, such as the blind or the illiterate – for example, by requiring the public body to assist them by reducing their request to writing. The law should set out clear timelines for responding to requests, which should be reasonably short. The response to a request should take the form of a written notice stating any fee and, where access to all or part of the information is denied, reasons for that denial along with information about any right of appeal. It is also desirable and practical for the law to allow requesters to specify what form of access they would like, for example inspection of the record, or a copy or transcript of it.14

Finally, the law should provide for the right to appeal from the administrative body to the courts. Only the courts really have the authority to set standards of disclosure in controversial areas and to ensure the possibility of a full, well-reasoned approach to difficult disclosure.15

15 Ibid.
Matters relating to requests and time for responding requests have been reflected under sections 11, 12, 13, and 14. The right to appeal is provided under section 19. However, the time for responding to information request under the ATI is relatively long. Maximum limit of thirty days is long taking into account that some information may be needed for the immediate use. Moreover, this goes contrary to the current practice provided under the Client Service Charter between the Prime Minister Office, Regional Administration and Local Government (PMO-RALG) and its customers which the same is offering public services which insists rapid responses.

The last principle is on the costs. The principle states that individuals should not be deterred from making requests for information by excessive costs. “Fees are a controversial issue in freedom of information laws. It is widely accepted that fees should not be so high as to deter requests, but practically every law does allow for some charges for access16. Different laws take different approaches to fees. Some limit charges to the cost of reproducing documents, perhaps along with a set application fee. Others group requests into different categories, charging less for public interest or personal requests. Still others provide for the provision of a certain amount of information, for example 100 pages, for free and then start to charge after that. Regardless of the approach, it is desirable for fee structures and schedules to be set by some central authority, rather than by each public body separately, to ensure consistency and accessibility.17

Under the ATI section 21 provides for access fees, however the provision is silent on how the fees should be charged and information holders have been left with an exclusive mandate to determine how the fees may be charged. This is in clear violation of the acceptable standards.

Remarks: As seen in the above analysis, some of the provisions of the ATI Act, 2016 do not meet the standards and acceptable practices relating to access to information laws. There are still unnecessary restrictions on the right to access information below the acceptable international standards.

Under the Constitution of the United Republic of Tanzania, 1977, the Right to Access Information can be gathered under Article 18 (1) & (2).

16 Ibid.
17 Ibid.
This Article provides a right to “everyone” to seek, receive information. Therefore the Access to Information Act must give effect to the spirit of Article 18 of the Constitution by creating environment under which individuals, without discrimination may access information.

As noted in other analysis above, section 5(1) & (4) of the ATI Act, 2016 restricts the access to information only to citizens of the United Republic of Tanzania and oust non-citizens. This is a clear violation of Article 18 of the Constitution. Therefore, it suffices here to say that section 5(1) & (4) of the ATI do not meet the constitutional standard. Therefore one of the remedy will be to challenge this section for contravening the Constitution.

Also it is relevant at this part to look at the best practices around the world on the right to access information or Accession to Information Laws. This is done purposely to identify standard gaps in the ATI Act, 2016 by comparing it to what is being done in other countries.

The best practice shows that, most of the Access to Information laws establish an oversight mechanism to ensure effective implementation of the law. This can either be an Independent Commission, Data Protection Officer or Ombudsman. The reasons for establishing these bodies include the goals of promoting the right of access as well as hearing appeals against violations of the right to access information.

For example, in Sweden, Norway and New Zealand, the Access to Information regimes gives the Ombudsman oversight of the right to information. In these countries the Ombudsmen have been give mandate to oversee the effective implementation of the right to access information. Literally, Ombudsman means an official appointed to investigate individuals’ complaints against maladministration, especially that of public authorities. This system is reported to be one of the mechanisms that work well.

In South Africa, the Human Rights Commission has been given the mandate to oversee the implementation of the right to access information. Information officers are required to report annually to the Human Rights Commission. Among other things they are required to report on the number of requests received, requests granted, requests refused and appeals. Again, the Human Rights Commission is required to report annually to

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18 See section 38 of the Promotion of Access to Information Act, 2000.
the Parliament regarding the same information. So in short the access to information regime in South Africa sets an oversight mechanism to ensure that the right to access to information is well implemented. This is missing under the ATI Act, 2016.

Furthermore, the South African Law on access to information authorizes access to information held by the private bodies/persons if that information is required for the exercise or protection of any right. This is a tremendous approach, which the ATI Act, 2016 ought to have adopted.

Again, the Promotion of Access to Information Act, 2000 contains an overriding clause giving it supremacy over any other legislation that may prohibit or restrict a person accessing any information. The ATI Act, 2016 does not have similar provisions. This is very dangerous as some information holder may invoke the provisions of other laws to deny access to certain type of information. Also, the Promotion of the Access to Information Act has a provision stating clearly that when requesting information from a public body, one has no obligation to state the reasons for seeking such information. This is missing under the ATI Act, 2016. The Act is totally silent on this matter.

Another country is the United Kingdom. In United Kingdom there is an Information Commissioner and Information Tribunal to oversee the implementation of the right to access information. Furthermore the Secretary to the State, Lord Chancellor and Commissioner have been given a task of helping public authorities in discharging their functions under the Act, for instance Secretary to the State and Lord Chancellor are required to issue code of practice on what are the best practices for public authorities to adopt in carrying out their functions under the Act. More importantly, under section 49 of the Act, the Commissioner is required to annually to lay reports before the Parliament regarding his functions under the Act.

Lastly, another country which may offer the best example is India. India has enacted the Right to Information Act, 2005. The Act establishes two Information Commissions to oversee the implementation of the provisions of the Act. These are the Central Information Commission and the State Information Commission. Generally these Commissions are

19 See section 84, ibid.
20 See section 50, ibid.
22 See section 45 and 46, ibid.
23 They are established by section 12 and 13 of the Right to Information Act, 2005.
set to receive and inquiry complaints received by the persons who have requested access to information from the public authorities.24 Again, these Commissions are required to annually report to the appropriate Government regarding the implementation of the right to information.25

What can be deduced from the practices of these countries is that, there is a need to establish an independent body to oversee the implementation of the Access to Information laws. Also, these bodies can receive and adjudicate various complaints relating to the access to information. It is unfortunate that under the ATI Act, 2016 there is no any oversight mechanism which has been established. Also, the mechanism for addressing complains as set out under ATI does not conform to the best practices. There ought to have been an independent body, for instance those in India.

Reporting mechanism is an essential part in ensuring effective implantation of the Act. There is a need to have a provision requiring a mandatory reporting by this information holder to the Parliament or other independent bodies.

**Conformity of the ATI Act, 2016 to the Information and Broadcasting Policy, 2003 and Open Government Partnership**

As far as access to information is concerned, the Policy requires government to eliminate barriers in accessing information. For instance under policy statement 2.4.1, the policy states that it intends to eliminate barriers in accessing information from the government and its institution. The Policy states expressly that the government should ensure the elimination of barriers in accessing information from the government and its institutions. Again, this requirement is reiterated under policy statement 2.4.2 and 2.1.1, all these are calling for the government to remove barriers in accessing information and ensures that people can have unhindered access to information. However looking at some of the provisions of the ATI Act, it is very unlikely that this objective will be achieved. This is because the Act contains some provisions which acts as a barrier in accessing information. Provisions such as those which requiring charging of fees, broad exemptions of certain information. In their totality, these acts as barriers to individuals and consequently affect their right to access

24 Section 18, ibid.
25 Section 25, ibid.
With regard to the Open Government Partnership (OGP), Tanzania joined the Open Government Partnership Initiative in September 2011. The intention is to make the Government business more open to its citizens hence improve public service delivery, government responsiveness, combating corruption and building greater trust. As stipulated under the Tanzania OGP Action Plan of 2012/2013, the OGP commitments are focused on the four pillars namely transparency, accountability, citizen’s participation and technology and innovation. 27 Our main focus is in the Health, Education and Water sectors. On transparency, the commitment is to improve various government websites to enable citizens to access information freely and timely. A citizens Budget in simplified language has been produced. The aim is to make citizens aware of the national budget component.28

Currently, Tanzania has OGP Action plan for 2014-2016. Under paragraph 3.1 of the OGP Action plan 2014-2016, it is stated that freedom of information is both a cornerstone of open government and a key democratic right. The Constitution of the United Republic of Tanzania, 1977 recognises this right, but at present there is no law that provides the means to put this right into practice. Giving effect to this, Tanzania commits to enact Access to Information Act by December 2014. (This commitment has been met however the Act has been enacted in 2016 and not 2014).

The OGP Action Plan goes further to state that the legislation will be established in line with international best practice and shall include:-

(i) Recognition of a human right to information, along with a broad presumption of openness of information held by public bodies, including state-owned enterprises and bodies, and private bodies undertaking public functions or operating under public funding;

The Access to Information Act, 2016 meets this requirement under section 2(2) which allows access to information held by public bodies and private bodies utilizing public funds.

(ii) An obligation to publish a wide range of information on a proactive

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26 Read policy statement 2.1.1, 2.4.1 and 2.4.2 of the Information and Broadcasting Policy, 2003.
basis;

This is provided under section 9 of the Act, although the range of information which is required to be published is considered to be narrow.

(iii) Robust procedures for making and processing requests which are simple, free and quick (with a clearly specified maximum response time).

This is provided under sections 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of the Act. Although there are minor shortcomings, the procedure is fairly simple as envisaged by the OGP Action plan

(iv) A limited regime of exceptions based on preventing harm to protected and security related interests, a public interest override and severability where part of a record is exempt;

This is provided under section 6 of the Act. Section 6(2) & (3) provides a number of exceptions under which access to information may be denied. Although the exceptions are fairly narrow but there are some exceptions which are hardly justifiable. For instance grouping information relating to foreign relations or foreign activities as information relating to security is hardly understandable. There is a need to qualify this exception, for instance by adding a clause that if such information relates to national security. Leaving it broadly as it is, citizens may be denied the information which they ought to know about their government.

(v) A right of appeal.

This is provided under section 19(4) of the Act. This gives an aggrieved person a right to appeal to the High Court.

(vi) Protection for good faith disclosures and sanctions for obstruction of access;
This also is reflected under section 23(1) & (2) of the Act. This section provides immunity for good faith disclosure of information on wrongdoings. Sanctions for blocking access are provided under section 22 of the Act, although this relates only to third parties and not the information holder.

(vii) Obligations to report on requests received backed up by sanctions for refusal to disclose information without reasonable cause.

This has not been reflected as there are no provisions which require the information holder to report the request received neither is there any provisions sanctioning refusal to disclose information without reasonable cause.

At this juncture, it is safe to state that the Access to Information Act has to a large extent conformed to the Open Government Partnership as it has been shown in this analysis. However, there are other issues which have not been properly addressed by the Access to Information Act as indicated above.

**Comparison between the Stakeholders’ Proposals on the Bill, 2011, CoRI Proposals and the ATI Act, 2016**

In 2011, the information stakeholders made proposals which should be include in the Right to Information bill of 2011. The proposal has seven parts and 44 provisions.

Generally speaking the stakeholder’s proposals on the Right to Information Bill have to a large extent not reflected under the ATI Act, 2016. Few provisions which have been reflected have been modified. For instance the following proposals have been reflected under the ATI Act, 2016:-

Access to information to public bodies as well as private bodies under section 8(1) of the proposal has been reflected under section 2(2) of the ATI but with a slight modification. Under the ATI only private bodies utilizing public funds are required to disclose information.

Again, duty to publish information has provided under section 12 of the proposal has been partly reflected under section 9 of the ATI. However, while the proposal demanded publication within 12 months, the ATI
demands publication within 36 months. Again, the proposed bill demands a periodical publication and that such publication shall be in Kiswahili. This is not reflected under ATI Act as there is no requirement for periodical publication either is there a requirement to publish in Kiswahili.

Section 37 and 38 of the proposals which protects good faith disclosures and whistleblowers’ protection has been partly reflected under sections 23 and 24 of the ATI.

As stated earlier, the ATI Act, 2016 did not incorporate most of the provisions contained in the stakeholders’ proposals. For instance, there is no Commission for Information as proposed under sections 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 of the proposed bill. Also, the Information Stakeholder’s Forum as proposed under section 42 of the proposal has not been established.

Therefore, we can say that the stakeholder’s proposals on the Access to Information Bill, 2011 has to a large extent not reflected under the Access to Information Act, 2016. Very few provisions have been reflected with a modification thereto.

With regard to CoRI proposals, the status is the same. Most of the CoRI recommendations/proposals have not been reflected only few have been reflected but with modification. For instance recommendations that section 6(6) of the ATI should prescribed for a maximum limit for imprisonment has been reflected; however the recommendation that fines should also be introduced as an alternative penalty has not.

Recommendations on section 18(1) which restricted the public use of the information accessed has been partly reflected, now it is not an offence to use the accessed information publically, however the section introduces new offence of distorting information. Moreover, recommendations that information holder shall give notice or respond to the request within a prescribed time have been partly reflected under section 11(1) of the ATI. That notwithstanding, as stated earlier, most of the very good recommendations were not taken, for instance section 21 continues to impose charges for accessing information, there is no prescription of the time of the commencement of the operation of the Act under section 1. Access to information is still limited to citizens only under section 5(4). More worse broad exceptions for denying access to certain types of information are still retained under section 6(2).
Identified Gaps and Weaknesses of the Act

After a thorough analysis of the Act, the following gaps and weaknesses have been identified:

a. **Access to Information**

The provision of section 5(1) provides that every person shall have the right to access to information. However section 5(4) restricts the definition of the term “person” only to the citizens of the United Republic of Tanzania. First this means that non-citizens cannot have access to information in Tanzania. Second, juristic persons such as companies, organizations, societies and international organizations cannot have access to information because they do not fit within the meaning of the term citizen of the United Republic.

**Proposed Remedy:** The provisions should be amended. The definition of the term person shall include both natural and legal person without restriction to citizenship or in alternative the term “person” should be substituted with the term “everyone”.

b. **Duty to Publish Information**

The provisions of section 9(1) (a) (b) & (c) obligates the information holder to publish the certain information within thirty six months (three years after coming into force of the Act. The information holder are required to publish a description of its structures and functions including those of its officers or advisory committee, statutory officers and advisory committees and general description of categories of information held by such information holder.

Again the provision is silent on a periodical publication. The section should have provided for a periodical basis of publication of information let’s say every year etc. Also, the provision does not state which language should be used in the publication of such information. The section ought to have stated this expressly.
Proposed Remedy: The provision should be amended to increase the scope of information which is required to be published to include budget or finances, contracts and other financial arrangements they have concluded with third parties. Also, the section should include the demand of periodical publication and language of publication.

c  Time for Responding to the Request
This section states that when access to information is requested, an information holder, shall as soon as practicable but not exceeding thirty days, after receiving a request notify the requester whether the information exists and give access if the information is accessible. The maximum limit of thirty days is high taking into account that some information may be needed for immediate use. The possible problem is that some information holder may take the time limit of thirty days as a normal time and delays access to information. The law should have provided a lesser period of time.

Proposed Remedy: The provision should be amended and a lesser period of time for responding to request should be introduced, otherwise some information holder may not be active in responding to request talking advantage of the maximum time limit.

d  Deferral of Access
This section gives an information holder powers to defer access to information until happening of a particular event where it is reasonable to do so at the public interest or having regard to a normal and proper administrative practices. This section is too broad and has no safeguards against the possible abuse by the information holder. Good practice was to stipulate a time limit for a deferral, let’s say three months etc.

Proposed Remedy: The provision should be amended to include time limit for deferral, otherwise the provision may be used to deny access to certain information.
e  **Use of Information**

This section creates an offence of distorting information. The section states that any person who receives information from an information holder shall not distort such information. If a person will distort such information commits an offence. The section does not state distorting information for what purposes or objectives. We are of the opinion that the section is too broad and capable of many interpretations.

**Proposed Remedy:** The provision should be amended to include the purposes for which distortion is made. For instance the provision should state that it is an offence to distort information received with intention to deceive the public etc.

f  **Review of the Decision**

Section 19(1) provides for a review of the decisions of the information holder to refuse access. The aggrieved person is required to apply for a review to the head of the institution. While the procedure is fairly commended, the problem arises when on reads the provisions of section 7(3) of the Act. According to this section, if the head of the institution fails to appoint information officer, he is required to act as an information officer. Then in the instances where the head will act as an information officer, section 19(1) is rendered superfluous. The drafters of the Act fail to capture these possible instances.

**Proposed Remedy:** The provision should be amended in order to state clearly that in event that the head of institution serves as an information officer then the application for a review should lie to the Minister.

g  **Access Fees**

Section 21 provides that information holder may charge fees for giving information. The section does not set limits for the fees which should be charged neither gives direction on how that charges should be calculated. Good practices show that, the law should only charge the fees commensurate with the reproducing costs. Normally, there are number of pages of information which are offered for free, again, it is unreasonable to charge fees for information which has been requested via the email. Leaving the provision as it is, some information holder
may use this as an alternative source of revenues.

**Proposed Remedy:** The provision should be amended to limit the fees charged only to the costs of reproducing information. Also, the provisions should state that the minister may prescribe regulations on how to charge fees in order to ensure uniformity in fees charged.

**Disclosure of Reasons**

Lastly, there is no any provisions in the Act requiring the person who are requesting access to information not to disclose the reasons. The Act only states that, the request for information may be made in a prescribed form. This form will be in regulations and therefore there is a possibility of demanding disclosure of reasons for which the information is sought.

**Proposed Remedy:** The Act should be amended to include a provision which states clearly that person requesting for information are not bound to disclose reasons. This should not be left to the prudence of the information holder.

**Key Recommendations**

- The Act should be amended to allow access to information by everyone, citizens and non-citizens, natural and legal persons.

  The Act should be amended to include provisions which should ensure that access to information is not expensive, and in some instances should be free of charge.

- The review procedure under section 19(1) should be amended to take into account the possibility of applying for a review direct to the Minister, in event the head of the institution also serves as an information officer under section 7(3) of the Act.

- The Act should be amended in order to set time limits in exercising the deferral powers under section 16 of the Act.

- The Act should be amended to broaden the scope of information required to be published under section 9(1) to include budgets or finances arrangements, contracts with the third parties etc. of the information holder. This may increase the level of transparency and
openness in the government.

- The Act should be amended to include an express provision requiring persons who are requesting information not to disclose reasons for which such information is sought.

- Stakeholder should consider of using the Court system for amendment given the fact that some of provisions as pointed above violates Article 18 of the URT Constitution, which provides for a right to “everyone” to seek, receive information.

**Concluding Remarks**

While most of the provisions of the Access to Information are fairly fine, there are some provisions which may hinder individual from enjoying the right to information. The Act as it stands denies access to information to individuals who are not citizens of the United Republic. This is against the International Law and Constitution of the United Republic of Tanzania, 1977. The Constitution and other International Human Rights Instrument extends the right to seek and receive information to everyone and not only to the citizens. Again, juristic persons and organizations may also be denied access to information unless their responsible officers request under their individual capacities. Also the Act ought to have included a provision which ensures that access to information are free of charge or alternatively should have limited the charges only to the cost of reproducing information. This ought to have been done in order to remove the possibility of some information holder to turn this opportunity into an income generating activity.

There is an immediate need to lobby for the amendment of the provisions which goes contrary to the established principles of international law and the constitution of the United Republic of Tanzania, 1977.

**3.2.2 The Access To Information Regulations, 2017**

This is a brief report of the analysis of the Access to Information Regulations, 2017. This report presents the level and extent to which the Regulations facilitate access and free flow of information, possible deficiencies and their impact on access to information, conformity to international and regional standards, as well as Article 18 of the Constitution of the United Republic of Tanzania, 1977.
These Regulations were made under Section 20 of the Access to Information Act, No.6 of 2016 (hereinafter referred to as “ATI”). The Regulations have two parts and one schedule. Part 1 provides for the preliminary provisions, while Part 2 provides for access to information and the schedule contains a prescribed form of request for information. They were published in the Government Gazette No.507 of 2017 on 29th December 2017.

Generally speaking, the Regulations have taken care of some of the omissions or gaps manifested in the parent Act, namely the ATI, 2016. They have given flesh to some of the skeletal provisions of the ATI by expanding the scope of the information to be accessed, obligations of the information holder, as well as free flow of information. In short, the Regulations have addressed some of the vital issues which were not provided for in the parent Act.

**The Level and Extent of Facilitation of Access to and Free Flow of Information**

The Regulations may be considered as a milestone achievement compared to the Parent Act. This is so because the Regulations have addressed some of the apparent omissions or gaps contained in the Access to Information Act. To a large extent, these Regulations have facilitated access to and free flow of information. They contain provisions which ensure free flow of information and unhindered access to information.

First, under Regulation 3, the information holder is obliged to establish, maintain and regularly update a widely accessible holder and user-friendly publication scheme, which may contain information it possesses, nature of its core functions, activities and operations. By requiring a widely accessible and user-friendly publication scheme, the Regulations intend to ensure unhindered access to information under the possession of the information holder. Furthermore, Regulation 4 (1) sets a minimum content of the publication scheme. At minimum, the scheme shall contain the name, nature, organization and functions of the information holder, its decision-making process and arrangements or agreements it may have with third parties in discharging its functions. Also, a fair description of the categories of documents and information it possess and its location, statement about the public’s right to request, review and retain copies of any such information. This is a far wider scope compared to parent provisions of the ATI, 2016. In addition, Regulation 4(2) requires maintenance of
hard and soft copies of the information at the premises of the information holder, or any other reasonable public places. This is meant to ensure that the user is able to access information in whatever form they want.

Interestingly, Regulation 5 (1) goes further to impose an obligation on the information holder to publish certain key information as soon as they receive or generate it even though there is no request for such information in place. Needless to say, this is meant to ensure free flow of information. The provisions of Regulation 5(2) list key information which the information holder is under obligation to publish. These are legislation, memorandum or charter for its establishment, its existing policy, procedure and rules, its budgets, the financial account, as well as contracts and annexes that have been entered into with third parties, its organizational chart and line of reporting, procedure for appealing decisions of the information holder or its officers and other information that would enable the public to gauge or monitor its performance. This is a commendable approach, which will not only ensure unhindered access to vital information, but also facilitate free access to information by the public. This regulation has expanded the scope of information which the information holder is obliged to publish.

Regulation 6 prohibits an information holder or officer from demanding that a person who is requesting access to certain information provide reasons for such a request and any other personal details except those which are necessary for communication purposes. This is a remarkable milestone and addresses the gap contained in the ATI, which was silent on this aspect and thus could thus potentially create an avenue for abuse by the information holder. Again, by putting this requirement in place, the regulation ensures unhindered access and free flow of information.

Along the same lines, Regulation 7(1) partly addresses the possible refusal to disclose information on the grounds that the requested information is exempt information. Instead of a general refusal or rejection, this regulation requires an information holder to sever the information when necessary and grant partial access to that part of information which can be severed from the general exempt information. This is meant to prevent possible abuse by the information holder and deny general access to certain information on the grounds that it is exempt information as provided by the ATI, 2016. Moreover, Regulation 7(2) imposes additional obligation on the information holder to give notice to the person requesting access to information, in case partial access is granted, informing him that only
part of information is provided after severance of the exempt part, reason for such a decision, name and designation of the person making the decision and right to apply for review regarding non-disclosure of part of the information. 29 This is meant to prevent abuse by the information holder and thus ensure unhindered and free access to information which can be consumed by the public.

In ensuring unhindered access and free flow of information, Regulation 8 (1) imposes an obligation on the information holder to disclose the information which relates to or supplied by a third party, and which is regarded as confidential by that third party. In disclosing this kind of information, the regulation requires an information holder to give a notice to that third party and invite them to make a written or oral submission as to whether the information shall be disclosed. 30 The only information which the Regulations prohibit from disclosure are trade or commercial secrets protected by the law. Other information may be disclosed if the public interest in disclosing such information outweighs the injury or harm to the interests of the third party. 31 This will do away with the tendency by public authorities to withhold certain information, especially that which relates to contracts on the grounds that they are confidential.

Lastly, Regulation 10(1) requires an information holder who is a public authority to hold or organize press conferences on a monthly basis and bring to knowledge of the public information of public interest. Furthermore, under Regulation 10(2), the information holder is under obligation to answer questions on issues of public interest. Also, the information holder is required to inform the public in due course about such press conferences or other actions organized by it. 32 This is meant to ensure free flow of information to the public since under this Regulation, the public is supposed to be updated monthly on vital information held by the public authority. Given the fact that the information holder is under obligation to answer questions on issues of public interest, the general public will be informed on all important matters concerning their nation and welfare at large.

At this point, we can conclude that the Regulations have to a large extent facilitated access to and free flow of the information. Also, they have plugged some of the gaps or omissions contained in the parent act, namely

29 This is provided under Regulations 7(2) (a)-(d) of the Regulations.
30 Regulation 8(1) (a) and (b), ibid.
31 See Regulation 8(3), ibid.
32 This is provided under regulation 10(3) of the ATI Regulations, 2017.
Regulations Deficiencies and their Possible Impact on Access to Information

The only noted deficiency of the Regulations is its omission on addressing issues relating to fees, which may be charged by the information holder in granting access. The provision of Section 21 of ATI, 2016 provides generally that the information holder may charge fees necessary for covering the actual cost of production. This is understandable and clear in terms of access to information in hard copy, but, as we are aware, access may be granted to soft copy information too. How can soft copy information be charged for? Should it be provided free of charge? Determining the actual cost of production of hard copy is relatively easy, but this is not the case for soft copy unless it is declared that it is free of charge. It would have been advisable to have a regulated fee for soft copy access. Alternatively, it should have been declared that it is free of charge.

Regulations’ Conformity with the International and Regional Standards on Access to Information

Suffices it to say at the outset that the Regulations have to a large extent taken into account the acceptable regional and international standards on access to information. For instance, on the scope of the information which the information holder is required to publish, this is in conformity with provisions of the African Model Law on Access to Information.33 Again, this is provided for under Article IV (2) of the Declaration on the Principles of Freedom of Expression in Africa, 2002. The principle states that public bodies should be under obligation to publish key information and widely disseminate documents of significant public interest. Information such as contracts and financial budgets, as well as other information sufficient to enable the public to monitor the performance of the information holder was not included in the scope of information under the ATI, 2016. The abovementioned standards have been well captured by the ATI Regulations.

Again, the requirement for regular update of the publication scheme and organization of press conferences on a monthly basis in order to inform the general public of information of public interest is in conformity with the

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33 See section 7 (g) & (f) of the African Model Law on Access to Information, 2012
minimum international and regional standards, which require proactive publication of information, especially that which is in the public interest.34 So far, the provisions contained in the Regulations have conformed with the acceptable regional and international standards on access to information.

**Regulations’ Conformity with Article 18 of the Constitution of the United Republic of Tanzania**

The Regulations are to a great extent in conformity with the provisions of Article 18 of the Constitution of the United Republic of Tanzania, 1977. This is so opined because most of the provisions of the Regulations are centred on ensuring free access and flow of information. The requirement that the information holder publish certain types of information which is vital and grant unhindered access to the public is a facilitation of the right to information as provided for under Article 18 of the Constitution. In short, save for some provisions of the ATI, 2016 which are still problematic, the provisions of the Regulations are a vehicle through which the right to information can be realized to a great extent.

**Concluding Remarks**

Generally, this thorough analysis has shown that the Regulations are in conformity with the regional and international standards, as well as Article 18 of the Constitution of the United Republic of Tanzania. That being the case, they may be an important tool in facilitating access to and free flow of information. Without prejudice to the foregoing, the effectiveness of the Regulations may still be hampered, taking into account the fact that they will still be subjected to their parent Act, the ATI, 2016. In other words, the Regulations are inferior to the ATI, 2016, and thus some provisions may still be used to defeat the good purpose of the Regulations.

3.3 **The Media Services Act, 2016**

3.3.1 **The Media Services Act, 2016 Analysis**

This is a report by Consultants engaged by Media Council of Tanzania (MCT) to investigate and analyze the Media Services Act, 2016 (herein after referred to as “MSA”) in order to identify potential threats to press freedom and freedom of expression. This report includes the MSA compliance to Constitution of the United Republic of Tanzania, International and

Regional Standards as well as good practices on press freedom and freedom of expression. Also it includes general weaknesses of the Act and suggests possible remedies to be undertaken by MCT and its partners.

On 5th of November 2016, the Parliament of United Republic of Tanzania enacted the Media Services Act and the same has been assented by the President on 16th day of November 2016. This Act provides for promotion of professionalism in the media industry, establishment of the Journalists Accreditation Board, Independent Media Council and framework for regulation of the media services and for other related matters.35 It is worth noting at this juncture that in the process of making this Act, the stakeholders were not involved and therefore couldn't present their proposals on the draft bill.

Structurally, this Act has eight parts, 67 sections and one schedule. Application of the Act is confined only to mainland Tanzania. It is worth noting that, MSA 2016 has introduced new provisions which were not featured in the Media Service Bill of 2015, for instance section 7 which provides for right and obligations of the media houses and journalists, sections 22 which establish Media training fund, section 58 which provides for power of the Minister to prohibit importations of publications and section 59 which provides for powers of the Minister to prohibit or sanction publication of any content which in his opinion jeopardizes national security or public safety.

Also, there are some improvements made under this new Act, compared to the MSA Bill of 2015. Some of the recommendations from stakeholders have been taken into considerations. For instance, the requirement of imposing limitations in provisions which provide for sentencing and fines has been taken on board. However, most of the recommendations from stakeholders from CORI were not taken. The comparison between the recommendations by CORI vis-à-vis the Act shows that out of the 62 recommendations made by CoRI, 12 were fully taken into consideration, 15 were partially taken and 35 were not taken at all (see the annexure 1)

Again, the Act contains a number of weaknesses such as the retention of accreditation of the journalists, licensing of the printing media, criminalization of the defamation, seditious offences, establishments of non-independent regulatory bodies and replication of some of the draconian provisions from the Newspaper Act, 1976, for instance section

35 See preamble to the Act.
58 and 59 which gives power to Minister to prohibit importation or sanctioning of any publication in his absolute discretion if in his own opinion such publication is against public interest or jeopardizes national security.

Lastly, the report proposes some remedial measures which may be undertaken by MCT in order to address the identified issues of MSA, 2016. These are advocacy and lobbying strategy, constitutional petition and Strategic Litigation before East African Court of Justice (EACJ).

**Impacts of the MSA, 2016 to Press Freedom, Freedom of Expression and Journalism Practice in Tanzania.**

This part of a report analyses the provisions of the MSA 2016 in order to see their impacts on press freedom and freedom of expression, editorial independence, self-regulation tradition of the media in Tanzania as well as their conformity with the Information and Broadcasting Policy of 2003. Freedom of expression is undoubtedly the basis of journalism. The media should be free in seeking and imparting information to the general public. Technically, the MSA 2016 was supposed to be an Act to promote the right to freedom of expression as enshrined under Article 18 of the Constitution of the URT and other International Human Rights instruments. For that reason it was supposed to be an act to promote press freedom and create a conducive environment for flourishing of the media houses as per Information and Broadcasting Policy, 2003.36

Paradoxically, the Act contains some of the provisions which curtail or limit the press freedom in Tanzania. For instance, section 19 (1) of the MSA requires all journalists to be accredited before allowed to practice journalism. This means that without an accreditation, a person cannot practice journalism. According to this Act, journalism means gathering, collecting, editing preparing or presenting news, stories, materials and information for a mass media.37 Therefore this task is confined only to a few accredited groups of people contrary to the right of freedom to seek, receive and impart information which should be enjoyed by everyone without discrimination. Although the possible objective of this seems to improve the media services and ensure the credibility of the industry, there is a legitimate concern that most citizens lack basic education and multiple

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37 See the definition of the journalist under section 3 of the MSA, 2016.
source of information in order to form an independent opinion. For that reason, an alternative, and less restrictive, means to increase the quality of media services would have been adopted, for instance sanctioning of offensive content etc.

Strangely, the Act also contains provisions which seem to vest the editorial powers to the Minister. These are section 58 and 59. According to section 58, the Minister has been empowered to prohibit importation of any publication which in his opinion is contrary to the public interest; the Act is silent on what amounts to a public interest. Worse still, the provisions of section 59 empower minister to prohibit or sanction the publication of any content which in his opinion jeopardizes the national security or public safety. Strictly speaking these are editorial powers given exclusively to the Minister to monitor the contents of the print media in the country. It is undoubtedly that section 59 may be used by the Minister to filter the contents of the print media. So it is safe at this juncture to say that, this provision seems to erode editorial independence and consequently restrict the press freedom and freedom of expression.

Moreover the provision of section 7(2) (b) (iv) of the Act may negatively affect the editorial independence. The section in question states that all licensed private media houses shall broadcast or publish news or issues of national importance as the Government may direct; and maintain accountability and transparency. This gives a room to the government to control issues which these media may publish or broadcast. Needless to say this interferes with the editorial independence of the media houses.

For over twenty years, media in Tanzania has been a self-regulatory regime and very successful.38 One of the objectives of the Information and Broadcasting Policy, 2003 is to encourage the journalists to establish a body for regulating their affairs.39 It suffices to say the Policy envisages a self-regulatory body and not otherwise. However under the MSA, 2016 this long standing culture seems to come to an end. This is because the MSA establishes regulatory bodies with the government hand in it. First it establishes the Journalists Accreditation Board under section 11 and Independent Media Council under section 24 of the Act. These bodies which were supposed to be free in their operations are not free, so to say. The members of the board are all appointees of the Minister and

39 See policy statement 1.2 of the Information and Broadcasting Policy, 2003 which reads as follows “Kuhamashisha wanahabari kuanzisha na kuendeleza chombo cha kusimamia maadili ya taaluma ya Habari na Utangazaji”.
are accountable to him as per section 12(1) of the Act. For this reason, the independence of the board may be called into question. Again, this is contrary to the principles of international law and good practices. Ordinarily these bodies’ members are not supposed to be appointed by the government. Good practice is to recruit them on a competence based. In the same line, the Independence of the Media Council may be jeopardized by the fact that in discharging its functions, the council is supposed to consult with the board which is comprised of the government/minister appointees.40

To some extent the MSA 2016, does not conform to the Information and Broadcasting Policy, 2003. Ordinarily and as a matter of procedure the laws are enacted to enforce the policy. In other words, the laws are enacted to give force to the directives of the policy. For instance, Policy statement 2.1.1 of the Information and Broadcasting Policy, 2003 calls for the government to eliminate barriers which hinders citizens from accessing information. To carry out the spirit of this policy statement one would expect the MSA to create an environment which would allow citizens to access information without unnecessary barriers. However the MSA is providing to the contrary. The MSA insists on strict accreditation of the journalists, licensing of the print media, unnecessary censorship of the contents and other directives to the media houses which adversely affect the right of citizens to access information. Instead of eliminating barriers, the MSA seems to create ones.

Furthermore, the policy statement 2.2.1 calls for a government to review the Newspapers Act, 1976 and the Broadcasting Services Act, 2003 in order to ensure that citizens are enjoying their right to freedom of expression. Under policy statement 2.2.2, the government is required to ensure that the complained laws are amended accordingly. Surprisingly, the MSA still retains some of the draconian provisions of the Newspaper Act, 1976 which gives Minister unfettered power to control the contents of the print media. Sections 58 and 59 of the MSA are the replica of the Newspaper Act, 1976 provisions.

40 Read section 26(1) of the MSA, 2016.
**MSA conformity with the United Republic of Tanzania Constitution, International, Regional standard and good practices on press freedom and freedom of expression**

Tanzania is a signatory to a number of International Human Rights instruments including the International Covenant on Civil and Political Rights, 1966 (ICCPR) and the African Charter on Human and Peoples’ Rights, 1981 (AfCHPR). These instruments provide for a right to freedom of expression which is a basis of journalism. Freedom of expression includes the right to seek, receive and impart information or ideas regardless of frontiers.41 Tanzania as a signatory to these conventions is required to guarantee the right to freedom of expression including the right to seek, receive and impart information.

In line with this, there is a Declaration of Principles on Freedom of Expression in Africa, 2002, although not binding but it was adopted by the AU in order to guide the state parties to African Charter on Human and People’s Rights (Tanzania inclusive) on how to implement the freedom of expression as provided under Article 9 of the Charter. The Declaration provides a guideline to state on how to ensure that their citizens are fully enjoying the right to freedom of expression.

Comparing the provisions of the MSA with the principles outlined in this Declaration indicates clearly that the MSA has not reached the acceptable standards of the law promoting freedom of expression.

For example, Article I (1) of the Declaration provides expressly that freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy. Moreover, sub article 2 provides that everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination. The gist of this article is to guarantee the right of freedom of expression

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41 See Article 19 of the ICCPR, 1966. Again, the African Charter on Human and People’s Rights gives a freedom to receive information, seek and express opinions within a legal boundaries. This is provided under Article 9 of the Charter.
against unnecessary interference by the government and more importantly to ensure that the right is exercised by all people without discrimination. Under the MSA there are provisions which go contrary to what has been provided under the above article. For instance section 19(1) is in clear violation of this principle by barring people from exercising their right to seek, receive and impart information. The section in question introduces an element of journalists’ accreditation and bars anyone from practicing journalism unless accredited. In short it bars a person from gathering, collecting information, stories, news and disseminate them to the general public. Again, section 7(3) of the Act bars media houses from issuing information for a number of reasons stated thereunder. While some of the reasons are justified, others are too broad and lacks a clear definition, for instance the Act does not state what are kind of information which undermine national security or what amounts to a hate speech. Leaving them as they are may subject the media house in a situation of fear and consequently affect their freedom.

Moreover section 58 and 59 of the Act gives the minister unfettered power to prohibit importation of any publication or publication of any content which in his opinion is contrary to the public interest or jeopardizes national security or public safety. These are draconian provisions which may adversely affect the right of the people to seek, receive and impart information regardless of the frontiers.

Article V (1) of the Declaration, provides that states shall encourage a diverse, independent private broadcasting sector. A State monopoly over broadcasting is not compatible with the right to freedom of expression. Section 7(2) (b) (iii) & (iv) of the MSA, seems to be in conflict with this principle. Under this section the government seems to give direction on the private media house on kind of information they are supposed to cover. For instance section 7(2)(b)(iv) states that the government may direct the private owned media houses to broadcast or publish news or issues of national importance. Good practice is to let the media be free to broadcast or publish any news of their choice as long as they do not violate the laws of the land. The provision of this kind may be used to encroach independent private broadcasting.

The provisions of Article VIII (1) of the Declaration states that any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately
protected against interference, particularly of a political or economic nature. Also, the appointments process for members of a regulatory body should be open and transparent, involve the participation of civil society, and shall not be controlled by any particular political party.42 In addition to that, any public authority that exercises powers in the areas of broadcast or telecommunications should be formally accountable to the public through a multi-party body.43

It is clear that the Journalists Accreditation Board which has enormous powers in regulating the journalism profession in Tanzania does not meet the standards prescribed under the above article. All seven members of the board are appointees of the Minister as per section 12(1) of the MSA. Again, these members are accountable only to the minister who has appointed them contrary to what is required under the principles of the Declaration. Due to these reasons the independence of the board may be called into question. Good practice on this aspect is to recruit members based on a competitive recruitment process. Direct appointments is likely to affect the independence of the appointees unlike when they have been recruited basing on their competence.

More interesting is the provision of Article X (1) of the Declaration which states clearly that the right to express oneself through the media by practising journalism shall not be subject to undue legal restrictions. As stated earlier above by subjecting journalists to the process of accreditation is unnecessary legal restriction which unnecessarily affects the right to freedom of expression. Section 19(1), (2) and (3) of the MSA are in clear confrontation with this principle. Again other requirements of licensing are deemed to be unnecessary requirements which affect the right to freedom of expression and press freedom.

Under the Constitution of the United Republic of Tanzania, the right to freedom of expression is provided under Article 18. The Constitution gives everyone the right to seek, receive and impart information regardless of the national frontiers. However most of the provisions of the MSA seems to derogate from this right. By subjecting media to unnecessary censorship, licensing and accreditation requirements, the right to freedom of expression is jeopardized. Under MSA ordinary citizens may not gather and collects information for the purpose of disseminating them to the

43 Article VIII (3), ibid.
public unless they are accredited journalists. 44 Again sections 58 and 59 of the MSA which gives minister absolute and discretional powers to prohibit and sanction importation and publication of the print media are contrary to Article 18 of the Constitution. The unfettered power of the minister under these section affects the individual right to freedom of expression which includes the right to seek, receive or impart information regardless of the national frontiers as provided under the Constitution.

**Gaps and Weaknesses of the MSA**

First, the Act prohibits journalists from practicing journalism unless they are accredited. This limits the right to freedom of expression. The provision of section 19(1) restricts a person from practicing journalism unless he has been accredited by the board. Generally, prohibiting individuals from practicing journalism unless they are licensed violates the right to freedom of expression. The right to express oneself through the mass media belongs to everyone not just a selected group who meet certain requirements. Arguably, the requirement of accreditation may have been purposely done in order to promote professionalism of journalists but this is not the least restrictive means to enhance the professionalism. There are other means which could have been put in place to achieve the same purpose. For example, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Expression has stated that journalists voluntarily adhering to the Declaration of Principles on the Conduct of Journalists, which is a global standard of professional conduct, would likely achieve this aim. 45

Notably, the term “journalism” is not defined under the Act, however from the Act’s definition of “journalist,” it can be inferred that “journalism” is the gathering, collecting, editing, preparing or presenting news, stories, materials and information for a mass media service. 46 This broad definition encompasses all sorts of individuals, many of who would not necessarily fall under the traditional definition of journalist. Indeed, journalists should be “understood to be individuals who are dedicated to investigating, analyzing and disseminating information, in a regular and specialized manner, through any type of written media, broadcast media (television or radio) or electronic media. 47 Restricting those who can “practice

44 See section 19(1) of the MSA, 2016.
46 Read section 3 of the Media Services Act, 2016.
47 Article 19, Tanzania-Analysis of the Media Services Bill, 2015
journalism” to individuals that are officially accredited violates the inborn right of one to express himself/herself.

Second, the Act establishes media regulatory bodies that lack independence and specific regulatory guidelines. Section 11(1) of the MSA establishes the Journalists Accreditation Board. All members of the board are appointees of the minister as per section 11(1) (a)-(f) of the Act. Under the international standards and good practices, media regulatory bodies must be independent, and adequate safeguards against abuse must be in place.

The third identified weakness is a criminalization of the defamation. Sections 35 and 36 of the Act provide for defamation. The provision of section 38(3) of the Act shows clearly that defamation may attract both civil and criminal liability. Criminal defamation laws are especially problematic from the point of view of free expression. They can lead to the imposition of harsh sanctions, such as a prison sentence, suspension of the right to practice journalism or a hefty fine.48 Even if they are applied with moderation, criminal defamation laws still cast a long shadow: the possibility of being arrested by the police, held in detention and subjected to a criminal trial will be in the back of the mind of a journalist when he or she is deciding whether to expose, for example, a case of high-level corruption.49 International bodies such as the UN has recognized the threat posed by criminal defamation laws and have recommended that they should be abolished.50

Criminal defamation violates the freedom of expression enshrined in Articles 18 of the Constitution of the United Republic of Tanzania, 19 of the ICCPR and 9 of the African Charter of Human and People’s Rights. For instance, the African Court on Human and People’s Rights has held that defamation should be criminalized only in limited circumstances and that imprisonment for defamation violates the right to free speech guaranteed in Article 9 of African Charter of Human and People’s Rights and Article 19 of the ICCPR.51

In addition to that, the Act still contains seditious offences under section 53(1). Many states have abolished seditious offences in their laws. For instance in Africa, Ghana has already abolished seditious laws and

49 Ibid.
50 Ibid.
applauded by the international community. Freedom of expression is important for a democracy and development. Not only does it act merely as an irritant to the state but through freedom of expression, Journalists, publishers, bloggers and NGOs may highlight issues of concern and propose solutions without fear. When their right to speak freely and frankly is curtailed, either directly by the state, or indirectly by the threat of disproportionate action, so is their ability to underwrite the fundamental rights and freedoms of their fellow citizens.52

Fourth, vagueness of some of the provisions of the Act. There are some provisions in the MSA which are vague and ambiguous and they are likely to bring problems in their application. For example the provisions of section 8 which prohibits a person from publishing, selling, offering for sale, importing, distributing or producing print media without being licensed. It is not clear from the wording of this section what does it actually prohibits? Does it prohibit cumulative acts of person publishing, selling, offering for sale, importing, distributing or producing print media without a license or any of the individual acts stipulated in the section? Does it mean that even the vendors of the newspapers require licenses before distributing them? It is a problematic provision and needs an immediate clarification otherwise its consequences may be far reaching.

Again, the provisions of section 7(3) (a) (i) and (c) prohibit a media house from issuing information which undermine the national security of the United Republic or constitute hate speech respectively. The Act does not stipulate which kind of information may jeopardize the national security nor does it stipulate what amounts to hate speech. Good practice is to include the list or definition of what amounts to hate speech or jeopardizing a national security in order to put media houses in a better position of understanding what they should publish and what they shouldn’t. Otherwise this is a sugar coated censorship which may threaten the press freedom.

The fifth weakness of the Act is the requirement of the licensing of the media house and especially the print media. Under section 5(e) of the Act, the Director of Information Services Department has been vested with the powers to issue a license to print media. This is unnecessary curtailment of the press freedom and freedom of expression. While licensing is important especially for the broadcasting media but extending it to a print media is

unreasonable and serves nothing than curtailing the freedom of expression. Technically speaking, licensing requirement is an impermissible restriction on the right to freedom of expression.

Another weakness is the establishment of the non-independent regulatory bodies. The Journalists Accreditation Board established under section 11 and Independent Media Council established under section 24 is not independent as they ought to be. The members of the board are appointees of the Minister while best practices suggest that members of these bodies should not be appointees but rather recruited through a competitive process in order to ensure their independence. Again, the so called Independent Media Council is not independent because in performing its functions outlined under section 26(1) is required to consult with the board whose members are all appointees of the Minister. In other words, the Council cannot do anything unless it has consulted the Board.

The last provision in our review is section 54 of the MSA which criminalizes false news, rumors and report. False news and rumors are very broad and subjective term. The section also punishes the offender without looking at the intention of the publisher of the news.

**Proposed Remedial Measures**

After rigorous review and analysis of the MSA, the team suggested the following remedial:

(i) **Advocacy & Lobbying**

The team advises MCT to adopt advocacy and lobbying strategy calling for the amendment of the provisions which contravene principles of International law and Constitution of URT. Moreover under section 65 of the MSA the Minister is empowered to make regulations for the better carrying out of provisions of the Act. The MCT may take advantage of this opportunity and lobby for better regulations which may address some of the complained issues and ensure that the enacted regulations complies with principles and standards of International Law and Constitution.

**Advantages of Advocacy & Lobbying**

- Most of CoRI recommendations which were not taken can be included

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in regulations. Interestingly, many issues under the Act require regulations for their operations. For instance, under section 65 of the Act, the Minister is required to make regulations which will provide for terms and conditions for operation of licensed media house, licensing print media, requirement and procedure for accreditation. Possibly, through this mechanism CoRI recommendations may be taken.

- Some sections are vague, therefore the Parliament will be required to amend the provision before enforcing them. For instance section 8 of the MSA is worded in a way that it is difficult to comprehend its intention.

**Disadvantage of Advocacy & Lobbying**

- No guarantee to win the issues

(ii) **Constitutional Petition**

Another available avenue which MCT may take is lodging a Constitutional Petition before the High Court of the United Republic of Tanzania. This is because, there are some provisions under MSA which contravene the URT Constitution especially Article 18. Therefore by using Article 26(2) or Article 30(5) of the URT Constitution, MCT may lodge a Constitutional petition challenging the stated provisions of the Act.

**Advantages**

- Cost effective, the main registry is located in Dar es Salaam;
- Judgment has more value and easy to be enforced; and
- Under the new rules the case may be determined in a short period of time

**Disadvantages**

- Independence of Judiciary may be questionable especially on cases of this nature;
- Court may be reluctant to apply International Law and International principles on freedom of expression in testing the validity of the Act in question
- There are a lot of proceeding technicalities
(iii) **Strategic Litigation before East African Court of Justice (EACJ)**

The team has established that some provisions of the Media Service Act 2016, violate freedom of expression and thereby constitutes violation of Tanzania’s obligation under the Treaty to uphold and protect human and peoples’ rights standards as specified in Articles 6(d), 7(2) of the Treaty and Article 6(d) of the EAC treaty. These articles provide for principles of community including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and people’s rights in accordance with the provisions of the African Charter on Human and Peoples’ Rights.

The team established that provisions of the Media Service Act, 2016 violate Articles 6(d), 7(2) and 8(1) (c) of the Treaty in the following ways:

- That the Journalists Accreditation Board powers to accredit, cancel or suspend journalists from the roll of journalists as provided under section 13 (a) (h) and 14(b) of the MSA violate Articles 6(d), 7(2) and 8 (1) (c) of the Treaty for the Establishment of the East African Community.

- That the criminal defamation as provided for under sections 35 and 36 of the MSA pressed for unjustified restriction on the right to freedom of expression and right to access information and thus violate Articles 6(d), 7(2) and 8 (1) (c) of the Treaty for the Establishment of the East African Community.

- That the criminalization of the publication of false news under section 50 and 54 is an impermissible restriction on the right to freedom of expression and access to information and thus violate Article 6(d), 7(2) and 8 (1) (c) of the Treaty for the Establishment of the East African Community.

- That the criminalization of seditious statements under sections 52 and 53 of the MSA restricts the freedom of expression and access to information and thus violate Articles 6(d), 7(2) and 8 (1) (c) of the Treaty for the Establishment of the East African Community.

- That the unfettered powers of the Minister to prohibit importation
or sanctioning the publication of any print media under sections 58 and 59 of the MSA restrict the right to freedom of expression and access to information and thus violate Articles 6(d), 7(2) and 8 (1) (c) of the Treaty for the Establishment of the East African Community.

**Advantages of EACJ**
- It has original jurisdiction: no need of exhaustion of local remedies
- Decisions are binding among the members states
- Independence of judiciary: because of its composition it is hard for a member state to influence the bench
- Less technicalities on issues of procedure

**Disadvantage of EACJ**
- Cost of litigating is high
- Tendency of the states to ignore decision of regional court
- Time limitation, under article 30(2) of the Treaty a case must be lodged within a period of 60 days (two months)

**Summary of the Analysis**

**MSA compliance with the International/Regional Standards, Constitution and Good Practices on Press Freedom and Freedom of Expression**
- Some of the provisions of MSA do not meet standards prescribed under the International Instruments on Freedom of Expression such as the ICCPR, African Charter on Human and Peoples’ Rights and the Declaration on the Principles of the Freedom of Expression in Africa, 2002. Again, it does not to a large extent conform to the best practices on ensuring the press freedom and freedom of expression.
- Some of the provisions such as section 19, 58 and 59 contravenes article 18 of the Constitution of the United Republic of Tanzania by limiting the right to seek, receive and impart information regardless of the national frontiers.
- Some of the provisions of MSA such as section 19, 58 and 59 violate Articles 6(d) and 7(2) of the Treaty for the Establishment of the East
African Community.

**Weaknesses of the MSA**
- Criminalization of Defamation
- Accreditation of Journalists
- Licensing of the print media
- Retention of seditious offences
- Unfettered powers of the Minister
- Non-Independent Regulatory bodies
- Criminalization of false news, rumors and reports

**Concluding Remarks**
As noted in our analysis earlier, the MSA, 2016 still contains provisions which are very dangerous for the press freedom. The Act gives the Minister unfettered power to control print media under sections 58 and 59. Furthermore, some of the provisions of the MSA such as those requiring journalists’ accreditation, licensing of the print media and criminalization of defamation are contrary to the established principles of the International Law on freedom of expression. Instead of promoting the right to freedom of expression, the Act can be used by the Minister/Government to suppress the press freedom and freedom of expression.

In addition to that, some of the provisions of the MSA such as sections 19, 13(a), 58 and 59 are contrary to Articles 6(d) and 7(2) of the Treaty for the Establishment of the East African Community. Also, to some extent the MSA does not conform to the Information and Broadcasting Policy, 2003. There are provisions in the MSA as discussed in part 2 above which are contrary to the objectives and spirit of the Policy. After all that, it suffices to say that the MSA, 2016 is a potential threat to the Press Freedom and Freedom of Expression in Tanzania. The Act contains draconian provisions which are likely to compromise the press freedom. It is high time now for the stakeholders to start lobbying for the amendment of the problematic provisions which we have identified or pursue other remedies we have proposed in our analysis.

**3.3.2 The Media Services Regulations, 2017**
This is a report of the analysis of the Media Service Regulations, 2017. It is
divided into eight sections. Specifically, the report addresses the following issues, impacts of the regulations to the editorial independence, freedom of expression and media freedom, conformity of regulations with the international standards, constitution of the United Republic of Tanzania and East African Treaty, and impacts of the regulations on the tradition of media self-regulation.

These Regulations were made pursuant to the provisions of section 65 of the Media Services Act, 2016. They were published in the Government Gazette No.18 of 2017. The regulations contain 28 regulations and two schedules. Generally the regulations has covered matters relating to licensing of the print media, content control of the media news, accreditation of journalists as well as procedures for appeal and other pertinent matters.

Through this analysis, the following has been found. First, the regulations impose stringent conditions for licensing of the print media. Second, the regulations seem to direct the media houses on what kinds of the news they should publish in their media and what they shouldn’t. And thirdly, provide categories of the persons who can be accredited to practice journalism as well as education requirement. All these have adverse impacts on the right to freedom of expression, media freedom as well as editorial independence. Consequently some of the provisions of regulations fall short of the acceptable international and regional standards on freedom of expression and media freedom.

Lastly, this report provides key recommendations on how to address the identified problematic provisions of these regulations.

**Regulations’ Conformity with the International and Regional Standards**

This part of the report looks at the conformity of the provisions of the Media Services Regulations with international as well as regional standards on the freedom of expression and media freedom.

At international level, the right to freedom of expression is articulated in two documents namely, the Universal Declaration of Human Rights, 1948 and the International Covenant on Civil and Political Rights, 1966. The right to freedom of expression is provided in article 19 of each instrument. This right includes the right to seek, receive and impart information and ideas without regard to frontiers. What is important to note is that the
Right to expression belongs to everyone, and no distinction is permitted. It is the right to tell others what one thinks or knows in private or via the media. The right to freedom of expression does not just apply to information and ideas generally considered to be useful or correct.

The provisions of article 19(3) of the ICCPR provides some restrictions which can be imposed on the right to freedom of expression. The restrictions shall be provided by the law and are necessary to ensure the respect of the rights or reputations of others and protection of the national security or public order, public health or morals. These limitations are the exception and not the rule. Interestingly, these limitations have been exclusively provided and are not open-ended and thus no addition is permitted. Any limitation of the right to freedom of expression must be truly necessary.

Generally, some of the provisions of the Media Services Regulations fall short of these standards. The regulations contain unnecessary restrictions to the right to freedom of expression. Regulation 8 imposes some restrictive conditions in applying for a print media license (see discussion later). Moreover, the regulations restrict the right to practice journalism (the right to express oneself through media) only to the few accredited journalists. Also, they restrict the freedom of the media to publish news by giving directives of what should be and what should not be published. So it suffices to say that some of the provisions of the regulations as identified above fall short of the international standards.

On the regional level, the right to freedom of expression is provided under Article 9 of the African Charter on Human and Peoples Rights, 1981. This article provides that “every individual shall have the right to receive information. And every individual shall have the right to express and disseminate his opinions within the law. Fortunately in Africa, there is a Declaration of the Principles on the Freedom of Expression in Africa of 2002. This declaration gives states directives on how to effectively implement the right to freedom of expression. Article XVI of the Declaration requires all state parties to the African Charter to make every effort to give practical effects to the principles.

Article 1 of the Declaration guarantee a freedom of expression to everyone. This include the right to seek, receive and impart information and ideas. This is inalienable right and an indispensable component of the
The right to express oneself should be enjoyed without discrimination of any kind. The provisions of article II of the Declaration states that any restrictions on the right to freedom of expression shall be provided by law, serve a legitimate interest and necessary in a democratic society.

Some restrictions which are contained in the Media Services Regulations are unnecessary. For limitations to stand, they must be truly necessary in achieving a legitimate aim which they seek to achieve. For instance, issues of accreditation and licensing of the print media are not necessary limitations in the right to freedom of expression. Because there are other less restrictive measures which could have achieved the same purpose. Therefore, they fall short of standards acceptable in international law.

Furthermore, the provisions of Article VI of the Declaration provides for the editorial independence of the public services broadcasters. It imposes obligation on the state to ensure that their freedom is guaranteed.

The Media Services Regulations do not have any provision which guarantees the editorial independence. The provision of regulation 5 which imposes conditions on the media houses on what type of news they should publish and what they shouldn’t abrogates the editorial independence of the media houses.

Article VIII (1) of the Declaration provides in clear terms that registration of the print media shall not impose substantive restrictions on the right to freedom of expressions.

The Regulations provides contrary to this principle. They contains provisions imposing unnecessary conditions in the licensing of the print media. Apart from restrictive conditions in applying for a license, the licensing of the print media itself is unacceptable practice in ensuring the freedom of expression. Therefore the provision of regulation 8 which provides for a licensing and conditions thereof is contrary to this principle.

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57 See article 2
Further, the provisions of regulation (6) (1) imposes some conditions which are not necessary and can only be used to monitor and control the publications of the print media to suit the interest of the government. In turn this can affect the right to freedom of expression and media freedom in general. According to this regulation, every licensed print media is required deliver two copies in print and in electronic format to the director and national archives Department at its own expense. One can hardly find any rationale or justification for this requirement.

Another restriction can be found under the provisions of regulation 14 (1). Under this regulation the licensed print media may be required to maintain information as may enable the director to perform its functions. Again, the director may order the licensed print media to submit periodic reports, statistics and other data. The impact of this regulation is to give the government an upper hand in controlling the publication of the print media. Consequently, the right to freedom of expression and media freedom may be jeopardized.

Interestingly, the provisions of article X (2) of the Declaration provides that the right to express oneself through media by practicing journalism shall not be subject to undue legal restrictions. In other words there should not be any undue legal restrictions baring a person from practicing journalism.

The provisions of the Media Services Regulations are contrary to this principle. Under regulation 17, a person cannot practice a journalism unless he has been accredited by the Accreditation Board. Furthermore there are conditions for accreditation. First, the categories of people who are eligible for accreditation are editors, reporters, freelancers, correspondents, photographers, news producers and radio and television broadcasters working with media houses, foreign journalist, students pursuing journalism, mass communication or related field and members of the public with outstanding service for the media profession.58

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58 Read regulation 17(1) (a) (b) (c) and (d) of the Media Services Regulations, 2017.
Second, being in those categories is not automatic qualification for accreditation, one must attain a minimum level of education as stipulated under regulation 17(2) (a) and (b). To be accredited one must be a holder of diploma or degree in journalism or media related studies from a recognized institution or holder of any diploma or degree in media related studies. Therefore these requirement may act as a restriction to a number of people who may want to practice journalism contrary to the acceptable international standards.

Finally, the provisions of article XIII (2) provides that privacy laws shall not inhibit the dissemination of information of the public interest. This is meant to ensure that the public is not deprived of its right to receive information particularly those of public interest.

The provision of regulation 5(1) (e) imposes an obligation to the media house to avoid intrusion or probing into private lives. This prohibition is too general and may deny the public their right to receive information especially those of public interest. Therefore this restriction goes contrary to the acceptable standards.

What can be deduced from the above discussion is that, still the Media Service Regulations contain provisions which fall beyond the acceptable international standards on the freedom of expression and media freedom.

**Regulations’ Conformity with the East African Community Treaty and Constitution of the United Republic of Tanzania**

This part of the report examines the provisions of the regulations against the East African Community Treaty, 1999 and the Constitution of the United Republic of Tanzania, 1977. Tanzania is a member state of the East African Community. Therefore it is important to examine the provisions of these regulations with the provisions of the East African Community Treaty, in order to see whether the provisions of the regulations are in conformity with the provisions of the treaty particularly those which call for good governance, democracy, rule of law, maintenance of the universally accepted standards of human rights and protection of human and people’s rights in accordance with the provisions of the African Charter on Human and Peoples Rights, 1981. These are provided under article 6(d) and 7(2) of the Treaty.
It is clear that some of the provisions of the regulations are contrary to the fundamental principles of good governance, democracy, rule of law, maintenance of the universally accepted standards of human rights as well as protection of human and people rights pursuant to the provisions of the Banjul Charter. As we have seen under section 2 of the report above, regulation 8 which imposes unnecessary conditions in the licensing of the print media, regulation 17 which imposes a requirement of accreditation before one can practice journalism and the provisions of regulation 5 which is a technical censorship to the media houses are contrary to the articles 6(d) and 7(2) of the East African Community.

When the right to freedom of expression and media freedom is restricted unreasonably, there cannot be good governance, rule of law, democracy and protection of human rights.

The right to freedom of expression is also guaranteed in the Constitution of the United Republic of Tanzania, 1977. This is provided under article 18 of the Constitution. This article gives everyone a right to freedom of expression including the right to seek, receive or impart information or ideas without regard to the national frontiers.

The provisions of regulation 5, 8 and 17 of the Media Services Regulations are contrary to this article of the Constitution. Regulation 5 imposes conditions on the media houses on what news should be published and which should not be published. While some of the restrictions are justified others are not. Again, restricting the practice of journalism only to those two have been accredited is contrary to the provisions of article 18 of the Constitution which gives this right to everyone without discrimination. Right to express oneself by any media is an inborn right and should be enjoyed by all without discrimination. The licensing of print media and yet imposing some conditions which are unconscionable restricts the right to freedom of expression contrary to the provisions of article 18 of the Constitution.

The provisions of regulations 5, 8 and 17 of the Media Services Regulations are contrary to the provisions of article 6(d) and 7(2) of the East African Community Treaty, 1999 for they undermine good governance, rule of law, democracy and protection of human rights. Again, the same provisions are contrary to the article 18 of the Constitution of the United Republic.

59 Read regulation 17 of the Media Services Regulations, 2017.
60 Read regulation 7, ibid.
of Tanzania, 1997 for restricting the right to freedom of expression unreasonably.

Impacts of the Regulations on Editorial Independence, Freedom of Expression and Media Freedom

As it has been seen in the previous sections of this report, some of the provisions of the Media Services Regulations are poison to the freedom of expression, media freedom and editorial independence. For instance, there are restrictive conditions for the licensing of the print media under regulation 8 violates the right to freedom of expression.

In applying for a license, an applicant is required among other things to present a business plan containing mission, vision and policy, dummy of the media outlet and in some instances the director may demand an applicant to execute a bond of minimum of Tshs. 100,000,000/= (one hundred million ) as a condition for registration.61

Surprisingly, regulation 8(5) gives a Director an absolute discretion to decide on imposition of the bond requirement. The minister may in his own opinion decide to impose a bond on any applicant of the license. The minimum amount of bond is huge and it cannot be easily afforded. There is no any safeguards against the misuse of the provisions by the Director. Technically, this can be used to deny license to some applicants of the license, for instance those who are not liked by the authorities. These are unnecessary conditions for they can only hamper the exercise of the right to freedom of expression.

In addition to that, accreditation of journalists is also not acceptable under international law and act as unnecessary restriction to the enjoyment of the right to freedom of expression. The provisions of regulations 17 provides for categories of persons who can be accredited as well as education qualification. The impact of this provision is obvious. A number of people may be denied their right to practice journalism (express oneself through media) by want of accreditation. International principles requires this right to be afforded to everyone without undue legal restriction.62

When accreditation becomes a necessary requirement, certain voices are excluded and eventually the right of everyone to be heard is undermined. The provisions of regulation 5 imposes conditions on the Media Houses

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61 Read regulation 8(1) (b) and (5) together with the first schedule of the Media Services Regulations, 2017.
62 Read Article X (2) of the Declaration of the Principles on Freedom of Expression in Africa, 2002.
on what kinds of news they should publish and what they shouldn’t. While some conditions may be justified others are not. For instance media houses are required to ensure that they avoid intrusion or probing into private lives, injure the reputation of individuals, publishing news which are likely to promote civil or public disorder and dissemination of unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene or otherwise offensive materials, content, videos or photos.63 These restrictions are too broad and only remove the editorial independence of the media houses. Reading the entire provisions of regulation 5 one may wonder what kind of news may be published then? As stated earlier, this removes the editorial independence of the media houses contrary to the acceptable principle.

It should be noted that the right to freedom of expression is very broad, it includes not only the right to receive correct information but also extends to false as well. People are entitled to receive any kind of news except only those which may jeopardized the national safety or security, public order, public health and morals.64 Therefore, the provisions of regulation 5 seems to restrict the freedom of expression by imposing restrictions on news which should be published and which should not. Again, it removes the editorial independence of the media house as well. Regulation 8 and 17 restrict the right to freedom of expression and media freedom by imposing unnecessary conditions in licensing of print media and accreditation of journalists respectively.

**Impacts of the Regulations on the Tradition of Media self-regulation**

For more than 20 years now the media industry in Tanzania has been under self-regulation. There was no any direct involvement of the government in regulating the industry. Even the international principles demands that the media regulatory bodies should be independent bodies.65 Again, media practitioners are supposed to be free to organize themselves into unions and associations of their own choosing.66 The objectives of all these is to ensure that the media industry is free from the clutches of the government.

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63 See regulation 5(1) (c) (e) (k) and (l) of the Media Services Regulations, 2017.
64 See Article 19(3) of the International Covenant on Civil and Political Rights, 1966.
Unfortunately, the provisions of the Media Service Regulations vest enormous powers to the director, accreditation board and minister in regulating the media industry. In short, the regulation of media is technically done by the government. Regulations 7, 8, 9, 14, 19(2), 22, 26 and 27 give powers to the Director, Accreditation Board as well as the minister to regulate various matters relating to Media. Director can issue and cancel print media licenses, accreditation board can accredit and cancel the accreditation of any journalist and the minister sits as an appellate body against decisions of the director and accreditation board. Therefore, the government has an upper hand in regulating the media since the director and members of the board are government’s appointees.

**Summary of the Analysis**

- The provisions of regulations 5, 6, 8 and 17 are contrary to the acceptable international and regional standards on the right to freedom of expression and media freedom. These regulations imposes unnecessary conditions which restrict the enjoyment of the right to freedom of expression. Issues of licensing, restrictive conditions on license and accreditation of the journalists fall below the acceptable standards.

- The provisions of regulations 5, 7 and 17 are not in conformity with the provisions of article 6(d) and 7(2) of the East African Community Treaty for they are undermining the good governance, rule of law, democracy and human rights. Also, the same provisions are contrary to article 18 of the Constitution of the United Republic of Tanzania, for restricting arbitrarily the right to seek, receive and impart information and ideas without regard to frontiers.

- Also the provisions of regulation 5, 7 and 17 restricts generally the right to freedom of expression and media freedom. The provisions of regulation 5 restricts the editorial independence of the media houses by imposing conditions on what news they should publish and what they shouldn’t.

- The Media Service Regulations vest enormous powers to the Director, Accreditation board and minister in regulating various matters in the media industry. Therefore, the government seems to have an upper hand in regulating the media. Thus the long cherished tradition of the media self-regulation, which Tanzania has enjoyed for more than twenty years, may die unnatural death.
**Key Recommendations**

Basing on the foregoing findings and discussions, you may consider the following:-

(i) Lobbying for the amendment of the problematic provisions in order to bring them in conformity with the acceptable international standards and Constitution of the United Republic of Tanzania.

(ii) Filing a judicial review suit before the High Court to challenge the provisions of the Media Services Regulations, 2017 for contravening the provisions of the Constitution of the United Republic of Tanzania, 1977.

**Conclusion**

As it has been seen throughout various sections of this report, some of the provisions of the Media Services Regulations, 2017 are in clear violation of the international principles on freedom of expression and Media freedom as well as Article 18 of the Constitution of the United Republic of Tanzania. The regulations impose some unnecessary restrictions in the enjoyment of the right to freedom of expression and Media freedom. For instance licensing of the print media with some stringent conditions, mandatory accreditation of journalists as a qualification to practice journalism and impositions of some unreasonable conditions on media houses about publications of news, restrict the right to freedom of expression and erodes the editorial independence of the media houses. Enormous powers given to the director and accreditation board (comprised of the minister appointees) in regulating various issues relating to media industry such as licensing and accreditation of the journalists pout the media under indirect control of the government. Like its parent Act (The Media Services Act, 2016), the Media Services Regulations, 2017 follow in the same path.

**3.4 The Cybercrimes Act, 2015**

As noted in Part 2 above, this Act criminalises data espionage, publication of child pornography, publication of pornography, publication of false, deceptive, misleading or inaccurate information, production and dissemination of racist and xenophobic material, initiating transmission of, or retransmission of unsolicited messages (spam) and violation of intellectual property rights and other types of cybercrimes.

- However, according to critics, this Act has serious implications on
constitutional and international human rights provisions, particularly freedom of expression, access to information and the right to privacy. The most controversial provisions of the Act relates to criminalisation of sharing of information, extensive police powers of search and seizure, surveillance without judicial authorisation as well as vaguely defined offences.

• For instance, the provisions of Section 8 of the Act, restricts or prohibits access to data by creating an offence of data espionage. However, critics argue that the restricted data under the provisions of Section 8 of the Act may be a piece of information which is critical for investigative journalism, research or other legitimate use. According to them, restricting such information is tantamount to restricting freedom of expression and thus cannot pass the international standards on freedom of expression.

• According to the international standards, all such restrictions to freedom of expression must be compatible with Article 19 of the International Convention on Civil and Political Rights which guarantees freedom of expression and information and allows restriction only if they are necessary for respect of the rights or reputations of others and for the protection of national security or of public order, or of public health or morals.

• Contrary to the above international standards, the provisions of Section 16 of the Act provides that it is an offence for any person to publish information data or facts presented in a picture, text, symbol or any other form in a computer system where such information, data or fact is false, deceptive, misleading or inaccurate. Under the Act, such offences attract a fine of not less than three (3) million shillings or imprisonment for a term not less than six (6) months or both.

• To publish information is defined to include “distributing, transmitting, disseminating, exhibit, exchanging, delivering, printing, copying, offering in any way, or making available in anyway.”

• In our view, with such a definition, literally things like twitter re-tweet, forwarded emails, Facebook statuses, likes and thumbs up, emotions, leaks, blog posts and online activist petitions, could unpredictably land one in prison.

• Search and Seizure

• Part IV of the Cybercrimes Act deals with search and seizure where a
police officer of the police station or any law enforcement officer may search and seize cell phones, computers, Ipads, or any other device, he/she has “reasonable grounds to suspect or to believe that a computer system may be used as evidence in proving an offence”. This part also gives police officers the power to order a person in possession of such data (which could provide proof of an offence) to hand it over to them.

- In practice this means that under the Act, any police officer could search a smart phone, laptop, computer, if he/she suspects it might contain material which could be used as proof of an offence listed in the Act, and this can take place at the premises of a subject or even at a public place. According to the Act, under such circumstances, a court order is needed only if the person concerned refuses to comply or if this cannot be done without the use of force or due resistance of the subject. Generally, these search and seizure powers as given to the police, have been criticised by a large number of media stakeholders and the public in general for being not only wide but a recipe for abuse.

- With the said power, heads of police stations can issue orders to junior officers to enter any premises and seize computers or smart phones or any other electronic devices without court warrant. Police officers may also be ordered to force people to disclose information stored in their computers or computer systems, or the content of e-mail communications. The said law also gives even junior police officers the power to demand information from Internet services providers and mobile phone network providers. They are also empowered under the law to intercept emails and collect or record the computer data through technical means. According to critics, these powers can be abused by police officers to harass and intimidate journalists and activists.

- In our view, such search and seizure powers as given to police officers by the Act, constitutes a breach of the right to privacy as outlined in Article 17 of the International Convention on Civil and Political Rights, 1966, and Article 16 of the Constitution of the United Republic of Tanzania, 1977. Consequently, this further curtails the right to freedom of expression.

Protection of Sources

- Protection of source of information is one of the cardinal principles of the media profession. It is believed that, sources are the fountain
of freedom of expression, thus if we want to promote freedom of expression, the law should always guarantee the protection of sources. However, the provisions of Section 36 of the Cyber Crime Act compel anyone to disclose whatever information including sources when needed by the law enforcement officers.

- In our view, this is contrary to the legal protection of sources guaranteed to other similar professionals such as lawyers, bankers and doctors.

3.5 **The Statistics Act, 2015**

Among other things, this Act criminalises publication of data and figures without the approval of the National Bureau of Statistics (NBS). In other words, the Government can use the Act to control data which are to be published and avoid releasing any figures that would be negative to its record.

- The fear of media stakeholders to the Statistic Act is founded on the increasing Government control over what the media can or cannot publish. It is important to understand that, The African Charter on Statistics, adopted by the 12th Ordinary Session of Assembly of the African Union in February 2009, proclaims in its part on principles as follows:
  
  “Accessibility African statistics shall not be made inaccessible in any way whatsoever. This concomitant right of access to all users without restrictions shall be guarantees by domestic law.”

- Furthermore, a Resolution on the Fundamental Principles of Official Statistics as adopted by the United Nations Commission for Statistics in April, 1994 sets out the following as principle 1:
  “Official statistics provide an indispensable element in the information system of a democratic society serving the Government, the economy and the public with data about the economic, demographic, social and environment situation. To this end, official statistics that meet the test of practice utility are to be complied and made available on an impartial basis by official statistical agencies to citizens’ entitlement to public information”

- Similarly, the African Charter on Democracy, Elections and Governance, 2007 provides in Article 3 that “transparency and fairness in the management of public affairs as “one of its principles. From the following analysis, it is obvious that the Statistics Act is not in line with
the African Charter on Statistics. The prohibiting of publication of the statistics which have not been approved by the National Statistics Bureau curtails the freedom of the press and particularly editorial independence.

3.6 **The Electronic and Postal Communication Act, 2010**

Although this Act was not criticized much when it was enacted, it has a total of 44 sections which create offences as well as creating a harsh environment for one to enjoy the much needed freedom of expression. Some of the sections create the following offences:

**Unauthorised Use of Cyber Network**

- The provisions of Section 124 of the Act criminalises use of cyber network without authorisation by providing that:

  “124 -(3) Any person who secures unauthorized access to a computer or intentionally causes or knowingly causes loss or damage to the public or any person, destroys or deletes or alters any information in the computer resources or diminishes its value or utility or affect it injuriously by any means, commits an offence and on conviction shall be liable to a fine not less than five hundred thousand (500,000) shillings or to imprisonment for a term of not exceeding three (3) months or both”

- Basing on the above provisions of the law, the challenge is when an access is deemed to be authorised and when is deemed to be unauthorised. Also, this kind of provisions may be a hindrance to the investigative journalism.

**Criminalisation of False Information**

- The Act under the provisions of Section 132 criminalises what it calls “false information” as follows:

  “Any person who furnishes information or makes a statement knowing that such information or statement is false, incorrect or misleading or not believed it to be true, commits an offence and shall be on conviction liable to fine of three (3) million Tanzania shillings or to imprisonment for a term of twelve (12) months or both”.

- The challenge on what is false information is not defined under the law, thereby creating a fertile ground for abuse of freedom of expression.
Furthermore, the penalty provided in the Act for such offence is in our view, too harsh and an impediment to the freedom of information and expression.

**State Interception to Individual Communications**

- Under the provisions of the law, the state can make an application to the public prosecutor for authorisation to intercept or to listen to any communication of any individual transmitted or received by any communications. This can be deduced or inferred from the provisions of Section 120 of the Act, which seems to suggest that a person with authority may intercept communication. Under such a situation, we consider the Act to be in contravention of constitutional right which guarantees individual privacy and hence has negative impact to the freedom information and expression.

### 3.8 The Electronic and Postal Communications (Online Contents) Regulations, 2018

**Introduction**

In this analysis, ARTICLE 19 reviews Tanzania’s Electronic and Postal Communications (Online Content) Regulations 2018 (the Regulations), published on 16 March 2018 by the Minister of Information, Culture, Arts and Sports. The Minister relies on Section 103(1) of the Electronic and Postal Communications Act 2010 as the legal basis for his power to issue the Regulations.

ARTICLE 19 notes that the Regulations seek to regulate the conduct of private companies and individuals in relation to the publication of and access to online content. It prohibits a wide range of content and creates new obligations and offences which constitute a serious interference with the rights to freedom of expression and privacy.

ARTICLE 19 considers that the obligations and offences created by the Regulations are so wide-ranging that it is deeply inappropriate to use subsidiary legislation (such as these regulations) rather than statute to create them. Among other things, the Regulations seek to prohibit ‘hate speech. “indecent.’ ‘obscene’ or ‘false’ content’ these prohibitions are framed in such overbroad language that would inevitably lead to the removal of legitimate expression.
The procedure for removal of content is entirely geared towards quasi-immediate removal of content (within 12 hours) by private companies on the say-so of individuals or a broad range of law enforcement agencies. Complaints are handled by the Tanzania Communications Authority, i.e. a public body, rather than the courts - there is no provision for a right of appeal or judicial review of content removal decisions.

3.9 CONCLUSION

From the above analysis, we can safely say that there are some provisions of the laws that interfere with the freedom of expression, access to information and right to privacy. In other words, the said provisions in general contravene constitutional guarantee of the right to freedom of expression, information and privacy and also largely incompatible with the international standards under various international instruments to which Tanzania is a member or signatory.
Tanzania: Electronic and Postal Communications (Online Content) Regulations 2018

April 2018

Legal analysis
Executive summary

In this analysis, ARTICLE 19 reviews the compatibility of the Tanzania Electronic and Postal Communications (Online Content) Regulations 2018 (the Regulations) in the light of international standards on freedom of expression.

The Regulations were adopted on 16 March 2018 and issued pursuant to Section 103(1) of the Electronic and Postal Communications Act 2010, which grants powers to the Minister responsible for communications to make regulations upon recommendation of the Committee on content related matters.

Our analysis shows that the Regulations prohibit content in overly broad terms and impose confusing registration or licensing requirements which are in breach of international standards on freedom of expression. The lack of any clear definitions in the Regulations is especially concerning given that failure to comply with the regulations is punished with heavy sanctions, which include a minimum term of 12 months imprisonment, or minimum fines of five million Tanzanian Shillings, or both.

The Regulations also grant sweeping powers of content removal to the Tanzania Communications Regulatory Authority (TCRA), Tanzania’s communications regulator. These powers contain no safeguards against abuse, and will almost certainly have the effect of stifling legitimate freedom of expression in Tanzania. These powers are therefore plainly incompatible with international human rights law.

ARTICLE 19 concludes that the Regulations are so flawed that they should be withdrawn entirely. Any proposal to regulate online content should be the subject of primary legislation, and should involve further discussion with all relevant stakeholders. We therefore suggest that the Regulations should be withdrawn in their entirety.
Introduction

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The Regulations also impose confusing licensing requirements on undefined ‘online service providers’, as well as registration requirements on bloggers – all of this is in breach of international standards on freedom of expression.

ARTICLE 19 concludes that the 2018 Regulations are so flawed that they should be entirely withdrawn.

Our analysis is divided into two parts: first, ARTICLE 19 sets out international standards on freedom of expression; second, we analyse each part of the Regulations in turn.
International human rights standards

ARTICLE 19’s comments on the Regulations are informed by international human rights law and standards. The Regulations should also comply with the guarantees of freedom of expression in the Tanzania Constitution.¹

The right to freedom of expression

The right to freedom of expression is protected by Article 19 of the Universal Declaration of Human Rights (UDHR),² and given legal force through Article 19 of the International Covenant on Civil and Political Rights (ICCPR).³ At the regional level, Article 9 of the African Charter on Human and Peoples’ Rights (ACHPR)⁴ guarantees the right to freedom of expression.⁵ Tanzania ratified the ACHPR in 1984. Article II of the Declaration of Principles on Freedom of Expression in Africa 2002 (African Declaration) further elaborates the protections to be afforded to the right to freedom of expression by States.⁶

The scope of the right to freedom of expression is broad. It requires States to guarantee to all people the freedom to seek, receive or impart information or ideas of any kind, regardless of frontiers, through any media of a person’s choice. The UN Human Rights Committee (HR Committee), the treaty body of independent experts monitoring States’ compliance with the ICCPR, has affirmed that the scope of the right extends to the expression of opinions and ideas that others may find deeply offensive.⁷

While the right to freedom of expression is fundamental, it is not absolute. A State may, exceptionally, limit the right under Article 19(3) of the ICCPR, provided that the limitation is:

- **Provided for by law:** any law or regulation must be formulated with sufficient precision to enable individuals to regulate their conduct accordingly.

- **In pursuit of a legitimate aim,** listed exhaustively as: respect of the rights or reputations of others; or the protection of national security or of public order (ordre public), or of public health or morals;

- **Necessary and proportionate in a democratic society,** i.e. if a less intrusive measure is capable of achieving the same purpose as a more restrictive one, the less restrictive measure must be applied.⁸

Thus, any limitation imposed by the State on the right to freedom of expression must conform to the strict requirements of this three-part test. Further, Article 20(2) ICCPR provides that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence must be prohibited by law (see below).

As a State party to the ICCPR, Tanzania must ensure that any of its laws attempting to regulate electronic and Internet-based modes of expression comply with Article 19 of ICCPR, as interpreted by the HR Committee, and that they are in line with the special mandates’ recommendations. Tanzania should also take into account the principles developed in the African Declaration on Internet Rights, an initiative from African civil society organisations, which largely reflects the principles outlined in this section of our analysis.⁹
Freedom of expression online and intermediary liability under international law

In 2012, the UN Human Rights Council (HRC) recognised that the “same rights that people have offline must also be protected online.”10 The Human Rights Committee has also made clear that limitations on electronic forms of communication, or expression disseminated over the Internet, must be justified according to the same criteria as non-electronic or “offline” communications, as set out above.11

While international human rights law puts obligations on States to protect, promote and respect human rights, it is widely recognised that business enterprises also have a responsibility to respect human rights.12 Importantly, the UN Special Rapporteur on freedom of opinion and expression (Special Rapporteur on FOE) has long held that censorship obligations should never be delegated to private entities.13

In his June 2016 report to the HRC,14 the Special Rapporteur on FOE stipulated that States should not to require or otherwise pressure the private sector to take steps that unnecessarily or disproportionately interfere with freedom of expression, whether through laws, policies, or extra-legal means. He further recognised that “private intermediaries are typically ill-equipped to make determinations of content illegality,”15 and reiterated criticism of notice and takedown frameworks for “incentivising questionable claims and for failing to provide adequate protection for the intermediaries that seek to apply fair and human rights-sensitive standards to content regulation,” i.e. underlining the danger of “self- or over-removal” in these situations.16

The Special Rapporteur on FOE recommended that any demands, requests and other measures to take down digital content must be based on validly enacted law, subject to external and independent oversight, and demonstrate a necessary and proportionate means of achieving one or more aims under Article 19 (3) of the ICCPR.17

Additionally, in their 2017 Joint Declaration, the four international mandates on freedom of expression expressed concern at “attempts by some governments to suppress dissent and to control public communications through […] efforts to ‘privatise’ control measures by pressuring intermediaries to take action to restrict content.”18 The Joint Declaration emphasises that:

[I]ntermediaries should never be liable for any third party content relating to those services unless they specifically intervene in that content or refuse to obey an order adopted in accordance with due process guarantees by an independent, impartial, authoritative oversight body (such as a court) to remove it and they have the technical capacity to do that.

The four mandates also outlined the responsibilities of intermediaries regarding the transparency of, and need for, due process in their content-removal processes.

Online content regulation under international law

The above principles have been endorsed and further explained by the Special Rapporteur on FOE in two reports, dated 16 May 201119 and 10 August 2011.20 In the latter, the Special Rapporteur also clarified the scope of legitimate restrictions on different types of expression online.21 He identified three different types of expression for the purposes of online regulation:

1) Expression that constitutes an offence under international law and can be prosecuted criminally. In particular, the Special Rapporteur clarified that the only exceptional types of expression that States are required to prohibit under international law are: (a) child pornography; (b) direct and public incitement to commit genocide; (c) hate speech; and (d) incitement to terrorism. He further made clear that even legislation criminalising these types of expression must be sufficiently precise, and there must be adequate and effective safeguards against abuse or misuse, including oversight and review by an independent and impartial tribunal or regulatory body;22
2) Expression that is not criminally punishable but may justify a restriction and a civil suit; and

3) Expression that does not give rise to criminal or civil sanctions, but still raises concerns in terms of tolerance, civility, and respect for others.23

The Special Rapporteur on FOE also highlighted his concern that a large number of domestic provisions seeking to outlaw hate speech are unduly vague, in breach of international standards for the protection of freedom of expression. This includes expression such as that “incitement to religious unrest,” “promoting division between religious believers and non-believers,” “defamation of religion,” “inciting to violence,” “instigating hatred and disrespect against the ruling regime,” “inciting subversion of state power” and “offences that damage public tranquillity.”

The protection of the right to privacy and anonymity online

The right to private communications is protected in international law through Article 17 of the ICCPR. Guaranteeing the right to privacy in online communications is essential for ensuring that individuals have the confidence to freely exercise their right to freedom of expression.

The UN Special Rapporteur on promotion and protection of human rights and fundamental freedoms while countering terrorism has argued that, as with restrictions on the right to freedom of expression under Article 19, restrictions of the right to privacy under Article 17 of the ICCPR should be interpreted as subject to the three-part test.24 In 2017, the HRC confirmed this in Resolution 34/7.

Inability of individuals to communicate privately substantially affects their right to freedom of expression. In his report of 16 May 2011, the Special Rapporteur on FOE expressed his concerns that:

53. [T]he Internet also presents new tools and mechanisms through which both State and private actors can monitor and collect information about individual's communications and activities on the Internet. Such practices can constitute a violation of the Internet user’s right to privacy, and, by undermining people’s confidence and security on the Internet, impede the free flow of information and ideas online.

In particular, the Special Rapporteur recommended that States ensure that individuals can express themselves anonymously online, and that States refrain from adopting real-name registration systems.25

In May 2015, the Special Rapporteur on FOE published his annual report on encryption and anonymity in the digital age, in which he concluded:

Encryption and anonymity, and the security concepts behind them, provide the privacy and security necessary for the exercise of the right to freedom of opinion and expression in the digital age. Such security may be essential for the exercise of other rights, including economic rights, privacy, due process, freedom of peaceful assembly and association, and the right to life and bodily integrity. Because of their importance to the rights to freedom of opinion and expression, restrictions on encryption and anonymity must be strictly limited according to principles of legality, necessity, proportionality and legitimacy in objective. (...) 

60. States should not restrict encryption and anonymity, which facilitate and often enable the rights to freedom of opinion and expression. Blanket prohibitions fail to be necessary and proportionate. States should avoid all measures that weaken the security that individuals may enjoy online, such as backdoors, weak encryption standards and key escrows. In addition, States should refrain from making the identification of users a condition for access to digital communications and online services and requiring SIM card registration for mobile users.26
The findings of this report confirmed the findings of the 2013 report of the Special Rapporteur on FOE, which observed that restrictions to anonymity facilitates States’ communications surveillance and have a chilling effect on the free expression of information and ideas.27
Analysis of the Regulations

This analysis takes each of the Regulations’ five parts in turn:

- Part 1 contains preliminary provisions, including definitions;
- Part 2 sets out the powers of the Tanzania Communications Regulatory Authority in relation to online content regulation;
- Part 3 lays out the obligations of online services providers;
- Part 4 concerns the handling of complaints; and
- Part 5 provides for offences and penalties for violations of the regulations.

We conclude that the Regulations are deeply flawed and entirely at odds with international standards on freedom of expression.

Vague and overbroad definitions

ARTICLE 19 notes that the Tanzanian government has attempted to give a legal definition to several terms which are commonly used when referring to online activities. In particular, Part 1 of the Regulations sets out the definition of terms such as ‘application services licensees’, ‘blogs’, ‘blogger’, ‘content’, ‘hate material’, ‘hate speech’, ‘indecent material’, ‘internet café’, ‘law enforcement agency’, ‘obscene content’, ‘online forum’, ‘online television’, ‘prohibited content’, ‘social media’ and ‘user’.

ARTICLE 19 is concerned that the vast majority of these definitions are overly broad and fail to meet the legality requirement of international human rights, particularly in light of the sweeping powers granted to the Tanzania Communications Regulatory Authority (see next part of this analysis):

- “Hate material” is defined as “content, which advocates or promotes genocide or hatred against an identifiable group of people.” The scope of this definition is overbroad. To begin with, it conflates different types of expression. “Hate material” is likely to be confused with ‘hate speech,’ a term which is itself ill-defined (see below). It appears that the drafters intended the definition of “hate material” to include references to both “direct and public incitement to commit genocide” and a much broader version of the prohibition of “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” under Article 20(2) of the ICCPR. However, none of the terms used in the definition comply with the requirements of international law.

ARTICLE 19 notes that under international law, “incitement to commit genocide” must be both “direct” and “public.” These important qualifiers are missing from the definition. Moreover, given that incitement to commit genocide is prohibited by international criminal law, a vague reference in secondary legislation is clearly inadequate to comply with the relevant international law requirements. At the very least, such offence should be clearly laid down in Tanzania’s criminal code, and the Regulations should then make reference to that provision.

The reference to “advocacy of hatred against an identifiable group of people” entirely ignores the wording of Article 20(2) of the ICCPR, which prohibits the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.” Again, the definition of “hate material” merely refers to feelings of intense and irrational emotions of opprobrium, enmity and detestation towards groups which are not defined by reference to any protected characteristics under international law. As such, any power to block or remove access to “hate material” is likely to be applied to vast amounts of legitimate expression.
“Hate speech” is defined in the Regulations as ‘any portrayal by words, speech or pictures or otherwise, which denigrates, defames, or otherwise devalues a person or group on the basis of race, ethnicity, religion, nationality, gender, sexual orientation, or disability.’ ARTICLE 19 notes that there is no agreement on the meaning of the term ‘hate speech’ under international law. By contrast, Article 20(2) of the ICCPR prohibits the advocacy of “national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” – this is thus the terminology which ought to be used in primary or secondary legislation.

In ARTICLE 19’s view, the definition of ‘hate speech’ in the Regulations is inadequate and inconsistent with international standards on freedom of expression. In particular, we note that the definition again conflates various concepts, including “incitement to discrimination, hostility or violence” and “defamation” “denigration” or “devaluation.” The Camden Principles on Freedom of Expression and Equality define the terms ‘hatred’ and ‘hostility’ as the “intense and irrational emotions of opprobrium, enmity and detestation towards the target group.”

By contrast, defamation law seeks to protect the reputation of individuals against false statements of fact, which tend to lower the esteem in which they are held in their community. Its purpose is different from “hate speech” law. Similarly, the terms “denigrating” or “devaluing” are highly subjective and liable to be interpreted in such a way that it includes content that is deemed offensive by particular groups. These terms are therefore broader than ‘incitement’ to discrimination. Thus, the definition of “hate speech” in the Regulations is overbroad and likely to restrict legitimate expression.

“Indecent material” is broadly defined as “any content which is offensive, morally improper and against current standards of accepted behaviour such as nudity and sex.” This definition provides no clarity or guidance whatsoever as to what is meant by indecent material. Instead, it introduces other vague and subjective terms, such as ‘offensive’, ‘morally improper’, and ‘against current standards of accepted behaviour’, which are clearly open to a variety of interpretations. ARTICLE 19 notes that pornography is a legitimate form of expression under international human rights law, though some restrictions on access to that material may be permitted. Given the already-sweeping censorship powers of the Tanzania Communications Regulatory Authority, legitimate content would inevitably be removed under this definition (e.g. a painting depicting a nudity, such as L’Origine du Monde by Gustave Courbet).

“Obscene content” is defined as content which “gives rise to a feeling of disgust by reason of its lewd portrayal and is essentially offensive to one’s prevailing notion of decency and modesty with a possibility of having a negative influence and corrupting the mind of those easily influenced.” In ARTICLE 19’s view, this definition is excessively vague and would inevitably reflect the subjective notions of decency held by members of the Tanzania Telecommunications Regulatory Authority. In any event, the definition does not explain what “prevailing notions of decency and modesty” entail or how that conclusion would even be reached/on what basis that analysis would be made. It also displays a patronising attitude towards the public, and implies that the public is seemingly deemed incapable of forming its own judgment on the basis of available information.

‘Application services licensee,’ ‘blogs,’ ‘bloggers,’ ‘users,’ and ‘online television’ are terms which are defined either too broadly or too narrowly, and often overlap. For instance, ‘application services licensee’ is defined as a “licensee of the Authority in the category of application service licence limited to the provision of online content or the facilitation of online content producers.” It is unclear, however, who is a provider of ‘online content’ or what is deemed to ‘facilitate online content producers.’ The definition could cover ‘bloggers’, ‘social media companies’, or individuals creating webpages or online forums which enable interaction between Internet users.
By contrast, the definition of “users” is relatively narrow: it is limited to a person or legal entity “accessing online content, whether by subscription or otherwise.” In practice, users of online services rarely limit themselves merely to accessing online content. They use the various tools available on social media and other platforms to engage with the content and post comments, share news articles etc. In this sense, users are also producers of content. The Regulations themselves recognise this (see Regulation 5(2)).

Meanwhile, the definitions do not clearly articulate the difference between ‘users’ and ‘bloggers’ who are defined as “writers or groups of writers owning or performing the act of blogging and any other acts similar to bloggers.” Notwithstanding the lack of definition of blogging, ‘blogs’ cover the sharing of “experiences, observations, opinions including on current news, events’ and video clips and links to other websites. In other words, this includes the sort of activity that most Internet users are engaged in on the Internet.

Other examples of overbroad definitions include “online television,” which encompasses the distribution of videos created by individuals. In other words, ‘users’ and ‘bloggers’ are equated with ‘online television’ for the purposes of the Regulations.

- “Law enforcement agency” includes the intelligence services (despite the fact that they perform different functions) and “any authority responsible for regulating communications or in any other body authorised in any written law.” In other words, the Regulations implicitly grant any government agency the same powers as traditional law enforcement agencies, e.g. to require cooperation from content providers or content service providers. This is both plainly overbroad, but it is also outside the competence of the Minister Information, Culture, Arts and Sports to grant such powers (see next section).

- Finally, certain key terms, which are repeatedly used throughout the Regulations, are not defined at all, e.g. ‘online content provider’ in Regulations 5 and 12. This is particularly problematic, as it is material to whether providers need to obtain a licence.

Powers of the Authority

Part 2, Regulation 4 of the Regulations sets out the powers of the Communications Regulatory Authority. These include: (i) the keeping of a register of bloggers, online forums, online radios and televisions; and (ii) action against non-compliance with the Regulations, including ordering the removal of ‘prohibited content.’

The government argues that the legal basis for these powers is contained in Section 103(1) of the Electronic and Postal Communications Act 2010, which grants powers to the Minister responsible for communications to create regulations, upon recommendation of the Committee on content related matters.

ARTICLE 19 note, however, that the powers laid down in Regulation 4 seriously interfere with the fundamental rights to freedom of expression and privacy. As such, we consider that Section 103(1) of the Electronic and Postal Communications Act 2010 is an insufficient legal basis for the creation of the 2018 Regulations. Such intrusive powers, should be laid down in primary legislation, if at all. In any event, both the registration of bloggers etc. and the power to order the removal of prohibited content are incompatible with international standards on freedom of expression.

We have the following comments on the powers of the Communications Regulatory Authority:

- **Registration of bloggers, online forums, online radios and televisions:** ARTICLE 19 notes that the power to register online forums, online radio and online televisions is incompatible with international standards on freedom of expression. In particular, the 2011 Joint Declaration on Freedom of Expression and the Internet provides that measures such as imposing registration requirements and requiring the use of real names are incompatible with international human rights obligations. The power to register online forums, online radio and online televisions is thus not only unnecessary but also incompatible with the Internet Intermediaries: Dilemma of Liability

- **Internal regulations:** The Regulations do not make the adoption of policies and tools enabling anonymity. There is no way of knowing, as the highly unclear and ambiguous. The Regulations do not provide any further definitions.

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and other requirements on service providers is not legitimate, unless such measures conform to the three-part test on lawful restrictions of freedom of expression under international law. At most, a requirement to declare a business, rather than a requirement of registration, may be imposed. As regards the registration of bloggers, the Human Rights Committee has made it clear (in General Comment no. 34) that ‘journalism’ is a function shared by many different actors, including bloggers. The Committee has also reiterated that mandatory registration of journalists is a disproportionate restriction on freedom of expression. Accordingly, the mandatory registration or licensing of bloggers or any member of the general public engaged in journalistic activity is incompatible with the right to freedom of expression. In any event, it has no plausible justification.

- **Powers to order the removal of prohibited content:** Under international law, powers to order the removal of content should rest with the courts. At a minimum, removal orders should be made by independent authorities, and should be subject to judicial review. This is plainly not the case here: the Tanzania Communications Regulatory Authority (the Authority) is not independent and the Regulations do not provide for a right of appeal, or judicial review of takedown orders. Moreover, it is unclear whether the Authority can exercise its power to order content takedown of its own initiative, or only upon notification of non-compliance (Part 4, Handling Complaints).

### The obligations of an online content providers

Part 3 of the Regulations contains the obligations of various actors involved in online content. Regulation 5(1) sets out the obligations for “online content providers and users.” ARTICLE 19 notes that a key term, ‘online content provider’, has not been defined. It is not clear if ‘online content provider’ refers to social media platforms, hosts, and other third-party entities, or if the term refers to authors or publishers of various types of content online such as newspapers.

If “online content providers” refers to authors or publishers of various types of content online, including newspapers and others, then most of the obligations set out in Regulation 5(1) are redundant and unnecessary, given that they already correspond to the rules and practices followed by publishers. Moreover, it is worth remembering that everyone is required to comply with the law.

Insofar as media, bloggers, and users may also be also acting as hosts for the purposes of third-party content, e.g. by allowing posts by third parties in the ‘Comments’ section of their website, the obligations set out in Regulation 5(1) are problematic and inconsistent with international standards on freedom of expression and privacy. The same is true insofar as ‘online providers’ encompasses social media platforms and similar services.

- **Regulation 5(1) (a) requires online content providers to ensure that their online content is “safe, secure and does not contravene the provisions of any written law.”** In ARTICLE 19’s view, it is highly unclear what the expression “safe and secure” means. For instance, it could be understood to mean the adoption of policies on online content such as harassment, or it could mean the adoption of policies and tools enabling anonymity. There is no way of knowing, as the Regulations do not provide any further definitions. The expression ‘any written law’ is also ambiguous. Although everyone, whether individuals or legal persons, is required to comply with the law, the latter expression could be interpreted as a form of strict liability for third-party content. This is especially important given that failure to comply with the Regulations is a punishable offence (see last section). In other words, Regulation 5(1) falls well below the legality requirement under international. Moreover, it is likely to lead to greater censorship of legitimate content, and therefore constitutes a disproportionate restriction on freedom of expression.
• Regulation 5(1)(b) requires content providers to take trends and cultural sensitivities of the general public into account. This obligation is both overbroad and unnecessary and would be an entirely subjective analysis. It is highly unclear what this obligation entails, in the absence of more detail about what trends are being referred to (political, economic, social etc.) and what ‘cultural sensitivities’ are. In practice, this obligation could either be very onerous, or discharged with minimal effort. In any case, this requirement cannot be justified as necessary for the pursuit of any of the legitimate aims under Article 19 (3) of the ICCPR.

• Regulation 5(1)(d) requires online content providers to use moderating tools to filter prohibited content. In ARTICLE 19’s view, hosts and other ‘online content providers’ should not be required to moderate content. To do so is to put them in the position of having to decide the legality of content, which is deeply inappropriate and in breach of international standards on freedom of expression. Moreover, obligations to monitor and filter content raise significant privacy concerns. For these reasons, the free speech mandates affirmed in their 2011 Joint that States should not impose general obligations to monitor content.36 Principle 29 of The Global Principles on Protection of Freedom of Expression and Privacy – a broad civil society initiative - also states that intermediaries should not be required to monitor their services actively, to prevent privacy infringements.37

• Regulation 5(1)(e) requires content providers to have mechanisms in place in order to identify the source of content. ARTICLE 19 is concerned by the impact this obligation will have on citizens, journalists, and whistle-blowers who rely on secure and private communications to express themselves freely and carry out their duties. Even more alarming is the broad and unfettered power of surveillance that is being given to content providers. This obligation is in breach of both the rights to privacy and freedom of expression.38 We further note that the Special rapporteur on freedom of expression has recommended that the use of anonymity and encryption tools should be protected and promoted rather than unduly limited.39

• Regulation 5(1)(f) requires online content providers to “take corrective measures for objectionable or prohibited content.” ARTICLE 19 notes that the Regulations introduces a new term ‘objectionable content’, which is not defined in the definitions section in Part I. It is also excessively broad: in practice, it means that online content providers could remove all kinds of speech, both legal and illegal, under domestic and international human rights law. It is also unclear whether online service providers would be required to do this of their own accord on the basis of the monitoring obligation outlined above, or upon notice or complaint. In any event, online content providers should be free to moderate content on their platforms in line with their own values and the type of environment they seek to promote (e.g. safe platform for children). They should not be required to do so, even less on the basis of such vague terms.

• Regulation 5(1)(g) requires online content providers to ensure that prohibited content is removed within 12 hours of being notified. Again, the Regulations are excessively vague on this point. In particular, they are silent on whether this notification must be given by a court, the regulatory authority, or simply by a user. In any event, as explained below, the entire proposed content-removal process of the Regulations fails to comply with international standards on freedom of expression. It contains no due process safeguards (e.g. counter-notice, appeals etc.) and will inevitably result in the removal of legitimate expression.

• Regulation 5(3) requires online content providers to cooperate with law enforcement. No further indication is given as to how that cooperation might take place. It is entirely lacking in procedural safeguards for the protection of the rights to privacy and freedom of expression of users of the platform or online service. For instance, no reference is being made to the need for a judicial warrant in order to access users’ personal information, nor is any reference made to the need for a judicial order insofar as cooperation may involve the removal of content. As such, this Regulation fails to comply with international standards on freedom of expression and privacy.
Obligations of subscribers, users and social media users

Regulation 5(2) sets out the obligations of subscribers and users. Regulation 5(2)(a) provides that users and subscribers are accountable for the information they post online, while Regulation 5(2)(b) stresses that users must ensure that their posts do not contravene the Regulations or any other written law. Regulation 10 essentially repeats the same obligations in relation to social media users with an added requirement to create a password ‘to protect user equipment.’

ARTICLE 19 considers that these Regulations are redundant as they merely re-state that everyone should comply with the law, or in the case of the obligation to create passwords, reflect best practice. It is also unclear how such an obligation would be enforced. In any event, we note that the Regulations themselves fail to meet the legality requirements in too many ways to provide any adequate guidance to users and others as to what is or is not permitted.

Obligations of application service licensees

Regulation 6 sets out the obligations of application service licensees. As we have said, the definition of an application service licensee is ambiguous, and too vague. It is not clear whether it is applicable to application developers, social media platforms, Internet Service Providers, online TV, or other entities.

- **Delegating censorship powers by contract:** Regulation 6(1)(a) provides, *inter alia*, that application service licensees are required to include contractual terms which give the companies a right to “deny or terminate their service where a subscriber contravenes the Regulations.” ARTICLE 19 notes that online service providers’ Terms of Service frequently provide that their service should only be used in accordance with the law and that any breach of the Terms of Service or other company policies may lead to the suspension or termination of the service. However, the Regulations are seemingly designed to delegate content removal powers to online service providers and put them in the position of enforcers of the law. This is confirmed by Regulation 6(1)(b), which requires online service providers to include terms allowing them to “remove content in accordance with the Regulations.” In our view, this is deeply inappropriate and inconsistent with international standards on freedom of expression and intermediary liability as outlined in Part I of this legal analysis.⁴⁰

- **Content removal procedure:** Regulation 6(3) to (5) outlines the obligations of application service licensees in relation to content removal. Under Regulation 6(3), licensees are required to inform subscribers that they must remove content, and do so within 12 hours of receiving notice from the regulatory authority or a person affected by the prohibited content. Subscribers then have 12 hours to remove the content. If the subscriber fails to remove the content within 12 hours, the licensee must suspend or terminate the subscriber’s access to the service. This procedure plainly fails to include any due process safeguards. To begin with, notice that content must be removed should only ever be made by a court or independent adjudicatory body, and not by a regulatory authority or an individual. Only a court is able to determine the legality of content. Moreover, the procedure fails to include basic procedural safeguards, including the opportunity for individuals (those whose content is alleged to be unlawful) to challenge the allegation before content is taken down, as well as lacking a mechanism for the provision of reasons for the removal, and providing a right of appeal. The sanction for failing to remove content within 12 hours is also disproportionate given that subscribers are given an incredibly short period of time to comply or raise any objections. In other words: the procedure for the removal of content under the Regulations is fundamentally flawed.
Obligations of online radio, online television and bloggers

Regulation 7 provides for the obligations of online radio, online television, and bloggers. Regulation 7(1) applies various traditional broadcasting requirements to online radio and television. While this is not problematic per se, the extension of those requirements to bloggers is worrying, as well as inconsistent with international standards on freedom of expression:

- **Licensing bloggers**: Regulation 7(2), read in conjunction with Regulation 7(1), means that bloggers are subject to the same requirements as online radio and television. It remains unclear however whether bloggers are required to obtain a licence with the Authority, or a simple registration is sufficient. In any case, as previously noted, mandatory registration or licensing of bloggers is inconsistent with international standards on freedom of expression: it serves no legitimate purpose and is unnecessary.41

- **Jurisdiction**: Regulation 7(2) extends the application of licensees’ obligations to Tanzanian citizens residing outside the country, and blogging or running online forums with contents for consumption by Tanzanians. ARTICLE 19 is concerned by the extraterritorial application of these provisions. While the enforcement of the law can be a daunting task because of the cross-border nature of the Internet, this should not be used as an excuse for the adoption of overbroad extraterritorial provisions. This is especially the case when the substantive provisions of the law are incompatible with international standards on freedom of expression. In our view, domestic provisions should only apply extraterritorially when a real and substantial connection can be established between the service at issue and the country seeking to apply its laws in this way.42 This would be the case, for instance, where the content is uploaded in Tanzania or where the content is specifically directed at Tanzania.

- **Licensing of electronic media**: Under Regulation 7(3), “electronic media” are required to apply for a licence. As noted above, any kind of licensing of journalists, bloggers, or electronic or print media is incompatible with international standards on freedom of expression. The information required to obtain a licence does not serve any legitimate aim and is plainly unnecessary.

Obligations of online content hosts

Regulation 8 sets out the obligations of online content hosts. These include the adoption of a code of conduct for hosting content and the removal of content upon notification by persons affected by the content, the Authority or law enforcement. ARTICLE 19 reiterates that the removal of content should only take place after a court or other independent adjudicatory body has determined that the content complained of was unlawful. It is deeply inappropriate and inconsistent with international standards on freedom of expression for content to be removed simply on the request of individuals. This will plainly lead to the removal of content that individuals find merely offensive, but that is not otherwise unlawful as such. Equally, the decision of a regulatory authority or law enforcement should not be considered sufficient to decide the legality of content. At a minimum, if an independent public authority takes such a decision, it should be subject to appeal or judicial review.

We reiterate that the procedure put in place under the Regulations for the removal of content by various actors fails to provide for adequate due process safeguards. It is in breach of international standards on freedom of expression.

Obligations of Internet cafes

Regulation 9 provides for various obligations of Internet cafes, including a requirement to:

- filter prohibited content;
• install video cameras to record the activities of Internet users inside the cafe. The surveillance video recordings and information registered must be kept for a period of 12 months; and
• register all Internet cafe users upon showing of an ID card.

ARTICLE 19 notes that these requirements significantly interfere with the right to freedom of expression; they should therefore have a proper basis in law, i.e. statute, rather than in secondary legislation. Furthermore, the purpose of these measures remains unclear.

In any event, they are disproportionate to any of the legitimate aims under international human rights law. First, we note that prohibited content is so broadly defined in these Regulations that the mandatory application of filters will inevitably result in the filtering of legitimate content.

Secondly, the Special Rapporteur on FOE has made clear that the mandatory registration of Internet users was incompatible with international standards on freedom of expression.

Thirdly, the installation of surveillance cameras in commercial premises, i.e. private property, cannot be justified by reference to the protection public safety or any other legitimate aim. While it may be legitimate for businesses to install surveillance cameras in their premises to prevent e.g. shoplifting, this decision should be left to them, not imposed by the State.

**Disclosure of Information**

Regulation 11 lays down some safeguards for the protection of the right to privacy as regards the disclosure of personal information. In particular, Regulation 11(1) provides that personal information can only be disclosed upon request by a court, a lawfully constituted tribunal, or a law enforcement agency.

Under Regulation 11(2), the sharing of personal information with other public authorities can only take place if necessary for the performance of public duties.

Although these safeguards are welcome, in our view they are too limited. To begin with, the power to share personal data should be laid down by statute rather than secondary legislation. Secondly, the broad definition of ‘law enforcement agency’ means that a large number of public authorities can easily gain access to personal information held by private parties, simply upon request.

We believe that access to such data by public authorities should, in principle, require a judicial warrant with some permitted exceptions for law enforcement and intelligence agencies in limited circumstances. 43 Thirdly, any legislation concerning access or disclosure of personal data should make explicit reference to the protection of the right to privacy as a factor when considering whether disclosure is necessary and proportionate in the circumstances. Further, it should also make explicit reference to data protection legislation, if any; if such legislation does not exist, it should be adopted as a matter of urgency.

**Prohibited content**

Regulation 12 lists various types of ‘prohibited content.’ ARTICLE 19 is concerned that the list prohibits content that may not be explicitly banned under Tanzanian law, or content that is legitimate under international human rights law.

In any event, the list of prohibited content contains several terms that are unduly vague. Legitimate content will inevitably be affected, and even removed, as a result. We highlight particular points of concern further below.
• **Hate speech, obscene and indecent content:** Regulation 12 (a), (b), and (c) prohibit indecent content, obscene content and hate speech. However, as we already noted, the definition of these terms in the Regulations is overly broad. It is also unclear how they might relate to the prohibition of equivalent content under domestic legislation and whether the latter is broader or narrower. This is likely to result in greater legal uncertainty.

• **Pornography:** Regulation 12(d) prohibits “explicit sex acts” and “pornography.” We note that the distinction between the two is unclear. At any rate, outright bans on pornography constitute a disproportionate restriction on freedom of expression. Access to pornography may, however, legitimately be restricted, for example through privacy-compliant age verification systems.

• **Sexual offences:** Regulation 12(e) bans the publication of sex crimes, rape, attempted rape, statutory rape, and bestiality. Although ARTICLE 19 understands the concerns of regulators that access to certain types of material should be restricted, particularly in the case of a younger audience, we consider that this provision is drafted in overly broad terms. Once again, the regulation is drafted as an outright ban rather than mere restriction on access. Furthermore, the regulation does not distinguish between works of fiction (e.g. cinematic films) and reality, nor does it provide for exceptions for legitimate reporting on these matters or educational material, e.g. sex education etc. It is also unclear whether the above only applies to video material or also includes written text.

• **Violent content:** Regulation 12(f) bans the publication of content that ‘portrays violence, whether physical, verbal or psychological, that can upset, alarm, and offend viewers, and cause undue fear among the audience or encourage imitation.’ ARTICLE 19 considers that this category of content is excessively broad. It is also eminently subjective and encompasses content that individuals may find merely offensive. It is also entirely unclear how anyone can predict what conduct is likely to ‘encourage imitation.’ ARTICLE 19 notes that rather than imposing outright bans, it would be more appropriate for the government to consult on the extent to which content rating systems should be applied to e.g. video-sharing platforms.44 We note, for instance, that companies like YouTube already use interstitial warnings for certain types of violent videos.45 If individuals do not want to be exposed to some categories of content, they should be offered the possibility of using filters for that purpose. However, the decision to use filters should be left to individuals rather than imposed by the State, for the reasons outlined above.

• **Torture, killings etc.:** Regulation 12(g) prohibits content portraying sadistic practices and torture, explicit and excessive imagery of injury and aggression, and of blood or scenes of execution or of people clearly being killed. In ARTICLE 19’s view, the ban on this type of content raises the same issues as those outlined in relation to Regulation 12(e) and 12(f). It fails to take into account public interest reporting on these matters or the nature of the video at issue, for instance whether it is a work of fiction, educational content etc. As such, perfectly legitimate content is likely to be removed in breach of international standards on freedom of expression.

• **Annoyance, threats of harm, public disorder:** Regulation 12(h) prohibits “content that causes annoyance, threatens harm or evil, encourages or incites crime, or leads to public disorder.” This category is plainly overly broad. Whether content causes ‘annoyance’ is clearly a subjective matter and it should therefore not be prohibited. For example, politicians might find some legitimate public interest reporting ‘annoying.’ It would plainly be improper if such individuals could merely point to the Regulations and request the takedown of content on that basis. The definition of other terms remains mysterious. For instance, it is unclear what a threat of ‘evil’ entails. Given the breadth of what may be criminalised under Tanzanian law, the prohibition on ‘encouraging or inciting crime’ would almost inevitably include legitimate material. It is also unclear how it would be determined that content would lead to public disorder. For instance, the video of a young man setting himself on fire sparked the Tunisian Revolution in 2011. However, this was not foreseeable and, in any event, the availability of this video was a matter of public interest - it showed the desperate situation of some members of Tunisian society.
journalists, researchers, environmental activists, human rights defenders, or others, for disseminating such information.46

- **Bad language:** Regulation 12(k) prohibits content that uses bad language, including (i) “the use of disparaging or abusive words which is calculated to offend an individual or a group of persons,” (ii) “crude references words in any language commonly used in the United Republic, which are considered obscene or profane including crude references to sexual intercourse and sexual organs,” and (iii) hate speech. In ARTICLE 19’s view, this provision is plainly inconsistent with international standards on freedom of expression. We recall that freedom of expression protects speech that offends, shocks, or disturbs: this Regulation would lead to the removal of legitimate content. It is only in circumstances where such language can be said to amount to advocacy of hatred that constitutes incitement to discrimination, hostility or violence that it can be prohibited.

- **False content:** Regulation 12(l) prohibits false content which is likely to mislead or deceive the public, save where it is clearly pre-stated that the content at issue is a parody, fiction, not factual. ARTICLE 19 notes that this provision, like the others, is drafted in excessively broad language. In particular, it fails to take into account the inherent difficulty in distinguishing fact from opinion. We are very concerned that it will be abused to crack down on opinions that the government does not like. The limited exceptions under Regulation 12(l) - (i) to (iii) - do nothing to alleviate concerns. They also impose undue burdens on individuals to determine and ‘pre-state’ whether information they are sharing is fact or fiction, which they may not be in a position to do. In our view, this provision is hopelessly flawed and incompatible with international standards on freedom of expression. In particular, the four mandates on freedom of expression recently reaffirmed that vague prohibitions on the dissemination of information such as “false news” are inconsistent with international standards for limiting freedom of expression.47

### Complaints handling

Part 4 (Regulations 16 and 17) of the Regulations lays down the procedure for handling complaints about prohibited content. If a person feels aggrieved by any matter related to prohibited online content, they may file complaints to the online content provider. On receipt of such complaint, the online content provider must ‘resolve’ the content being complained of within 12 hours. If the online content provider fails to remove the content, the aggrieved person may, within thirty days refer the complaint to the Authority. The Authority then serves a copy of the complaint to the online service provider, who must respond within 12 hours. If the complainant is still not satisfied with the response of the content provider, the matter is handled under the Content Committee Procedures of the Authority.

In ARTICLE 19’s view, the content removal procedure is deeply flawed and in breach of international standards on freedom of expression, as outlined in Part 1 of this analysis.48 To begin with, the entire process is based on overbroad content prohibitions.

Secondly, the process is designed so that content is removed on the mere say-so of private parties or law enforcement agencies, or left to the discretion of the Authority, which is neither a court nor an independent body.

Thirdly, there is no opportunity for the publisher of the content to have their views heard before a decision is taken to remove the content. Additionally, 12 hours is clearly an insufficient period of time to review complaints properly.
ARTICLE 19 advocates for the development of progressive standards on freedom of expression and freedom of information at the international and regional levels, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, freedom of expression and equality, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19’s overall legal expertise, the organisation publishes a number of legal analyses each year, comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available at www.article19.org.

If you would like to discuss this analysis further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at legal@article19.org.