

# **COMPENDIUM OF MEDIA RELATED LAWS IN TANZANIA**



**MEDIA COUNCIL OF TANZANIA**

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## PREFACE

This compendium is meant to provide an insight to the general public on the media related laws. It consists of the laws which directly deal with the media industry and other laws 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 analysed in each part and section where the specific law is analyzed. This was specifically done to ensure that only provisions which relates to the media industry only are analysed. Also in the same line, the provisions have been analysed briefly to ensure easy understanding of 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 on 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 our sincere hope that general public will find this compendium useful for general educational purpose.

**Samwel Gerald & Ramadhani Maleta**

**@2018**

# 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 and a freedom with protection from interference from 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 a cornerstone of the journalism. To ensure that, freedom and rights guaranteed under the Constitution are enjoyed, laws are enacted to that purpose. In the Media industry, there are plethora of laws and regulations, which in one way or another touches on issues relating to media, particularly freedom of expression and access to information.

This compendium consists of the analysis of various media related laws in Tanzania. It is divided into three parts. Part One provides an introduction, Part Two contains 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;
- v. The Statistics Act, No.9 of 2015.

As said above, a number of regulations have been promulgated as well to ensure the smooth implementation of the principal legislations: The 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 analyzed 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 analyzed 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 on terms of sub-headings or issues as contained in the particular legislation.

#### 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 5<sup>th</sup> of November 2016 and assented by the President on 16<sup>th</sup> day of 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.<sup>1</sup> The Act is supplemented by its regulations known as the Media Services (Regulations) G.N No.18 of 2017.

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<sup>1</sup> See preamble to the Act.



## **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 recognized as a Journalist, one must be accredited by the Journalist Accreditation Board. It is prohibited for a person to practice 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 accredited as a professional journalist by the Journalist Accreditation Board. The qualifications are provided under regulation 17 of the Media Services Regulations, 2017.

## **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 in journalism or any other related media studies from the recognized institution offering journalism or Media Studies, or,<sup>2</sup>

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<sup>2</sup> See regulation 17(2) (a) &(b) of the Media Services Regulations, 2017.

- 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 the foreign journalist.<sup>3</sup>

### **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.<sup>4</sup> 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. <sup>5</sup>

In case of a foreign journalist, he is required to submit the following documents; filled prescribed form, a letter from the Media House, and proof of payment of prescribed fee together with the certified copy of Passport. <sup>6</sup>

### **1.4 Temporary Accreditation and Life Membership Accreditation**

Under regulation 18 of the Media Service Regulations, 2017 students pursuing media related studies are eligible for a temporary accreditation for the purpose of

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<sup>3</sup> Regulation 17(1)(a)-(d), of the Media Services Regulations, 2017.

<sup>4</sup> See section 19(2) of the Media Services Act, 2016.

<sup>5</sup> Regulation 20(a)(i)-(iv) of the Media Services Regulations, 2017.

<sup>6</sup> Regulation 20(b)(i)-(iv) of the Media Services Regulations, 2017.

apprenticeship to practice 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 media house or any other institution offering space for apprenticeship.<sup>7</sup> The time under which such student is accredited will be shown on the press card.<sup>8</sup>

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 members in journalism profession or journalist 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 only and for a period not exceeding ninety (90) days. <sup>9</sup>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.<sup>10</sup> This is provided under section 19(3) and (4) of the Media Services Act, 2016 respectively.

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<sup>7</sup> Regulation 18(1)(a)-(c) of the Media Services Regulations, 2017.

<sup>8</sup> Regulation 18(2) of the Media Services Regulations, 2017.

<sup>9</sup> Section 19(3) of the Media Services Act, 2016.

<sup>10</sup> Section 19(4) of the Media Services Act, 2016.

## **1.5 Roll of Journalists**

Upon satisfying the qualifications for accreditation as professional journalist and submission of the 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.

## **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.<sup>11</sup> Press card is an evidence that the holder thereof is an accredited journalist and shows a 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.

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<sup>11</sup> See also regulation 21 (1) 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.

### **1.5 Cancellation of the Accreditation**

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

- (i) When 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.

### **1.8 Meaning and Types of the Media House**

The Act defines the words Media House under the provision of Section 3 to mean any person licensed to provide media services.

Media house are categorized into two groups, which are:-

- (i) Private owned Media House
- (ii) Public owned Media House.

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

## **1.9, Media and Media Services**

On the other hand, 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 include online platform whereas Media Services are referred to be those services provided through media.

## **2.0 The Licensing Requirements for Provision of Media Services**

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

## **2.1 Media and Journalist Freedoms and Rights**

After obtaining the license 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.

## **2.2 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
- 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 issues. 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 for 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, 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 License**

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

### **Challenging the decision of a Director**

The License Applicant (in case of rejection) or a holder (in case of cancellation or suspension) who is aggrieved by the decision of the Director of Information Services Department may appeal to the Minister within 30days 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 the journalists. This Board is established under section 11 as a board corporate with perpetual succession and common seal, capable of suing and being sued on its own name, however the Attorney General reserve 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 a Chairman of the Board;
- ii. The Director of the Information Service Department;
- iii. The Secretary of the Council;
- iv. Law 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, 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 matter 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 organizations 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 the Section Act 14(a)-(d) of the Act to do the following:-

- ✓ To establish such committees as may be necessary for the better undertaking of its functions;
- ✓ To suspend and expunge the names of the 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 of a chairman, vice chairman and two other accredited journalists nominated by the 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 event one party is aggrieved by the award of the Committee may appeal to the High Court as provided under section 29(1) of the Act.

### **Minister's Power**

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

#### **✓ Power to prohibit importation of publication**

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

- ✓ **Power to sanction or prohibit publication of any content which jeopardizes 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 that jeopardizes national security or public safety.

## **OFFENCES**

### **a. Publication of Defamation**

The Act under **section 37** make it unlawful for publication of defamatory matter concerning any person unless the same is true and it was for public benefit that the same be 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 amend such publication, then no any legal action be it civil or criminal shall be brought against a 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 the seditious intention. According to section 53, any person who does or attempts to do any act or 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 bring into hatred or contempt or to excite disaffection against the lawful authority of the Government of the United Republic;
- ✓ It excite 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 bring into hatred, contempt or to excite disaffection against the administration of justice in the United Republic;
- ✓ It raise discontent or disaffection amongst people or section of people of the United Republic; or
- ✓ It promote 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 make use by any means of media service for the purposes of publishing information which is intentionally or recklessly falsified in a manner which threaten the interest of national security and defense 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 license**

The operation of media service without license, practicing journalism without accreditation and dissemination of false information without justification is 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 5-10 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 publish false statement which is likely to cause fear and alarm to the public or to disturb public peace commits an offence. In case of conviction, the person shall be liable to a fine not less than ten million shillings but not exceeding twenty or imprisonment for a term not less than four years but not exceeding six or to both fine and imprisonment.

## 2. The Access to Information Act, 2016 and the Access to Information Regulations of 2017

This Act was passed by the Parliament on 7<sup>th</sup> day of September 2016 and assented by the President on 23<sup>rd</sup> 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 citizen only. In other words, only citizens of the United Republic of Tanzania have unfettered access to information.<sup>12</sup>

### **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

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<sup>12</sup> See section 5(4) of the Act.

illiterate where he can make the request orally<sup>13</sup>. 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, an information holder is required to give notice to the person seeking information a notice informing him whether the information sought exist 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 thereof, 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.

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<sup>13</sup> See section 10(4) 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 exempted under section 6(2) of the Act;
- and
- (ii) Where the disclosure of information is against the public interest.

However, under 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 an 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 which are exempt from public access are listed under section 6(2) of the Act. These are information which are likely to undermine national defense and security, international relations, impedes due process of 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 commercial lawful interests, hinder or causes substantial harm to the Government to manage economy, undermine Cabinet's records, distort or dramatize 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 an 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 is aggrieved by the decision of the information holder, he is entitled to apply for review of the decision to the Head of the Institute.

<sup>14</sup>The Head of the Institute is required to determine the application within 30 days.<sup>15</sup> In case the person is aggrieved by the decision of the head of the institute, he may appeal to the Minister within the period of thirty days from the date the decision was made.<sup>16</sup> However, if the information requested was under the authority of the information

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<sup>14</sup> Section 19(1) of the Act.

<sup>15</sup> Section 19(2) of the Act.

<sup>16</sup> Section 19(3) of the Act.

holder who is under the Minister, the person aggrieved by the decision of the Head of Institute shall directly apply for review to the High Court instead of the Minister.<sup>17</sup> 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 an information officer 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 type 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 possess 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

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<sup>17</sup> Section 19(4) of the Act.



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 organizational chart, procedure for appealing decision of information holders or its officers.

The information holder has discretion to publish any other information under his possession apart from these which are 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 organize a press conference to bring to knowledge information of public interest on 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 contravene the requirements of the usage of the information **commits an offence** and upon conviction shall be liable to the imprisonment to the 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 concerned individual shall be liable to the **fine of not exceeding 5million shillings** or to the **imprisonment for the term not exceeding twelve 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.

### 3. The Electronic and Postal Communications Act, 2010 and Its Related Regulations of 2018

This Act was enacted by the Parliament on 29<sup>th</sup> January 2010 and assented by the President on 20<sup>th</sup> March 2010. The Act was enacted with the sole purposes 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 licenses 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 in the media industry, 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 make an application by filling a prescribed form as provided under regulation 4(1) of the Electronic and Postal Communications (Licensing) Regulations, 2018.<sup>18</sup>

### **Categories of Licenses**

Under this Act, there are six categories of the licenses issued by the Authority whereas Section 5(1) provides for network facilities licenses, network services licenses, application services licenses, content services licenses, postal and courier services licenses and any other licenses as may be determined by the Authority. On part of Television broadcasting the holder of the Network Facilities Licenses are allowed to broadcast Free to Air (FTA) Channels while the Pay TV Operators are generally granted network services licenses. 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 imposes certain obligations on the broadcasters. This is

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<sup>18</sup> See also section 6(1) of the Act,

provided under regulation 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 the 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;
- ✓ To avoid programs 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 programs 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 minor from harmful program content;
- ✓ To avoid programs related to nakedness, gambling, violence, superstition and astrology;
- ✓ To provide programmes that promote national peace, unity and tranquility and that does not endanger national security;
- ✓ 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 the community, 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 authorized by the Authority as specified in the construction permit;
- ✓ To provide programmes that inform, educate and entertain the 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 License**

Section 116 makes it an offence for a person to operate network facilities without obtaining a license to that effect. In case of conviction the 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 Contents**

This is provided under section 118 of the Act, the person convicted shall be liable for a fine of not less than five million Tanzanian shillings or imprisonment for a term not less than twelve months or both and also to a fine of seven hundred and fifty thousand Tanzanian shillings every day after the date of conviction if transmission of the obscene contents continues.



## 4. The Cyber Crime Act, 2015

This Act was enacted by the Parliament on 1<sup>st</sup> April 2015 and assented by the President on 25<sup>th</sup> April 2015. The Act provides for platforms for investigation, collection and use of electronic evidence. It was enacted to make provisions for criminalizing 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 analyzed hereunder.

### **Publication of False Information**

**Section 16 of the Act** criminalizes 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 shall be liable to a fine of not less than five million shillings or to the imprisonment for a term of not less than three years or both.

### **Transmission of Unsolicited Messages**

Furthermore, the Act criminalize any person who with intent to commit an offence initiate 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 person if convicted shall be liable to a fine of not less than three 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 year or to both.

### **Unauthorized Access to Data**

These offences 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 authority. While this may be good if looked ordinarily but as far as investigative journalism is concerned it may pose as a challenge. With this kind of provisions in place, it is difficult to embark on investigative journalism especially ones which may warrant accessing computer data.

### **Publication of Pornography and Child Pornography**

Sections 13 and 14 of the Act prohibits publication of child pornography and pornography respectively 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 behaviors. If convicted of this offence, a person shall be liable to pay a fine not less than three million shillings or imprisonment for a term not less than one year or both.

### **Publication of Materials inciting Genocide and Crimes against Humanity**

In the same line, 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, a person shall be liable to pay a fine not less than three million shillings or imprisonment for a term not less than one year or both.

## 5. The Statistics Act, 2015 and Its Regulations, 2017

This Act was enacted by the Parliament on 26<sup>th</sup> March 2015 and assented by the President on 25<sup>th</sup> April 2015. The Act caters for the national statistics system and establishes an independent Bureau that shall regulate country 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**

The official statistics means statics which are produced, validated, compiled and disseminated by the Bureau, Government Institutions and agencies.<sup>19</sup> This is provided

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<sup>19</sup> The Term agency has been defined under section 3 of the Act to include research institutions, NGOs, development partners or any other user or producer of statics.

under section 20(1) of the Act. Any other statistics which falls 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.<sup>20</sup>

### **Joint Collection of Information**

Section 22 of the Act provides for the joint collection of the information whereas the Bureau is authorized 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** provide to the effect that, where any census or survey is being taken, any officer or staff authorized by the Bureau may require any person to supply him with particular informational details in a form prescribed and the

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<sup>20</sup> See section 20(2) of the Act.

required person shall to the best of his knowledge, information and belief complete those belief for the purposes of such statistical study. This means that if the journalist is engaged in collection of these statistical information he will be exercising his profession of gathering and processing the same for Bureau 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, nor to the Bureau or 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 National Bureau of Statistics (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 harmonization of statistics within the sector;
- ✓ To identify skill gaps and propose appropriate capacity building and training programs for staff 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 advice 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 Programs of statistical survey as input to the National Medium term and Annual Statistical Survey Program respectively.

### **Application for 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 arrangements, 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 thereto 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**

Precisely, Section 37 (1) (b) provide to the effect that, any person who without lawful authority publishes or communicate 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 2 million or imprisonment to the term of not less than six months or both. This provision applies to journalist or 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 willfully 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 believe 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 million shilling or imprisonment to the term of twelve 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 event he allows publication of the false statistical information or data collection activity 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 million shillings or imprisonment for a term not less than three years or both.

### **Publishing or Communicating of Official Statistics without Authorization of the Bureau**

This applies to agency or person allowed by the bureau to process official statistics information. Section 37(6) requires those person to obtain prior authorization 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 criticized 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 Media Services Act, 2016

This Act repealed and replaced two pieces of legislations namely, *The Newspapers Act of 1976 (Cap.299)* which was condemned from all corners as draconian law and *The Tanzania News Agency (Cap 149)*.

- ✓ The above notwithstanding, this Act still retained some of the offences which were under the repealed Newspapers Act of 1976. These offences are sedition, libel and publication of false news which are likely to cause fear and alarm to public<sup>21</sup>, something which attracted not only worries but also criticisms from media stakeholders who considered these offences as political and may infringe the right to freedom of expression.

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<sup>21</sup> Read sections 49-50 of The Media Services Act, 2016.

✓ Obviously, the inclusion of the above named offences in the Act casts a wide net of criminal liability to various stakeholders in media professional to the extent that the said criminalization of freedom of expression exposes any suspect to either fine or imprisonment or in some incidences both, a fine and imprisonment . In terms of the imprisonment, a person can go to jail for a minimum term of three years for such offences which may not necessarily attract any criminality. In fact, the inclusion of the new offences in the Act, has equally been a focal point of attention from various stakeholders. For example, the provisions of section 47 of the Act which establish offences relating to media services. In fact the said provisions criminalize:

- publication of malicious, intentional, fraudulent, fabricated or any statement which is known to be false or not believed to be true,
- publication which is intended to threaten the interest of defense, public safety, public order, economic interests of the United Republic of Tanzania or reputations, rights and freedom of others.

Any person guilty of any of such offences may be fined to pay between Tanzania Shillings Five to Twenty Million or imprisonment for the term between three to five years or both fine and imprisonment.

✓ Some offences are so widely defined and thus expand the web of criminal liability. For instance, the offence of sedition is so wide and may infringe the

right to freedom of expression. The provisions of section 38 of the Media Services Act defines “seditious intention” to mean among others, to bring into hatred or contempt or to excite dissatisfaction against the lawful authority of the Government of the United Republic. Technically speaking, this is an unduly wide general definition, even though the section contains a public interest defense. We are of the view that, a publication “should not be deemed as seditious by reason only that it intends to show that the Government has been misled or mistaken in any of its measures or point out errors or defects in the Government or Constitution of the United Republic or in legislation or in the administration of justice with a view to remedying such errors or defects.

- ✓ A person who is found guilty of a seditious offence for the first time shall be liable to a fine not less than five million shillings or to imprisonment for a term of not less than three years or both. For a subsequent offender he shall be liable to fine not less than seven million shillings or to imprisonment for a term of not less than five years or both. On the other hand, a person who has any “seditious publication” in his/her possession and does not deliver it to the authorities attracts punishment in the form of a fine of not less than two million Tanzania shillings or imprison for a term of not less than two years or both. Furthermore, a printing machine used for the printing or reproduction of seditious publication may be seized. In addition, the court may ban the further publication of the newspapers for a period of not less than twenty months.

- ✓ In our considered opinion, the penalties in terms of a fine or imprisonment as provided for under the Media Services Act for such seditious offences are too severe. Further, such a ban on publication of newspaper for alleged sedition violates the right to freedom of expression. Not only that but the seizure of a printing machine could also amount to such a ban and is incompatible with the said provisions of Article 19 of the International Covenant on Civil and Political Rights, 1966.
- ✓ Furthermore, the new Media Services Act seems to trade along the same line with its predecessors especially on control or regulation of the print media .A good example is section 55 of the Media Services Act, which like section 25 of the repealed Newspapers Act, empowers the Minister to ban or suspend any newspaper for national security or public safety. This is unfettered power of the Minister which are prone to be abused. Since coming into force of the Media Services Act, 2016, there are newspapers which have already tasted the bitterness of the said provisions.
- ✓ Generally the Act has been couched in a manner which allows the Government to interfere with the regulation of the media industry. In our considered opinion, the provisions of the Act which allow Government interference to media activities, contravene Article 19 of *The International Convention on Civil and Political Rights*, 1966 to which Tanzania acceded in 1976 which provides that everyone has the right to freedom of opinion without

interference and that everyone shall have the right to freedom of expression, which include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

- ✓ In the same line, section 3 of the Act defines media to include online platforms. The section goes further to define social media as online interactions among people in which they create, share, and exchange of information and ideas in virtual communities, networks and their associated platform. All these are considered as media and thus subjected to the restrictions of the Act. In our considered views, the inclusion of the online platforms and social media (facebook, twitter and blogs) contradicts **the General Comment No. 34 on Article 19 of the International Convention on Civil and Political Rights by the United Nations Human Rights Committee** which provides as follows:

*"State parties should take account on the extent in which developments in information and communication technologies, such as internet and mobile based electronic information dissemination systems have substantially changed communication practices around the World. State parties should take all necessary steps to foster the independence of these media and to ensure access of individuals thereto"*

### 3.3 The Access to Information Act, 2016

There are some challenges which may impede the right to access information as provided in this Act. Section 5 of the Act provides for the general right to access information, save for exceptions as provided under Act. One of the exception is provided under section 6 of the Act. According to the provisions of section 6 of the Act, some information are exempt and thus cannot be accessed, these are information which:

- ❖ Undermine national security, defence or international relations of the United Republic ;
- ❖ Impede due process of law;
- ❖ Undermine lawful investigations;
- ❖ Facilitate or encourage commission of an offence;
- ❖ Involve unwarranted intrusion to privacy of an individual;
- ❖ Infringe lawful commercial interests of the information holder or third party;
- ❖ Cause substantial harm to the Government to manage economy;
- ❖ Undermine cabinet's records; and
- ❖ Dramatise or distort court's proceedings data before the conclusion of the case.



✓ Under the said provisions of section 6 of the Act, it is an offence punishable with imprisonment for a term not less than fifteen years if a person disclose such exempt information withheld by the public authority in accordance to the Act. In our view this section restricts freedom of information and contradicts section 4 of the same Act which lists one of the objectives of the law to provide for the protection of persons who release information of public interest in good faith. It is obvious that, the provision of section 6 fails to provide a public interest defence for cases where release of such information takes place for legitimate purpose, such as investigative journalism or research. In our views, section 6 also contradicts the provisions of section 23 of the Act which provide for the legitimate activities of whistleblowers by protecting persons in the service or employment of any information holder against; sanctions for releasing information on wrongdoing, or information which would disclose a serious threat to

- health,
- safety or
- the environment,

as long as that person acted in good faith and in reasonable belief that the information was substantially true.

### **Challenges in Accessing Information.**

- ✓ Other challenge posed by the Access to information Act is found under the provisions of sections 7 -19 of the Act which created endless and prolonged delay when one requests to access information and where in case of denial by the information holder to give such information, there is a dispute settlement mechanism framework which is a quasi-judicial with a lots of delays and which at the end may defeat the entire purpose of the law. For instance, 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 one 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.

### 3.4 The Cybercrimes Act, 2015

As noted in part two above, this Act criminalizes 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 implication on the constitutional and international human rights, particularly freedom of

expression, access to information and the right to privacy. The most controversial provisions of the Act relates to criminalization of sharing of information, extensive police powers of search and seizure, surveillance without judicial authorization 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 guarantee 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 million shillings or to imprisonment for a term not less than six 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 views, with such broad 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 these police officials power to issue order to any person in possession of such data (which could provide proof of an offence) compelling him to disclose such data<sup>22</sup>.
- ✓ In practice this means that under the Act, any police officer could search a smart phone, laptop, computer, if he/she suspects that it might contain material which could be used as proof of an offence listed in the Act, and this can on the

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<sup>22</sup> See section 31 of the Act 2015.

premises of a subject or even in 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, are criticized 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 computers or computers systems, or the content of e-mail communications. The said law also gives even junior police officers power to demand information from internet services providers and mobile phone network providers. They are also empowered under the law to intercept e-mails 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 other activists.

✓ In our considered view, such power for search and seizure as given to police officials 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 curtails also the right to freedom of expression.

## Protection of Sources

- ✓ It is undisputable fact that, protection of source of information is one of the cardinal principles of media profession. It is believed that, source is a fountain of freedom of expression, thus if we want to promote freedom of expression, the law should always guarantee the protection of the source. 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 views, 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 criminalizes 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 any figure that would be a mark on its record

- ✓ The fear of media stakeholders to the Statistic Act like 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 12<sup>th</sup> 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 guaranteed 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 compiled 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 prohibitions on publication of the statistics which have not been approved by the National Statistics Bureau is curtailing the freedom of the press and particularly the editorial independence.

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

Although this Act was not much criticized when enacted, it has a total of 44 sections which creates offences as well as creating a harsh environment for one to enjoy the much needed freedom of expression.<sup>23</sup> Some of the sections creates the following offences:-

#### Unauthorized Use of Cyber Network

- ✓ The provisions of section 124 of the Act criminalizes use of cyber network without authorization 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, destroy or delete or alter any information in the computer resources or diminish 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 Tanzania Shillings or to imprisonment for a term of not exceeding three months or both”*

- ✓ Basing on the above provisions of the law, the challenge is when an access is deemed to be authorized and when is deemed to be not authorized. Also, this kind of provisions may be a hindrance to the investigative journalism.

#### Criminalization of False Information

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<sup>23</sup> These are sections 116-160 of the Act.



- ✓ The Act under the provisions of section 132 criminalizes what it calls “false information as follows”

*“ Any person who furnishes information or make 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 to fine of three million Tanzania shillings or to imprisonment for a term of twelve months or both”.*

- ✓ The challenge on what is false information is not defined under the law, thereby making a fertile ground for abuse of freedom of expression. Further, 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 authorization to intercept or to listen 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 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.

### 3.7. The Media Services Regulations, 2017

The Online Contents Regulations were published on 16th of March 2018 by the GN No 133 of 2018. The Media Services Regulations (G.N. 18/2017) is one of the new media laws which are criticized by stakeholders for being draconian, unconstitutional and in contravention to international standards on freedom of expression and information. The Regulations were made under the provisions of section 12 of the Media Services Act No. 12 of 2016 which empower the Minister responsible for contents and media services. Other provisions of these regulations have been analysed on part two above, but one aspect of these regulations which may impact the media industry is on handling of the Government's advertisements. Needless to say, these are the major sources of funds to most of the media houses. That being the case, if not properly handled and distributed, they can be used to undermine the media industry.

#### **Advertisements**

- ✓ Regulation 25 compels all government Ministries, Departments, Agencies, Institutions as well as projects with over 50% government funding and Local Government Authorities to channel their advertisements through the Information Services Department for synchronization before they are published or broadcasted. According to the regulation, the Director of Information Services is given sole and exclusive power to decide which medium to use in publishing or broadcasting the submitted adverts subject to budget set for by the accounting officers. In our view this discretionary power, may be abused for

singling out some media house which seems to be critic of the Government policies etc., or which publishes news which the Government does not like.

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

The Regulations were made on 16 March 2018 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.

Notably, the Regulations requires bloggers, online forums, online radios and televisions to be registered with the Tanzania Communication Regulatory Authority (TRCA). It should be noted that the power to register online forums, online radio and online televisions is incompatible with international standards on freedom of expression. For instance, the 2011 Joint Declaration on Freedom of Expression and the Internet provides that measures such as imposing registration 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.<sup>24</sup>

With respect to the registration of bloggers, the Human Rights Committee General Comment no. 34 states clearly that journalism is a function shared by many different actors, including bloggers. That being the case, mandatory registration of journalists is a disproportionate restriction on freedom of expression. Accordingly, the mandatory

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<sup>24</sup> Read Article 19 analysis on the Electronic and Postal Communications (Online Contents) Regulations, 2018.

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.<sup>25</sup>

### **Obligations of Subscribers, Users and Social Media Users**

Regulation 5(2) provides for the obligations of subscribers and social media 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. In addition to that, users are required to ensure that their equipment are protected by the password. Short of that, they will be held responsible for anything posted via their equipment or accounts.

### **Licensing of electronic media**

Under Regulation 7(3), electronic media are required to apply for a license. Moreover, the fees for the license is considered extremely high. According to the second schedule to these Regulations, an applicant for online content services license may be required to pay more than Tshs. 2,000,000/=. This is huge amount of money and may not be afforded by some bloggers or owners of online television. Consequently, it curtails the right to freedom of expression and access to information by the public. It is reiterated that, any kind of licensing of journalists, bloggers, or electronic or print media is

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<sup>25</sup> *Ibid.*

incompatible with international standards on freedom of expression. The requirement to obtain a license does not serve any legitimate aim and is plainly unnecessary.<sup>26</sup>

### **Obligations of Internet Cafes**

The Regulation imposes rather a strange obligations to the operators of the 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.

Close look at these obligations reveals only one motive, and that is, the unnecessary control by the authorities on the use of the internet by the public. This may have far reaching consequences as far as freedom of expression and privacy is considered. Anonymity is considered as one of the very important tool in freedom of expression especially on the digital era or internet. Therefore, these requirements significantly interfere with the right to freedom of expression.

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<sup>26</sup> Read Article 19, *op.cit.*

### 3.9 CONCLUSION

From the above analysis, we can safely say that there are some provisions of the laws that interferes 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.