



To license or not to license, that is the question



Zanzibar's journalist Salma Said narrate the ordeal about her kidnapping during the press conference held at Media Council of Tanzania's office, on her left is MCT Executive Secretary Kajubi Mukajanga and right is former Tanzania Editors Forum Chairperson, Theophil Makunga.

INTRODUCTION

The issue of whether there should be a scheme for the registration of journalist has vexed policy makers, legislators, government administrators and media practitioners for quite some time now. Each one of these

constituencies approaches the issue of journalists' registration from very different standpoints.

Government agents at every level (political bosses, civil servants, many ruling party legislators), consider the registration of journalists to be a natural thing to do, since it is almost unheard of that a body of



Some organization members of the Coalition on the Right to Information (CoRI) in one of the CoRI meetings held at the MCT offices.

‘professional’ people would operate without being duly registered. This point of view is however tainted by the fact that, alongside this apparently innocuous defence of registration, there exists a whole raft of pieces of legislation that betray the government officials’ real reason for insistence on registration, that is control of the press.

Even some media practitioners have bought into the spurious arguments

about ‘professionalism.’ The argument here has been that journalism is a profession just like other professions such as medicine, engineering and law, and must consequently be treated the same way the others are treated.

This appears to be attractive to some members of the media fraternity, who believe their ‘profession’ has been debased through invasion by ‘intruders’ who lack the basic

educational and professional qualifications. There is an obvious desire to protect the profession against the negative acts of untrained, unqualified and irresponsible elements in society who masquerade as journalists.

Members of the general public have also complained about individuals who go round saying they are journalists but whose credentials are difficult to determine and whose work is most times substandard. Worse, some of them have taken on the aspect of beggars and crashers of events to which they are not invited, always begging for fares back home.

WHY REGISTRATION?

All these arguments in favour of registration carry valid points that need to be considered. The view of government officials (and others, including media practitioners), who think that journalists need to be registered just like other professionals, at least for purposes of taxation and concession claims, is valid up to a point.

Media stakeholder Idris Jabir contributes to a topic presented during the commemorations of International Day for Universal Access to Information, 2017 held in Dar es Salaam, others in the pictures are participants during the event.



It goes without saying that government must possess a fair amount of knowledge about all the economic, political, cultural and social activities carried out in its realm, and that means all these entities must be in some register or other for, amongst others, purposes of taxation. This requirement will logically be concerned with media organizations, but it need not affect the registration of individual journalists.

Who is a journalist?

The argument against journalists' registration is centred around the convoluted issue of who can be termed a journalist. This has constituted a controversial exchange amongst media practitioners themselves as well as among members of the public.

There is a point of view that sees a journalist as essentially someone who has a minimum level of education and who has acquired technical training in how to report, edit, broadcast and produce news stories and other media products. This will traditionally be someone who is trained with a view to being employed in a newspaper, radio or television station.

The opposing point of view is that of a journalist being any member of a community who is actively engaged in gathering and disseminating information about issues of importance to the community, and who may or may not have undergone any specialized journalism training. All that is needed for this kind of journalism are a sound level of ability to observe and understand phenomena and the requisite ability to communicate with the rest of society.

There will, of course, appear differences of appreciation by different people looking at different realities. The old, perhaps diminished in our time, role of the man with the loud horn who used to alert the village to an approaching swarm of locusts or a cascading landslide, has to be construed as a form of journalism.

Ironically, that role, unsophisticated as it may seem, has been partially taken over by the social media enthusiast, who is constantly on Twitter,

Facebook and Whatsapp, or on a personal blog, informing the world about whatever he or she fancies. The advent of the so-called citizen journalist has further complicated matters.

In many villages across Africa, where societies have not moved too far from the way they used to live a century ago, the place of the public informant, who is not on anyone's payroll has been maintained.

The arguments around this issue habitually forget the very etymological genesis of the word 'journalism', which originally came from the French word 'journal', which simply means diary, a very personal thing.

What is Registration, and is it different from Accreditation?

Registration regimes differ from one country to another, but generally these require that anyone wishing to practice as a journalist get registered by the authorities, usually the ministry responsible for information. In some jurisdictions, a journalist has to renew his or her registration every year, and is usually given a 'press card' bearing the number of the year for which the card (hence, the authorization) is issued.

The corollary of this requirement for registration is that it can be withdrawn, or refused when renewal is sought at the beginning of the year (as some jurisdictions specify). In this sense, compulsory registration includes an embedded understanding that the authorization to practise as a journalist can be denied.

Accreditation has often been considered to be different than registration. Foreign journalists may be accredited to practice as journalists in their host country, or local journalists may be required to obtain accreditation for them to access specified spaces such as the Parliament, the presidency, the Courts or sporting venues.

This is usually important in regulating the number of journalists who may be allowed into limited spaces, as opposed to elimination through

registration procedures which allow government bureaucrats to arbitrarily refuse authorization to 'inconvenient' reporters.

So, is there any substantive difference between registration and accreditation in terms of the freedom to practice journalism? Very often, these terms are used interchangeably, and the difference is to be found in the implementation, and that could down to the particular official manning the gates at any particular time.

It has to be noted here, that in the pre-democratic regimes of the African continent, the tendency of public officials is not to facilitate journalism but rather to circumscribe it with as many restrictions as can be thought up. The Ministry of Information in all our African governments is a constant reminder that we are still in the pre-democratic phase, because this ministry's main job is control and propaganda, justifiable only in wartime.

EXAMPLES OF REGISTRATION LAWS

Both Kenya and Tanzania provide us with recent efforts by their governments to impose registration/licensing schemes. The Media Council (of Kenya) Act of 2013 prescribes obligatory annual registration of journalists, media practitioners, enterprises and training institutions.

The declared purpose of this law is to improve professionalism by making journalists practicing in Kenya have the requisite skills and are ethically upright. To this end it provides for a Code of Conduct by which every practicing journalist must abide. Tanzania's Media Services Act (MSA) of 2016 follows the broad strokes of the Kenyan law, and it is interesting to note the similarities in the two pieces of legislation.

The MSA of Tanzania envisages the creation of a statutory media council which will help the government in the regulation of media practitioners, including in registration and other forms of state control. This is being done in spite of the existence of a robust, self-regulating media scene that has been overseen by the Media Council of Tanzania (MCT) whose work has been good enough to inspire emulation by other countries around the world.

It may not be necessary to go into greater details of these two laws, but some of the provisions are worthy of note. For instance, both laws impose the necessity of having attained a minimum college qualification, a degree or diploma in journalism. Also, it is made clear that an applicant may be admitted or refused, and he or she may be refused registration subsequently during the annual renewal of the license.

It has been argued by state officials, and even by some media practitioners, that these educational requirements are intended to guarantee high levels of competence and knowhow by setting standards by which entrants may be measured.

Media practitioners who accept these arguments may find some merit in the

component setting levels of education and training, in that these seem to restore respectability to the occupation of journalism. However, they may be oblivious to the restrictive components of these laws that actually go against the most basic tenets of freedom of expression



Minister of Information, Culture, Artist and Sports Dr. Harrison Mwakyembe speaks with MCT Staff when he visited their pavilion during the exhibition when on the Commemorations of World Press Freedom Day, 2018 held in Dodoma.

OPINIONS

Here below is a selection of opinions on the issue of journalist registration, just to give examples of the kind of issues under discussion.

Toby Mendel

Toby Mendel is the Director of Law at Article 19 and Executive Director of the Centre for Law and Democracy in Canada. He recognizes the differences existing between the various registration regimes and their requirements. Very often, terms like registration and accreditation are used interchangeably, and this can cause ambiguity. He decides to use the term, 'licensing schemes' to denote all the various forms of state imposed control over journalists.

'The ostensible purpose of licensing schemes is usually to ensure that the task of informing the public is reserved for competent persons of high moral integrity', Mendel says.

Tanzania Editors Forum Secretary, Neville Meema contributes to a topic presented during the commemorations of International Day for Universal Access to Information, 2017 held in Dar es Salaam, others in the pictures are participants during the event.





MCT Programme Officer, Paul Mallimbo gives MCT Official greetings during the Commemorations of World Press Freedom Day, 2018 held in Dodoma

‘In practice, however, the power to distribute licences can become a political tool, used to prevent critical or independent journalists from publishing. For this reason, and simply because the right to express oneself through the mass media belongs to everyone, irrespective of qualifications or moral standing, licensing schemes for media workers are considered to be in breach of the right to freedom of expression’.

Stephen Strasser

In his paper titled “Registering Reporters : How Licensing of Journalists Threatens Independent News Media, Strasser, an associate professor at the City University of New York, points out that in the past, during the Cold War, licensing of journalists ‘had an ideological tinge’ and was a way of enlisting journalists in the cause of nation building.’

Strasser points out that in the new political climate, ushered in by the fall of the Soviet Union, states will still want to continue licensing journalists for a variety of reasons, but the forces militating for a greater space for human rights and freedom of expression are growing in strength.

Still, he seems reluctant to credit any ‘one-size-fits-all approach,’ and counsels caution in dealing with each country case. For instance, Strasser wonders whether it would be fair to fault Rwanda for its limitations on freedom of expression with the country’s history which is well known.

He proposes the promotion of journalists’ self-regulation; linking free expression to a free press; the provision of skills-based rather than theoretical journalistic education and the defence of on-line journalism.

Strasser concludes: There is little doubt that international media developers and human rights

advocates should be opposed to licensing; journalists have to worry about any government that defines and regulates them. But the test for those promoting independent journalism should be how a licensing policy restricts entry into the field.....

The Inter American Court of Human Rights (IACtHR)

In a 1985 decision, the Inter American Court of Human Rights (IACtHR) was of the opinion that it was wrong to equate journalism with other professions such as those of lawyers and physicians.

The Costa Rican government had argued that the requirement under that country's law that journalists belong to a 'colegio' (association) was a normal practice because it was necessary for public order, that it would ensure higher professional and ethical standard and that it would guarantee the journalists' independence against the media owners.

The court held that the freedom to seek, receive and impart information was specifically protected as a human right protected, which could not be said of the other professions. The court rejected the arguments advanced by the government and insisted that whatever organizational arrangements that a government wished to take in the regulation of an orderly public space, it should not interfere with the basic human right of freedom of expression, which the licensing scheme was guilty of.

The argument about the propriety of keeping the media space from poor journalism and weeding out the those who may be seen as being unqualified was rejected on the grounds that the right to freedom of expression should not be subjected to limitations which could, while appearing to be helpful, kill the very thing they purport to protect.

Zambia High Court

Other national and international jurisdictions have adopted similar stances. For instance, in 1997, the High Court of Zambia invalidated an attempt to establish a statutory body to regulate journalists, stating that any effort to license journalists would breach the right to freedom of expression, regardless of the form that effort would take.

In 2004 the three main international organizations watching over freedom of expression (The UN Special Rapporteur on Freedom of Opinion and Expression; the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression) issued a joint statement stating that 'individual journalists should not be required to be licensed or to register.'

CONCLUSIONS AND RECOMMENDATIONS

It is safe to state that there are no clear-cut differences between two sides ('licensing' and 'non-licensing') in this argument. There are those who believe that journalism needs to be regulated in a way that makes journalists more responsible and accountable, and this would include a form of registration, or according to Mendel, licensing.

This school contends that journalism has to be 'professional' in the same way that law, engineering, medicine and accountancy are regulated. This school includes some media practitioners who feel demeaned by belonging to an occupation with no 'professional' cachet recognized by the rest of society, and therefore prone to intrusion and abuse.

The other school holds onto the tenet that journalism, and the whole realm of communication, belongs to a fundamental are of human rights, since the ability to communicate is one of the most basic of human rights upon which other rights are predicated. It is argued that any form of registration or

licensing interferes with this right, as it gives state officials discretion to decide who may or may not be a journalist.

In between these two positions, there are those who are prepared to take a more pragmatic view, sometimes in favour of licensing for special cases, although generally opposed to such schemes. This school would insist that any licensing scheme, like any other form of intrusion into this fundamental human right, pass the 'three-part' test.

That is any such limiting measure be sanctioned clearly by law; that it be for a clearly defined public good; and that it be commensurate with the ill it seeks to cure.

Maybe we need to draw a few conclusions and make some recommendations, all the time emphasizing that the arguments will continue for a long time to come, and the jury is still out on a number of issues:

Journalism, which is a most basic

From left; Anastazia Rugaba, Irenei Kiria, Jenerali Ulimwengu, Anna Henga and Absalom Kibanda listen to discussions on one of the topics presented during the commemorations of International Day for Universal Access to Information, 2017 held in Dar es Salaam, others in the pictures are participants during the event.





plank in the edifice of the right to freedom of expression, is a human right for all to practice without limitation.

This freedom should not be interfered with by state departments and officials except in very exceptional circumstances, such as war.

Any such interference must satisfy the ‘three-part’ test: that it be sanctioned clearly by law; that it be commensurate with the ill it seeks to fight; and that it be for a clear public good. Government and state officials cannot be trusted with the regulation of journalism and journalists, simply because the media play the role of whistle-blower, and most of the evils complained against emanate from government.

Government is the main centre of two of the worst evils in our societies, corruption and human rights violations, so government should not be the one charged with the regulation of the work of the whistle-blower.

Self-regulation should be encouraged as much as possible. When self-regulation fails, or when aggrieved parties are not satisfied with the remedies on offer, they are free to follow regular judicial arbitration. The goal should be to as much as possible do away with state arbitrariness.

Democracy, or what little of it had been attained over the past two decades, is on the retreat. There is growing encroachment on civil spaces, and governments will persist in their quest to control the media so as to stifle protest and criticism. At the same time, media and civil society must brace up for a protracted effort to create more space for robust popular conversations via media.

For media to survive and thrive, media must strive to clean up its act, to improve on its technical and ethical training, to ensure the best service that can be rendered to society. A society that is well served by a media that works for society’s greater freedom is the best guarantor for the media’s own freedom when under attack by the state.

Media Council of Tanzania Executive Secretary Kajubi Mukajanga follows the discussions during the commemorations of International Day for Universal Access to Information, 2017 held in Dar es Salaam, others in the pictures are participants during the event.