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LEGAL LOOPHOLES IN PROMOTING MEDIA FREEDOM AND THE RIGHT TO INFORMATION IN ZANZIBAR

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SEPTEMBER 2021

Acknowledgement

The production of this report could not have been possible without the generous support of the Global Media Defence Fund, a UNESCO Multi-Partner Trust Fund, whose objective is to enhance media protection and improve the access of journalists to specialized legal assistance. The support enabled us to dedicate our time and energy towards putting this study together.

Undertaking this task would have not been possible without the able and proactive collaboration of our many peers in the media and legal fraternity in Zanzibar including the coalition on media freedom. Special mention must go to the Tanzania Media Women Association through whose dedicated and selfless support we were able to reach key media stakeholders in Zanzibar including organizing a workshop to review prevalent laws as well as the proposed media law in the isles. We are grateful to all relevant stakeholders in and out of government who were willing to share experience on the legal framework governing media freedom and the right to information including journalists, editors, and regulators.

Lastly but not the least, we must register our appreciation for Chris Maina Peter, Professor Emeritus of Law at the University of Dar es Salaam who led in putting together this study. His tireless efforts, elephantiac memory of events in Zanzibar and humility in sharing his vast and unparalleled knowledge and experience of the law and more so in Zanzibar was critical to the success of this study and we remain indebted for his service. Aziza El-Maamry, Legal and Research Associate and Deus Valentine Rweyemamu, the Chief Executive Officer made substantial intellectual contributions in the design and subsequent execution of this important study.

Appreciation also goes to all the staff of the Center for Strategic Litigation who had to put up with the many demands of this study including chipping help every so often when colleagues were completely immersed in the study and had no time to spare for other obligations.

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Executive Summary

This study on the media legal framework in Zanzibar comes at an opportune moment when the 8th phase government in Zanzibar has expressed a solid intention to modernize and liberalize the media sector in Zanzibar. Media and the right to information are important cornerstones for the vision tabled by the administration for a robust (Blue) economy and a proactive fight against corruption. The latter will not be realized if citizens are not empowered thoroughly to play their rightful oversight role over public officials and resources. It is only by empowering citizens with the right to information and allowing independent media to flourish that collective action against corruption can be catalyzed. The legislature in Zanzibar therefore bears a critical role in ensuring that Zanzibar is ready to materialize its potential through open and inclusive public debate on economic growth and public accountability.

This study is divided into seven parts excluding annexures. The first part sets out the context in Zanzibar as far as media freedom and right to information are concerned including the constitutional architecture. The second part draws on the global and regional standards on media freedom and the right to information as part three addresses the legal framework including the union legal framework and its relevance to Zanzibar.

In part four, the political economy of media regulation in Zanzibar is discussed highlighting the various actors, the enabling laws and the relative powers of the actors.

Part five of the study discussed in relative detail the relevant laws in Zanzibar touching on media freedom and right to information highlighting the key gaps in the said laws. On the other hand, part six discusses the proposed media services bill and provides a critical analysis of it as well as recommendations for improving it. Part seven, provides a list of recommendations to be considered in order for the legal framework to improve in line with regional and global standards.

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“Other areas include continuing to guard the basic tenets of democracy and fundamental freedoms of the people including the media. As you know, freedom and democracy are the foundation for peace in the country and they assist in stirring political, economic and social development ... I must also note that freedom or democracy is prescribed within the law, regulations and procedures. Therefore, along with democracy and freedom, I call on you (my fellow) Tanzanians to go about our pursuit of both these values in full recognition of the laws of the country.”

President Samia Suluhu Hassan¹ ♣

PART ONE: Introduction

The right to information is very important to human beings. This is because it is a major safeguard to life. When there is lava flowing from an erupting volcano or there is a serious typhoon approaching the coast from the high seas or floods or fire approaching an urban setting, it is information which prepares the population in all these scenarios to take appropriate measures and in the process safeguard life. Without a free flow of information, it would be catastrophic.

At the same time, a government can only effectively engage with the population through information flowing on both sides. That is the government sending information to the people and the people reacting to government plans and actions. In that way the society moves forward. It serves no purpose for a government to manipulate the flow of information through censorship and harassment of the media. That creates an artificial and dangerous situation. People will be fed with half-truths and in return, they will comment and say, not what is true but what the government wants to hear. The society in such a situation will not develop out of this open deception but stagnate.

Development in the area of technology has made the right to information easy to realise and a reality. Things happening in one corner of the earth will reach and be known to the other corner in a minute. That is the beauty of science which has made realisation of this fundamental right a reality and not a dream. This wonder of science comes at a price. It is the price of the State attempting to control the flow of information to suit its needs and in particular comfort in power; on the one hand and Sections of the population manipulating information, partially to harass the regime in power and also curving a place of influence in the society. This gives rise to the emergence of the fake news phenomenon.

Therefore, we have the State attempting to reign in the reinless horse on the one hand, not necessarily to ensure only correct news reaches the public but news which are in its favour. The public on the other hand digs to discover what the State is hiding, not necessarily to land at the truth but to ensure that the State remains in check. This situation explains the debates on the law relating to the right and freedom of information and in particular the main stakeholders in this field namely, the State, media personnel of diverse categories and the people.

This work attempts to trace the emergence and development of the right and freedom of information at global, regional, sub-region, and national levels and ends up concentrating on Zanzibar. The situation in Zanzibar is complicated by the very nature of the Union between Tanganyika and Zanzibar. Within the Union, Zanzibar retains relative autonomy on issues which have not been categorised as Union Matters by the Articles of the Union of 1964 and consolidated by the Constitution of the United Republic of Tanzania of 1977. Information per se is not a Union Matter. However, there are certain types of information which touch on Union Matters. This very delicate balance is what has pushed information-related issues such as Statistics and Cyber Crime to fall within Union Matters and thus handled by the two parts of the Union i.e. Tanzania Mainland and Zanzibar. Thus, while trying to legislate on various aspects of the right and freedom of information, Zanzibar has to bear in mind this delicate divide of authority.

This report traces the media legal framework in Zanzibar in the view of the national, regional and global context in order to draw out recommendations of how the same can be improved.



♣ Inaugural Address to the National Assembly of the United Republic of Tanzania, Dodoma on 22nd April, 2021. This is an unofficial translation from the Kiswahili speech.

PART TWO: Setting Standards for Promotion and Protection of Media Freedom

The standards and parameters have been set and developed by the members of the international community over the years at different levels from global, regional to sub-regional. This has been done with the expectation that they will be strictly adhered to at national or domestic level. The practice of States is not uniform. Some adhere to these standards as it should be done while others, citing all forms of excuses fail to reach the agreed thresholds.

Recognition of the importance of the right to information is not only a domestic issue. It is global and not a recent issue. Back in 1946, a year after the establishment of the United Nations, the United Nations General Assembly adopted a resolution calling for an international conference on freedom of information.²

The resolution underlined that:

Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated.

This was cemented by the Universal Declaration of Human Rights of 1948³ which elaborated that:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.⁴

In 1966 the Declaration was given legal value through two international legal instruments, namely the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966. The former instrument underlined the importance of

² See United Nations General Assembly Resolution 59(1), 65th Plenary Meeting held on 14th December, 1946.

³ United Nations General Assembly Resolution 217A. This document has developed into a very popular legal instrument and has been translated into over 500 languages across the world. It has also attracted and inspired national Constitutions including that of the United Republic of Tanzania where the Constitution of 1977 in Article 9(f) calls upon the authorities in the country to implement all their functions with the aim of ensuring inter alia, that human dignity is preserved and maintained in accordance with the provisions of the Universal Declaration of Human Rights, 1948.

⁴ Article 19.

freedom of information.⁵ Other global initiatives followed, all underlining the importance of information to human beings.⁶

At regional level, legal instruments have emerged promoting as well as protecting freedom of information. In Europe, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 places freedom of information within the wider freedom of expression.⁷ This is complemented by Framework Convention for the Protection of National Minorities, 1995;⁸ Charter of Fundamental Rights of the European Union, 2000;⁹ and Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, 1998.¹⁰

Africa has not been left behind. Article 9 of the African Charter on Human and Peoples' Rights, 1981 addresses this right.¹¹ Also relevant is the Cairo Declaration on Human Rights in Islam, 1990.¹² At sub-regional level in the continent, the Treaty of the East African Community, 1999 in Article 6 gives importance to the right to information.

At national level, freedom and the right to information is to be found in almost all constitutions including those currently existing in the United Republic of Tanzania.¹³ There are other pieces of legislation in the country which govern this right and which we shall have opportunity to address at length in the course of this work. legislation in the country which govern this right and which we shall have opportunity to address at length in the course of this work

⁵ See Article 19 of the International Covenant on Civil and Political Rights, 1966 which was adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16th December, 1966 entered into force on 23rd March, 1976.

⁶ These include: International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), 1990 (Article 13); Convention on the Rights of the Child, 1989 (Article 12); Convention on the Rights of Persons with Disabilities (CRPD), 2006 (Article 21); Basic Principles on the Independence of the Judiciary, 1985 (Principle 8); and Basic Principles on the Role of Lawyers, 1990 (Principle 23).

⁷ See Article 10 as amended by Protocol 11.

⁸ Article 9.

⁹ Article 11.

¹⁰ Article 6.

¹¹ This Article has been elaborated over time by various bodies including the African Commission on Human and Peoples' Rights established under the Charter. See Resolution on the Deteriorating Situation of Freedom of Expression and Access to Information in Africa, 2010; and Resolution on the Safety of Journalists and Media Practitioners in Africa, 2011. See Hamad, Mohamed Khamis, Freedom of Expression in Zanzibar: Legal Review, Zanzibar: Tanzania Media Women's Association, 2019. Article 22.

¹² See the Constitution of the United Republic of Tanzania, 1977 (Article 18); and the Constitution of Zanzibar, 1984 (Article 18).



PART THREE: The Law and the Media in Zanzibar

I. The Constitution of Zanzibar, 1984

Section 18. (1) Without prejudice to the relevant laws of the land, every person has the right to freedom of opinion and expression, and to seek, receive and impart or disseminate information and ideas through any media regardless of national frontiers and also has the right of freedom from interference with his communications.

(2). Every citizen has the right to be informed at all times of various events in the country and in the world at large which are of importance to the lives and activities of the people and of issues of importance to society.¹⁴

There are several issues worth considering in relation to how the freedom of opinion and expression, and to seek, receive and impart or disseminate information has been formulated in the Chapter Three to the Constitution (**Article 18**).

(i). One, freedom is preceded by a claw-back clause ('without prejudice to the relevant laws of the land'). The provision has been subjected to the normal laws of the land. Practically, it means that laws on this subject matter in Zanzibar are superior to the Constitution and can take away what is provided in the Constitution. This is strange and abnormal [This was the situation at the level of the United Republic of Tanzania before the 14th Amendment of 2005 to the Constitution of the United Republic of Tanzania, 1977]. Therefore, the first struggle should focus on amendment of the Constitution of Zanzibar of 1984. This is because whatever law is enacted will always be alright however formulated because the Constitution does not provide any standard but rather accommodates any law however formulated.

14 The Constitution of Zanzibar, 1984 is in Kiswahili and there is no official translation into English. This English translation is adopted from Hamad, Mohamed Khamis, *Freedom of Expression in Zanzibar: Legal Review*, Zanzibar: Tanzania Media Women's Association, 2019, p. 6.

(i) The right to information in Zanzibar provided in Article 18(2) is only restricted to Citizens and not to all persons. Again, this departs fundamentally from what is provided in Article 18 of the Constitution of the United Republic of Tanzania which grants all the freedoms to “Every Person” and not only to citizens.

(iii) In addition, granting rights to citizens in Zanzibar is also controversial. Strictly speaking, Zanzibar does not have citizens. Citizenship has been a Union Matter since 1964. It was Item (vi) of the Articles of the Union, 1964¹⁵ and it is Item 6 in the First Schedule to the Constitution of the United Republic of Tanzania, 1977. There is a category of persons referred to as ‘Zanzibaris’ as defined by the Zanzibari Act, 1985 but that Act does not grant citizenship to this category of persons. It can therefore be safely concluded that the Constitution of Zanzibar grants these specific freedoms and rights to citizens of the United Republic of Tanzania.

II. United Republic of Tanzania Legislation Applying to Zanzibar¹⁶

There are a number of laws enacted by the Parliament of the United Republic of Tanzania relating to the media and freedom of information which are relevant to Zanzibar. However, not all of them extend to the isles. The Constitution of Zanzibar, 1984 introduces conditions for these laws to be able to apply in Zanzibar. Relevant here is Section

132 of the Constitution which provides:

132(1) No law enacted by the Union Parliament shall apply to Zanzibar unless that law relates to Union affairs only and having complied with the provisions of the Union Constitution.

¹⁵ See Article 5(a) of the Articles of the Union as produced in Union of Tanganyika and Zanzibar Act, 1964 (Act No. 22 of 1964). See also United Republic of Tanganyika and Zanzibar, Government Notice No. 243 of 1/5/1964.

¹⁶ The following laws of the United Republic of Tanzania, though relevant to the subject matter under discussion i.e. the freedom of information are not Union Matters and therefore apply in one part of the Union – Tanzania Mainland and do not extend to Zanzibar. These are: The Whistle-blower and Witness Protection Act of 2015; the Media Services Act No. 12 of 2016 of the United Republic of Tanzania; The Access to Information Act of 2016 of the United Republic of Tanzania; The Online Content Regulations of 2018 of the United Republic of Tanzania; The Electronic and Postal Communications Act of 2010 of the United Republic of Tanzania; The Online Content Regulations of 2020 of the United Republic of Tanzania; The Radio and Television Broadcasting Regulations of 2020. Equally important but not extending to Zanzibar are Media Services Regulations, 2017 (Government Notice No. 18 of 3/2/2017).

- (2) The enactment shall be submitted to the House of Representatives by the responsible Minister.
- (3) Where subsidiary legislation is made in terms of the authority provided for in sub-article (1) and (2) of this Article in accordance with the law shall only apply in compliance with the conditions in the parent Act as prescribed in this Article.

This constitutional provision has been given judicial recognition by the High Court of Zanzibar in the case of Director of Public Prosecutions v. Abdalla Suleiman Mwinyi and 6 Others,¹⁷ where Abdul-Hakim A. Issa, J. held that:

... this Court is of the firm view that the provision of Section 132 of the Zanzibar Constitution must be complied with before any Act of Parliament on Union matters can be enforceable in Zanzibar.

The judge clearly underlines the main condition to be adhered to before any Union law can apply to Zanzibar. It must be on Union Matters, as set in the first Schedule to the Constitution of the United Republic of Tanzania and has to be laid before the Zanzibar House of Representatives. With these pre-conditions in place, not all laws touching on the media freedom enacted by the Parliament of the United Republic of Tanzania can apply in Zanzibar.

As such, we have established three legislation which have met these requirements. These are the National Security Act, 1970;¹⁸ the Statistics Act, 2015;¹⁹ and the Cyber Crimes Act, 2015;²⁰

A. The National Security Act of 1970

Security of a country is a very serious matter. It is therefore not surprising that the item of security has been a Union matter right from the inception of the Union in 1964 and is well captured in both Articles of the Union of 1964 and Schedule One to the Constitution of the United Republic of Tanzania, 1977.

¹⁷ High Court of Zanzibar at Vuga, Criminal Case No. 07 of 2016.

¹⁸ Act No. 3 of 1970.

¹⁹ Act No. 9 of 2015.

²⁰ Act No. 14 of 2015.

It is not easy to question matters perceived or declared to be of security in nature. Equally it is not easy to set standards on what amounts to endangering the security of the State. A capable journalist working on a good investigative story is likely to be accused of involvement in espionage in the course of doing his or her work. It is therefore not surprising that notwithstanding its 51 years on the statute books few have felt comfortable to attack its relevance to date. It is hoped that with the opening of civic space and democracy in general, doors will be opened to challenge some of the actions done and defended simply on the pretext of security.

B. The Statistics Act of 2015²¹

Statistics are a Union Matter in the United Republic of Tanzania. They are item No. 20 in the First Schedule to the Constitution of the United Republic of Tanzania, 1977 which lists Union Matters.

However, the operational legal provisions in the country limit the geographical reach in the United Republic of Tanzania. Thus, the law applicable clearly demarcates application in the two parts of the Union. According to Section 2 of the Statistics Act, 2015 (as amended), in relation to Tanzania Zanzibar, this law applies in relation to one item only i.e. population and housing census only. The bulk of the legislation applies to Tanzania Mainland. A long list of items to which the law applies is provided in the Third Schedule to the Act which has 39 items.

Therefore, several of the controversial provisions contained in the Act did not extend to Zanzibar. That notwithstanding, we discuss some of these provisions which affect millions on Mainland Tanzania.

Normally, statistics are used as an indicator on the direction of a particular issue. In a country, statistics guides the people and their leaders on how to plan their lives and the direction of the nation for its development. Good and well-thought out plans can come only from a study of correct statistics. It is therefore important for statistics to come out of serious research and should portray nothing but the truth of a concrete situation.

Therefore, incorrect statistics can easily mislead a country and therefore derail its development plans. There is no doubt therefore that statistics are very important to all sectors in the country. It is not only the country, but a corporation, a company or the individual should strictly study

²¹ Act No. 14 of 2015.

statistics in order to move in the right direction. To avoid the use of statistics is to try and develop by guesswork and with no aim of serious development.

For a country, doing research and getting correct and dependable statistics is a basic requirement. Thus, freedom to research and come out with correct statistics is essential. Statistics can clearly be compared to light which points in the direction which the society should take. Without correct statistics, there cannot be sound development in a society.

It is self-deception for an individual, institution or a country to use concocted statistics and expect good results. At the same time without freedom to conduct research and freedom to defend the results of such research in public the society cannot move forward. It is worse when a thinking is developed that there is only one person or institution which has all correct statistics and all the people should follow these statistics as the ultimate truth without questions.

It is impossible in a concrete situation for one individual or institution to claim monopoly of the truth. In real life the truth comes from statistics which have been derived from research and have been subjected to serious discussion. Therefore, to try to curtail freedom of research and publicising the results is to cultivate and spread ignorance of the highest order. It therefore follows that there is no alternative to guaranteeing freedom of research which will produce statistics to be debated in the open to establish the truth. Debate on statistics produced by researchers is part of the wider democracy in any institution or country. It is thus unacceptable to initiate an arrangement which will systematically curtail freedom of research and the sharing of the results. Such an arrangement can only undermine development in all spheres of life.

In realisation of the importance of statistics, the United Republic of Tanzania enacted a specific law to co-ordinate and deal with statistics in general. This is the Statistics Act, 2015.²² At the same time, to underline the value of statistics to the development of the country, Tanzania has placed Statistics as one of the twenty two Union Matters specified in Schedule One to the Constitution of the United Republic of Tanzania, 1977.

Surprisingly, in 2018 the Statistics Act of the United Republic of Tanzania was seriously overhauled. This was done through Part VII of the Written Laws (Miscellaneous Amendments

²² Act No. 9 of 2015.

(No. 3) Act, 2018.²³ These amendments squeezed freedom of research and how to deal with statistics in the country.

To begin with, the amendment changes the title of the head of the national statistics office from Director General to the Chief Statistician. Also, at the same time, the concept of official statistics was elaborated by law. The Amendment declares that official statistics are those prepared, approved, collected and distributed by the National Bureau of Statistics.

Some of the provisions which curtail and squeeze freedom of dealing with statistics in the country include the following:

- (a) According to Section 24 there is no person, government institution or any other institution which is allowed to initiate collection of official statistics through research or census without the permission from the Chief Statistician who is the only person allowed to do that.
- (b) Any person who is allowed to deal with statistics should, before sharing out statistics with the public, seek and get permission from the National Statistics Office and where such a person has statistics which differ with those in the National Statistics Office, should inform this office.²⁴ It is prohibited to distribute to the public any statistical information whose aim is to discredit and remove the legit or to mislead or disgrace national statistics.²⁵
- (c) Section 20 provides a serious penalty for any person who deals with statistics contrary to the directives issued through this law. Therefore, any person who publishes or submits official statistics or information contrary to this law commits a criminal offence and on conviction, is liable to a fine of not less than ten million shillings (US\$4,310) or to imprisonment of not less than three years or both the fine and imprisonment.
- (d) In an exceptional way, this law provides the minimum fine and minimum jail term without giving the courts of law the freedom to give the appropriate punishment

²³ Act No. 8 of 2018.

²⁴ Section 24A.

²⁵ Section 24B

depending on their perception of the situation on the basis of the evidence adduced before them. Therefore, apart from removing freedom of dealing with statistics, the penalties given are considerably heavy. There is no doubt that this law interferes significantly with the freedom of research in general and the right to share out the results. This law is therefore the end of freedom of expression through statistics.

The local newspaper *The Citizen* was banned for seven days for quoting global information on the depreciation of the value of the Tanzania Shilling against the US Dollar, information which was already in public space. Their offence was alleged to be their failure to seek the approval of the Office of the National Chief Statistician.²⁶

It is important to note however that these harsh provisions in the Act do not cross the Indian Ocean to the Isles. They apply only in Tanzania Mainland.²⁷

C. The Cyber Crimes Act, 2015

(i). Why the Law

The Cyber Crimes Act, 2015²⁸ was adopted by the National Assembly of the United Republic of Tanzania on 1st April, 2015. It was assented to by the then President of the United Republic of Tanzania Hon. Jakaya Mrisho Kikwete on 1st September, 2015 and in the process bringing it into operation. The mischief behind the enactment of this law was to address the increasing abuse of the cyber space following the growth of the use of social media in the country. All good things have their not so attractive sides too. The same could be said for the developments in the telecommunication sphere. While advances in science and technology have made it very easy to communicate, almost making the post office redundant, there are also evil minds in the society who are negatively utilising these advances in science. Fraud and other serious crimes are committed through the use of technology. Also, at a personal level, characters (often anonymous) are insulting and character assassinating other people through the internet and generally spreading

²⁶ See Committee to Protect Journalists, “Tanzania Imposes 7 – Day Publication Ban on The Citizen,” 1st March, 2019.

²⁷ Section 2 is very specific that the Act applies to Tanzania Zanzibar in respect of Population and Housing Census only.

²⁸ Act No. 14 of 2015.

false and malicious information against other people. This must be checked and it can be said to have been the idea behind the introduction of the Cyber Crimes Act, 2015.

The timing of the enactment of this law was also not accidental. There were two issues worth considering as influencing the enactment of this law. One, in the period between 2005 and 2015 Tanzania had witnessed liberalisation and openness in almost all sectors of public life. Freedom of expression had expanded immensely, coupled with registration of media outlets of different forms from print to electronic media. Also, in this very period, the claw-back clause limiting freedom of expression and the right to information was removed through the 14th Amendment to the Constitution of the United Republic of Tanzania, of 1977. This constitutional amendment created a conducive atmosphere for the people to exercise their rights and freedoms relating to information.

Two, in 2015 the country was approaching its 5th multiparty general elections. There were concerns about the level of freedom prevalent in cyberspace. It was likely to lead to chaos with contestants at times using the internet to mudsling each other. Such wide freedoms would be stoking the fire, leading to political chaos. As a mitigating factor, it was thought that a strict law to control freedom of expression and in particular limiting media freedom would be helpful. That explains but does not justify the enactment of the Cyber Crimes Act, 2015.

Each crime relating to cyberspace attracts its own form of penalty depending on gravity. Thus, the penalties differ fundamentally as indicated in each of these offences discussed in Sections 4 to 29 forming Part II of the Act, depending on the crime alleged to have been committed.

(ii). The Contents of the Law

The law is divided into seven parts. The most important area of this law is Part II which has 24 Sections dealing with offences and penalties.²⁹ The offences in this part include intentionally and unlawfully accessing a computer system³⁰ or unlawfully remaining in that system after the expiry

²⁹ Sections 4 to 29.

³⁰ Section 4. The punishment for this offence is a fine of not less than three million shillings or three times the value of the undue advantage received, whichever is greater or to imprisonment for a term of not less than one year or both the fine and imprisonment.

of the time allowed to access a system; intercepting by technical or any other means a non-public transmission or from within a computer system, a non-public electromagnetic emission from a computer system, or circumventing the protection measures implemented to prevent access to the content of non-public transmission. The Act makes it an offence to intentionally damage, delete, alter, render meaningless, useless or ineffective any computer data and to obstruct, interrupt or interfere with lawful use of computer data. Also, it is an offence to communicate, disclose or transmit any computer data, programme, access code or command to an unauthorised person. This goes hand in hand with intentional and unlawful receipt of unauthorised computer data.³⁴

Section 8 of the Act deals with data espionage and makes it an offence to obtain computer data protected against unauthorised access without permission. The Act also criminalises possession of devices including computer programmes, password, access code or similar data intended for enabling access to a computer system. Other offences covered include computer forgery, computer related fraud, publication of child pornography through the computer system³⁸ and

³¹ Section 5. On conviction, a person who commits this offence is liable to pay a fine of not less than one million shillings or to imprisonment for a term of not less than one year or both.

³² Section 6. This offence attracts a fine of not less than five million shillings or to a jail term of not less than one year or both fine and imprisonment.

³³ Section 7. The punishment for these offences is heavy. It is a fine of not less than five million shillings

³⁴ Section 7(2). Committing any of these offences is punished, upon conviction, to a fine of not less than two million shillings or three times the value of the undue advantage received, whichever is greater or to imprisonment for a term of not less than one year or to both.

³⁵ Section 8(1). A person who contravenes this part of the Act commits an offence and is liable on conviction to a fine or not less than twenty million shillings or three times the value of the undue advantage received, whichever is greater, or to imprisonment for a term of not less than five years or to both.

³⁶ Section 11. To commit this offence attracts a fine of not less than twenty million shillings or three times the value of undue advantage received, whichever is greater or imprisonment for a term of not less than seven years or both the fine and imprisonment.

³⁷ Section 12. This offence also attracts a heavy fine of twenty million shillings or three times the value of undue advantage received, whichever is greater or imprisonment for a term of not less than seven years or both.

³⁸ This is a very serious offence which touches every member of the society because the children are the future of the society. Therefore, those trying to play around with children are dealt with seriously. Section 13 criminalises publication of child pornography through the computer system. The punishment for committing this offence is a fine of not less than fifty million shillings or three times the value of undue advantage received whichever is greater or to imprisonment for a term of not less than seven years or to both fine and imprisonment.

pornography involving adults; impersonation; publication of false information; and the use of the computer to produce, offer, distribute, or transmit racist or xenophobic material and racist xenophobic motivated insults as well as publishing materials which incite, deny, minimise or justify genocide and crimes against humanity.

The Act also makes it an offence to initiate, transmit, relay, send out unsolicited messages or to falsify the header information in unsolicited messages. In relation to on-going investigations, the Act makes it an offence to disclose the details of that investigation which requires confidentiality or to obstruct the investigation through intentional and unlawful destruction, deletion, alteration, concealment, modification or rendering, meaningless, ineffective or useless. Cyber bullying is one of the most widespread crimes committed today in the world. This involves initiating or sending any electronic communication using the computer system to another person with intent to coerce, intimidate, harass, or cause emotional distress. Also, it is an offence to use a computer system with the intention to violate intellectual property rights protected under the law.

The law also prohibits and criminalises attempts and conspiracy to commit any of the offences enumerated in the (Cyber Crimes) legislation.

- ³⁹ Section 14. Pornography of this nature attracts a fine between twenty and thirty million shillings or imprisonment term of between seven and ten years or both
- ⁴⁰ Section 15. To use the computer to impersonate another person is a serious offence of deception and attracts a fine of five million shillings or three times the value of undue advantage received by the offender, which ever is greater, or imprisonment for a term of not less than seven years in custody or both.
- ⁴¹ Section 16. Any offence relating to this offence attracts a fine of not less than five million shillings or a jail term of not less than three years or both.
- ⁴² Section 17. The punishment for this offence is a fine of not less than three million shillings or imprisonment term of not less than one year or both.
- ⁴³ Section 18.
- ⁴⁴ Section 19.
- ⁴⁵ Section 20.
- ⁴⁶ Section 21.
- ⁴⁷ Section 22.
- ⁴⁸ Section 23. Punishment for this serious offence on conviction is a fine of not less than five million shillings or to imprisonment for a term of not less than three years or to both.
- ⁴⁹ Section 24. Those violating intellectual property on non-commercial basis are liable to a fine of not less than five million shillings or imprisonment for a term of not less than three years. For those exploiting intellectual property on commercial basis are punished harder. One conviction, they are liable to a fine of not less than twenty million shillings or an imprisonment term of not less than five years or both the fine and imprisonment.

Part III of the Act deals with jurisdiction for purposes of the offences enumerated elaborately in Part II. The Courts of law of competent jurisdiction in Tanzania have jurisdiction over these offences if committed wholly or in part within the United Republic of Tanzania; on a ship or aircraft registered in the United Republic; by a national of the United Republic residing in or outside the United Republic; or any person, irrespective of his nationality or citizenship or location when the offence is committed using a computer system device or data located within the United Republic or directed against a computer system device or data or person located in the United Republic of Tanzania.

Part IV of the Act gives the power of search and seizure to a police officer in charge of a police station or a law enforcement of similar rank, upon being satisfied that there are reasonable grounds to suspect or believe that a computer system may be used as evidence in proving an offence or is acquired by any person as a result of an offence, issue an order authorising a law enforcement officer to enter any premises and seize the device or computer system. The police officer of the rank provided above may issue an order compelling any person in possession of required data to disclose such data and where such data is vulnerable to loss or modification may make measures to preserve the same. If necessary, the officer may authorise the use of a forensic tool for purposes of collection of the relevant evidence related to offences covered by the law.

All the above are serious offences and ought to be taken quite seriously. It is not only when the State is involved but also in interpersonal disputes when people take to cyberspace as the arena for their conflicts. False information and pictures are sent across the globe in a second through the touch of the computer or the phone and the damage is often immeasurable.

Members of the public and particularly human rights activists query Section 16 of the Act which addresses publication of false information. For ease of analysis, the provision provides:

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

The complaints are based on the general thinking in developing countries that it is just fair to produce and peddle what is now termed as ‘fake news’. It is therefore not surprising to note that even the Budapest Convention on Cyber Crime, 2001 which is taken as a beacon when it comes to addressing cyber-related offences, does not regard the contents of Section 16 as a serious offence.

Due to this outlook of not viewing publication of false information a serious offence, countries like Tanzania are under fire from all sides for enactment of laws curtailing personal freedoms including freedom of expression. The enactment of this law is also associated with the decision by the Millennium Challenge Corporation (MCC) to block assistance to the United Republic of Tanzania worth \$500m in 2016 .

The contents of this law have also been a subject of litigation in courts of law. In *Jebra Kambole v. Attorney General* Miscellaneous Civil Cause no.32 of 2015 parts of this law and in particular Section 50 which allows compounding of offences were found to be problematic and the government of the United Republic was given a year to ensure that this law is rectified to properly conform to the Constitution. Notwithstanding, no effort has so far been made by the parliament of the United Republic to amend the law.

In the period between 2015 and 2020 this law was extensively used with several persons prosecuted for what they had written on social media . Most of them were found guilty and fined and those who could not pay were sent to prison to serve their sentences. The actions by the authorities have put the public on guard that their communications are no longer safe and that they are being monitored. Apart from instilling fear in members of the public, this law is violating

⁵⁰ See MWIBURI, Abel Juma, *Preventing and Combating Cybercrime in East Africa: Lessons from Europe an’s Cybercrime Frameworks*, Berlin: Duncker, 2019. See also Wicki-Birchler, David, “The Budapest Convention and the General Data Protection Regulation: acting in concert to curb cybercrime?” Volume 1 *International Cybersecurity Law Review*, 2020, p. 63; and MSAFIRI, Aidan C., *Globalisation of Concern II: Essays on Education, Health, Climate Change and Cyberspace*, Geneva: Globethics.net, 2012.

⁵¹ This was confirmed in Statement from Ambassador Mark B. Childress on Decision by Millennium Challenge Corporation (MCC) Board to Suspend Tanzania’s Compact Eligibility. See: <https://www.mcc.gov/news-and-events/release/stmt-032816-tanzania-partnership-suspended>

⁵² This provision allows the Director of Public Prosecutions, at any time prior to the commencement of court proceedings and subject to a voluntary admission of the commission of offence under this Act by the accused, to compound the offence and order that person to pay a sum of money specified by him but not exceeding the amount of fine prescribed for any of such offence.

⁵³ Charlotte Cross (2021) Dissent as cybercrime: social media, security and development in Tanzania, *Journal of Eastern African Studies*, 15:3, 442-463, DOI: [10.1080/17531055.2021.1952797](https://doi.org/10.1080/17531055.2021.1952797)

several provisions of the Constitution of the United Republic of Tanzania. Not only those relating to freedom of expression but also those on privacy.

Article 16 is very clear on privacy including that of communication. It provides that:

- 16.** (1) Every person is entitled to respect and protection of his person, the privacy of his own person, his family and of his matrimonial life, and respect and protection of his residence and private communications.
- (2) For the purpose of preserving the person's right in accordance with this Article, the state authority shall lay down legal procedures regarding the circumstances, manner, and extent to which the right to privacy, security of his person, his property and residence may be encroached upon without prejudice to the provisions of this Article

The Constitution is clear that any interference in the communication of the citizen should be for good reasons and not general using a single legislation which sweeps each and everybody. Therefore, this is a situation which calls for careful consideration and urgency for the government to respect the judgement given by the High Court against which it has not appealed.

There are also complaints about the punishments provided under this law. For instance, a person charged with publishing pornographic materials, on conviction, is liable to a fine between twenty and thirty million shillings (US\$8,670–US\$13,000) or to imprisonment for a term between seven and ten years or both the fine and imprisonment.

Also, those involved in the business of publishing false, deceptive, misleading, or inaccurate information with intent to defame, threaten, abuse, insult, or otherwise deceive or mislead the public are also not taken lightly. On conviction, their punishment is a fine of not less than five million shillings (\$2,170) or imprisonment for a term of not less than three years or both such fine and imprisonment. It is a deterrent form of punishment, and a person has to think twice before engaging in mischief.

⁵⁴ See Section 14.

On its part, the government has taken the issue of cybercrimes very seriously. A special section within the Police Force has been established to deal specifically with this area of criminality.

Much as there may be complaints about the severity of the punishments provided in this law, one has to balance the rights of the alleged offender and the victim. The law cannot allow idle persons to maliciously malign others in total freedom and without any form of protection. The State should be able to send the signal that it is serious in protection of lives and dignity of the ordinary citizens.

As for Zanzibar, the Cyber Crimes Act, 2015 applies on the isles having been tabled before the Zanzibar House of Representatives and thus fulfilling the requirements of Section 132 of the Constitution of Zanzibar, 1984. The only provision of this legislation of the United Republic of Tanzania that does not extend to Zanzibar is Section 50 which relates to compounding of offences. It says:

- Section 50. (1)** Without prejudice to any other law in force in Mainland Tanzania, the Director of Public Prosecutions may, at any time prior to the commencement of court proceedings and subject to a voluntary admission of the commission of the offence under this Act, compound the offence and order that person to pay a sum of money specified by him but not exceeding the amount of fine prescribed for any of such offence.
- (2)** The compounding order under subsection (1) shall be
- (a)** in writing, specifying the offence committed, the sum of money to be paid and the date for payment and have attached the written admission referred to in sub-section
- (1);** **(b)** final and not subject to any appeal; and
- (c)** enforced in the same manner as an order of the High Court.

It is not clear why this particular provision was specifically singled out in the whole Act and exempted in the case of Zanzibar.

Going through this law, one notes that:

1. The law is strict, modern and the punishments are high and stiff.
2. The Act is organised in such a way that punishment for each offence is provided within the Section.
3. Also, the gravity of the offence is reflected in the severity of the punishment.
4. The complaint should not be against the law but rather the investigation and proper prosecution so that justice is done.

Having been enacted by the Parliament of the United Republic of Tanzania and having fulfilled the requirements set by the Constitution of Zanzibar, 1984 or its application in the isles, little can be said about it.



PART FOUR: The Political Economy of Media Regulation in Zanzibar

I. The Zanzibar Legal and Constitutional Order

Zanzibar is part of the United Republic of Tanzania, a union of two previously sovereign states of Tanganyika (Mainland Tanzania) and Zanzibar that merged in April 1964.

Notwithstanding the union, Zanzibar maintains its own semi-autonomous government and an independent constitution. As such, issues such as human rights including media freedoms are non-union matters and are addressed within the independent framework of the Zanzibar constitution. However, given that foreign affairs is one of the 22 matters listed in the first schedule of the United Republic of Tanzania constitution, Zanzibar is not party to any international human rights frameworks wherein such authority rests with the union government. As such, when reporting to International Human Rights Mechanisms, it is the government of the United Republic of Tanzania that takes responsibility including on matters relevant to Zanzibar. This arrangement cuts across many other areas including membership to international technical bodies. The union government for instance, enjoys membership to the International Telecommunications Union (ITU) as Zanzibar follows suit since the semi-autonomous government of Zanzibar has no such membership.

International and regional treaties are not part of domestic law in Zanzibar and therefore cannot directly be invoked in Zanzibari courts. Subsequently, the Zanzibar constitution provides for the authorities to identify international principles and standards that are desirable for application in Zanzibar and to take initiative (with necessary modifications) to domesticate such principles and standards to allow them to be applicable in the courts of law. Under Article 10(9), the Constitution provides that all Government's organs and its servants shall adhere and follow the international treaties on human rights and good governance.

The Zanzibar Media landscape is filled with critical actors at national and subnational level. Critically important is the concurrent and shared jurisdiction of several union government agencies

55 Peter, C.M., "Enforcement of Fundamental Rights and Freedoms: The Case of Tanzania," Volume 3 No. 1 African Yearbook of International Law Online / Annuaire Africain de droit international Online, 1995, pp. 81-98. (<https://doi.org/10.1163/221161795X00051>).

56 Kabudi, P.J., "The Judiciary and Human Rights in Tanzania: Domestic Application of International Human Rights Norms," Volume 24 No. 3 *Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, 1991, pp. 271-281. Retrieved on 14th July, 2021, from <http://www.jstor.org/stable/43110041>

in the regulation of the sector. Several laws have been passed by the parliament of the United Republic of Tanzania that have a bearing on Zanzibar. In effect these laws apply to both parts of the union and are enforced by union agencies which often have presence in Zanzibar or work through established agencies of the Revolutionary Government of Zanzibar. These include the Cyber Crimes Act, 2015; the Electronic and Postal Communications Act, 2010 and the Tanzania Communications Regulatory Authority Act, 2003. These laws provide that they apply for both mainland Tanzania and Zanzibar notwithstanding the requirement under the Zanzibar constitution for such acts to be tabled and ratified by the Zanzibar legislature (House of Representatives).

II. The Media Legal Regime in Zanzibar

Zanzibar maintains its own legal regime on such matters as the registration, licensing and regulation of media. The law however does not explicitly provide for several aspects of media regulation including electronic/online media based on which the Tanzania Communications Regulatory Authority (TCRA): the union agency responsible for regulation of postal, electronic and broadcasting communications has authority. The constitution of the United Republic of Tanzania (R.E.2005, first schedule) stipulates 22 matters as “Union Matters” in that they are dealt with by laws made by the parliament of the United Republic and agencies formed thereof. As such, matters related to harbours, post and telecommunications fall under this category. The Tanzania Communications Regulatory Authority Act, 2003 empowers the Authority to regulate telecommunications, broadcasting, postal services, allocation and management of radio spectrum and emerging electronic technologies including the internet and other Information Communication and Technologies (ICT) applications. The law specifically excluded the regulation of broadcast and content from the purview of the TCRA in the case of Zanzibar. This role therefore is taken up

⁵⁷ Act No. 14 of 2015.

⁵⁸ Act No. 3 of 2010.

⁵⁹ Act No. 12 of 2003.

⁶⁰ Majamba, H.I., “The Paradox of the Legislative Drafting Process in Tanzania,” Volume 40 No. 3 Statute Law Review, 2019, Pages 325–337 (<https://doi.org/10.1093/slr/hmx001>).

⁶¹ This is provided for under the Zanzibar Broadcasting Commission Act, 1997 (Act No. 7 of 1997) and the News Agents, Newspapers and Books Registration Act, 1988 (Act No. 5 of 1988).

by the Zanzibar Broadcasting Commission which is established by law under the Zanzibar Broadcasting Commission Act of 1997.

The Electronic and Postal Communications Act and the Cyber Crimes Act were enacted in 2010 and 2015 respectively. Both laws provide that they apply for both Tanzania mainland and Zanzibar. As such, their enforcement in Zanzibar is led by union central government agencies including the TCRA and the Tanzania Police Force (TPF) particularly in as far as the regulation of online media is concerned. Nonetheless, there are no dedicated agencies to oversee the electronic/online media sector in Zanzibar unlike on the mainland. In that regard, the Zanzibar Broadcasting Commission takes up this responsibility in the absence of dedicated legislation to regulate online media in Zanzibar. The Commission undertakes this responsibility in close collaboration with the TCRA.

Specific to Zanzibar are the Registration of News Agents, Newspapers and Books Act, 1988 as well as the Zanzibar Broadcasting Commission Act, 1997. The two laws are central to the regulation of media in Zanzibar and provide for the oversight of print and broadcast media. In practice however the Zanzibar Broadcasting Commission has extended its mandate to include electronic media in as far as the licensing of online TVs as well as online content providers is concerned. These laws create agencies i.e. the Commission, the Registrars and Boards vested with power to regulate the media sector. They also provide specific powers to the Director of Information Services, the Registrar of News Agents, Newspapers and Books, the Registrar of Broadcasting Services, Minister (responsible for Information) and the President.

III. Regulation of the Media Sector in Zanzibar

The Tanzania Communications Regulatory Authority (TCRA) came into being in 2003 following the enactment of the TCRA Act, 2003. The TCRA is an independent Authority for the postal, broadcasting and electronic communications industries in the United Republic of Tanzania. It was formed out of a merger between the former Tanzania Communications Commission and the Tanzania Broadcasting Commission. The Authority is charged with the responsibility to regulate

⁶² Act No. 5 of 1988.

⁶³ Act No. 7 of 1997.

⁶⁴ Act No. 12 of 2003.

the industry, protect consumers, encourage competition and efficiency as well as defining the industry licensing and performance standards. TCRA also enforces tariffs relevant to the industry besides monitoring the performance of ICT applications.

In the absence of a separate Electronic and Postal communications legal framework in Zanzibar, the TCRA is also charged with the responsibility for the enforcement of the law in the isles. Section 2 of the Electronic and Postal Communications Act, 2010 provides that the Act shall apply to Tanzania mainland and Zanzibar with the exception of those activities falling within the jurisdiction of the Zanzibar Broadcasting Commission. As such, read together with Act No. 7 of 1997, the mandate of the Zanzibar Broadcasting Commission does not cover such matters as electronic and online communication. In practice however, the Zanzibar Broadcasting Commission has been responsible for registering online TVs, broadcasters as well as blogs and other online content providers. It is unclear however the legal basis for the exercise of such a mandate by the commission. The TCRA continues to work collaboratively with the commission in Zanzibar in the management and regulation of electronic communication.

Under the Part IV of TCRA Act, a content committee is established to advise the sector minister on broadcasting policy, monitor and regulate broadcast content, handle complaints from operators and consumers; and monitor broadcasting ethics compliance. The committee has come under the spotlight in recent years for its active role in censoring broadcasters in Tanzania including online TVs and radio. In 2018, the committee which is chaired by the TCRA Vice Chairperson fined five television stations a total of 60 million Tanzania shillings (about \$27,000) for broadcasting a press conference by the Legal and Human Rights Centre (LHRC). The NGO was presenting its findings from observation of recent by-elections during which they alleged that government forces, with other unidentified groups, arrested, detained, tortured and abducted opposition members during November 2017 by-elections in different parts of the country. The committee argued the content was “seditious” and contrary to the Broadcasting Services (Content) Regulations. In April 2018, Mwananchi newspaper was banned from publishing online for six months and fined five million Tanzanian shillings (US \$ 2,173) for allegedly publishing false news on its social media platform, according to the committee . The censorship role of the committee has contributed to a

⁶⁵ https://www.hrw.org/sites/default/files/report_pdf/tanzania1019_web_2.pdf

⁶⁶ <https://cpj.org/2020/05/tanzanian-newspaper-banned-from-publishing-online/>

deteriorating record for Tanzania on the World Press Freedom Index. Since 2016, Tanzania has dropped 53 places on the index according to Reporters Without Borders (RSF). According to the press freedom lobby, Tanzania's was the biggest fall of any country in the period 2016-20.

Besides the TCRA's mandate, Act no.7 of 1997 established the Zanzibar Broadcasting Commission. The Commission is charged with the authority to regulate the provision of broadcasting services to include vision, sound multimedia and data services, mainly intended for delivery of news, entertainment and education to the general public with its mandate limited to Zanzibar. A registrar appointed by the Minister (responsible for Information) is mandated to register all broadcast media and content providers.

The News Agents, Newspapers and Books Registration, 1988 also provides a set of sector regulators. The Registrar of News agents, Books and Newspapers, plays an important role in media regulation in Zanzibar. S/he is mandated with the responsibility to oversee print media including registration, licensing and receipt of bonds for publication of newspapers. A Director of Information Services, the Minister as well as the President of Zanzibar also play important roles in accordance with the law.

IV. Key Actors in the Zanzibar Media Scene

As provided by law, several agencies are responsible for the oversight and regulation of the media sector in Zanzibar. These include the Zanzibar Broadcasting Commission, the Registrar of News Agents, Newspapers, The Registrar of Broadcast services and Books, the respective Minister for Information as well as the President. Furthermore, an advisory board is created under the Registration of News Agents, Newspapers and Books Act, 1988 to advise the minister on the regulation of print media. The actors vary in terms of their level of influence in the regulation of media, their statutory powers and their influence over other actors in the sector. Notwithstanding the laws, the constitution of Zanzibar also provides for a judiciary vested with the mandate to administer justice including on matters related to media freedom and rights.

⁶⁷ <https://rsf.org/en/news/tanzania-rsf-condemns-latest-government-clampdown-media>

⁶⁸ Act No. 5 of 1988.

⁶⁹ Act No. 5 of 1988.

A Registrar of Newsagents, Books and Newspapers is provided for under the 1988 Registration of News Agents, Newspapers and Books Act, 1988. The main role of the registrar is limited to overseeing the registration of news agents, books and newspapers and maintaining a record of the same. As such the incumbent keeps separate registers of newsagents and the returns of newspapers and books as prescribed in Sections 11 and 12 of the act. In keeping with this mandate, the register publishes at the beginning of each year a list and the relevant particulars of registered newsagents, newspapers and books as prescribed under Section 8 of the law.

Nonetheless, an advisory board is established to consider applications for news agents, newspapers and books for registration. The board also advises on the implementation of the Registration of News Agents, Newspapers and Books Act as well as any other task assigned by the Minister. The board is led by a presidentially appointed Chairperson whereas not more than five other members are appointed by the minister to constitute the board. As such the board is an important actor in deciding who is allowed and who is not allowed to undertake publication and/or distribution of newspapers and books in Zanzibar. The decision by the register to approve the registration of any news agents, newspaper or books is therefore guided by the recommendations of the board to the minister.

The Minister for Information is nonetheless an all-powerful actor when it comes to the regulation of media in Zanzibar. Under Act no.5 of 1988, the Minister may by notice in the gazette, exclude any specified person or class of persons from the operation of all or any part of the provisions for registration of newspapers either absolutely or subject to such conditions as s/he may think fit. S/he may, by order published in the Gazette, exempt from the provisions of the Act any business or any category of businesses involving broadcasting; or any person carrying on any business or any category of such persons. These are considerable powers that are not vetted by any independent authority and leave notable room for abuse by the minister.

Section 30 of the Registration of News Agents, Newspapers and Books Act (1988) empowers the Minister to suspend publication of any newspaper if S/he is of the opinion that it is in the public interest or in the interest of peace and good order. In the same vein, the Minister under Section 31

⁷⁰ Section 3 of the Registration of News Agents, Newspapers and Books Act no. 5 of 1988

⁷¹ Section 4 of the Registration of News Agents, Newspapers and Books Act no. 5 of 1988

⁷² This is elaborated below in the case of Dira newspaper which was banned by the minister in November 2003.

is empowered to prohibit publication of a newspaper. It shall be an offence under Section 33 for any person, after such orders have been made to print or publish or cause to be printed or published the newspaper so prohibited. Also, it is a crime to sell, offer for sale or expose for sale, distribute or exhibit the prohibited newspaper. Part IX of the Act deals with cinematography permits. According to Section 63 of the Act, no person shall direct, or take part or assist in, making of film for a cinematograph picture, whether intended for exhibition in Zanzibar elsewhere, unless cinematography permit in respect of the making of such film shall have been first granted by the Minister. The restriction does not however, concern the making of a film for a cinematographic picture when such film is made by an amateur for private exhibition to his family and his friends.

The Minister is also empowered to exempt anyone from the condition provided under Section 63(1), and may in his discretion at any time cancel any exemption granted under Section 63(1) of the Act. The Minister therefore wields considerable powers under the law which are mostly unchecked. For instance, a popular weekly newspaper, Dira received a letter on November 24 from the Zanzibar Minister of State Salim Juma Othman ordering the closure of the paper in line with power under the law that empowers the government to shutter a paper it deems a “threat to national security.” The letter did not explicitly indicate if and how the paper posed a threat to national security. Notwithstanding, the order was well within the parameters of the powers granted to the Minister by the 1988 law.

The Zanzibar Broadcasting Commission is established under Section 5 of the Act as an autonomous body corporate. It is constituted of a chairman, who is appointed by the President, executive Secretary who is the Chief Executive Officer and also appointed by the President. The Commission also includes not less than four nor more than eight other members appointed by the Minister, one of them being a representative of the frequency management office and one an expert in broadcasting; and a State Attorney from the Attorney-General’s Office. The board’s mandate includes to review applications made under the law, advice the minister on the implementation of the act and to perform any other work assigned by the Minister. As such, the role of the Board is primarily advisory.

⁷³ Zanzibar Government Bans Newspaper: <https://ifex.org/zanzibar-government-bans-newspaper/>

⁷⁴ Section 6 of the Zanzibar Broadcasting Commission 1997.

The Director of Information Services is provided significant discretion under Section 39(2) of the News Agents, Newspapers and Books Registration Act (1988). The act grants powers to the Director to issue to any person, after application and upon payment of the prescribed fees if any, issue in writing authorization upon such conditions as may consider fit provided that the Director may, without assigning any reasons thereof refuse to issue any authorization or suspend or revoke any authorization issued by him. A person aggrieved by any refusal by the Director to issue an authorization, or any condition specified in the authorization may appeal to the Minister whose decision shall be final and conclusive and shall not be subject to review by any court. Section 40 of the Act empowers the Minister to revoke any authorization issued by the Director.

In the regulation of the media in Zanzibar, the ultimate discretionary powers lie with the president. Section 34 of the Act empowers the President to prohibit the publication or importation of any part or future issue thereof, if S/he is of the opinion that the importation of such publication would be contrary to the public interest. Such discretionary powers of the President and the Minister are exercised without giving the other party an opportunity to be heard which is contrary to Section 12(6)(a) of the Zanzibar Constitution.

V. The Role of the Private Sector in Zanzibar's Media Landscape

Private media has a largely limited footprint in Zanzibar. There is only one major broadcaster in the shape of the Zanzibar Broadcasting Corporation which is owned and controlled by the Revolutionary Government of Zanzibar. The Broadcaster runs both Television as well as Radio stations. The Zanzibar Broadcasting Commission has registered a total of 33 online Television Channels, 27 radio stations and 11 Television Content Providers. All these are privately owned and regulated by the commission.

Zanzibar has only two registered newspapers i.e. Zanzibar Leo (Zanzibar Today) and Zanzibar Mail. The former is the only Kiswahili language newspaper while the latter is the only English language newspaper in the isles. In the past there existed a privately owned newspaper i.e. Dira which was banned in November 2003 after the then Minister of State Salim Juma Osman alleged the paper was a threat to National Security in accordance with the 1988 The News Agents, Newspapers and Books Registration Act. The editor of the newspaper, Ali

⁷⁵ Section 39(3) and (4) of the Registration of News Agents, Newspapers and Books, Act No. 5 of 1988.

⁷⁶ <https://ifex.org/zanzibar-government-bans-newspaper/>

Nabwa, attributed the permanent ban to the paper's publication of large scale corruption, nepotism and questioning the Union between Tanganyika and Zanzibar. There are no large media conglomerates in Zanzibar with media owners spanning across the spectrum with multiple media outlets as in the case of mainland Tanzania. As such, private media owners in Zanzibar enjoy limited influence over state policy since it is the state that is the largest media owner. Subsequently, there does not exist in Zanzibar, a media owners lobby to advocate for the interests of private media owners. This is notwithstanding the sprouting online media outlets which are themselves expanding the scope of media ownership in Zanzibar. The multiple online media owners have no forum of their own to agitate for their interests making it difficult to attend to their peculiar interests.

VI. The Media Fraternity and Community in Zanzibar

The media fraternity in Zanzibar is organized through various journalists' associations founded by practicing journalists. Most of these associations are registered as Societies under the Zanzibar Societies Act, 1995. There are no professional media bodies thus no existing efforts towards strengthening self-regulation of the sector. Some of the leading associations include the Association for Development Journalists (WAHAMAZA), the Zanzibar and Pemba Press Clubs and the Tanzania Media Women Association. The Media Council of Tanzania which was originally founded on the mainland maintains a dedicated office in Zanzibar to cover Zanzibar related media matters. Unlike their counterparts on the mainland, there is no dedicated forum/body bringing together Editors and/or owners of media organizations in Zanzibar. This is partly a result of the near absence of independent media in Zanzibar.

The state plays an overwhelming role in the Zanzibar media scene being the largest owner and in some cases sole owner of media. Zanzibar has two newspapers, 11 television stations and 33 radio stations. There are no disaggregated data on the number of blogs, YouTube channels or other forums owned privately and independently in Zanzibar.

⁷⁷ Act No. 5 of 1995.

⁷⁸ This according to the Registrar at the Zanzibar Broadcasting Commission

The Zanzibar media scene is dominated by the state who act both as a regulator and a competitor for private media in the country. The near absence of private mainstream media has inhibited the opportunity for expanding diversity in the media scene but also for holding the state accountable for protecting and promoting media freedom rights. It is therefore imperative that investing in private media in Zanzibar is key to ensuring basic rights in the context of media freedom are observed.



PART FIVE: The Laws Touching on the Media in Zanzibar

I. Introduction

There are several laws in Zanzibar which in one way or the other touch on the media in Tanzania. In some, the media is addressed at length while in others it is by the way and not the main theme. In this part we address all these laws seriatim depending on their weight to the subject.

A. The Registration of News Agents, Newspapers and Books Act, 1988

(i) Contents of the Law

The Registration of News Agents, Newspapers and Books Act, 1988 was adopted by the Zanzibar House of Representatives and assented to by the former President of Zanzibar the late Idris Abdul Wakil on 30th October, 1988.

This law is divided into ten parts which together hold 80 provisions which are all relevant to various aspects of the media. In part I apart from the normal preliminary provisions of law relating to the name of the law and interpretation, the appointment of the Registrar of Books and Newspapers by the Minister responsible for information is covered. In addition, this part also provides for the establishment of the Advisory Board whose Chair is appointed by the President and its five members by the Minister for information. The main functions of this Board is to consider the various applications made under this law and to advise the Minister on the implementation of the Act.

Part II of the Act provides the process of registering newspapers in Zanzibar. According to Section 8 of this law, before any person prints, publishes or causes to be printed or published in Zanzibar, such person has to provide certain specified information. These are the name of the newspaper, the house or building in which this newspaper is to be printed, and the names and places of

⁷⁹ Act No. 5 of 1988. This Act was assented to by the former President of Zanzibar the late Idris Abdul Wakil on 30th October, 1988.

⁸⁰ Section 1.

⁸¹ Section 2.

⁸² Section 3.

⁸³ Section 4.

⁸⁴ Section 5.

residence of the proprietor, printer and the publisher on the newspaper. This information has to be provided in a form of an affidavit, which has to be done every time there are any changes in the said information. In case any of the referees are a company, the affidavit shall be sworn by the Secretary or one of the directors of the company. The information provided shall be published by the Registrar of Newspapers and Books in the Official Gazette of the Government.

While this may seem like a simple straightforward procedure, there are challenges in its application as several media outlets have reported difficulties in registration. Maybe in practice things might be different.

Part III of the Act provides a requirement to deposit the books and newspapers published. Section 13 of the Act requires that all copies of books and newspapers printed and published in Zanzibar be published with the Registrar of Books and Newspapers. It is the Minister for Information who shall direct where the deposited materials will be kept. This Part also provides for penalties for not complying with the Act. It is an offence to fail to provide correct information and also to deposit publication as directed. Failure to do that attracts a heavy penalty.

Part IV of this Act imposes the requirement for anybody wanting to print or publish any newspaper to execute a Bond. That person has to execute the Bond before a Magistrate accompanied by two sureties. The aim of this Bond is to act as a security for situations when the printer or publisher has any penalty imposed for any offence under this Act or provide funds in case damages or costs are awarded against the printer or the publisher in respect of any libel printed or published in the newspaper after the execution of the Bond. The Bond has to be registered under the Registration

⁸⁵ Section 10.

⁸⁶ Section 11(1). According to Section 11(2) the Registrar is required to publish every year all information relating to newspapers published in Zanzibar each year.

⁸⁷ This perhaps explains why there are only two newspapers in Zanzibar both owned by the government as of today.

⁸⁸ Interestingly, the whole procedure provided in this Act does not apply to the printing or publication of any newspaper by and on behalf of the ruling party Chama Cha Mapinduzi or the Revolutionary Government of Zanzibar. This exception is provided in Section 7(1).

⁸⁹ Section 13(6)(b).

⁹⁰ According to Section 16(1)(c) is a fine of between Shillings five thousand and twenty thousand or imprisonment not exceeding five years or both such fine and imprisonment. Today, that penalty may seem very small and particularly the fine. But, in 1988 when this law was enacted – 33 years ago, that was a lot of money.

⁹¹ Section 18(1).

⁹² Section 18(2).

of Documents under the relevant law and deposited with the Registrar of books and Newspapers for custody. A surety supporting a Bond may withdraw by giving the Minister and all those who are concerned a notice of thirty days. Under the Act, it is an offence to sell a newspaper which has been printed without conforming with the requirements of this Act relating to execution of a Bond. The penalty for this offence is a fine which is not less than five thousand shillings (US \$ 2.2) and not more than twenty thousand shillings (US \$ 8.6) or imprisonment for a term not exceeding three years or both the fine and imprisonment.

The Act in Part V provides various general provisions relating to newspapers. The most important ones include the requirement to print on each newspaper the true and real name and address of the printer and the publisher. It should actually indicate a clear description of the place where the printing of the publication is made. It is an offence not to provide these details in a newspaper. While these fine details may be desirable in order to avoid entertaining clandestine publication, in some jurisdictions it has led to disaster to printers and publishers of politically sensitive papers. The Police have used this information to track them and destroy not only the printed papers but also to demobilise the printing facilities.

Under Section 26(1) the printer of a newspaper is required to keep at least for a period of six months a copy of a newspaper printed. It is an offence punishable by a fine of not less than two thousand shillings (US \$ 2.2) and not more than ten thousand shillings (US \$ 4.3) or to imprisonment for a term not exceeding two years or both such fine and imprisonment. The Act then goes on to provide police with wide powers to seize any newspaper, wherever found, which

⁹³ Section 18(6).

⁹⁴ Section 20. In this situation a new Bond has to be executed as directed in Section 19.

⁹⁵ Section 22.

⁹⁶ Section 25(1).

⁹⁷ Section 25(2). It can attract a fine of not less than five thousand Shillings but not exceeding twenty thousand things or imprisonment for a term not exceeding two years or both such a fine and imprisonment. In addition, the court may order the copies of the newspaper concern to be forfeited or destroyed.

⁹⁸ Technology has enabled newspapers to be published and printed in different parts of the world at the same time. Therefore, it will require several regimes to agree on the same course of action.

⁹⁹ The printer or publisher can be required at any time by the Registrar of Books and Newspapers, a court of law, a judge or magistrate to produce such publication.

¹⁰⁰ Section 26(2).

has been printed and published or which is reasonably suspected to have been so printed and published in contravention of this law.

Section 30 of the Act defeats the whole purpose of printing and publishing any newspaper in Zanzibar. It allows the Minister responsible for Information to suspend the printing and publication of a newspaper if s/he is of the opinion that it is in the public interest or in the interest of peace and good order to do so. Where the Minister with the advice of the Advisory Board is of the opinion that prohibiting the publication of the suspended newspaper would be in the interest of the public or would be in the interest of peace and good order, the newspaper ceases publication.

This Act is not limited to publications printed and published in Zanzibar only. It also addresses importation of publications to Zanzibar. Section 34(1) allows the President of Zanzibar, if he is of the opinion that the importation of any publication would be contrary to the public interest, in his absolute discretion, to prohibit the importation of such publication. That prohibition also covers the importation of future issues of such publication. It is an offence to import, publish, sell or offer for sale, distribute or produce any prohibited publication. Also, it is an offence to be found in possession of any publication whose importation has been prohibited.

The Act also makes it an offence to receive prohibited publication. It therefore requires that any person, upon receipt of a prohibited publication or extracts from it, immediately deliver it to the nearest administrative officer or the officer in charge of the nearest police station. It is a punishable

¹⁰¹ Section 27(1). In addition, any magistrate may by warrant authorize any police officer of or above the rank of Inspector, with or without assistance to enter and search any place where it is reasonably suspected that any newspaper printed or published in contravention of the Act is being kept or that any other offence under this law had been or is about to be committed and to seize any newspaper found together with any evidence of the commission of an offence under this law which may be found. This is provided in Section 27(2). The requirement of seeking and obtaining a warrant may be dispensed with where the police officer has reasonable cause to believe that the delay which would occur in obtaining a search warrant would tend to defeat the purpose of the search (Section 27(3)).

¹⁰² Section 31.

¹⁰³ Section 35(1). Those found offending this provision are liable to a fine not less than two thousand shillings (US \$ 0.86) but not exceeding forty thousand shillings (US \$ 17.2 or to imprisonment for a term not exceeding five years or to both such fine and imprisonment. The publication shall also be forfeited to the Government.

¹⁰⁴ Section 35(2). The punishment for this offence is a fine of not less than two thousand shillings (US \$ 0.86) but not exceeding ten thousand shillings (US \$ 4.33) or imprisonment not exceeding two years or both fine and imprisonment.

offence to fail to do that. It is an offence to receive or post prohibited publications by post. Thus, Section 37 empowers certain relevant officers to examine any package suspected to contain prohibited publications.

Part VI of the legislation addresses the question of regulation of collection and distribution of news and news materials. Under Section 39 no person is allowed to collect or cause to collect any news or news materials in Zanzibar for the purposes of dissemination without a written authorisation from the Director responsible for Information Services. The same procedure is required for distribution within Zanzibar or beyond of any news or news materials intended to be dissemination collected within Zanzibar.

The Director of Information Services is given wide powers when it comes to issuing of authorisation to collect or distribute news and news materials in Zanzibar. The Director, at his/her own discretion can issue an authorisation, suspend or revoke one at his/her own discretion and s/he is not required to justify his/her actions. The aggrieved person can appeal to the Minister responsible for Information whose decision shall be final and conclusive. On top of that, the Minister is empowered by the law to revoke any authorisation issued by the Director in public interest or interest of peace and good order in Zanzibar.

¹⁰⁶ The punishment is a fine of not less than two thousand shillings (US \$ 0.86) but not exceeding ten thousand shillings or imprisonment (US \$ 4.33) for a term not exceeding three years or to both such fine and imprisonment as per Section 36(1).

¹⁰⁷ These officers include any officer of the Tanzania Posts and Telecommunications Corporation who is not below the rank of Postmaster; an officer of the Customs Department not below the rank of Supervisor; or any officer authorised on that behalf by the Minister responsible for Information. These officers who are enumerated under Section 37(1) can open the suspected package or article and inspect it. Also, when this process is going on, they may choose to detain the suspect. If any publication or extract is found in such a package or article, the whole package or article will be impounded and retained by the officer conducting the inspection and the person in whose possession it was found will be immediately arrested and proceeded against as per Section 37(2).

¹⁰⁸ Sections 39 to 45.

¹⁰⁹ Section 39(1)(a). The only persons entitled to a written authorization are a local news reporter, a freelance reporter and a foreign news agent who must lodge an application and pay the prescribed fees.

¹¹⁰ Section 39(1)(b). The provisions of Part VI of the Act have to be read together with Section 40 which requires those collecting, distributing or disseminating news or news materials to strictly follow the Government Policy and other national policies and aspirations of the people of Zanzibar and Tanzania in general and particularly those promoting harmony in society (Section 42).

¹¹¹ Section 39(2).

¹¹² Section 39(3).

¹¹³ Section 40

In a very exceptional manner, the Act gives the police wide powers to enter any place, premises, vehicle or aircraft within which they has reason to believe that any news materials intended for dissemination is being or about to be prepared, conveyed or otherwise dealt with for the purpose of collection or distribution just to ensure that the Act is being complied with. It is a serious offence to obstruct such a police officer in the process of carrying on his duty.

Part VII covers and elaborates what are termed offences against the State. These include seditious intention; seditious offence and their ingredients. This is followed by elaboration of the offence of defamation and particularly its written form – libel. The penalty for this offence is provided as a fine of not less than three thousand shillings (US\$1.3 and not exceeding fifteen thousand shillings (US \$ 6.5) or a term in prison not exceeding three year or both the fine and imprisonment. Save for Section 61 which covers defamation of a foreign dignitary where the State may be said to have interest, it is not clear why this private tort is criminalised.

In Part IX of this Act the whole question of cinematography is addressed. Under the Act anyone wanting to engage in film making for works intended for Zanzibar or elsewhere has to apply for a permit from the Minister responsible for Information. For the permit to be issued, the applicant should inter alia, enter a Bond with or without sureties for a sum not exceeding one hundred thousand shillings (US \$ 43). The Minister may put a condition in the permit that a public officer be present where the work permitted is being carried out in order to ensure that the work is not offensive to Zanzibari and Tanzanian culture and that it does not endanger the safety of any person or property. Having completed the work, before being exhibited it has to get a permit from the Censorship Board as directed by Section 64 of the Act.

As with preparation of cinematography within Zanzibar, there are conditions set in this law for importation, exporting, selling or hiring cinematographic pictures. Anyone wanting to engage in

¹¹⁴ Section 43(1)(a)-(e).

¹¹⁵ Section 44.

¹¹⁶ Sections 46 to 52.

¹¹⁷ Sections 57 to 62

¹¹⁸ Section 63.

¹¹⁹ Section 63(6).

¹²⁰ Section 63(7).

this business must apply for permit from the Minister responsible for Information . It is an offence to engage in this business in contravention of the provisions of this legislation. The last part of this legislation is Part X which is general. Most importantly surprising in this part is a general penalty which any offence for which no penalty is given in the Act. According to Section 73, on conviction, any person who violates the Act or the regulations made under the Act shall be liable to a fine of not less than two thousand shillings (US \$ 0.86) and not more than twenty thousand shillings or imprisonment for a term not exceeding three years or both such fine and imprisonment.

(ii). Evaluation of the Act

This is an old law written and adopted 33 years ago. The style then of writing laws was different and thus by today's standards it looks out of touch with the modern legal method.

The content of the law also reflects the time it was prepared. For instance, without mincing words, there is special treatment for the ruling Chama Cha Mapinduzi and the Revolutionary Government of Zanzibar. These are the sacred cows not to be touched. Again, typical of the old government system where the officials and politicians were given an upper hand, in this law the Registrar and the Minister have been given wide and uncontrolled discretionary powers which are dangerous. It must change to reflect the concept of limited governance which prevails today.

At the same time penalties are almost on every provision. Normally, penalties are provided towards the end of the law or at the end of a particular special provision as punishments cannot be uniform.

In each penalty provided, there is a tendency of introducing the minimum sentence that the court can impose. This system of providing minimum sentences is not popular to those who respect the principle of independence of the judiciary. Under this system the magistrate or a judge has his or her hands tied and cannot decide based on the evidence adduced in court and his or her perception of the matter and the evidence produced. Future legislation to replace this should carefully address this question of limiting the freedom of the judges and Magistrates handling the case.

¹²¹ Section 65.

¹²² Section 67. The punishment for this offence is a fine of not less than two thousand shillings and not exceeding ten thousand shilling or a term in prison not exceeding one year in prison or both such fine and imprisonment.

Logically, given the time this law was enacted, the fines provided look artificial while they are not. It is only the inflation which has taken its toll. This should be addressed and corrected in the law replacing it.

It is worth noting that this legislation has not been used extensively for a long time. Mainly since the situation has not allowed the media to flourish in the Isles. A few papers have been punished or prohibited. These include Majira which is published from Dar es Salaam and Dira, a vibrant and highly popular paper published in Zanzibar. Given the weaknesses noted in this legislation, mostly caused by the passing of time, there is no doubt that this law needs to be reviewed.

B. The Zanzibar Broadcasting Commission Act, 1997

The Zanzibar Broadcasting Commission Act, 1997¹²³ establishes the Zanzibar Broadcasting Commission as an autonomous body corporate with perpetual succession and a common seal being able to sue or be sued in its own name. That characterisation, notwithstanding, it remains part and parcel of the Revolutionary Government of Zanzibar.

The Commission is an important player when it comes to the media in Zanzibar. Among its functions is to licence broadcasting in Zanzibar, to regulate and supervise broadcasting activities; to maintain a register of all persons licensed as broadcasters and dealers in broadcasting stations; regulate activities of broadcasters and dealers in broadcasting apparatus; and to undertake standardisation, planning and management of frequency spectrum available for broadcasting in Zanzibar and allocate the same in such manner as to ensure the widest possible diversity of programming and optimal utilisation.

¹²³ In January 1996, the Zanzibar Minister of Information, Issa Mohamed Issa, issued an order which excluded the newspaper Majira from the island. This is reported in Zanzibar: Democracy on Shaky Foundations (1999) by Article 19.

¹²⁴ Act No. 7 of 1997 which came into force on 12th March, 1998 when it was assented to by the then President of Zanzibar Salmin Amour Juma.

¹²⁵ Section 5.

¹²⁶ This is clear from the various mandates given by the establishing law to the Minister responsible for or Information in Zanzibar, other officers and the President of Zanzibar who is also the Chairman of the Revolutionary Council of Zanzibar. Also, according to Section 22(a) of the Act part of the funds and resources of the Commission are provided by the Zanzibar House of Representatives either as grants or loans.

¹²⁷ The functions of the Commission are elaborately provided in Section 7.

The Commission is also responsible for protecting the policy, security and culture and tradition of Zanzibar from destruction. It is headed by a Chairman who is appointed by the President of Zanzibar and holds office at the pleasure of the President meaning that there is no specific tenure. Other Commissioners are appointed by the Minister responsible for broadcasting save for the Executive Secretary of the Commission who acts as the Chief Executive Officer of the Commission who is also appointed by the President.

The Act also establishes the office of Registrar who is responsible for registration of all institutions carrying on broadcasting business; issuing of registration certificates to operators of broadcasting business; and with powers to cancel or to refuse to register any institution carrying on broadcasting business for failure to comply with the conditions given to them.

According to Section 11 of the Act, anyone wanting to transmit or receive and transmit or to operate broadcasting service or deal in broadcasting apparatus is required to have an appropriate licence. The qualifications for acquiring a licence and the procedure is provided in Section 12 of the Act.

It is interesting to note some of the considerations which the Commission has to take into account while granting a licence to applicants. These include allocation of spectrum resources in a manner which will ensure the widest diversity of programming and the optimal utilisation of the resources while giving priority to broadcasters transmitting for longer hours in a day; reservation of spectrum resources for future use; giving priority to community-based national development broadcasts; and determination of the broadcaster to train local staff in radio and television broadcasting.

Part IV of the Act sets the Commission's role in coordination and supervision of broadcasting in Zanzibar. In this role, the Commission more or less acts as a watch-dog for the Government. All

¹²⁸ Section 6(6). It is important to note that the Chairman's office is executive in nature because according to Section 10 of the Act the Chairman is the head and supervisor of the day to day activities of the Commission over and above presiding the meetings of the Commission.

¹²⁹ Section 6(1)(b).

¹³⁰ See Section 10(4).

¹³¹ A licence has to be applied for by a Zanzibari or a Tanzanian; a company registered in Zanzibar with at least 20% of share capital held by the Zanzibar Government; or a company registered elsewhere but with 30% of the share capital is owned by the Government of Zanzibar and also it should not be directly controlled by persons who are not Zanzibaris (Section 12). The law makes it difficult for foreigners to get involved in broadcasting business. In order to do so, it has to be on the shoulders of Zanzibaris but not on their own.

¹³² Section 12(3)(e-h).

those granted broadcasting licences are required to present all news and current affairs in a factual, accurate, impartial and non-partisan manner; to encourage the development of Zanzibar and Zanzibari expression by providing wide range of programming reflecting Zanzibar opinions, ideas, values and artistic creativity; to serve the needs and interests that reflect the circumstances and aspirations of Zanzibar men, women and children in a democratic society; limit advertisements to a maximum of 30% of the total daily broadcasting time; and to comply with the generally accepted standards of journalistic ethics in editing of programmes as formulated in the Code of Conduct for the Media Professionals.

In addition, all broadcasters are required to preserve and store sound and video recordings of all programmes and broadcasts for a minimum period of three months after transmission date; to disclose the name of the producer of every programme at the end of transmission of a programme; and to respect copyright and neighbouring rights obligations in respect of the broadcast material.

In its supervisory role, the Commission is supposed to look into compliance by the licence holders of the conditions of the licence and in case of breach, the licence holder is requested to provide explanation in writing. Where the Commission is of the opinion that there has been a breach of duty it may do any of the following: warn the licence holder; direct the licence holder to effect programme change within a specified period; direct the licence holder to disclose free of charge the findings of the Commission; impose a fine on the licence holder of not less than one million shillings (US\$433); suspend the broadcasting licence for specified period determined by the Commission; or revoke the broadcasting licence.

Part V of the Act deals with internal activities of the Commission and finance. Part VI is general but concentrates on offences and penalties relating to broadcasting. Section 26(1)(a) declares it an offence to engage in business as a broadcaster or a dealer in broadcasting apparatus without the appropriate licence. Also, it is an offence to interfere with or to obstruct the transmission or reception of any radio communication; to wilfully delay or obstruct an inspector or a police

¹³³ Section 15(3).

¹³⁴ Section 16(3).

¹³⁵ Sections 19 to 25.

¹³⁶ Section 26(1)(e).

officer or another officer in the course of their duties under the law; to fail or refuse to comply with the terms and conditions of the licence; and to make a false declaration in the process of obtaining the broadcasting licence. The Court dealing with offences detailed in the Act may over and above the penalties given order the forfeiture to the government of any broadcasting apparatus or other material in relation to in connection with or by means of which the offence was committed.

C. The Censorship and Cinematographic Exhibition Act, 2009

(i). Contents of the Law

What is in a name? The name of this law speaks volumes about its potential impact on society. It means that there are materials which cannot directly reach the public until they have gone through “special” people who decide whether they should go through or not i.e. censored. That means, limitation to freedoms (of information) of the citizen. The question is whether such censorship is legitimate or not.

The Act is divided into five parts with a total of 24 Sections. These are preliminary; establishment of Censorship and Cinematographic Exhibition Board; funds and accounts of the board; procedures offences and penalties; and miscellaneous provisions. The main function of this law is the establishment of a Board with four functions. These are to censor a variety of artistic and entertainment works. What is to be censored include films, video cassettes (CDs, DVDs, HDVs), banners or special advertisement, magazines before they are used by or shown to the public. These may have been prepared in or outside Zanzibar with the aim of preserving the righteous conduct and culture of Zanzibar Islands. Other items to be censored are plays and other arts

¹³⁷ Section 26(1)(f).

¹³⁸ Section 26(1)(h).

¹³⁹ Section 26(1)(i). The penalty for this is heavy. It is a fine not less than five million shillings (5,000,000/=)

¹⁴⁰ Section 26(2).

¹⁴¹ Act No. 1 of 2009. It was assented to by the then President of Zanzibar H.E. Amani Abeid Karume on 30th March, 2009.

¹⁴² Section 4(a).

¹⁴³ Section 4(c).

entertainments before they are released to the public. Also to be censored are entertainment advertisements in motor vehicles and business banners.

Other functions of the Board are suspending any cinematographic exhibition, stage plays and any other entertainment which are inconsistent with the righteous conduct of Zanzibaris; to issue permits for entertainment and business banners as well as cinematographic, video cassettes, stage plays and entertainment such as taarab, ngoma, music and others. In the course of its work, the Board is supposed to cooperate with other government institutions which deal with artistic works and culture.

The burning question is who are these special people entrusted with the duty of determining what Zanzibaris and other people in Zanzibar should see and should not watch or see? According to Section 5 of the Act, the Censorship and Cinematographic Exhibition Board is constituted of the the Chairperson appointed by the President from among respected persons with vast knowledge in cultural affairs; and other members not exceeding six appointed by the Minister responsible for cultural affairs from Zanzibar Regions with vast knowledge in cultural affairs. The Board is assisted by an Executive Officer as its Secretary.

The Board is said to be a body corporate with perpetual succession and a common seal. It is therefore capable to suing or being sued in its own name and it can purchase, acquire, hold, charge and dispose of both moveable and immovable property. The Board can also enter into valid contracts in its own name. That said, it is worth noting that most of its funds are derived from the Revolutionary Government of Zanzibar voted to by the Zanzibar House of

¹⁴⁴ Section 4(d). According to Section 4(f) the aim of doing this is said to provide general guidance on better exhibition of stage plays and these other entertainments.

¹⁴⁵ Section 4(e).

¹⁴⁶ Section 4(g).

¹⁴⁷ Sections 4(h) and (i).

¹⁴⁸ Section 4(j).

¹⁴⁹ Section 5(1)(a).

¹⁵⁰ Section 5(1)(c).

¹⁵¹ Section 5(1)(b).

¹⁵² Section 3(1)(a).

¹⁵³ Section 3(2)(b).

¹⁵⁴ Section 3(2)(c).

Representatives. Also, the functions given to the President and the Minister responsible for cultural affairs limits the autonomy of the Board.

The Act requires any person intending to host or run an exhibition by using cinematographic content, video cassettes, stage plays, computer games, entertainment advertisement on posters, motor vehicles with public address system, banners, television or newspapers to apply for permit from the Board. The Board shall issue a permit after carrying out an inspection of the items or acts for which the permit is being sought. It is an offence to contravene the Act and upon conviction one is liable to pay a fine not exceeding five hundred thousand shillings (US \$ 215) or imprisonment for a period of not more than six months or both such fine and imprisonment.

(ii). Evaluation of the Act

The Act has been overtaken by time. Technology has advanced so much that it renders the Act practically obsolete. New technological facilities have been developed and they need to be factored into the law. The old and well-established culture of going to public films or plays is no longer prevalent or popular in Zanzibar. Some of the more popular auditoriums for Films which were famous in Zanzibar have had their use changed e.g. Majestic Cinema in Vuga or the Cine Afric in Malindi.

The idea of censorship is not entirely out of place but in this day and age requires much more diligence in protecting the culture and people, particularly children and the youth. It is not simply the old system of having a few chosen only to watch each and everything and then decide what will go to the public and what will be blocked.

D. Other Legislation Touching Elements of Media

There are some laws in Zanzibar whose main themes are not freedom of information and have very little to do with the media. However, they are still relevant and cannot be ignored and have to be addressed albeit briefly. These pieces of legislation include:

¹⁵⁵ Section 15(a). Other sources of funds to the Board include sums received as fees or charges as well as grants and loans from various sources. See Sections 15(b) and (c).

¹⁵⁶ Section 19(1).

¹⁵⁷ Section 19(2).

¹⁵⁸ Section 20.

- (a) The Penal Act, 2018;
- (b) The House of Representatives (Immunities Powers and Privileges) Act, 2007;
- (c) The Public Service Act, 2011; and
- (d). The Elections Act, 2018.

II. Cases Involving the Media in Zanzibar

Unlike in Tanzania Mainland where there has been robust and spirited litigation on the freedom of information and the rights of the journalists, in Zanzibar things have been rather calm. This can be attributed to the fact that there are very few newspapers registered, published, and printed in Zanzibar. This is very different from the pre-independence and revolution period where there was a multitude of newspapers owned by individuals, companies, and political parties as well. They were all ideologically strong and attracted readers in large numbers. One can add that the disappearance of these newspapers has also affected not only the reading culture but also the general levels of education in the isles.

Therefore, most journalists in Zanzibar represent Mainland based newspapers and foreign media such as BBC, DW and others. Of course, one cannot underrate the importance of the journalists working for the only local newspaper, Zanzibar Leo; Zanzibar Broadcasting Corporation (Radio and Television) all owned by the Revolutionary Government of Zanzibar as well as the journalists working in local mainly private FM Radio Stations and Cable Television.

It is therefore important to highlight a few controversies in Zanzibar relating to the media. On the newspapers, one was banned for a brief period from entering Zanzibar. That is Majira from the Mainland. The other, which was prohibited from publication, was the Zanzibar-based Dira. The Editor, the late Ali Nabwa was put through a lot of harassment and he passed on while struggling for his paper which never resurfaced.

¹⁵⁹ Act No. 6 of 2018. Assented to by President Ali Mohamed Shein on 16/03/2018.

¹⁶⁰ Act No. 4 of 2007. Assented to by President Amani Abeid Karume on 19/07/2007.

¹⁶¹ Act No. 2 of 2011. Assented to by President Ali Mohamed Shein on 01/07/2011.

¹⁶² Act No. 4 of 2018. Assented to by President Ali Mohamed Shein on 16/01/2018.

On treatment of journalists by State apparatus, we have a number of cases of beatings, torture and even temporary disappearances. The latest incident involved the journalist from Mwananchi who was tortured by some members of the Special Forces of the Revolutionary Government of Zanzibar. The Government came out in full force to condemn this occurrence and even compensated the journalist for his personal items destroyed by the trigger-happy security personnel. This is a positive spirit shown by the 8th Phase Government of Dr. Hussein Ali Mwinyi, the President of Zanzibar. Such positive engagement could contribute to laying a firm foundation for media freedom and the freedom of Information in Zanzibar.

III. Media and Civil Society in Tanzania

There is a limited number of civil society organizations in Tanzania that have dedicated their work to the promotion of media freedom. Most such organizations work on advocacy, networking, and collective bargaining on behalf of journalists, editors and media owners. Most of these organizations work both on the mainland and Zanzibar helping to fill an important role in the latter. Most prominent among these is the Media Council of Tanzania (MCT) which has a branch in Zanzibar that work in congruence with the Dar es Salaam based office to address issues specific to Zanzibar.

Media in Tanzania faces various challenges that impact directly on their role in promoting democracy, good governance, and accountability. Tanzania has enacted several laws that impede press freedom and freedom of expression and reinforce existing laws that restrict unfettered reporting. Together, these laws criminalize legitimate in-depth and investigative journalism. Press freedom violations have recently escalated, including threats, intimidations, assaults and kidnapping of journalists, and destruction, vandalism, and arson on media property. Several media outlets have been fined, suspended, or banned for violating content regulations, with 2016 recording a high number of such punitive actions. Newspapers such as Mawio, Mwanahalisi and Raia Mwema have been banned for publishing articles critical of past and present Governments, and journalists charged with sedition and publishing false news.

¹⁶³ <https://www.icnl.org/wp-content/uploads/Tanzania-practical-manual-final-with-FHI360-covers.pdf>
Tanzania Media Laws: A Handbook for Practitioners. July 2019, p. 3

In 2017, the Tanzanian Government ended a twenty-year tradition of live broadcasts of Parliamentary sessions on the pretext that the State broadcaster, the Tanzania Broadcasting Corporation (TBC), could no longer afford to meet the costs. Government later extended this ban to private radio and television stations even though they had no funding constraints. Restrictions have extended to online media publishers, with the founder of the country's most popular website for whistle-blowers, Jamii Forums, being prosecuted for refusing to disclose its sources. Media outlets were heavily fined in 2018 for publicizing an election observation report prepared by the Legal and Human Rights Centre (LHRC), which expressed concerns about alleged election malpractice by the police and certain electoral candidates. The chilling effect of such actions deprives civil society organizations (CSOs) of media coverage of such important activities, and their stakeholders and the public of alternative information. A climate of fear within media circles is also perpetuated by political pronouncements warning media outlets against reportage that is said to undermine efforts to develop the country.

A healthy democracy depends on free and independent media that can act in the public interest. Principally, the rights of freedom of opinion and expression guarantee that people can hold opinions without interference, seek, receive, and impart information and ideas of all kinds, subject only to very narrow restrictions, prescribed in international law. Free and independent media are essential to ensure these rights and freedoms. The role of journalists is more than just a job; it is a profession that can shape a nation's views and opinions. Media provides avenues for people to be informed and to develop and express opinions. A credible press enables advocacy for new agendas and change and is critical in keeping authorities accountable to the people through their watchdog role. Journalists depend on information held by public bodies and institutions, and on credible sources (including whistle-blowers) to access such information. Laws that facilitate (rather than hinder) these efforts are critical. On their part, journalists and other media practitioners have a responsibility to maintain professional and ethical standards in executing their roles. This includes credible reporting, following ethical guidelines, and ensuring journalistic independence.

On 10th May, 2018, 65 civil society groups called on the Tanzanian Government to address the rapidly deteriorating environment for media, human rights defenders and opposition party

¹⁶⁴ Ibid Page 3 to 4.

¹⁶⁵ Ibid Page 5 to 6

members. The open letter addressed among other things, ‘the new legal restrictions criminalizing freedom of expression of social and traditional media’ and ‘the suspensions, fines and banning media outlets’, ‘the judicial harassment and persecution of journalists and human rights defenders.’ The 65 civil society groups provided recommendations including probing for the amendment of all disabling and restrictive provisions of the Cybercrimes Act, the Electronic and Postal Communications (Online Content) Regulations and the Media Services Act and to have them replaced by progressive Sections that will guarantee freedom of expression and the media in line with international standards. In the same light, these civil society groups recommended for newspapers banned, suspended or fined under the Media Services Act of 2016 to be reviewed to enable them to continue their operations without undue influence, as well as conducting independent investigations into cases of attacks and assaults on journalists with the view to bringing suspected perpetrators to justice and these attacks to be publicly and unequivocally condemned.

Civil Societies Organizations in Tanzania have also provided statements on the trend of harassing journalists while on duty. The Media Council of Tanzania’s Executive Secretary, Kajubi Mukajanga on 22nd April, 2021 issued a statement to remind the state security organs that journalism is not just sheer work but is credible legal work. He further cited President Samia Suluhu Hassan’s remarks on 6th April, 2021 to the Ministry of Information, Culture Arts and Sports to lift the ban imposed on media outlets and urged officials not to exercise authority to control media outlets and quoted President Samia Suluhu Hassan, ‘I understand there are media outlets that you have banned, lift the ban and they should abide by the law. We should not give credence to complaints that they are suppressed and denied freedom of expression’ . The Council listed a number of incidents of harassments of journalists including:

¹⁶⁶ <https://www.civicus.org/index.php/media-resources/media-releases/open-letters/3163-civil-society-groups-express-concern-over-worrying-human-rights-decline-in-tanzania>

¹⁶⁷ Ibid

¹⁶⁸ The Citizen (2021). President Samia orders Information ministry to lift ban on media outlets. Available at <https://www.thecitizen.co.tz/tanzania/news/president-samia-orders-information-ministry-to-lift-ban-on-media-outlets-3351174>

1. On 12th April, 2021, two journalists, one from ITV and Radio One, Christopher James and Dickson Billikwija of Island TV were detained under orders from the Director of Temeke Municipality, Lusabilo Mwakabibi, accusing them of gate crashing into his meeting.
2. On 9th April, 2021 in Mwanza, the District Commissioner of Nyamagana Dr. Philis Nyimbi, threatened to take action against journalist Mabere Makubi of ITV whom she accused that his reporting endangered her employment.
3. On 12th April, 2021, a freelance journalist reporting for the Guardian from Moshi, James Lanka, was arrested and remanded in police custody for three days without any charges and no statement was taken from him when he pursued a story on the arbitrary arrests of businessmen.
4. In Katavi region, a journalist reporting for Channel 10, Pascal Katona who was covering the election of an Imam at Makanyagio mosque was attacked by some worshippers of the Mosque who disregarded the outcome of the election and destroyed his working equipment.
5. On 21st April, 2021 in Zanzibar a journalist working for Mwananchi newspaper, Jesse Mikofu, was attacked and roundly tortured by Zanzibar special forces. He was accosted by the armed officers when he photographed them arresting and forcibly removing vendors from Darajani area who were supposed to operate at Kibandamaiti area. The officers also ordered the journalist to destroy his cell phone which he had used to take the photographs.

The Media Council of Tanzania, has among others, also released several publications and reports in its quest to ensure that media outlets and journalists keep pace with the transformative changes which occur in the mass media sub-sector. These publications include a compendium of analyses of media-related laws in Tanzania which outlines the fundamental requirements, responsibilities and rights of journalists and media organizations as embodied in the country's laws. The aim being to have journalists and media organizations to operate within the statutorily set parameters.

¹⁶⁹ <https://mct.or.tz/scribesharassment/> MCT condemns latest harassment of scribes.

¹⁷⁰ <https://www.thecitizen.co.tz/tanzania/news/mct-releases-reports-on-gender-and-civic-freedom-2706778> MCT releases reports on gender and civic freedom.

In essence, civil society organizations have experienced a constrained operating environment in recent years. Nonetheless, the civic space environment in Tanzania appears to be relaxing at the moment notwithstanding the limiting laws which could allow for more progressive laws and less repressive ones.

Besides the Media Council, there are several other organisations active in promoting media rights in Zanzibar. These include Tanzania Media Women’s Association Zanzibar (TAMWA-ZNZ); Media Council of Tanzania Zanzibar office (MCT-ZO); Organisation of Development Journalists in Zanzibar (WAHAMAZA); Zanzibar Journalism and Mass Media College; Centre for Strategic Litigation (CSL); and Zanzibar Press Club.



PART SIX: Zanzibar and the Media - Where do we go from here?

I. Introducing the New Media Bill

Since 2019, the Revolutionary Government of Zanzibar has been preparing a Bill to repeal and replace the Registration of News Agents, Newspapers and Books Act, 1988. Various stakeholders have been invited from time to time to contribute to the improvement of the intended new legislation. The new law will be titled Media Services Act, 2019 and the Bill has been published in Kiswahili.

Like its predecessor, the Bill is divided into ten parts. However, they have been completely re-organised with some new issues introduced and some old items discarded and others re-emphasised. Taking into account the passing of time and inflation, the penalties have also been increased for various offences.

Among the new issues include introduction of the Information Department which was not there before under the Director of Information as the Chief Executive Officer of the Department. The Director of Information shall also be the spokesperson of the government and the custodian of funds and properties of the Department.

The qualifications of the Director are high. He should be a Zanzibari with a minimum education of first degree in mass communication or equivalent area, economics or administration from a recognised University. Also, the Director should possess experience of not less than five years in information or related discipline; of good character and discipline; should not have been convicted for a criminal offence and sentenced to a six months imprisonment or more; and should not be active in politics.

¹⁷¹ This being the case the discussion in English is from our understanding of the contents of the Bill as it stands today.

¹⁷² The latest version of the Bill was signed by the then Minister for Information, Tourism and Antiquities Hon. Mahmoud Thabit Kombo on 30th August, 2019.

¹⁷³ According to Section 1 of the Bill, the new law will be called “Sheria ya Huduma za Habari, 2019.”

¹⁷⁴ Part III of the Act covering Sections 16 to 23.

¹⁷⁵ The functions of this Department are elaborately provided in Section 22.

¹⁷⁶ Section 17.

¹⁷⁷ Section 18.

Under the Director of Information is the office of the Registrar of Books, Newspapers, Magazines and Publications who shall be under and accountable to the Director. The qualifications of the Registrar are enumerated in Section 20(1). The position of the Registrar does not seem quite secure. Section 20(2) provides for conditions for his/her removal which is not normal to focus on a single officer in a legislation. The duty of the Registrar is to register newspapers, magazines, newsagents and books published and distributed in Zanzibar and beyond after approval by the Advisory Board. It is also the duty of the Registrar to issue permits for all journalists and media persons working in Zanzibar from outside Zanzibar. It is also the duty of the Registrar to inspect the identities of journalists and media officers working in Zanzibar in order to ensure that these identity cards are being used properly. The office of the Registrar is also the custodian of the register containing the names of institutions and owners of media houses; newspapers, magazines, books, news agents; and journalists and information officers.

Another completely new and refreshing area of the Bill is Part IV on right to information. This area was not envisaged in 1988 although the Constitution of Zanzibar, 1984 was already there with the Bill of Rights intact in Chapter Three. However, the relevant article i.e. Section 18 was poorly drafted and nothing has changed today. This Section which is mainly on freedom of expression also touches on the right to seek, receive and give information from any source irrespective of country borders and prohibits interference with freedom of communication. The main problem with this seemingly progressive provision is the fact that it is prefaced by a claw-back clause. It is made subject to the laws of the country. Section 18(2) is further constraining. It limits the right to receive information all the time on various issues of interest from within the country and the world only to citizens. This is strange because Zanzibar does not have any citizens. According to

¹⁷⁸ Section 19.

¹⁷⁹ The Registrar is appointed by the Minister responsible for education and should be a Zanzibari with the first degree in law, mass communication for related field and three years' experience.

¹⁸⁰ According to Section 20(2) the Registrar can be removed for criminal conviction attracting a jail term of six months or more; being declared bankrupt under the laws of Zanzibar; and failure to perform his functions due to health or any other reasons.

¹⁸¹ Section 21(1)(a).

¹⁸² Section 21(1)(b).

¹⁸³ Section 21(1)(c).

¹⁸⁴ Section 21(1)(d).

¹⁸⁵ See Section 18(1) of the Constitution of Zanzibar, 1984.

the Articles of the Union of 1964 and Schedule 1 to the Constitution of the United Republic of Tanzania, 1977, citizenship issue is a Union Matter. With this legal confusion hanging around in relation to freedom and the right to information, Part IV of the Bill throws a lifeline to the otherwise hopeless situation.

In a refreshing tone, Section 24(1) provides that every person has the right to receive information and the freedom to seek, to receive and to send information using any form of communication from any source of information without due regard to the borders of the country. At the same time, media outlets of all kinds have the right to get and to transmit any information in the hands of private and public institutions without any hindrance. Information, being a right, shall not be provided subject to payment of any kind. It has to be free of charge to journalists seeking this information in order to distribute the same to the public. The Bill also makes it a duty of the journalist and the mass media in general to provide information to the public through various means at their disposal.

In the area of private media, the Bill underlines that there will be transparency and fairness in the process of issuing of licences and to motivate diversity in broadcasting as well as ensuring fair allocation of wavelengths and advertisements.

Community media is covered in Sections 33 to 37. Here it is emphasised that the government will undertake to licence and enable community media to operate smoothly in Zanzibar.

Self-regulation of the media in Zanzibar is provided in Section 37. The media functionaries are supposed to prepare regulations on ethics and discipline in a transparent way that will involve all stakeholders and be guided by professionalism. At the same time, the authority responsible for information and media in general is supposed to be free and not encumbered by political, business and other interests.

¹⁸⁶ Section 24(2). This otherwise very freedom is limited in relation to what is not allowed under the National Security Act, 1970 as per Section 24(3).

¹⁸⁷ Section 25.

¹⁸⁸ Section 26.

¹⁸⁹ Section 26 (3).

¹⁹⁰ Sections 29 and 30. In a very strange manner, Section 28 prohibits “privatization” of a news broadcaster.

¹⁹¹ Section 38 whose marginal notes are in English instead of Kiswahili. The authority responsible for the media shall be responsible to the public and shall be executive in nature without taking away the judicial functions of the courts

The security of journalists is covered by Article 39 through which the Government guarantees journalists their security. In addition, the Government undertakes to prevent any attacks on any journalist including killing, torture, detention without justifiable reasons. At the same time, the government undertakes to provide capacity building to journalists, policy makers and other stakeholders on the levels of security for journalists. In the same vein, the government shall take legal measures including prosecution and punish all those involved in any crime against journalists and to ensure that victims of such crimes get reparations; while conceding responsibility for actions done by its employees, security, intelligence, military or other officials who will threaten, humiliate or endanger the security of a journalist. In an indication of gender sensitivity, the Government through the bill promises to undertake specific measures to ensure security of female journalists taking into account their specific needs and to fight any gender harassment and threats. In a war situation, the Government undertakes to regard journalists as non-combatants in accordance with international law and human rights.

In a welcome development, under the Bill, a journalist will not be required to provide the sources of confidential news or the facilities used in acquisition of such news unless required to do so by a court of law. Again, in another innovative provision, the Government undertakes not to interfere with personal communication of a journalist unless it is sanctioned by an independent

of law. See Sections 38(3) and (4). This is an attempt to depart from the method used by the Media Council of Tanzania (MCT) which has a quasi-judicial Kamati ya Usuluhishi ya Baraza la Habari Tanzania – a form of an alternative dispute settlement facility which brings complainants against media outlets and the media institutions involved.

¹⁹² Section 39(2).

¹⁹³ Section 39(3).

¹⁹⁴ Section 39(4).

¹⁹⁵ Section 39(5).

¹⁹⁶ Section 39(6).

¹⁹⁷ Section 39(7).

¹⁹⁸ Section 40(1). Even then, giving of information or facilities of a journalist due to Court order will be done if the identification of the source of information is important for investigation or prosecution of a major offence or defence of the accused. A Court order can also be issued if the required information is not available anywhere else; or public interest is more important than the right to self-defence. See Section 40(2)(a) to (c). This point of protecting the source of information is re-emphasised in Section 79 which provides that any work in the information sector who has been granted identification documents who collects, edits, disseminates or publishes news with the aim of sending or disseminating or publishing them will not be required to name the person or the method used to get or to name them. It is the High Court of Zanzibar which has the last word on whether the source of information should be named or not after hearing all the sides in camera as per Section 80 of the Bill which provides a very thorough process to be followed.

Court taking into account the right of defence and non-interference with the right to freedom of expression.

The right to information in Zanzibar is the subject of Part V of the Bill. Every person has the right to information and freedom to seek, receive and to send information by any means from any source without regard to the borders of the country. Media institutions have wide freedoms to seek, receive, disseminate information under any private or public institutions without any hindrance. Without prejudice to the provisions of Section 22 of the Bill relating to freedom of expression, the right to receive information will not involve prohibited areas. Section 42 recognises information as a human right and therefore, any source of information, without due regard to its system of providing information, shall not charge for the news given to journalists collecting it for dissemination to the public. It is the duty of both the private and public institutions involved in dissemination of information to provide such information to every person as quickly as possible. Thus, there is a duty on any institution holding any news to release the same periodically without any hindrance.

The Bill provides for situations in which information will be denied. This is where comparatively the effects which will be suffered through the release of such information is far more serious compared to the public interest to be safeguarded. The denial of information will be temporary depending on continued existence of the effects in question. Generally, the release of information will be proportionate to the perceived danger and only as long as it lasts.

¹⁹⁹ Article 40(3).

²⁰⁰ Part V of the Bill is constituted by Sections 41 to 47.

²⁰¹ Section 41(1). It is important to note that there is a conflict between what is provided in the Bill and what is provided in Section 18(2) of the Constitution of Zanzibar, 1984 which restricts the right to receive information to citizens only. That provision of the Constitution is further complicated by the fact that Zanzibar does not have citizens of its own. Citizenship is a Union Matter under Schedule One to the Constitution of the United Republic of Tanzania and thus there can only be citizens of Tanzania and not Zanzibar.

²⁰² Section 41(2).

²⁰³ Section 41(3).

²⁰⁴ Section 42.

²⁰⁵ Section 43(1).

²⁰⁶ Section 43(3). The Section then elaborate on the various methods which can be used in dissemination of information. These include public meetings or other forms of gatherings; announcements through media outlets; publishing in newspapers; publishing in public or private websites; news conferences; and other forms of publication which can reach the public. See Section 43(3)(a) to (f).

However, by and large, information will be denied where the release of information will involve unregulated release of personal details of a person; where release of information will injure legitimate business or financial interests of a stakeholder or any other person; where it will endanger the life, health or security of a person; where it will cause injury to international relations of the country; where it will adversely affect fight against crimes, arrest and prosecution against a criminal; where it involves confidential conversation between a doctor and patient or a lawyer and client or a journalist and his or her source; and any other immunity provided by the law. The decision not to release information will be released fast in writing with detailed reasons which fall within international and legal standards.

The decision not to provide information is appealable within the institution involved without any charge and with due care. Where the appellant is not satisfied, the law allows going higher to the Board and the possibility of referring the matter to the High Court in case the handling of the matter by the Board is not satisfactory.

It is a serious offence to prevent a journalist from doing his or her duty. Any person who threatens, prevents, beats, hides, injures, tortures, or does anything which is not legitimate to a journalist with the aim to prevent that journalist from accessing a source of information and unable to collect news or to air them or to publish them commits an offence and if convicted in court shall be punished by imprisonment for a period not less than two years and not exceeding five years. It is unclear why the Section does not provide for a fine for such offence. If the situation allows, following conviction, the court may order the accused to pay the journalist involved a compensation which the court shall deem satisfactory taking into account the circumstances of the issue involved. Section 47 turns the stick to information providers. It provides that any public or private institution which fails to release information in accordance with this law commits an offence and upon conviction shall be liable to pay a fine not exceeding one million shillings.

²⁰⁷ Section 44(3).

²⁰⁸ Section 44(4).

²⁰⁹ Section 45(1).

²¹⁰ Section 45(2).

²¹¹ Section 46(1).

²¹² Section 46(2).

²¹³ Section 47.

Registration of newspapers, journals and books is guided by Section VI of the Bill. There will be a system of applying for a licence to publish newspapers, journals and books which will be elaborated in regulations to be issued under this law. A company, corporation or any person shall not be allowed to do any business of owning or publishing a newspaper, journal or book without a licence issued in accordance with this law.

Under this law, only the following categories of persons and institutions can apply for a Licence. These are a Zanzibari; a company registered in Zanzibar in which at least 30% of its shares are held in and benefit Zanzibar; or a foreign company working in Zanzibar and in which not less than 30% of its shares are held and benefits the Revolutionary Government of Zanzibar; or any other qualification as it will be elaborated in accordance with this law. Application for licences shall be made to the Information Department which should be accompanied by a fee to be set by that Department from time to time and a Deposit whose value shall be set by that Department and a Strategic Plan of the applicant. The applicant is also required to submit a list and qualifications of all professional staff. The Board shall publicise the applications made in at least three newspapers which are read in Zanzibar and public views will be taken into account while evaluating and deciding on the applications. Without prejudice to the conditions for issuing licences, the Board shall be guided by experience, expertise in providing services relating to journalism, publishing of newspapers, books and journals and dealing with technology as it grows.

Upon being satisfied that the applicant has satisfied all the conditions in accordance with this law, the Board shall issue the licence. Without prejudice to the conditions for issuing licences, the

²¹⁴ Section 48(1).

²¹⁵ Section 48(2).

²¹⁶ Section 49.

²¹⁷ Section 50(1).

²¹⁸ Section 50(2).

²¹⁹ Section 50(3).

²²⁰ Section 51(1). The licence issued is valid for a period of one year and the holder is required to pay an annual fee for the licence. This is provided in Section 56. In a way, the licence has been made an income generating project. The Department should have simplified the process by making the licence valid for a longer period but subject to the annual fees instead of getting a new licence annually.

Department after issuing a licence it shall publicise that fact in the Official Government Gazette and not less than three newspapers read in Zanzibar.

Once the licence is issued, the Board retains the powers to alter the licence or to withdraw the licence when the holder violates the conditions of the licence or disrespects or fails to follow a warning in writing issued by the Board and to violate the laws of the country. However, no person, institution or company will have its licence suspended or revoked without being given notice and informed of the allegations against it and being afforded the opportunity to defend itself before the Board. Section 83 may be relevant here as it requires whoever is given a licence for any news institution to satisfy oneself that the contents of an article, opinion, news pictures, contributions by individuals, direct transmissions do not violate the contents of the licence issued by the Department of Information and professional regulations.

For companies, corporations and any person wanting to do business of owning or publishing a book will be required to submit an application for registration to the Director in accordance with this law. The Registrar is supposed to send to the Director the list of registration of newspapers and books to the Director every six months for purposes of gazetting in the official Government Gazette. Sections 58 and 59 provide for the requirement to submit copies of books and newspapers to the office of the Registrar. The copies submitted to the Registrar for safekeeping are protected and any person who destroys them commits an offence punishable by a fine of not less than five hundred thousand shillings (US\$216) or six months imprisonment or public service.

²²¹ Section 51(2).

²²² Section 52(1) indicates that the Board may do this in order to assist in the development in the discipline of journalism.

²²³ Section 53(a).

²²⁴ Section 53(b).

²²⁵ Section 53(c).

²²⁶ Section 54(1). The decision of the Board is appealable by the party not satisfied in a court of law within 14 days. This is provided in Section 55.

²²⁷ Section 57(1).

²²⁸ Section 57(3). Incidentally this particular Section does not have a subsection (2).

²²⁹ Section 60(2).

It is an offence to publish and distribute any book or newspaper in Zanzibar without following the provisions of this law or to make returns to the Registrar which are not true. The punishment for any of these offences is a fine of not less than two million shillings (US\$860) or a term of imprisonment of not less than one year or both the fine and imprisonment. The law is rather lenient for any company, corporation or person who publishes any newspaper in Zanzibar and fails to follow the provisions of this law or provides information which is untrue. The punishment is merely a fine of not less than five hundred thousand only (US\$216). Yet, the same law provides for a very elaborate procedure of pursuing those illegally publishing newspapers in Zanzibar.

The law provides for those who publish false information or gossip to the public. The punishment for this serious offence, upon conviction is a fine of shillings five hundred thousand (US\$ 216) or imprisonment for six months or both the fine and imprisonment. Publication of seditious information attracts banning by the Registrar with the permission of the Board. The owner is supposed to provide defence within two weeks and if the Registrar is not satisfied by the defence given the suspension of publication can be extended for six months to allow the owner to correct the shortcomings which are the source of the suspension. Any company, corporation, or person whose paper has been suspended by the Board has the opportunity to appeal to the High Court.

In three Sections, Part VII of the Bill addresses the sensitive question of libel. Any person who prints, writes or says or shows by signs anything that is against the law, publishes anything defamatory against another person with intention to defame him or her commits the offence of libel. The only defence is where the publication is correct or was done in the public interest.

²³⁰ Section 60(1)(c).

²³¹ Section 60(3). There is no alternative fine provided and instead his or her property can be attached through a court order and sold to cover the fine. [Punishment is extremely soft for a very grave offence – publishing without following the provisions of the law].

²³² According to the Section 61 any Police Officer with an Order issued by a Regional Court accompanied by an Information Officer can enter and inspect any place suspected holding newspapers published illegally and to arrest any suspect and arraign him or her before a court of law.

²³³ Section 63(1). The only defence for this offence is for the accused person to prove that he or she made efforts to establish the truth of what was published. See Section 63(2).

²³⁴ Section 64(3).

²³⁵ Section 65.

²³⁶ See Sections 66, 67 and 68.

²³⁷ Section 66.

²³⁸ Section 67.

Also, the publisher will not be held liable if the publication has been done by the President, the Government, the Zanzibar House of Representatives or the National Assembly of the United Republic of Tanzania in the form of any official form for purposes of its work. This defence is given priority in the belief that the publication has been done in good faith by a person responsible in both law, ethics and socially to make that publication and it has been done legitimately and that the publication did not exceed the levels logically required in such a situation.

Again, as had been the tendency in this Bill, the punishment for libel is not commensurate with the seriousness of the offence. Section 69 provides that a person convicted for libel will be fined shillings one million (US\$433) or six months custodial sentence or both the fine and imprisonment. It is an offence also to facilitate a prohibited publication to be accessible in public and anybody doing that is liable on conviction to a Shillings five million fine (US\$2,160) or imprisonment for a period of eighteen months or both the fine and imprisonment.²⁴²

Part VIII of the Bill deals with issuing of permits for Cinema. The relevance of this part is open for discussion. This is because the culture of the Cinema is almost extinct. The old and fashionable Cinema Houses in Zanzibar such as Majestic Cinema in Vuga are no longer active and have been allocated other functions. That said, it is also worth noting that Zanzibar has become famous for its annual film festival every July known as The Zanzibar International Film Festival (ZIFF) which attracts experts, actors, actresses and Directors from all over the world. However, the Bill assumes the existence of the old form cinema and not even the neighbourhood small “Halls” where the youth crowd to watch international and club football from across the world and particularly from England, Italy and Spain.

Section 70 of the Bill prohibits making or assisting someone to make a film for cinema either for screening in Zanzibar or elsewhere without a permit issued by the Director of Information Services.²⁴³ Exempted from this requirement is where a film is being prepared by an athlete for

²³⁹ Section 68(1).

²⁴⁰ Section 68(2).

²⁴¹ This is inconsistent with general practice internationally on the handling libel in the courts of law – to check practice in the courts of law.

²⁴² Section 69(3). Sub-section (4) goes on to define what is meant by a public space.

²⁴³ Section 70(1).

personal use or the use of the family and his or her friends. Otherwise, anybody wanting to engage in activities relating to Cinema has to seek and fulfil the requirements of Section 71 of the Bill for a permit. The Director of Information Services) can grant or refuse a permit as he or she deems fit. A permit can also be issued with conditions attached to it depending on the circumstances. The Director may also attach an officer to the area where the shooting of the Film is taking place. When it comes to screening of the Cinema another authority comes in. That is the Censorship Board working closely with the Director. Exempt from these requirements are films or cinema prepared on behalf of the government or those private ones prepared by athletes for private purposes.

Anyone intending to engage in business involving importation, exportation, selling for hiring films requires a permit from the Director of Information Services. Such permit will not be issued if the film involved conflicts with any part of this law, policies of the Government or it contains anything that cannot be shown to the public on the ground that it contrary to the culture of Zanzibar or Tanzania as a nation or it involves advocacy to increase divisions among the people, chaos, hatred and contempt of the Government or among the people. It is an offence to make, import, sell or hire out any film against the provisions of this law. The punishment for that offence is a fine not less than three million shillings (US\$1,300) or imprisonment for a period of two years or both the fine and imprisonment.

Part IX of the Bill is on the identification papers for journalists and workers in the information sector. Every person working in the information sector will be required to get identification papers

²⁴⁴ Section 70(2). Also, the Director may decide to waive the requirement of a permit where it is deemed appropriate to do so. This is done under Section 70(3).
²⁴⁵ Section 72.
²⁴⁶ Section 73.
²⁴⁷ Section 74(1). Under Section 74(3) no Cinema will be screened without the approval of the powerful Censorship Board.
²⁴⁸ For use by the family or friends as per Section 74(2)(b).
²⁴⁹ Section 75(1).
²⁵⁰ Section 75(2).
²⁵¹ Not three shillings as indicated in the Bill at Section 77.
²⁵² Section 77.
²⁵³ Not XI as indicated.

from the Department of Information.²⁵⁴ At the same time, every institution dealing with Information registered in Zanzibar will be required to apply for identification papers for its journalists.²⁵⁵ Every person registered as working in the information sector in Zanzibar shall have the right to collect and disseminate information for public consumption.²⁵⁶ As for freelance journalists and foreign journalists representing foreign news outlets, they are required to present their credentials and qualifications to the Director so as to be able to get identification papers in accordance with this law.²⁵⁷ Any person denied identification papers by the Director can lodge an appeal with the Board and if

necessary refer the matter to the High Court of Zanzibar.²⁵⁸ It is emphasised that nobody will be denied identification papers save for professional and journalistic reasons.²⁵⁹ It is an offence to undertake journalistic work in Zanzibar without identification papers and if the offence is established it is punishable by a fine of shillings five hundred thousand (US\$216) or to do community service for a period to be determined by a Court of Law.²⁶⁰

The constitutional right to the freedom of association to journalists is provided in Section 81 which provides that workers in information related institutions are free, without prejudice to journalistic ethics, to join organisations of workers in or out of Zanzibar in accordance with the existing laws. In the same vein staff in the information sector have the right to join professional organisations in and outside Zanzibar.²⁶¹

Abuse of office by journalists is what is covered by Section 84. The provision declares it an offence for any staff of a media institution to threaten any person to be corrupted or by other illegitimate means to demand for money or anything from any person so that this person is not published adversely in connection with any crime or in relation to any

²⁵⁴ Section 78(1). For a person to qualify for identification papers as a journalist should have at least a Diploma in Information from an institution recognized by the Government. This requirement is in Section 78(11).

²⁵⁵ Section 78(2). In return, the leadership of each such institution has duty to register all journalists who have been given identification papers and submit such list to the Registrar for record purposes as per Section 78(4). At the same time, Section 78(9) requires every institution, company or corporation dealing with journalism to inform the Department of Information when a member of staff retires, resigns, dies or is terminated from work.

²⁵⁶ Section 78(3).

²⁵⁷ Section 78(5).

²⁵⁸ Section 78(6). In this area, strangely Sub-articles 6 and 7 are merged together!

²⁵⁹ Section 78(8).

²⁶⁰ Section 78(10).

²⁶¹ Section 81.

this situation, the laws relating to corruption shall be put into play and if proved then the identification papers granted to the offender shall be withdrawn.²⁶² The law adds that any person who purposely publishes information which is not true and it is established in a court of law or publishes created news also commits an offence and once established will be liable to a fine not exceeding shillings one and half million (US\$651) or imprisonment not exceeding six months or providing community service.²⁶³ It is unclear the lenience provided in this Section of the law.

Section 85 protects journalists or other workers in the information sector against being punished in certain circumstances. This is where the alleged act leading to the offence relates to the constitution, international agreements which Tanzania has signed and ratified by the Zanzibar House of Representatives or ethics relating to information; the duty to do what was done is allowed under the law; the truth, legal views or thoughts; public rights to get news published or intended to be published; the right to publish the news after a court has given its judgment; quotation from a statement issued by a person who is entitled to issue such statement as a result of skills, professional weight and work.²⁶⁴ Also, no institution or staff shall have his or her facilities taken while undertaking his or her work legitimately.²⁶⁵ Any person complaining that his or her rights have been violated by the journalist in the process of doing his or her duties should be advised to institute proceedings in a court of law.²⁶⁶

The Bill in Section 86 allows a company, institution or person to be an agent on information from any news facility doing its work in Zanzibar subject to applying for permission from the Director.²⁶⁷ It is an offence to do agency work without the permit of the Director and on conviction shall be liable to a fine of three million shillings (US\$1,300) or a term in prison of less than two years or both the fine and imprisonment.²⁶⁸

Part X of the Bill looks at the question of procedure and management of Information in

²⁶² Section 84(1).

²⁶³ Section 84(2).

²⁶⁴ Section 85(1).

²⁶⁵ Section 85(2).

²⁶⁶ Section 85(3).

²⁶⁷ Section 86(2).

²⁶⁸ Section 86(3).

granted licence.²⁶⁹ These include editing of all the information to be published in accordance with the ethics of the profession; to reserve in safe custody all the information in the journals and newspapers published for a period of three months after distribution; absence of any infringement of copyright and other intellectual property rights accompanying the information; and to ensure that the benefits of the workers are achieved.²⁷⁰

The Board, upon receipt of complaints from any person, is supposed to require the person, company or corporation against which the complaint is directed to provide explanation in writing the reasons for the violations of the conditions contained in the licence.²⁷¹ Failure to provide satisfactory justification and reasons for the violations is an offence which can invite a fine of not less than shillings three million (US\$1,300) or a term in prison of not less than two years or both the fine and imprisonment.²⁷² Section 90 provides for the constitutional right to defend oneself following complaints being filed. The law opens the door for anyone denied this right to proceed to court.²⁷³

Any company, corporation or person has the right to deny any information published in any publication which is not correct.²⁷⁴ The refuting statement should contain the correct position, should be brief in comparison with the information being denied, should not contain anything that is likely to breach the law, should be elaborating the information and statement being denied, and should be signed by the victim, his lawyer or the Chief Executive Officer of the company or corporation.²⁷⁵

The company, corporation or person who has published information which is not true will be required to deny the truth of that information through the following arrangement, namely within ten days from the date this information was published; should deny with the same weight; and

²⁶⁹ Section 87(1).

²⁷⁰ Section 87(2).

²⁷¹ Section 88.

²⁷² Section 89(1). In case the complainant is not satisfied by the way the matter has been handled can proceed and file an appeal in the courts of law. This is provided in Section 89(2).

²⁷³ Section 90(2).

²⁷⁴ Section 91(1).

²⁷⁵ Section 91(2).

should announce the denial without any payment.²⁷⁶ The contents of this part of the law should not be utilised in the direct broadcasts of either the Zanzibar House of Representatives or the National Assembly of the United Republic of Tanzania.²⁷⁷

Section 92 enumerates situations where a journalist or a media professional may not be prosecuted for criminal offences mentioned in this law. This is where the offence concerned is committed in the process of executing something which is a constitutional right; a human right accepted constitutionally in Zanzibar; a duty to publish under the law on the right to information; right to publish the information following the judgment of the Court; the truth relating to views of the argument; the right to inform the public information with immunity under the law on the right to information; information from statement from a person with authority to issue such statement from his own understanding, professional duty or position.²⁷⁸

The media person concerned is also shielded against offences enumerated in various laws relating to abusive language to quarrel and threatening peace; sedition; treason; and criminal assault.²⁷⁹ Any person alleging that his or her rights have been affected by a publication issued by a journalist or media person over information relating to the offences enumerated above may request for extra consideration from the court of law.²⁸⁰

The rest of the law is basically administrative in nature. Part XI is on the activities of the Finance Department while Part XII is on various provisions and general provisions.

II. Evaluation of the Bill

This is basically a good modern Bill which captures what is required in recent laws enacted elsewhere with a view to open up the civic space. Journalism and the right to information are presented in a positive and desirable context.

²⁷⁶ Section 91(4).

²⁷⁷ Section 91(5).

²⁷⁸ Section 92(1).

²⁷⁹ Section 92(2).

²⁸⁰ Section 92(3). This is another situation where the Journalist is being allowed to ‘get away with murder’ i.e. not be punished for misuse of professional work – This is being repeated here having been dealt with before within this law.

However, the Bill suffers from its extreme and open favour of journalists and media workers in general and completely ignores the State and the general public. This has the potential of cultivating impunity among media professionals in the absence of a clear reward system for prescribed violations.

The drafting and corrections to the Bill portray several limitations in legal drafting. For instance:

- (a) There are repetitions of the same themes several times in different parts of the Bill.
- (b) Some Sections with single Sub-sections which are not proper in legal drafting.
- (c) The punishments provided may be construed as inconsistent with and oblivious to the gravity of offences committed.

Genuine efforts should be made to rescue this work by raising it to the required professional level as there are dangers of some good provisions being accidentally swept away by the authorities in the process of 'correcting' the Draft Bill.

In the course of discussing the Bill, the media personnel should try to assume that there is also good faith on the part of the Revolutionary Government of Zanzibar in the process of coming up with this Bill. Therefore, the discussion should be open and the negotiations should be without reservations. There should be efforts to ensure that a win-win situation is achieved. In this way it will be easy to come up with a consensus likely to give rise to a balanced and enviable modern law. That is a law on the media which everyone will be proud to associate with.

PART SEVEN: Conclusion

Fundamental rights and freedoms, under which Media Freedom and the Right to Information fall are not Union Matters within the Tanzanian constitutional set-up as are human rights in general. This means that there is a room for Zanzibar to go it alone and with political goodwill improve the situation. Depending on the regime in power, this constitutional arrangement might be a headache for Zanzibaris when they have no breathing space.

It has happened quite several times and in those rare moments under legal strangulation, Zanzibaris have rushed for oxygen in the Union legal framework and institutions such as the Court of Appeal of Tanzania. In such a situation, one appreciates a proper and balanced approach to delicate situations. It is important to reflect seriously about this on the right and freedom of information as the isles chart the way forward.

Be as it may, it is critical that Zanzibar ensures that the prevalent legal framework meets global standards. This should begin with the Constitution of Zanzibar, 1984 whose Bill of Rights in Chapter Three falls short of such standards. Apart from containing claw-back clauses which are not necessary, most rights are set out negatively and are directly restrictive. It is high time that Zanzibar modernises the Bill of Rights to move with time. As a starting point, it should borrow a leaf from the Constitution of the United Republic of Tanzania, 1977, as amended in 2005.

This should go hand in hand with removing from the Constitution of provisions that limit levels of access to justice. A good example is Section 24(3) of the Constitution of Zanzibar, 1984 which provides that:

24 (3) The application against the decision of the High Court in the suit instituted against the provisions of this Chapter of the Constitution shall be heard by the High Court before three judges without including the judge who has decided that question on the first occasion. Those three judges shall be appointed by the Chief Justice.

Any appeal in an issue relating to Chapter Three (The Bill of Rights) shall be heard by three judges excluding the judge who heard the case for the first time. The three judges

shall be appointed by the Chief Justice and their decision shall be final and cannot be appealed against in the Court of Appeal of Tanzania.²¹⁸ This is not a normal ouster clause but goes further to mention the excluded institution. For purposes of human rights, this is a serious limitation of rights by either side. Persons pursuing their rights should be afforded the opportunity to exhaust all opportunities available. This constitutional provision will undermine freedom of the media as stakeholders are being refused access to the highest court of the land.

Having dealt with the Constitution of Zanzibar, 1984 and its shortcomings, we should move to specific laws addressing the media and freedom of information in general and how they infringe global and regional standards, some of which the United Republic of Tanzania is a party. This could be done seriatim.

This work has tried to map out the laws relating to the media in Zanzibar as they stand today and what is being suggested as a change. By and large, the laws on the media in Zanzibar are old in both fashion and content. A lot has gone under the bridge in this discipline, but Zanzibar has been left behind. Instead of addressing issues relating to media piecemeal, the ministry concerned should address the whole discipline wholly so that people can move forward.

To assist this undertaking, this work goes through the proposed Media Bill, 2019 with the aim of opening a debate on the right and freedom of the media. Although seemingly moving with time, there are a few areas which require touching to improve its contents. In order to turn this work into a prime source on the media in Zanzibar, all the laws, currently in force in Zanzibar have been discussed. This enables readers and researchers to have everything at one source and allows for a continued evaluation of the situation of the media in the isles.

²⁸¹ It should be noted that this is the third area where the Court of Appeal of Tanzania is being denied jurisdiction in Zanzibar. First, it is in interpretation of the Constitution of Zanzibar, 1984; and all matters originating from the Kadhis Courts. These too end at the High Court of Zanzibar.

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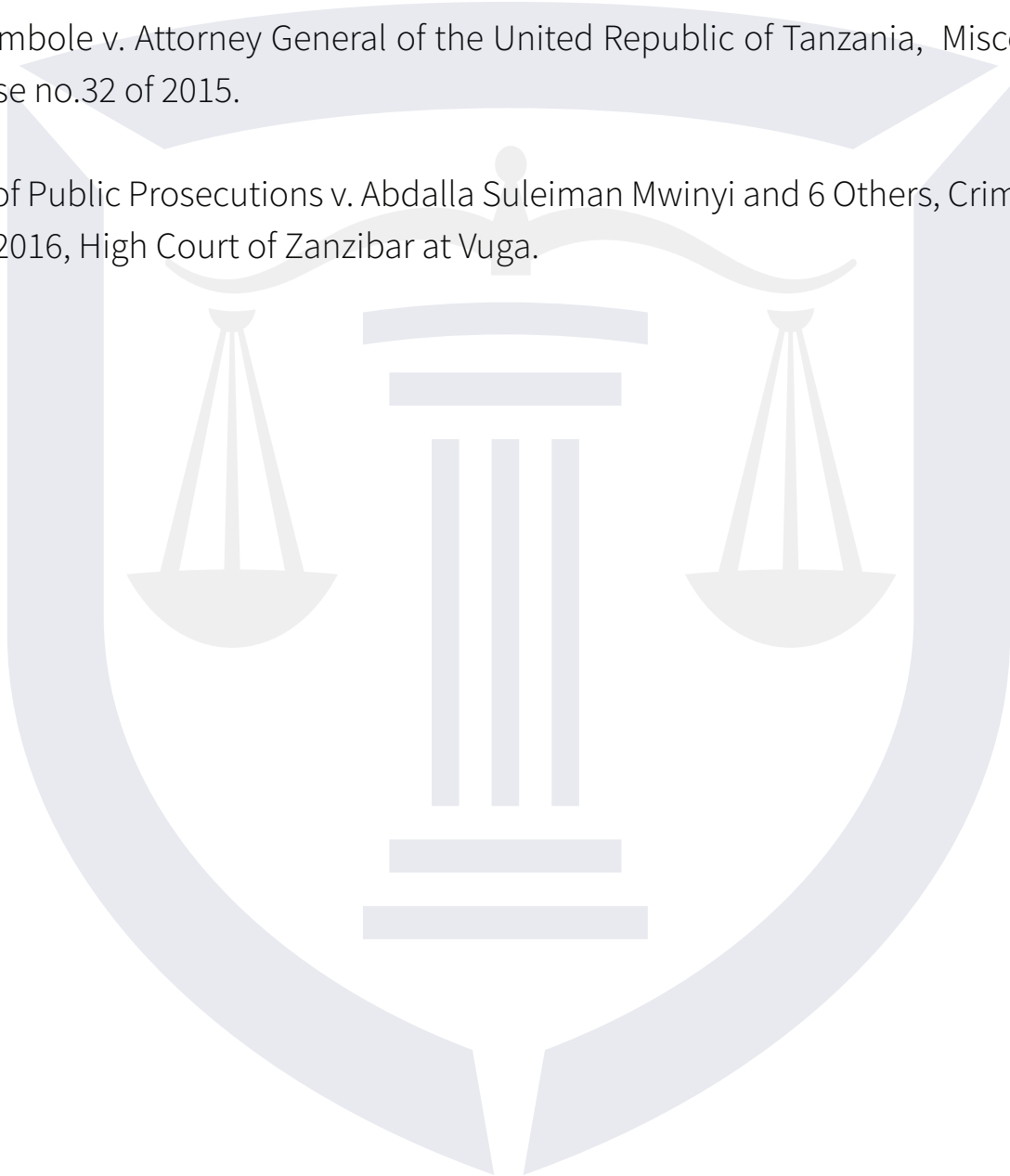
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