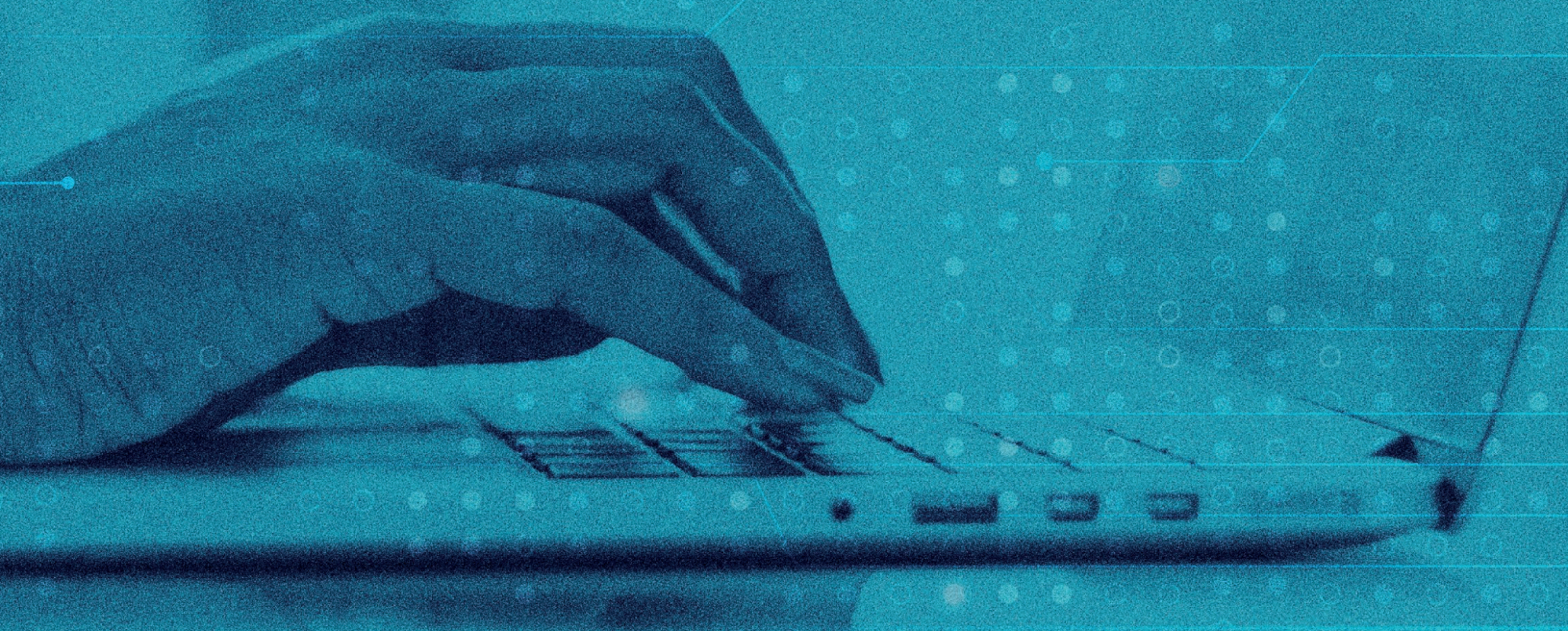


Analysis of Proposed Amendments to Tanzania's Online Content Regulations 2021

September 2021



Introduction

In 2020, Tanzania issued the Electronic and Postal Communications (Online Content) Regulations, 2020¹ (EPOCA regulations) which repealed the Electronic and Postal Communications (EPOCA) (Online Content) Regulations, 2018.² The EPOCA regulations were made under section 13 of the Electronic and Postal Communications Act to regulate online content service providers, internet service providers, application services licensees, online content users and any other related online content. However, the regulations raised a number of concerns amongst human rights defenders, political dissidents, journalists, academics, civil society organisations and actors, over their regressive impact on digital rights and freedoms including freedom of expression (FOE), access to information (ATI), association and assembly.

In August 2021, Tanzania published the proposed Electronic and Postal Communications (Online Content) (Amendment) Regulations 2021 (EPOCA amendment regulations) which shall be read as one with the Electronic and Postal Communications (Online Content) Regulations, 2020. Once adopted, they will have a wide impact on digital rights and freedoms of Tanzanians. Below are some of the major observations from the proposed amendments.

Positives

Application of the EPOCA Regulations

According to **regulation 2**, the EPOCA regulations of 2020 extended to internet service providers which was quite delimiting given the role of internet service providers as primary intermediaries of the internet and not content providers. This was fundamentally affecting access to the internet and to information as well as freedom of expression. The amendment presented by the proposed EPOCA amendment regulations under **regulation 2** is thus progressive in as far as it removes internet service providers from the list of those to which the regulations apply.

Scope of definitions

The proposed amendment under **regulation 3** makes strides in attempting to explain what some terms mean especially in respect to “online media content services” which are defined as “...content services provided for the purpose of news and current affairs in a manner similar to, or in a manner that resembles services providers licensed under the Act.” An “online content aggregator” is defined as “...licensed content service provider who collects content from different sources and packs into specific baskets of channels for a purpose of being accessed by users upon payment of a prescribed fee.” These definitions which are lacking in the current regulations provide some level of certainty as to the application of the regulations in respect to the two categories.

Similarly, the EPOCA amendment regulations minimises the possibility of misapplication of certain terms by specifically providing an independent definition for “online content service” and “weblog”. This equally provides some level of certainty as to the application of the two terms.

¹ Electronic and Postal Communications (Online Content) Regulations, 2020
[https://www.tcra.go.tz/uploads/documents/sw-1619088125-The%20Electronic%20and%20Postal%20Communications%20\(Online%20Content\)%20Regulations,%202020.pdf](https://www.tcra.go.tz/uploads/documents/sw-1619088125-The%20Electronic%20and%20Postal%20Communications%20(Online%20Content)%20Regulations,%202020.pdf)

² Electronic and Postal Communications (EPOCA) (Online Content) Regulations, 2018
[https://www.tcra.go.tz/uploads/documents/sw-1619087888-The%20Electronic%20and%20Postal%20Communications%20\(Online%20Content\)%20Regulations,%202018.pdf](https://www.tcra.go.tz/uploads/documents/sw-1619087888-The%20Electronic%20and%20Postal%20Communications%20(Online%20Content)%20Regulations,%202018.pdf)

The deletion from the 2020 regulations of the words “internet café,” “online platform,” “mainstream media,” and “news related content” removes concerns about their potential impact, especially the chilling effect on freedom of expression and access to information as well as limiting use of the internet. The definition of the terms is currently too broad and vague in as far as it provides for assignment of static public Internet Protocol (IP) addresses to computers in cafes and requires installation of surveillance cameras to record and archive activities inside the cafe. The two requirements discourage the use of circumvention tools, such as Virtual Private Networks (VPN) and infringe on the privacy of the individual.

Categories of Licences

The proposed amendment of **regulation 5** by the proposed **regulations 4 and 5** is progressive having reduced the application and licensing fees, and removed the application and licensing fees from Online Content Service Licence Category B (Simulcasting radio and television). Moreover, some clarity has been drawn with the categorisation of licences with the introduction of Online Content aggregator by subscription in Category A which offers services upon payment of subscription fees.

Regulation 8 is suggestive of a positive direction to delete **regulation 9 (d)**. It proposes the deletion of the current **regulation 9(d)** which potentially censors a broad variety of content in the name of, among others, sexuality and decency, slander and defamation, public security, violence and national security, health and public safety and use of bad languages and disparaging words, which could lead to arbitrary restriction on freedom of expression. In addition, it will also remove the onerous and undue burden on service providers to invest in costly tools for content monitoring.

Equally commendable is regulation 11 which proposes the deletion of **regulation 13**. Regulation 13 required the assignment of static public Internet Protocol (IP) addresses to computers in cafes, which encumber the use of circumvention tools, such as Virtual Private Networks (VPN), which enable users to bypass network restrictions and to enhance their anonymity online. The current provision also interferes with the right to privacy, freedom of expression and access to information of the individual. In its current form, regulation 13 is counter to Principle 40(2) of the Declaration of Principles on Freedom of Expression and Access to Information in Africa,³ which states that; “Everyone has the right to communicate anonymously or use pseudonyms on the internet and to secure the confidentiality of their communications and personal information from access by third parties through the aid of digital technologies.”

The proposed **regulation 12** which will replace regulation 18 of the EPOCA regulations of 2020 on children's protection is commendable as it is clearer and more specific and thus, buttresses child protection against harmful content.

³ African Commission on Human and Peoples’ Rights at its 65th Ordinary Session, Declaration of Principles on Freedom of Expression and Access to Information in Africa, https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019.pdf

Worrisome Observations

Scope of definitions

While the proposed EPOCA amendment regulations make an effort to remove some of the broad and ambiguous terms from the definitions in **regulation 3** that could be potentially misused against individuals, media and private sector players, some more terms require immediate actions before the amendment is passed. Below are two terms which should be addressed if the applicable standards protecting FOE, ATI, association and assembly⁴ are to be realised.

(a) “Hate speech” which is defined to mean “any portrayal in words, speech, pictures, etc., which denigrates, defames or otherwise devalues a person or group on the basis of race, ethnicity, religion or disability.”

This definition is so broad in scope that it includes defamation which has never formed part of hate speech. Defamation is a civil wrong that is personal in nature as opposed to being categorised as hate speech.

Indeed, any such restriction of speech must meet the prescribed threshold as explained in the 22nd session of the Human Rights Council on the prohibition of incitement to national, racial or religious hatred.⁵ Paragraph 28 specifically states that:

Article 20 of the Covenant (ICCPR) requires a high threshold because, as a matter of fundamental principle, limitation of speech must remain an exception. Such a threshold must take into account the provisions of article 19 of the Covenant. Indeed, the three-part test (legality, proportionality and necessity) for restrictions also applies to cases involving incitement to hatred, in that such restrictions must be provided by law, be narrowly defined to serve a legitimate interest, and be necessary in a democratic society to protect that interest. This implies, among other things, that restrictions are clearly and narrowly defined and respond to a pressing social need; are the least intrusive measure available; are not overly broad, so that they do not restrict speech in a wide or untargeted way; and are proportionate so that the benefit to the protected interest outweighs the harm to freedom of expression, including with respect to the sanctions they authorize.

Recommendation

The words “defames or otherwise devalues a person” should be deleted from the definition of hate speech.

(b) “indecent material” which means material which is offensive, morally improper and against current standards of accepted behaviour which includes nudity and sex.

The use of the words “morally improper and against current standards of accepted behaviour” is vague and leaves wide discretion to the authorities to interpret what is lawful conduct or not. This could be used to prosecute individuals and to unjustifiably restrict operations of online content providers. There are already implications of application of this provision. For instance, Wasafi TV was shut down for six months (from January to June 2021) for allegedly violating the Electronic and Postal Communications (Broadcasting Regulations) by broadcasting “indecently dressed” local artists during the “Tumewasha” festival.⁶

Recommendation

Repeal the words or phrase “morally improper and against current standards of accepted behaviour” from the definition of “indecent material”

⁴ Human rights norms obligate States to protect these rights as the norm. Any restrictions on fundamental rights are permitted only as an exception and must comply with strict criteria (also known as the three-part, cumulative test) under the International Covenant on Civil and Political Rights (ICCPR), which requires that: (a) the restriction is provided by law, which is clear and accessible to everyone; (b) the restriction is aimed to pursue one of the legitimate purposes set out in the ICCPR (Art. 19(3)), namely: (i) to protect the rights or reputations of others; (ii) to protect national security or public order, or public health or morals (principle of legitimacy); and (c) the restriction is necessary and the least restrictive means required to achieve the purported aim.

⁵ Human Rights Council, Twenty-second session, “Annual report of the United Nations High Commissioner for Human Rights: Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred,” available at https://ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf (accessed 15th June, 2021)

⁶ Elizabeth Edward, “TCRA slaps Wasafi TV with a six-month ban,” *The Citizen*, January 5, 2021, available at <https://www.thecitizen.co.tz/tanzania/news/tcra-slaps-wasafi-tv-with-a-six-month-ban-3247904> (accessed 15th June 2021)

Licensing Requirements

The EPOCA regulations of 2020 provide for licensing requirements of all online content service providers under regulation 4. However, the proposed EPOCA amendment regulations, 2021 do not make any positive proposals for amendment in respect to regulation 4 yet it is prohibitive of operations unless licenses are acquired from TCRA. The affected categories may include individuals, companies, educational institutions, and organisations such as NGOs and CSOs.

Thus, the licensing requirements are very restrictive and disproportionate as they prescribe a penalty of not less than five million shillings (USD 2,157) or imprisonment for a term of 12 months or both. Moreover, the penalty is made in total disregard of the fact that there may be small scale providers or individuals who have limited financial resources and engage in activities that are not necessarily commercial but for communication and expression of views.⁷ The effect is that such penalties create self-censorship in violation of freedom of expression standards.

Recommendation

The requirement of licensing should be deleted from the regulations.

In the alternative, imprisonment should be removed from the prescribed penalty and the prescribed fine should be reduced to a maximum of fifty thousand shillings (USD 25).

Process of Application for licence

The EPOCA Regulations of 2020 presume that every online content service provider is an incorporated entity. The requirements have a chilling effect on, and potentially curtail FOE and ATI. Indeed, the scope of information required is so wide and extends to collection of personal data that it could potentially infringe on individual privacy without adequate safeguards, since Tanzania has no specific law on data protection and privacy.

The proposed EPOCA amendment regulations, 2021 aim to repeal regulation 6 and replace it. **Regulation 6** provides that:

- (2) The application form shall be accompanied by-
- (a) certified copy of certificate of incorporation or certificate of registration;
 - (b) certified copy of Tax Identification Number Certificate;
 - (c) certified copy of Tax Clearance Certificate for companies or non-governmental organisations;
 - (d) certified copy of National Identity Card;
 - (e) list of owner and management team;
 - (f) curriculum vitae of the staff;
 - (g) editorial policy guidelines for news and current affairs licence category;
 - (h) technical description for the facilities used; and
 - (i) any other documents as the Authority may require.

On the other hand, the proposed **regulation 6(2)(a)** provides that:

The application form for Online Content Service Licence Category A shall be accompanied by:

- i) certified copy of certificate of incorporation or certificate of registration;
- ii) certified copy of Tax Identification Number Certificate;
- iii) certified copy of Tax Clearance Certificate for companies or non-governmental organisations;
- iv) certified copy of National Identity Card of shareholders;
- v) list of owner and management team;
- vi) curriculum vitae of the staff;
- vii) editorial policy guidelines for news and current affairs licence category;
- viii) any other documents as the Authority may require; and

⁷ UN Human Rights Committee has in General comment No. 34, Article 19: Freedoms of opinion and expression Paragraph 39 UN Doc # CCPR/C/GC/34 (2011) (<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>), stated that: States parties must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations. The criteria for the application of such conditions and licence fees should be reasonable and objective, clear, transparent, non-discriminatory and otherwise in compliance with the Covenant.

The proposed **regulation 6(2)(b)** Online Content Service Licence **Category B** which includes simulcasting radio and television shall be accompanied by a certified copy of valid content service license.

The proposed amendment has only added the requirement of accompanying the application form with a certified copy of the National Identity Card of shareholders and only removed the aspect of the requirement of “(h) technical description for the facilities used” and the addition of the requirement of a certified copy of valid content service license for **category B** which includes simulcasting radio and television applicants. Although this is a progressive change in the proposed amendment, the scope of information required is so wide and extends to collection of personal data that it could potentially infringe on individual privacy without adequate safeguards, considering the absence of a data protection and privacy legislation in Tanzania.

Recommendation

Remove the requirement for accompaniment of the application form with:

- (a) certified copy of certificate of incorporation or certificate of registration;
- (b) certified copy of Tax Identification Number Certificate;
- (c) certified copy of Tax Clearance Certificate for companies or non-governmental organisations; and
- (d) curriculum vitae of the staff;

Tanzania should swiftly enact a data protection and privacy law to protect, regulate data collection, storage, management and processing.

In addition to the above observations, it would be important for the following provisions of the EPOCA regulations of 2020 to be looked into for repeal or amendment as highlighted below.

Prohibited Content

Regulation 16 prohibits publication of certain content which is set out in the Third Schedule. Under **sub-regulation (2)**, “A person shall not render, possess or distribute technology, program, application or any other related thing that allows or helps users to have access to prohibited content.”

This regulation potentially limits the use of Virtual Private Networks (VPN) which aid in protecting and enabling users to bypass restrictions that limit access to online content. The sub-regulation thus stands to arbitrarily limit freedom of information, expression, and the right to privacy. This regulation further places restrictions on use of encryption technology, thus placing rights to privacy and anonymity at risk.

Sexuality and decency

Under **para 1(b)** in the **third schedule**, while prohibition is of “content that depicts, motivates, promotes or facilitates publishing or exchanging of homosexuality, adultery, prostitution, sex crimes, rape or attempted rape and statutory rape, or bestiality” the provisions could be potentially used to restrict exposure of individuals to similar criminal acts. Exposure of the acts and their related consequences against perpetrators can be important for prevention of future recurrence of similar acts against individuals.

Recommendation

Delete the words, “...or facilitates publishing or exchanging of” from the para 11(b).”

Trading of Sexual or Immoral Goods

Paragraph 1(c) prohibits “content that motivates, supports or promotes practices or trading of sexual or immoral goods such as movies, photos, drawings, books, stories, sexual games, toys and related things”

This provision in essence seeks to prevent publication of pornographic content. Prohibition of pornography is already addressed in the Cyber Crimes Act, 2015⁸ and therefore this regulation is redundant. Moreover, the provision extends to what is termed as “related things” which is ambiguous and could be used to unlawfully prosecute individuals and curtail FOE and ATI.

Recommendation

Delete para (1)(c) or in the alternative, delete the words “related things” from the paragraph.

Personal Privacy and Respect to Human Dignity

Paragraph 2 of the Third Schedule prohibits the publication of content that infringes on privacy and human dignity. However, para 2(b) prohibits content that among others “insults, slanders and defames other persons” “regardless of whether the information is true where publishing the same may harm the person.”

This provision undermines the defence of truth in cases of defamation.⁹ It is also not cognisant of the global trend that defamation should be decriminalised.¹⁰ It therefore potentially curtails human rights and freedoms including expression, speech and information.

Recommendation

Delete Paragraph 2 of the Third Schedule.

Public Security, Violence and National Safety

Paragraph 3 to the Third Schedule prohibits publication of content on public security, violence and national security, including:

- (a) content against the State and public order including content that aims to or publishes information, news, statements or rumors for the purpose of ridicule, abuse or harming the reputation, prestige or status of the United Republic, the flag of the United Republic, the national anthem or the United Republic’s symbol, national anthem or its logos;
- (b) content that calls for or motivates, promotes or provokes non-compliance to the laws and regulations;
- (c) content that is involved in planning, organizing, promoting or calling for demonstrations, marches or the like which may lead to public disorder;
- (d) content that would threaten the security of the United Republic or affect public order;
- (e) content that includes news of official confidential communications or military affairs;
- (f) content that would harm the national currency or lead to confusion about the economic condition in the country;
- (g) content that incites, encourages or enables the commission of a crime against the United Republic or its citizens;
- (h) content that is likely to threaten the stability of the United Republic or its safety, unity or security, or harming national unity or social peace;
- (i) content that portrays violence, whether physical, verbal or psychological, that can upset, alarm and offend viewers and cause undue fear among the audience or encourage imitation;
- (j) content that portrays sadistic practices and torture, explicit and excessive imageries of injury and aggression, and of blood or scenes of executions or of people clearly being killed;

⁸ Available at https://rsf.org/sites/default/files/the_cyber_crime_act_2015.pdf

⁹ Article 19, “Defamation Campaigning Tools: A Simple Introduction to Key Concepts of Defamation Law, 2006,” available at <https://www.article19.org/data/files/pdfs/tools/defamation-abc.pdf>

¹⁰ Report of The Special Rapporteur on Freedom of Expression and Access to Information in Africa ‘Viewed in 25 years of the Commission,’ Presented by Adv. Pansy Tlakula at the 52nd ORDINARY SESSION 9th to 22nd October 2012 in Yamoussoukro, Cote D’Ivoire, available at https://www.achpr.org/public/Document/file/English/activity_report_sp_freedom_expression_eng.pdf; see also, in the Matter of Lohé Issa Konaté v. Burkina Faso Application No. 004/2013, available at https://www.chr.up.ac.za/images/centrenews/2014/files/Konate_Decision_English_UNSIGNED_Version_from_Registry_20141217.pdf

- (k) content that causes annoyance, threatens harm or evil, encourages or incites crime or leads to public disorder or that may threaten national security or public health and safety;
- (l) content which advocates hate propaganda or promotes genocide or hatred against an identifiable group;
- (m) content that promotes or favours what would raise sedition, hatred or racism or sectarianism or harming national unity or social peace or disturb the public order or public morals

Most of the restricted content under this paragraph is undefined, yet overly broad and vague, which contravenes the principles of predictability and transparency for lawful restrictions on FOE. Thus, under this paragraph, determination of what content is permissible is hard to know. The overly broad and ambiguous categories of prohibited content is an unlawful and undue restriction on FOE, ATI and association and assembly.

Moreover, vague provisions have been held by the East African Court of Justice to curtail freedom of expression in the case of *Media Council of Tanzania & others vs. A.G of Tanzania*.¹¹ The court ruled that Section 7 of the Media Services Act that prohibited content based on vague terms like “undermines national security”, “impede” and “threaten” violated freedom of expression since it did not allow individuals to regulate their actions because it is unclear what content is prohibited. The “provided by law” principle requires that laws be sufficiently precise to allow persons to know what expression is restricted and what expression is permitted.¹²

Recommendation

Repeal paragraphs 3(a)—(i) and (k).

In the alternative, redraft 3(a)—(i) and (k) to be clearer and more reflective of the established minimum regional and international human rights standards in place of the currently restrictive provisions.

Criminal Activities and Illegal Trade Activities

Paragraph 4 of the Third Schedule prohibits criminal activities and illegal trade activities. In terms of content, this is commendable. However, para 4(e) on “content that motivates, promotes or facilitates terrorist groups or any illegal group, association, organization or body” is worded in a vague and unclear manner. The words, “content that motivates, promotes or facilitates” could fail to meet the above mentioned three-part test in article 19 (3) of the ICCPR.

Worse still, the provision could be used to arbitrarily curtail speech of government critics including civil society and the media in the guise of illegality, as previously evidenced in the clamp down on media.¹³

Recommendation

Repeal the words “content that motivates, promotes or facilitates” from paragraph 4(e).

In the alternative, redraft the paragraph to be clearer, narrowly construed and more specific as to its scope of application in accordance with relevant human rights norms.

¹¹ *Media Council of Tanzania, Legal and Human Rights Centre & Tanzania Human Rights Defenders Coalition v. Attorney General of Tanzania*, (Reference No. 2 of 2017), Judgement issued on 28 March 2019.

¹² ICNL, “Legal Analysis: Tanzania—The Electronic and Postal Communications (Online Content) Regulations, 2020.

¹³ Reporters Without Borders, “Tanzania suspends another media outlet over its Covid-19 coverage” July 10, 2020, available at <https://rsf.org/en/news/tanzania-suspends-another-media-outlet-over-its-covid-19-coverage>

Respect to Religion and Personal Beliefs

Paragraph 7 of the Third schedule prohibits content that undermines religion and personal beliefs to the effect that;

- (a) “content which contains or promotes offending, defaming, insulting, ridiculing or violating any of the religions or any of its rites, sanctities or divine books, or interfering with freedom to practice one's religion by violence or threat;”
- (b) “content that motivates, promotes or facilitates incitement, or ridicule, hatred against a certain religious belief or expression that motivates, promotes or facilitates religious subjugation or apostasy”

These two provisions potentially restrict freedom of expression based on grounds of expression contrary to popular views or officially sanctioned beliefs. Such provision is contrary to Article 19 of the ICCPR as stated by the UN Human Rights Committee in as far as it would bar displays of lack of respect for a religion or other belief systems which are protected under freedom of expression.¹⁴

Furthermore, such provisions could be used to prevent criticism and punish critics of religious leaders, or censor publications that may be highly critical of religious doctrines of various faiths. Restrictions should ideally be implemented where such criticism incites violence against a believer or for purposes of preventing such violence.¹⁵

Recommendation

Repeal paragraph 7 (a) and (b)

Public Information that may cause public havoc and disorder

Paragraph 8 of the of the Third Schedule prohibits publication of information that may cause public havoc and disorder including among others;

- (b) circulating or making available information with regards possible terrorist attacks, droughts, weather forecasts or occurrence of natural calamities without the approval of the respective authorities;
- (c) content with information with regards to the outbreak of a deadly or contagious diseases in the country or elsewhere without the approval of the respective authorities

The two provisions are too broad and vague that they could be used to unlawfully restrict freedom of expression with the primary objective of protecting the interests of those in government. Consequently, criminal sanctions could be unfairly imposed against individuals and organisations to restrict them from legitimately publishing their information.

Further, the restrictions on publication of content on the outbreak of a deadly or contagious disease in the country or elsewhere without the approval of the respective authorities is contrary to international law as it could further deter the publication of valuable information.¹⁶ Moreover, it could leave the population exposed to pandemics due to denial of vital information.

In the wake of COVID-19 there was wide persecution of the media over publication of information on the pandemic.¹⁷ It is therefore imperative that publication of vital information is promoted and protected to ensure public health and safety. Restrictions should be only imposed where the principles of legality, necessity and proportionality are established.

¹⁴ Human Rights Committee, General Comment No. 34: Article 19: Freedoms of opinion and expression, para. 48, UN Doc # CCPR/C/GC/34 (2011); see also, United Nations Human Rights Council, A/HRC/32/38, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye” May 11, 2016, para. 41.

¹⁵ United Nations Human Rights Council, A/HRC/32/38, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye” May 11, 2016, para. 45.

¹⁶ United Nations Human Rights Council, A/HRC/44/49, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye: Disease pandemic and the freedom of opinion and expression” April 23, 2020, para. 42

¹⁷ Reporters Without Borders, “Tanzanian media unable to cover Covid-19 epidemic,” November 5, 2020, available at <https://rsf.org/en/news/tanzanian-media-unable-cover-covid-19-epidemic>

Recommendation

Repeal Paragraph 8 (b) and (c) of the Third schedule.

In the alternative, measures that aim to ensure that restrictions on content of the prescribed nature meet the legality and necessity requirements.

Use of bad languages and Disparaging Words

Paragraph 9 of the Third Schedule prohibits, “content that uses bad language, such as the use of disparaging or abusive words which is calculated to offend an individual or a group of persons, crude reference words, in any language commonly used in the United Republic, which are considered obscene or profane including crude references to sexual intercourse and sexual organs, and hate speech”

The provision in this paragraph is vague that it fails to meet the three-part test. For instance, the phrases like “bad language,” “abusive words” and “crude reference words” are so broad and open to interpretation, leaving wide discretion for authorities to determine what speech is prohibited. This gives room for the government to prefer criminal charges against the opposition and/or its critics.

While profanity and obscenity may be prohibited by States, the prohibition should be clear and unequivocal and should reflect the established international human rights standards. Moreover, freedom of expression “includes the right to scrutinize, debate openly, make statements that offend, shock and disturb, and criticize.”¹⁸

Recommendation

- (a) Repeal the words; bad language,” “abusive words” and “crude reference words, in any language commonly used in the United Republic, which are considered obscene or profane including crude references to sexual intercourse and sexual organs” from the provision, or
- (b) Delete paragraph 9 of the Third Schedule in entirety, or
- (c) In the alternative, a clear, precise and succinct provision that is unambiguous should be drafted and replace the current provision.

False, Untrue, Misleading Content

Paragraph 10 of the Third Schedule prohibits “content that is false, untrue, misleading which is likely to mislead or deceive the public unless where it is clearly pre-stated that the content is a satire, parody or fiction; and where it is preceded by a statement that the content is not factual.”

Fake news, false information and misinformation have become major threats to truthful information. Yet laws on fake and false information violate freedom of expression. While government control is necessary, it must be implemented within the three-part test. Otherwise, unchecked restrictions on fake and false information have a chilling effect on freedom of expression and information, stifles independent media and stifles public debate. Generally, laws prohibiting “fake” or “false” news are incompatible with the freedom of expression.¹⁹

Recommendation

Repeal the prohibition of circulation of false news.

In the alternative, there should be clear provision of the standards for liability for circulation of fake or false information

¹⁸ *Handyside v. United Kingdom*, 7 December 1976, Application No. 5493/72, 1 EHRR 737, para. 49 (European Court of Human Rights).

¹⁹ See, *The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, Joint Declaration on “Fake News”, Disinformation and Propaganda, para. 2(a) (March 3, 2017).*

Penalties

Regulation 21 provides for general penalties to the effect that;

“A person who contravenes the provisions of these Regulations commits an offence and shall, upon conviction, where no specific punishment has been provided, be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than twelve months or both.”

The prescribed penalty, that is, a fine of not less than five million shillings (USD 2157) or to imprisonment for a term of not less than twelve months or both is too harsh given the nature of targeted individuals and media. It also constitutes severe and disproportionate restrictions on FOE and may create undue censorship of FOE

Recommendation

Delete regulation 12 which provides for general penalties.

Revise the penalty to not more than 500,000 Tz shillings (USD 216) or to imprisonment for a term of not more than 3 months or both

Conclusion

The Electronic and Postal Communications (Online Content) Regulations, 2020 are largely restrictive and curtail human rights and freedoms online including expression, information, assembly and association and the right to privacy online. Moreover, the regulations were adopted in haste during a controversial period in Tanzania of COVID-19 denialism and in the run-up period to the 2020 general elections, and appeared aimed at curbing free speech targeting online platforms used by government critics in opposition, media, academia and human rights defenders. The proposed amendments to the regulations provide some ray of hope towards the digital rights and freedom space, but may not be sufficient to fully tackle current concerns in Tanzania.

Hence, the regressive provisions as highlighted in the foregoing analysis should be repealed or amended if digital rights and freedoms are to be promoted and enjoyed in Tanzania in line with existing obligations under international and domestic law.



Collaboration on International ICT Policy for East and Southern Africa (CIPESA)

☎ +256 414 289 502

✉ programmes@cipesa.org

🐦 @cipesaug

📘 [facebook.com/cipesaug](https://www.facebook.com/cipesaug)

🌐 www.cipesa.org