

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity**

REFERENCE:  
AL TZA 3/2018

9 July 2018

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolutions 33/30, 35/15, 34/18, 32/32, 34/5 and 32/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of infringements on the right to life, the right to freedom of expression, as well as the rights to freedom of peaceful assembly and of association in Tanzania, indicating a pattern of restrictions to civic space in Tanzania.**

We wish to draw your attention to two recent communications sent by the Special Procedures. AL TZA 4/2017, sent on 7 November 2017 is related to the arrest and detention of thirteen persons, including three lawyers and their clients, in connection with their participation at consultations on possible strategic litigation challenging the Government's ban on drop-in centres serving key populations at the risk of HIV. AL TZA 2/2018, sent on 25 April 2018 relates to the arrest, detention, and prosecution of human rights defender Sophia Donald, as well as the arrest and detention of Ms. Donald's mother.

We regret not having received an answer to these communications and recall that the responses to our communications constitute a central element of the States' cooperation with Special Procedures.

According to the information received:

Over the past two years, a worrying decline in respect for human rights has been observed in Tanzania. In particular, the exercise of the rights to freedom of expression, peaceful assembly and association has faced growing restrictions

underlying a deteriorating environment for civil society, notably for journalists, human rights defenders, protestors as well as political opposition party members.

a) *Restrictive legislation on the right to freedom of expression*

Tanzania has recently adopted domestic legislation which raises concern as to its compatibility with international human rights standards on freedom of expression.

The **Cybercrime Act**, adopted in 2015, enables the authorities to ban and sanction the dissemination of newspapers articles or social media posts when deemed critical to the Government. Article 12 imposes harsh sanctions for the publication of information deemed “false, deceptive, misleading or inaccurate.”

Adopted on 25 April 2015, **the Statistics Act** makes it illegal to publish or communicate statistical information that has not been approved or authorized by the National Bureau of Statistics. Any element that may result in “distortion of facts” is also considered illegal.

Adopted in September 2016, **the Access to Information Act** enables authorities to withhold information if its disclosure is likely to “undermine Tanzania’s international relations”, “hinder or cause substantial harm to the Government’s management of the economy”, or “distort records of court proceedings before the conclusion of a case”.

Adopted in November 2016, **the Media Services Act** contains provisions allowing the authorities to unilaterally ban publications of any content that jeopardizes national security. Under the Act, journalists can be banned or expunged for committing “gross professional misconduct as prescribed in the code of ethics for professional journalists” and practicing journalism without receiving a prior accreditation constitutes an offence.

In March 2018, the **Electronic and Postal Communications (Online Content) Regulations** was adopted. According to the law, bloggers and persons operating online radio and television streaming services must secure a license and pay an annual fee of over \$900 before they can publish any material online. It also contains provisions granting the authorities the discretion to revoke a permit if a site or a blogger publishes content that "causes annoyance" or "leads to public disorder."

We are concerned these laws, adopted without consultation with civil society, provide the executive branch with overly broad discretionary powers to restrict the right to freedom of expression. The above legislation and the overbroad wording applied represent a disproportionate and unnecessary restriction to the exercise of the right to freedom of expression and information which would be incompatible with the criteria for permissible restrictions to freedom of expression under international human rights law. It must also be noted that most of the above

mentioned legislation lack due process guarantees and impose heavy penalties on individuals accused of breaching them, such as heavy prison sentences and fines.

*b) Attacks against journalists and media outlets*

Over the past two years, many journalists and human rights defenders have been arrested and prosecuted under these laws. As a result, numerous media outlets have been closed, and the authorities imposed heavy fines on newspapers. Since 2017, four prominent newspapers have been banned and four others have been fined.

In June 2017, the newspaper Mawio was banned for a period of 24 months, both in print and its online version. In September 2017, the Mwanahalisi newspaper was suspended for 24 months and the weekly Raia Mwema for 90 days. On 24 October 2017, the Swahili-language Tanzania Daima was suspended for 90 days for “publishing false news about anti-retroviral drug use for people with HIV”.

On 2 January 2018, five television stations were fined a total of 60 million Tanzanian shillings (\$27,000) by the Communications Regulatory Authority (TCRA) for broadcasting “offensive and unethical” content, in particular a press statement issued on 30 November by the Legal Human Rights Centre (LHRC). The statement related to a report documenting violations of human rights, such as detentions, intimidation and physical abuse in the context of the 6 November 2017 elections of councilors. Other TV stations that featured the statement - Star TV, Azam Two, East Africa TV, Channel 10 and ITV - were also fined.

Additionally, several journalists have during the same period of time been subjected to physical attacks and judicial harassment:

On 21 November 2017, Mr. Azory Gwanda was abducted by a group of unidentified assailants and his whereabouts remain unknown. Mr. Gwanda is a journalist for Mwananchi and The Citizen. He authored several articles about the murders of several local officials and police officers.

In August 2017, Mr. Micke William and Mr. Maxence Melo Mubyazi were both on trial after being charged under the Cybercrime Act. They were accused of obstructing justice for failing to disclose the identities of persons who posted details of allegedly corrupt officials on Jamiiforums, a whistleblower website they owned. Their case was adjourned 40 times. They face one year of prison and a fine if convicted.

We are concerned that the repressive legislative and operative environment with regard to freedom of expression represents serious impediment to the work of journalists and media outlets. We are concerned that this may lead to self-censorship in media, and in particular impede the work of investigative

journalists. We are additionally concerned at the broader implications of this on civil society and on the population's access to information.

*c) Other groups particularly at risk and the general situation of human rights defenders*

Human rights defenders are reportedly the target of various forms of harassments tactics, both judicial and extra-legal. Over the past two years, an increase in negative public statements from high-ranking officials against human rights defenders and their work has been observed.

In September 2017, the authorities requested organizations to submit or re-submit administrative information, such as the proof of their registration, the localization of their offices as well as registration payments. Until November 2017, the Government suspended the registration of new organizations and the activities of already existing organizations were suspended.

The authorities have also engaged in questioning the citizenship of many human rights defenders, being accused of being foreign nationals.

LGBT people, and the defenders of their human rights, have particularly been the subject of harassment and intimidation from the authorities. Organizations working with key groups, including LGBT, people have been stigmatized and threatened with suspension or closure. In October 2017, 13 human rights lawyers and defenders were arrested and detained for "promoting homosexuality".

In 2018, several cases of opposition party members and parliamentarians being killed or attacked have been reported. On 13 February 2018, Mr. Daniel John, official of the main opposition party Chama Cha Demokrasia Na Maendeleo (CHADEMA) in Dar es Salaam, was abducted and subsequently killed. On 22 February, Mr. Godfrey Luena, a member of parliament for CHADEMA, was also killed with machetes.

On 26 February 2018, Mr. Joseph Mbilinyi and Mr. Emmanuel Masonga, also members of a political party, were sentenced to five months of prison for "insulting the President" during a political rally.

*d) The right to freedom of assembly*

In response to the general discontent over measures and policies adopted by the authorities, several groups have been increasingly assembling peacefully since 2017. The authorities have reportedly responded to these protests using excessive force and arresting protestors. The latter have been subject to intimidations aiming at dissuading them from protesting.

In April 2018, the authorities decided to impose a ban on demonstrations scheduled for 26 April to protest against the democratic backsliding in the country. Several high officials delivered hostile statements and threatened protestors to be “beaten like stray dogs”. Prior to the demonstrations, seven persons involved in the organization of these protests were arrested in Arusha. Among the very limited amount of persons protesting, nine persons were arrested. All of them have been placed in detention.

Regarding the right to assemble peacefully, domestic legislation provides that organizations have to notify the holding of events to the authorities. In practice, it appears that civil society organizations are requested to provide details of their scheduled events and that this notification procedure serves as a prior authorization procedure. As a result, many events, including political rallies led by opposition parties, have been shut down or prevented.

We express grave concern at the growing restrictions placed on the exercise of the rights to freedom of expression, association and peaceful assembly, including through the adoption and subsequent implementation of a legislative arsenal severely impinging on the right to freedom of expression. We are particularly concerned at the targeting of human rights defenders, protestors, journalists, LGBT people and the defenders of their human rights, and political activists for peacefully carrying out their human rights activities as well as for legitimately exercising their rights to freedom of expression, freedom of association and freedom of peaceful assembly. The killings of political opponents registered over the past few months are particularly worrying. We are concerned by this increasingly hostile environment which is leading to self-censorship and instilling a climate of fear among civil society, negatively impacting civic space in Tanzania.

We are finally worried this pattern underscores a policy implemented by the authorities to curtail completely fundamental freedoms, suppress dissenting voices and close civic space.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information regarding the aforementioned legislation and clarify how it is in compliance with international legal standards, in

particular with the right to freedom of expression guaranteed in article 19 of the International Covenant on Civil and Political Rights (ICCPR).

3. Please provide information regarding the abduction of Mr. Azory Gwanda, whether any investigations have been carried out and if perpetrators have been brought to justice.
4. Please provide information regarding the sanctions adopted against several media outlets and individual journalists, in particular the judicial proceedings against Mr. Micke William and Mr. Maxence Melo Mubyazi, as well as their legal basis and how these judicial proceedings are compatible with articles 9 and 14 of the ICCPR.
5. Please provide detailed information regarding allegations of harassment against human rights defenders, political opponents and other activists, including LGBT activists. In particular, please provide details regarding the lethal attacks against Mr. Daniel John and Mr. Godfrey Luena. Please also provide information on any investigations on these killings, and on whether any individuals or groups have been prosecuted. If no investigations have taken place, please explain why. Please explain the legal basis regarding the sentencing of Mr. Joseph Mbilinyi and Mr. Emmanuel Masonga. Please substantiate how these measures and allegations are compatible with articles 19 and 22 of the ICCPR.
6. Please provide any information regarding allegations of use of force during peaceful protests, the bans on protests, as well as the arrests and intimidations of protestors and explain how these measures are compatible with international human rights law, in particular with articles 9, 14, 19 and 21 of the ICCPR.
7. Please indicate what measures have been taken to ensure that human rights defenders and other activists in Tanzania are able to carry out their legitimate work, including through the exercise of their right to freedom of opinion and expression, their rights to freedom of peaceful assembly and of association in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort against either themselves or their families.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

David Kaye  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Victor Madrigal-Borloz  
Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

**Annex**  
**Reference to international human rights law**

*Right to Life*

In connection with above alleged facts and concerns, we would like to refer to article 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), to which the United Republic of Tanzania acceded on 11 June 1976, which guarantees the inherent right to life of every individual and provide that this right shall be protected by law and that no one shall be arbitrarily deprived of his life.

In its General Comment No. 31, the Human Rights Committee recalls the responsibility of State parties to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice or redress the harm caused by non- state actors (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18). The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) provides detail on the duty to investigate potential unlawful deaths “promptly, effectively and thoroughly, with independence, impartiality and transparency.” A failure to investigate violations of the Covenant and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR (CCPR/C/21/Rev.1/Add.13, paras. 15).

With regards to allegations of excessive use of force by law enforcement authorities, we would like to refer to the Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990). They provide, amongst others, that law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. The use of force and firearms must as far as possible be avoided, using non-violent means before resorting to violent means.

*Arbitrary detention and fair proceedings*

We would also like to refer to the right not to be arbitrarily deprived of liberty and to fair proceedings before an independent and impartial tribunal, as set forth in articles 9 and 14 of the ICCPR. We wish to highlight that deprivation of liberty resulting from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR is arbitrary.

Article 9 establishes in particular that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law, and that anyone who is arrested shall be informed, at the time of arrest, of the reasons behind such arrest and be brought promptly before a judge for the purpose of legal assessment of detention.

Article 14 stipulates that, in the determination of any criminal charge, everyone should have adequate time to communicate with a counsel of choice, and that no one should be compelled to confess to guilt. The right to have access to a lawyer without delay and in full confidentiality is also enshrined in the Basic Principles on the Role of Lawyers (Principles 7 and 8). Article 14 also includes the right to be tried without undue delay;

*The rights to freedom of opinion and expression, of peaceful assembly and of association*

Article 19 of the ICCPR guarantees the right to freedom of expression, which includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

We would like to remind your Excellency’s Government that any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 4 and 19 (3). Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

We once again wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We would also like to refer to the Human Rights Council resolution 33/2 on safety of journalists (A/HRC/RES/33/2) adopted on 6 October 2016, which “recognizes that the work of journalists often puts them at a specific risk of intimidation, harassment and violence, the presence of which often deters journalists from continuing their work or encourages self-censorship, consequently depriving society of important information” and “urges the immediate and unconditional release of journalists and media workers who have been arbitrarily arrested or arbitrarily detained.”

We recall that the ICCPR guarantees the rights to freedom of peaceful assembly and of association in its articles 21 and 22. These rights can be subject to certain restrictions in strict conditions of necessity and proportionality.

In this regard, we would like to refer to Human Rights Council Resolution 24/5 which “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline,

including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others”.

With regard to the de facto prior authorization to hold assemblies, we recall that the exercise of fundamental freedoms should not be the subject of previous authorization and that the suspension or de-registration of an association constitutes one of the severest types of impediment to the right to associate (A/HRC/20/27, para. 28 and 75).

In addition, we would like to draw your attention to Human Rights Council Resolution 22/6 which calls upon States to respect, protect and ensure the right to freedom of association of human rights defenders. States should ensure, where procedures governing the registration of civil society organizations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive. Such procedures should allow for the possibility to appeal and avoid requiring re-registration, in accordance with national legislation, and should be in conformity with international human rights law (OP 8).

We would finally like to recall resolutions 17/19 and 27/32 of the Human Rights Council, expressing grave concern for acts of violence and discrimination committed against individuals because of their sexual orientation and gender identity. On the basis of international human rights norms and standards and the work of the United Nations human rights treaty bodies and special procedures, the United Nations High Commissioner for Human Rights has recommended that States inter alia repeal laws used to criminalize individuals on grounds of homosexuality for engaging in consensual same-sex sexual conduct and ensure that other criminal laws are not used to harass or detain people based on their sexuality or gender identity and expression, He has also recommended that States prohibit discrimination on the basis of sexual orientation and ensure that individuals can exercise their rights to freedom of expression, association and peaceful assembly in safety without discrimination on grounds of sexual orientation and gender identity (A/HRC/29/23, A/HRC/19/41).

We would also like to refer to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

We wish to particularly stress the following articles:

- article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups,
- article 6 (a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about

- all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.
- article 6 (b) and c) which provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters.