

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

REFERENCE:
OL TZA 4/2018

26 October 2018

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 34/18.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the amendments to the Statistics Act, passed by Parliament in September 2018 and understood to be pending the President's approval. If adopted, the amendments would further restrict the exercise of the right to freedom of expression, in particular by the media and in academia.

Concerns at the crackdown on dissent and criticism and restrictions to civic space, including the 2015 Statistics Act, were raised in a joint communication by several Special Procedures mandate holders to your Excellency's Government on 9 July 2018 (ref. no TZA 3/2018). We regret not having received any response from your Excellency's Government.

According to the new information received:

In June 2018, an omnibus bill, entitled *The Written Laws (Miscellaneous Amendments) (No.3) Act, 2018*, was presented before the Parliament of Tanzania proposing amendments to several laws, including amendments to the Statistics Act of 2015 (Part VII of the omnibus bill). The amendments were passed by Parliament in September 2018 and are believed to be pending before the President's approval.

Under the amendments, anyone who questions the accuracy of official statistics through any form of dissemination will face a fine of at least 10 million Tanzanian shillings (approximately USD 4,400), at least three years imprisonment, or both.

Article 32(b) amends article 37(4) of the Statistics Act, which following the amendments would read: "*Any person who publishes or causes to be published or communicates any official statistics or statistical information contrary to the provisions of this Act, commits an offence and is liable, on conviction to a fine of not less than ten million shillings or to imprisonment for a term of not less than three years or to both*".

According to the amendments' section on "*Objects and reasons*", the amendments "*are aimed at restricting the dissemination of statistical information*

that will invalidate or discredit official statistics. Therefore any person who processes statistical information shall obtain approval of the Bureau before dissemination of information to the public”.

Before explaining my concerns with the amendments to the Statistics Act, I wish to remind your Excellency’s Government of its obligations under article 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Tanzania on 11 June 1976.

Article 19(1) of the ICCPR establishes “the right to hold opinions without interference”. The right to hold opinions is so fundamental that it is “a right to which the Covenant permits no exception or restriction” (CCPR/C/GC/34).

Article 19(2) establishes States Parties’ obligations to respect and ensure the right “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”.

Under article 19(3) of the ICCPR, restrictions on the right to freedom of expression must be “provided by law”, and necessary for “the rights or reputations of others” or “for the protection of national security or of public order (ordre public), or of public health and morals”. Permissible restrictions on the internet are the same as those offline (A/HRC/17/27).

Since article 19(2) “promotes so clearly a right to information of all kinds,” this indicates that “States bear the burden of justifying any withholding of information as an exception to that right” (A/70/361).

The Human Rights Committee has emphasized that “free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues and to inform public opinion without censorship or restraint. Moreover, international human rights law provides States’ responsibility to ensure an environment in which a diverse range of political opinions and ideas can be freely and openly expressed and debated. Freedom of expression also includes sharing one’s beliefs and opinions with others who may have different opinions. In the Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda, my mandate together with other regional freedom of expression experts stressed that the “human right to impart information and ideas is not limited to “correct” statements, and “protects information and ideas that may shock, offend, and disturb”.

The requirement of necessity implies an assessment of the proportionality of restrictions, with the aim of ensuring that restrictions “target a specific objective and do not unduly intrude upon the rights of targeted persons”. The ensuing interference with third parties’ rights must also be limited and justified in the interest supported by the intrusion (A/HRC/29/32). Finally, the restrictions must be “the least intrusive instrument

among those which might achieve the desired result” (CCPR/C/GC/34). The Human Rights Committee has stressed that, in assessing proportionality, the “value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain”. In light of these standards, the Joint Declaration on Freedom of expression and “Fake News” has concluded that “general prohibitions on the dissemination of information based on vague and ambiguous ideas, including “false news” or “non-objective information” are incompatible and should be abolished.

Finally, the proposed amendments also interfere with the Fundamental Principles of Official Statistics adopted by the United Nations (A/RES/68/261), which are critical to retain public trust in official statistics, including the internationally agreed indicators to measure progress towards achievement of the 2030 Agenda for Sustainable Development. The amendments fail to uphold people’s entitlement to relevant and sound statistical information (Principles 1 and 2), and seem to go radically beyond the already recognized entitlement of statistical agencies to comment on erroneous interpretation and misuse of statistics (Principle 4).

I express concern at these amendments as they represent a further limitation to freedom of expression, including academic freedom, media freedom, and to the public’s right to information, in a context where these rights are already severely restricted. I am concerned that the amendments fall short of the standards of international human rights law for restricting freedom of expression and as they provide the authorities with overbroad powers to censor information. I am particularly concerned that restrictions to dissemination about statistical information without prior consent, coupled with the threat of criminal sanctions, raise the danger that your Excellency’s Government will become arbiters of truth or “correct” statistics in the public and political domain. Accordingly, I am concerned that the amendments would disproportionately suppress a wide range of information essential to a democratic society, including criticism of the Government, news reporting, political campaigning and the expression of unpopular, controversial or minority opinions.

The full texts of the human rights instruments and standards outlined above are available at www.ohchr.org and can be provided upon request.

In light of these concerns, I urge your Excellency’s Government to consider alternative measures such as the promotion of independent fact-checking mechanisms, State support for independent, diverse and adequate public service media outlets, and public education and media literacy, which have been recognized as less intrusive means to address disinformation and propaganda.

Finally, I would like to inform your Excellency’s Government that this communication, as a comment on pending or recently adopted legislation, regulations or policies, will be made available to the public and posted on the website page for the mandate of the Special Rapporteur on the right to freedom of expression: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>.

Your Excellency's Government's response will be made available on the same website page and in a report to be presented to the Human Rights Council for its consideration.

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

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