

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

REFERENCE:
AL TZA 1/2019

8 May 2019

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 seven-day suspension of the newspaper The Citizen, for an alleged breach of the Statistics Act, and the continued suspension of its online version.

Concerns at the amendments to the Statistics Act, including provisions criminalizing the publication of statistics that contravene official data, were raised in a communication to your Excellency's Government on 25 October 2018 (ref. no AL TZA 4/2018). Particular concerns were raised at the potential of the amendments to interfere with the right to freedom of expression, in particular when exercised by the media and for educational and scientific purposes.

According to the information received:

On 27 February 2019, the Information Services Department, which oversees the licencing of newspapers, suspended the newspaper The Citizen for seven days for publishing "false news". The suspension extended to the online version of The Citizen, and its Twitter account was also deactivated. The basis for the suspension was elaborated in a letter from the Information Services Department, which stated that the newspaper "deliberately published misleading information that the value of the Tanzanian shilling has declined compared to three years ago without following the due procedure and financial standards set by the Bank of Tanzania". The letter furthermore stated that The Citizen had printed a number of misleading articles that "largely violate media ethics and incite citizens against the government". Finally, the letter cited a story published by the newspaper in 2018, which quoted an American politician accusing the government of human rights violations. While the publication of the print version of the newspaper has resumed, the newspaper is currently not available online.

I express concern at the suspension of The Citizen on the basis of legislation that is in violation of international human rights standards. I reiterate my concerns that the Statistics Act, as amended, which appears to constitute the legal basis for the suspension, severely restricts media freedom and the public's right to information. Restrictions to dissemination of information about statistical data provide the authorities with overbroad

powers to be the arbiters of truth or “correct” statistics in the public and political domain. 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.

In this connection, I 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(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).

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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information or comments you may have about the above allegations.
2. Please provide detailed information about the legal basis for the suspension of The Citizen, and explain how the suspension complies with international human rights standards.
3. Please provide information about the legal basis for the continued suspension of the online version of The Citizen.
4. Please provide information about any measures taken or to be taken to ensure revise the Statistics Act and to ensure that its provisions are not used to target media and journalists.

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency’s Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I 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.

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

Annex

Reference to international human rights law

In light of the information above, I would like 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(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).

In its General Comment No. 34, 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 of 2017, 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).