

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

REFERENCE:
AL TZA 3/2020

17 July 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 34/18 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received **concerning continued allegations of infringements on the rights to freedom of expression, association, and peaceful assembly in Tanzania, indicating a pattern of restrictions to civic space in Tanzania, particularly in the context of the upcoming 2020 elections.**

Over the past couple of years, a continued worrisome decline in respect of 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 journalists, human rights defenders and members of the political opposition, which were addressed in six communications sent by the Special Procedures within the last two years (AL [TZA 1/2018](#), AL [TZA 2/2018](#), AL [TZA 3/2018](#), OL [TZA 4/2018](#), AL [TZA 1/2019](#), and [AL TZA 1/2020](#)). We regret that the reply received from Your Excellency's Government on 13 May 2019 concerning the communication AL TZA 1/2019 did not address the substance of the communication. In addition, we regret not having received an answer to four of 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:

On 10 March 2020, the Kisutu Resident Magistrate's Court in Dar es Salaam found that the chairperson and eight other senior political leaders of the CHADEMA party, an opposition political party, were guilty of unlawful assembly, rioting, rioting after proclamation, raising discontent and ill-will for unlawful purposes, sedition and inciting commission of an offence. The court found the accused guilty of 12 out of 13 (except conspiracy to commit an offence) of the criminal charges against them. The nine leaders were sentenced to fines ranging from 30 million Tanzanian Shilling (about USD 13,000) to 70 million Tanzanian Shilling (about USD 30,000), totaling of 350 million Tanzanian Shilling (about USD 150,000), or five-month imprisonment. All the leaders were unable to pay the fines and were sent to Segerea prison in Dar es Salaam on 10

March 2020. Immediately after the court verdict announcement, CHADEMA members initiated a campaign on social media to collect the required amount. On 11 March 2020, four convicted leaders were released by Kisutu court after CHADEMA paid the fine imposed to them. On the following two days, the CHADEMA party paid the fine for the remaining party members who were subsequently released from prison.

On 13 March 2020, three Members of Parliament, Ms. Ester Bulaya, Ms. Jesca Kishoa, and Ms. Halima Mdee, as well as two CHADEMA leaders, Mr. Henry Kilewo and Mr. Boniface Jacob, were allegedly beaten and injured by prison warders and police outside of Segerea prison in Dar es Salaam, where individuals had gathered in support of CHADEMA leaders who had just been released. The prison guards and police reportedly used wooden batons and tear gas to disperse the gathering. Ms. Bulaya, Ms. Kishoa and Ms. Mdee were admitted to hospital after the assault. 27 supporters, including the five party leaders were allegedly taken to Stakishari police station and were interrogated for over nine hours before being bailed out. According to information we received, on 23 March 2020, 13 out of 27 individuals that had been charged in relation to this event, including Member of Parliament Ms. Halima Mdee and Ms. Ester Bulaya, were brought before Kisutu Resident Magistrate's Court in Dar es Salaam facing seven different charges violating different provisions of the Penal Code, including disobedience of lawful order, unlawful assembly, malicious damage to property, abusive language to prison officers and assault. The accused denied the charges and were released on bail on 23 March 2020. The case was adjourned to 23 April for preliminary hearing.

According to the information we received, another Member of Parliament from the CHADEMA political party was arrested by the Singida regional police on 2 March 2020, for allegedly authoring the distribution of publications that are to incite citizens against law enforcers. The Member of Parliament is said to have claimed that fourteen party leaders and supporters had been killed and burnt in the Singida region between August 2019 and March 2020, with no investigation undertaken by the police. On 4 March 2020, the lawyer of the Member of Parliament filed a habeas corpus application before the Dodoma High Court, and the individual was released in the morning of 5 March, prior to the hearing of the motion. On 25 March 2020, he was arraigned before the Court in relation to 15 offences. Count 1 relates to "raising discontent for unlawful purposes" contrary to the Penal Code while counts 2 to 15 relate to "publication of false information in a computer system" contrary to the Cybercrimes Act (2015). The 14 counts on violations of the Cybercrimes Act were the list of the names of the alleged deceased individuals, which he had allegedly published on his twitter account. He was released on bail and his case was adjourned to 13 May 2020.

It is reported that these arrests and charges against political leaders are taking place in the context of the adoption of various laws that restrict the space for political actors, civil society, journalists and others. In 2015, the Government

adopted the Cybercrime Act, which reportedly imposes harsh sanctions for the publication of information deemed “false, deceptive, misleading or inaccurate”. According to the information received, by February 2019, at least 56 people had been charged with offences under the Cybercrimes Act, in what is reported to result in an environment of intimidation and criminalisation of journalists, human rights defenders, bloggers and social media sites users.

In November 2016, the Government adopted the Media Services Act, which 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”, while practicing journalism without receiving a prior accreditation constitutes an offence. According to the information we received, as at October 2019, at least six media outlets had been closed, fined and suspended since 2016 for publishing reports related to allegations of corruption, human rights violations and the state of Tanzania’s economy. Some journalists are also said to have been arrested in connection to provisions of this Act.

In March 2018, the Government adopted the Electronic and Postal Communications (Online Content) Regulations. 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”, which is not further defined. According to reports received, the Tanzania Communication Regulatory Authority (TCRA) suspended and fined several internet-based broadcaster and online stations, including for allegedly “transmitting false and misleading information” on the country’s approach to managing COVID-19.

In November 2018, the Government passed amendments to the 2004 NGO regulations. The amendments have granted the authorities with broad powers to monitor and evaluate NGO activities. For instance, some activists have reportedly been arrested and questioned about activities deemed at variance with their organisation’s establishing constitution. The 2018 amendments to the 2004 NGO regulations now require NGOs to publicly declare sources of funds, expenditures, and activities within fourteen days of the fund-raising activity, subject to deregistration. The 2019 amendments to the NGO Act impose new registration requirements and give the Registrar further discretionary powers to suspend the operations of any NGO if suspected of violating the new law pending determination of the Board; to conduct monitoring and evaluation of NGO activities on a quarterly basis; and to investigate any matter related to NGOs operations in collaboration with law enforcement officials.

In 2019, amendments were made to the Political Parties Act. These amendments reportedly grant wide powers to the registrar of political parties that include the power to deregister parties, grant approvals to conduct civic education, suspension of members of political parties, and criminal sanctions. These amendments also follow a blanket ban on political rallies until 2020, announced by the President in 2016.

In June 2020, the Parliament amended the Basic Rights and Duties Enforcement Act to narrow the criteria for legal standing to challenge a law or policy. Reportedly, the amendments will require anyone seeking legal redress for human rights violations under the Constitution's bill of rights to prove that they are personally affected. The amendments may prevent organizations from filing cases on behalf of victims, in an environment where accountability mechanisms and access to justice for victims are already fragile

It is reported that these too broad or vague legal restrictions on expression create a "chilling effect" that discourages individuals from exercising their rights to free expression for fear that government authorities may penalize a broad swath of speech-related activities.

While we do not wish to prejudge the accuracy of these allegations, 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 strict implementation of restrictive legislation. The above-mentioned legislation imposes heavy penalties on individuals, which seems to result into the silencing of government's critics through fear of reprisal or prosecution. We are, in this context, concerned at the reported criminalization of members of the CHADEMA party, which may be related to the exercise of their rights and freedoms. We are particularly concerned that this pattern of suppression seems to curtail fundamental freedoms, suppress dissenting voices and shrink civic space prior to the upcoming elections in 2020. We express concerns that the current political environment may not foster a free and open discussion ahead and during the general elections of October 2020, undermining the electoral process.

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 these are in compliance with international legal norms and standards, in particular the right to freedom of expression and the rights to freedom of peaceful assembly and of association guaranteed in articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR).
3. Please provide information on the TCRA's decision-making process, including but not limited to, how violations by media outlets are identified, the notice process, how decisions are reached, and how many media outlets have been sanctioned under the Electronic and Postal Communications (Online Content) Regulations, 2018.
4. Please provide information regarding sanctions and fines adopted against media outlets, including relevant court decisions and their justifications.
5. Please indicate what measures have been taken to ensure that the political opposition, journalists and human rights defenders in Tanzania are able to carry out their legitimate work, including through the exercise of their right to freedom of opinion and expression, and 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.

We 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, 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 may 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.

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

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

Annex
Reference to international human rights law

In light of the information above, we 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(3) of the ICCPR requires that any restriction on the right to freedom of expression (i) is provided by law; (ii) serves a legitimate purpose; and (iii) is necessary and proportional to meet the ends it seeks to serve.

We, once again, wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16. The Resolution calls on States to refrain from imposing restrictions which are not consistent with article 19(3), including: 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.

Further, 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 only. In light of the need for open and free elections, we would like to remind your Excellency's Government of its obligations under Article 25 of the ICCPR, which protects the right of every citizen to "take part in the conduct of public affairs, directly or through freely chosen representatives." The Human Rights Committee has observed that citizens "take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives." The Human Rights Committee has also observed that voters should be "free to support or oppose their government" and "should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind." (General Comment No. 25 from the Human Rights Committee)

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). We also underline that permissible restrictions on the internet are the same as those offline (A/HRC/17/27).

In connection with the above arrest of political activists, we would 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 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.

Finally, 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.”