

Analysis of Broadcast Content Regulations (2017)

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Introduction

The Ministry of Information, Culture, Arts and Sports recently published draft Broadcast Content Regulations (2017), under the Electronic and Postal Communications Act. This briefing note presents an analysis of the regulations, including but not limited to their implications for freedom of expression. Suggested amendments that would mitigate the concerns raised are put forward.

Analysis

Vague and broad terms and freedom of expression

There are numerous articles in the proposed regulations that limit freedom of expression in some way. Much of this is reasonable – for example to protect public health, to ensure that sponsored content is clearly labelled as such, or to ensure balance in news reporting and fair coverage of competing candidates during election campaigns. However, in several cases, the wording of these terms is particularly broad and open to misinterpretation, and therefore vulnerable to abuse as a means of closing down space for legitimate expression of views. For example:

- 5(h): a requirement for commercial broadcasters to “provide programmes that promote national peace, unity and tranquillity and that does not endanger national security”.
- 6(2)(b): a requirement that religious content service providers must not “offer programmes that feature the views or beliefs of any race or religion which are unacceptable to the target audience”.
- 10(1)(a): a requirement on every broadcaster to ensure that their content “upholds national sovereignty, national unity, national interest, national security and Tanzania’s economic interests”, among other things.
- 10(1)(g): a prohibition on broadcasting anything that has the potential to influence the minds of viewers / listeners without their being aware or fully aware of what has occurred.
- 10(1)(h): “Avoid programme related to astrology, superstition or broadcast material related to traditional healer purporting to cure ailments or diseases”
- 10(2)(a): a prohibition on broadcasting “any matter which contains the use of offensive language, including profanity and blasphemy”
- 10(2)(e): a prohibition on content that is “indecent, obscene, false, menacing or otherwise offensive in character”
- 16(5): “Every licensee shall refrain from broadcasting programmes that are likely to promote civil or public disorder”

The restrictions on content that might endanger national security are reasonable and clear, and of course it is entirely justifiable to try to protect religious minorities and to prevent civil disorder. The difficulty, however, is that many of the terms used above are not defined, vague and/or open to abuse. Protection of “unity and tranquillity”, for example, is language that could be used as a justification for closing down space for legitimate criticism and debate. A similar argument applies to “upholding national unity” and “economic interests”. And in 16(5), “likely to” could easily be replaced by “intended to”, or legitimate coverage of controversial news events could be prevented.

<i>Specific concern</i>	<i>Suggested changes / proposed new text</i>
5(h) “unity and tranquility” are vague terms	Remove these terms, so it reads: “provide programmes that do not endanger national security”.
6(2)(b): restrictions on religious broadcasts that refer to other religions are open to misinterpretation	Assuming the intention is to protect religious groups against abuse, clarify the language accordingly, such as: “must not offer programmes that denigrate the views or beliefs of any other race or religion.”
10(1)(a): the line “upholds national sovereignty, national unity, national interest, national security and Tanzania’s economic interests” is broad and open to misuse	Remove the terms “national unity” and “Tanzania’s economic interests”.
10(1)(g): this prohibition arguably prohibits broadcasts of almost anything. Influencing viewers / listeners minds is complex, and neither viewer nor even content producers are ever fully aware of how this works.	Remove 10(1)(g) or replace the words “has the potential to ...” with “is deliberately and maliciously intended to ...”.
10(1)(h): prohibits any content “related to astrology, superstition” or “traditional healer[s] purporting to cure ailments or diseases”, even content that questions such matters. As such no coverage of attacks on people with albinism would be permitted.	Replace 10(1)(h) with the following text: “Avoid programmes that represent astrology, superstition or traditional healers purporting to cure diseases as being effective.”
10(2)(a): the term “offensive content” is very broad, unclear and subjective, open to misinterpretation and abuse. Almost any criticism could be considered offensive to someone?	Remove 10(2)(a) and ensure that protections relating to bad language and religious minorities are covered elsewhere.
10(2)(e): appears to make it an offence to broadcast any fictional content, as well as being open to interpretation as to what it considered “menacing” or “offensive”.	Remove 10(2)(e) and ensure that protections relating to sexual content are covered elsewhere.
16(5): the terms “are likely to” are highly subjective and open to interpretation and abuse	Replace “are likely to” with “are intended to”.

Duplication and inconsistency

Large sections of the draft regulations duplicate each other to a large extent, sometimes covering the same issues three or more times. For example, content of a violent nature is covered at length in article 12, and also in 10(2)(c), 37(7)(a); sexual content is covered in articles 26 and 27, and also in 10(2)(b), 31(1)(b) and 37(7)(c); offensive language in and 10(2)(a), 28(d), 31(1)(b), and 37(7)(d). There is also duplication of terms related to the protection of children from unsuitable content in articles 11 and 13, 5(f) and parts of 12, and the use of English, Kiswahili and other languages in article 28(a) as well as 5(d) 6(1)(f), 7(1)(n-o) and 30(2)(a).

Such duplication is entirely unnecessary and likely to result in confusion.

Relatedly, there are several examples of inconsistency in the regulations, particularly with regard to the treatment of the public service broadcaster, commercial broadcasters, non-commercial broadcasters and community broadcasters. For example, in article 5, commercial broadcasters are required to “include drama, documentaries and children’s programmes that reflect the themes and cultural identity of the nation”, “avoid racial and religious hatred”, “avoid programs related to nakedness, gambling, violence, superstition and astrology”, “avoid defamation and blasphemy” and “provide programmes that promote national peace, unity and tranquillity”, while none of these requirements apply to public broadcasters, non-commercial broadcasters or community broadcasters. Similar, each of these other types of broadcasters are subject to numerous requirements that do not apply to the others.

Such inconsistency lacks any clear logic. If it makes sense to put such restrictions on one type of broadcaster, then (perhaps with a few exceptions), it also makes sense to apply them to all other types of broadcasters.

Further, other inconsistencies in the proposed regulations directly contradict each other. For example, regulation 14(3)(i) requires that broadcasters “shall not broadcast any programme sponsored by a political party” and 18(1)(d) says that broadcasters must “not permit any broadcast sponsored by or made on behalf of a political party” during election campaigns. However, 18(1)(c) explains how content sponsored by political parties should be introduced.

<i>Specific concern</i>	<i>Suggested changes / proposed new text</i>
Extensive duplication, particularly with regard to violent content, sexual content, offensive language, use of English and Kiswahili, and protection of children.	Conduct a thorough review of all articles and clauses that relate to each of the highlighted matters, and streamline them.
Inconsistency towards different types of broadcasters	Review articles 4-7 to identify which terms need to apply solely to a particular type of broadcaster and should remain, and which should apply to all types of broadcasters and should therefore be incorporated into articles 10-18 or 31-41 as appropriate.
Inconsistency toward political parties’ sponsorship of content	Remove 18(1)(c)

Onerous requirements for broadcasters, including local content requirements

The regulations introduce a range of requirements for broadcasters that would create a large workload and considerable cost if carried out in full.

In 16(1), the regulations require that any programmes that allow the expression of personal views, “the audience shall be informed in advance and be given an opportunity to respond to such views.” Does this mean that all public debate programmes must include a phone-in element? If so, the burden on broadcasters would be excessive.

Further, 21(3), in providing for access to content by the deaf or blind, requires broadcasters to ensure that all content is subtitled, audio-described and translated into sign language. The intention to ensure people with disabilities are included is positive, but requiring this of all content would impose huge financial burden on broadcasters.

Article 30 covers local content, requiring that “a minimum of 60% of all content” must be local content and “not less than 80%” of music broadcast is Tanzanian music. Similarly, article 8(1)(b) requires subscription broadcasters to “provide 25% local content by subscription of total channels”. While again the intention here is positive, the reality is that these minimums will be very difficult or impossible for many broadcasters to achieve without losing viewers / listeners and while maintaining commercial viability.

Article 38 covers programme schedules, requiring that broadcasters must “publish [a] programme schedule in a daily newspaper ... at least one month in advance”, “adhere to the programme schedule ... unless otherwise obliged to broadcast spontaneous events of national or international significance”, “not [to] change [the] programme schedule without prior notification to [TCRA]” and submit to TCRA a “quarterly programme schedule fourteen days before each quarter.” These terms would severely limit the ability of broadcasters to adapt quickly to changing circumstances and new opportunities.

Finally, there are specific restrictions on non-commercial and community broadcasters that would limit their ability to raise funds to cover their operating costs. Specifically, 6(1)(d) prohibits non-commercial broadcasters from airing “advertisements that put them on the same status as commercial broadcasters. Allowable advertisements include announcements and underwritings”. Further, the definition of community broadcasters in article 3 specifies that they must be “not for profit”, and 7(1)(l) requires community broadcasters to “avoid advertising any product or services which are detrimental to the community’s well-being and health”.

<i>Specific concern</i>	<i>Suggested changes / proposed new text</i>
Requirement for all opinion content to be accompanied by public phone-ins or similar	Add “including submitting view by email or post.”
High burden on broadcasters in requiring all content to be accompanied by subtitles, audio description and sign-language translation	Relax these terms such that it should apply to specified content (such as news, or peak-time content only), or to a specified minimum amount of content (such as 10%).
High local content requirements	Reduce the minimum local content requirements. Suggested minimums are 20% for “all content”, 40% for music and 10% of subscription broadcasters’ channels.
Restrictive rules against changing programme schedules	Require broadcasters to publish schedules as per the proposed regulations, but allow freedom to change schedules at short notice, requiring only that broadcasters must provide information to TCRA of any changes made within 14 days after broadcast.
Restrictions on advertising for non-commercial and community broadcasters	Allow all broadcasters to take advertisements, requiring only that non-commercial broadcasters must re-invest all income in content and operating costs.

Morality and related judgements

In several places, the regulations refer to public morality and related issues of judgement, usually without providing specific details. 10(1)(c) and (d), for example, requires all broadcast content to “observe good taste

and decency” and to “uphold public morality”. 16(6) requires every broadcaster to “refrain from broadcasting programme that are likely to promote prostitution *and other immoral activities.*”

This raises two concerns. First, who should be the moral arbiters who determine what is and what is not acceptable? And second, the lack of specifics introduces uncertainty and the opportunity for misinterpretation and misuse. The phrase “other moral activities”, for example, could be argued by some to include polygamy, while others might argue that this is acceptable behaviour. Corporal punishment might similarly divide people.

<i>Specific concern</i>	<i>Suggested changes / proposed new text</i>
Vague terms governing content that could offend public morals	If specific moral concerns are to be prohibited, they should be specified in full.