

## Twaweza

*Note: this analysis has been conducted based on the version of the bill that is posted on the website of the parliament of Tanzania, dated June 2013, together with a Schedule of Amendments dated November 2014. The bill as passed by parliament may be different.*

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### 1. Introduction

On March 26<sup>th</sup>, 2015, the parliament of Tanzania passed the Statistics Act of 2013. The bill now goes forward for approval by the President.

The bill has attracted considerable criticism in the media and in parliament, with critics arguing that it represents a closing down of democratic space, that it goes against freedom of the media and contradicts the government's stated commitment to open government. Some critics have gone further, claiming that the bill makes it illegal to collect or publish statistics without approval from the National Bureau of Statistics (NBS).

This note presents a rapid analysis of the bill's contents. It identifies key concerns relating to the bill, proposes simple measures that could address the problems, and briefly considers the likely implications of the bill as published.

The bill contains many valuable measures, including strengthening NBS as an independent entity and making it easier for the bureau to collect data through household surveys. For the sake of space, these are not analysed in detail here.

However, the problematic aspects of the bill (as analysed later in this note) appear to make any work involving statistics in Tanzania a high risk activity. As such, the likely effect would be to spread caution among researchers and the media on important topics of public interest. In turn, this would have a negative effect on public debate, evidence-based policy making, independent scrutiny of government, and the generation of new policy ideas.

### 2. Five concerns, eight questions for clarification

The bill raises a number of key concerns (each point is discussed in more detail later in this note):

1. It introduces uncertainty in terms of who is allowed to generate statistics and what authorisation is required.
2. The rules around the dissemination of survey micro-data are unnecessarily restrictive. Further, they appear to be inconsistent with principles of open government and open data.
3. The bill includes obstacles to whistleblowing without any public interest protections.
4. The bill introduces severe restrictions on the publication or communication of any contentious statistical information. It makes it illegal (i) to publish or communicate "false" statistical information, and (ii) to publish or communicate statistical information that "may result in the distortion of facts". This ignores the fact that disputes around statistics are an essential part of academic and policy debates, and appears to require those producing or publishing statistics to get prior approval from NBS. Further, there are no protections in these cases for acting in good faith.

5. Penalties for those found guilty of offences under the bill are severe, indeed unlimited.

Based on this analysis, we have identified eight questions in need of clarification:

1. The bill refers to “official statistics”, including providing a means for non-governmental agencies (NGOs, research institutes, private sector, etc.) to produce official statistics. However, it lacks clarity on other (i.e. “unofficial”) statistics. Does this law allow non-governmental agencies to produce “unofficial statistics”?
2. The bill appears to suggest that non-government agencies cannot produce any statistics that meet NBS standards without prior approval of the NBS Director General. Is this correct?
3. The restrictions in article 27 (specifically clause 1(c)) on the dissemination of anonymised individual survey records (micro-data) appear to make it impossible for those granted access to such data to publish any findings based on analysis of the data. Is this correct?
4. Article 37 (1)(b) makes it illegal for anyone to share any information (not limited to statistical information) without proper authorisation, which is potentially a significant obstacle to anyone who wishes to blow the whistle on wrong-doing. Did the government consider including a clause that protects those acting in good faith, or in the public interest, or both?
5. Article 37 (4) makes it a criminal offence to publish or communicate “false” statistical information. Even rigorously produced statistics can be contentious or disputable, and arguments about statistics are a normal and essential part of academic and policy debate. In this context, who will judge whether particular statistics are “false,” and how will they protect space for honest evidence-based debate?
6. Article 37 (5) makes it an offence to publish or communicate official statistical information that “may result in the distortion of facts”. Again, all statistics are disputable, and argument is an essential component of policy debate. As before, who will judge whether particular statistics “may result in distortion,” and how will they protect space for honest evidence-based debate?
7. The offences listed in article 37 take no account of intentions. As such, anyone who publishes inaccurate statistical information as an honest mistake or in the public interest could be subjected to harsh punishments. In contrast, earlier in the bill (Article 16), broad protections are provided to NBS employees who act “in good faith”. Could the same protection of those acting “in good faith” (or “in the public interest”) be extended to include anyone producing, publishing or communicating statistics?
8. The punishments listed in article 37 are potentially very severe. Indeed, prison terms and fines are subject to no maximum limit. This compounds the risk to those producing or publishing statistics on contentious topics. Is it normal to provide minimum (rather than maximum) sentences, and does the severity of these punishments match the seriousness of the offences?

### 3. Detailed analysis of key concerns in the bill

#### 3.1 Lack of clarity around official and unofficial statistics, standards and code of practice

In several places, the bill discusses “official statistics”, in a way that lacks clarity. Depending on interpretation, it also potentially imposes considerable restrictions on non-governmental agencies collecting data and communicating statistics.

On “official statistics”:

Article	Text (as amended)
3	“official statistics” means statistics designated as official under article 20
6 (1)	The bureau [NBS] shall be the national statistics office responsible for production, coordination, supervision, and dissemination of official statistics, and for the custodianship of official statistics in the country
17 (3)(a)	The bureau shall issue a code of practice for official statistics that sets out professional standard to be followed by all agencies producing official statistics
17 (3)(c)	The bureau shall set standards in the collection, analysis and publication of statistics to ensure uniformity in quality, adequacy of coverage and reliability of statistical information
18 (2)	no person or agency may authorize the commencement of an official statistical collection, possessing, analysing and dissemination except with the approval of the Director General [of NBS]
20	(1) The official statistics shall, subject to subsection (2) be body of statistical information produced, validated, compiled and disseminated by- (a) the Bureau; (b) Government institutions; and (c) agencies [defined as research institutions, non-governmental organizations, development partners or any other user or producer of statistics]. (2) The statistics produced under subsection (1)(c) shall qualify to be official statistics if they meet the criteria and standards set by the Bureau and approved by the Director General

Article 20 appears to define any statistics produced by anyone as “official” if the statistics meet standards set by NBS under article 17 (3) (a) and (c). One interpretation of this is simply that NBS will be able to designate rigorously produced statistics as “official”, even when they were not produced by NBS or another government institution. This would be laudable.

However, in defining “official statistics” in articles 3 and 20, the phrase appears to include all statistics produced according to NBS standards. Further, article 18 states that no-one is allowed to collect, possess, analyse or disseminate “official statistics” without prior approval of the Director General. A stricter interpretation of the bill, therefore, is that no agency can produce, possess or disseminate any statistics that meet NBS standards without such approval. This would impose a severe restriction on all statistics-related activities by NGOs, research institutions and the media, requiring them to get prior approval of the Director General before collecting, analysing, disseminating or even possessing official statistics.

This could be resolved very simply, either by clarifying in article 20 that official statistics are only those designated as such by the Director General, and/or making it clear elsewhere that agencies are allowed to produce and disseminate “unofficial statistics” without any need for prior approval.

### **3.2 Restrictions on dissemination of micro-data**

The bill places limits on the dissemination of micro-data (individual statistical records) held by NBS. This is for good reasons – primarily to protect the privacy of survey respondents. Micro-data that has been stripped of personal identifying information can be shared outside NBS.

However, some of the restrictions on sharing of micro-data are unnecessarily tight.

In particular, those who are given access to the data are not permitted to “disclose information to any other person or organisation” (article 27 (1) (c)). Under a strict interpretation, this prevents users of micro-data from publishing any findings of their analysis.

This restriction is contrary to the principles of open government and open data, and to international best practice regarding the open sharing of data collected with public funds.

Resolving the problem would be simple. Article 27 (1)(c) could be removed without compromising private information. Alternatively, it could be rephrased to clarify that it is only on-sharing of the micro-data that is not permitted.

### **3.3 Obstacles to whistleblowing**

Article 37 (1)(b) states that “any person who without lawful authority publishes or communicates to any person otherwise than in the ordinary course of his employment any information acquired by him in the course of such employment, ... commits an offence.”

Essentially, this is a broad measure that outlaws leaks and whistleblowing. In particular, there is no protection here offered to those who leak information in the public interest. Further, it is not limited to statistical information.

Article 37 (2) outlaws publication or communication of any statistical information which has been “disclosed in contravention of the provisions of this Act”. This therefore includes survey records with private information, for example, as well as information covered by 37 (1)(b) on leaks.

In other words, under this bill, both the provider of leaked statistical information and anyone who publishes or communicates that leaked information will be in breach of the law. As before, there is no protection offered to those who use leaked information in the public interest.

In both cases, resolving these problems would involve the simple addition of a sub-clause permitting leaks and publication of leaked statistical information where it is done in the public interest.

### **3.4 Publication and communication of “false,” “misleading” or “distorting” information.**

Article 37 (4) states that “A Director, Manager, Controller or any other person who is concerned with the management of any communication media, allow or cause to be published false statistical information ... commits an offence.”

“Communication media” is defined in Article 37 (7) as including “radio station, television station, newspaper or magazine, website or any other media”.

Article 37 (5) states that “An agency or a person who publish or communicate official statistical information which may result in the distortion of facts, commits an offence.”

There are several significant problems with these two clauses.

First, making it illegal to publish or communicate statistical information that is either “false” or “may result in the distortion of facts” requires that someone should be able to judge what is “false” or “may result in distortion”. In some cases this may be uncontroversial, but in many cases it is not. Even rigorously produced statistics can often appear to conflict and are routinely contested. Arguments about statistics form the basis of much academic and policy debate around the world, often without easy resolution.

Will a court of law be asked to judge whether one survey methodology is more rigorous than another? Or will courts simply assume that “official statistics” are correct, and therefore than any statistics that contradict “official statistics” are “false”?

If the government concludes from rising exam pass rates that schools are delivering and a research institute finds that children are leaving school illiterate, will a court be asked to adjudicate?

Such questions are not well suited to resolution by law courts. It would be preferable to encourage free and open debate on statistical matters, to allow open scrutiny of methods.

Second, neither clause considers the intention of the person or agency publishing or communicating statistical information. As such, someone who makes an honest mistake could be guilty of a crime. Similarly, a newspaper or radio station that quotes from a study carried out by someone else could be found guilty.

In contrast, earlier in the bill (Article 16), broad protections are provided to NBS employees who act “in good faith”. “No act done by any officer or employee of the Bureau if done or omitted to be done in good faith in the exercise or performance or purported exercise or performance of his duties or functions as an officer or employee of the Bureau shall subject such an employee or officer to any action, liability or demand of any kind.”

The clearest means of resolving these problems would be simply to remove clauses 37 (4), (5) and (7). This would be the approach most consistent with open government principles and with the realities of working with statistics in public debate.

Alternatively, the clauses could be re-written to extend protection for those acting “in good faith” to include those in agencies and the media.

### **3.5 Penalties**

The list of offences and penalties provided in article 37 is highly problematic for academic and media freedom and for open public debate. In addition to the problems covered in point 4 above, the penalties are potentially extremely severe.

For some offences, the penalty is given as “a fine of not less than two million shillings (approximately \$1,200) or to imprisonment for a term of not less than six months or to both.” For other offences, the minimum fines vary between one million and ten million shillings, and minimum prison sentences range from 6 months to 3 years.

In all cases, these penalties are minimum penalties, with no maximums stated. As such, as the bill stands, there is no upper limit to fines or prison sentences issued to someone found guilty of these offences.

It is highly questionable that publication of “false statistical information” or “statistics which may result in the distortion of facts” should be punishable by imprisonment. It is even more problematic when there is no upper limit to the length of the sentence.

As before, the clearest means of resolving these problems would be simply to remove clauses 37 (4), (5) and (7).

Alternatively, amending the penalties so that they are clear and reasonable maximum sentences would be an improvement.

#### **4. Implications and conclusions**

Based on the analysis above there are a number of serious problems with the Statistics Act. It clearly contravenes the principles of open government, democracy and freedom of the press.

As it is currently written, the law introduces unhelpful uncertainty in terms of who is allowed to generate statistics and what authorisation is required. Further, it turns the production and communication of statistics in Tanzania into a high risk activity for almost everyone, most particularly those in the media, research institutions and NGOs.

Given the high level penalties provided for by the bill, it is likely that even highly credible research institutions and media houses will act with extreme caution when dealing with statistical information on sensitive topics. As such, it may well have a chilling effect on independent scrutiny of government, public debate on topics of public interest, and the generation of valuable new ideas. The bill represents a severe reduction of space for evidence-based policy debate.