

# Broadcasting, policing, human rights and “sedition” in Tanzania: A briefing note on the case of five TV stations – DRAFT

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## Introduction

On January 1, 2018, five TV stations were fined by the Tanzania Communications Regulatory Authority (TCRA), which judged that they had breached broadcasting rules<sup>i</sup>. They were judged to have broadcast content deemed to be “seditious, unbalanced and unethical,” in their broadcast of clips from a press conference<sup>ii</sup> held by the Legal and Human Rights Centre (LHRC) to present their report on human rights abuses associated with the by-elections to elect ward councillors in November 2017. The LHRC report<sup>iii</sup> included allegations of human rights abuses by the police and by representatives of various political parties.

This briefing note looks at the relevant laws and regulations, specifically on the matter of sedition, along with other laws and regulations that cover sedition and freedom of speech.

## TCRA decision

In the TCRA decision<sup>iv</sup>, the television stations were found guilty of contravening the Broadcasting Services (Content) Regulations, 2005, specifically Rules 5(a)(h); 6(2)(b)(c); and 6(3).

Star TV in particular was penalised for the following reasons (and the reasons for penalising other stations were not substantively different):

1. *Kutangaza habari ambazo hazikuzingatia maadili ya uandishi, kwa kutochukua hatua ya kuthibisha ukweli na usahihi wa taarifa iliyotolewa na Kituo cha Sheria na Haki za Binadamu, kinyume na kanuni za huduma za utangazaji (maudhui) za mwaka 2005, namba 6(2)(b) na 6(3). [Broadcasting news that did not reflect principles of journalism, by not taking steps to verify the truth and accuracy or the information provided by LHRC, in contravention of rules 6(2)(b) and 6(3) of the Broadcast Services (Content) Regulations, 2005.]*
2. *Kutangaza habari za uchochezi zinazoweza kuhatarisha amani na usalama wa taifa, kinyume na kanuni za huduma za utangazaji za mwaka 2005, namba 5(a) na (h). [Broadcasting seditious news that can endanger peace and national security, in contravention of rules 5(a) and (h) of the Broadcast Services (Content) Regulations, 2005.]*
3. *Kutozingatia maadili ya uandishi kwa kutangaza habari zisizokuwa na mizania, kinyume na kanuni za huduma za utangazaji namba 6(2)(b) na (c), na 6(3). [Not reflecting the principles of journalism by broadcasting unbalanced news, in contravention of rules 6(2)(b) and 6(3) of the regulations.]*

Further, the TCRA statement included a translation of some of the rules listed above, including rule 5(a) and (h).

## Broadcasting Services (Content) Regulations, 2005

There is no explicit reference to “sedition” in these regulations<sup>v</sup>. Similarly, “sedition” is not mentioned in the law under which the regulations were established (the Broadcasting Services Act, 1993<sup>vi</sup>), the law

establishing TCRA (the Tanzania Communications Regulatory Authority Act, 2003<sup>vii</sup>) or the law that made significant changes to TCRA's mandate (the Electronic and Postal Communications Act, 2010<sup>viii</sup>).

However, the rules mentioned above are worth presenting in full, and do touch on similar matters:

*5 Every licensee shall ensure that the programme and its presentation:*

*(a) upholds national sovereignty, national unity, national interest, national security and Tanzania's economic interests*

*(h) does not incite or perpetuate hatred against or vilify, any group or persons on the basis of ethnicity, race, gender, religion or disability.*

*6(2) The licensee shall*

*(b) report accurately and fairly*

*(c) report news in an objective and balanced manner, without intentional or negligent departure from the facts, whether by distortion, exaggeration, misrepresentation or material omission*

*(3) Every licensee shall ensure that, during the presentation of current affairs programmes, factual programmes and documentaries, where issues of public importance are discussed, reasonable effort is made, and reasonable opportunity is given, to present a fair, accurate, balanced and impartial view.*

Rules 6(2) and (3) relate to accuracy, balance and impartiality in news broadcasts, which are not the main issue of concern here.

Rule 5, however, could be argued to cover seditious content, and indeed the unofficial translation used by TCRA when announcing its decision did include the term "uchochezi" (the usual translation of "sedition") in its translation of Rule 5(h) above, though the English term is not used.

The TCRA translation of Rule 5(h)<sup>ix</sup> is in fact different in substantive ways from the English:

*5(h) Habari zinatakiwa hazileti uchochezi wala kujenga chuki kwa mtu au kundi la watu.*

*[News broadcasts should not have seditious intent or incite hatred against a person or group of people.]*

The TCRA translation thus makes two changes to the rule: i) it introduces the term "uchochezi" / "sedition" into the rule; and ii) it removes the specification that inciting hatred only applies to hatred on the basis of ethnicity, race, gender, religion or disability. These are both highly substantive changes that transform the meaning of the rule into something very different from the original (and legally applicable) English version. Further, it is hard to see how the TV stations in question could be argued to be in breach of rule 5(h), as nothing in their reports incites hatred against any of the specified groups.

## **"Sedition" in the Media Services Act, 2016**

Other Tanzanian laws do include explicit references to "sedition". This includes the Media Services Act, 2016<sup>x</sup>, and the Penal Code<sup>xi</sup>, both of which define it at length. There are only minor differences between the definitions in the Media Services Act (article 52) and the Penal Code (article 55), so the text here is taken from the Media Services Act:

*52 (1) A "seditious intention" is an intention to*

*(a) bring into hatred or contempt or to excite disaffection against the lawful authority of the Government of the United Republic;*

- (b) *excite any of the inhabitants of the United Republic to attempt to procure the alteration, otherwise than by lawful means, of any other matter in the United Republic as by law established;*
  - (c) *bring into hatred, contempt or to excite disaffection against the administration of justice in the United Republic;*
  - (d) *raise discontent or disaffection amongst people or sections of people of the United Republic; or*
  - (e) *promote feelings of ill-will and hostility between different categories of the population of the United Republic.*
- (2) *An act, speech or publication shall not be deemed as seditious by reason only that it intends to:*
- (a) *show that the Government has been misled or mistaken in any of its measures; or*
  - (b) *point out errors or defects in the Government of the United Republic or Constitution of the United Republic or in legislation or in the administration of justice with a view to remedying such errors or defects.*
- (3) *In determining whether the intention for which an act was done, any word spoken or any document published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and in the circumstances in which he conduct himself.*

Further, the Act states in article 57 that *“a person shall not be prosecuted for any seditious offence under this Act unless with a written consent of the Director of Public Prosecutions.”*

The Media Services Act applies to broadcast media as well as to newspapers. As such the definitions and additional points in this law could be considered to apply in the case of TV stations reporting on the LHRC press conference.

It could reasonably be argued that the exceptions given in 52(2) apply to the TV stations in this case. Specifically, the TV stations could argue that their intent was to *“point out errors in the Government ... or ... in the administration of justice, with a view to remedying such errors or defects.”*

Finally, the Constitution of the United Republic of Tanzania<sup>xiii</sup> has an important role to play here. Article 18 states that:

- Every person*
- (a) *has a freedom of opinion and expression of his ideas;*
  - (b) *has a right to seek, receive and/or disseminate information regardless of national boundaries;*
  - (c) *has the freedom to communicate and a freedom with protection from interference from his communication; and*
  - (d) *has a right to be informed at all times of various important events of life and activities of the people and also of issues of importance to the society.*

## **Analysis**

If actual human rights abuses take place, and especially if some are carried out by the police, it must be in the national interest to allow the media to report this. The same applies to credible allegations of human rights abuses, including any report from the highly respected LHRC. To deny the media such a right would be to allow such abuses to continue unchallenged, making it possible or likely that the abuses would continue and would grow in scale.

On the other hand, reporting on alleged human rights abuses by the police, and by representatives of political parties, may be embarrassing to the government, and may even lead to some citizens becoming unhappy with the police or the government more generally. The implicit reasoning of the TCRA decision is that this situation would harm national unity, national security or the national interest.

However, it is hard to believe that dissatisfaction with the police or with government is a greater danger to national interests, unity or security than allowing human rights abuses to continue and to grow would be.

Further, in the legislation where sedition is mentioned, and defined in some detail, the TV stations in this case would appear to have a strong defence against the allegation, namely that their intent in broadcasting the contentious news items was to “point out errors ... with a view to remedying such errors.”

## **Key questions**

The TCRA decision and the related law prompt a number of important questions about sedition, the national interest, the law and freedom of speech and freedom of the press in Tanzania.

First, there are significant grey areas in the law regarding the definitions of key terms. What definitions of “national interest”, “national unity”, and “national security” are to be applied? Who is to determine those definitions?

Second, the laws and regulations cited by TCRA in this case are silent on the matter of “sedition”. It is only their (mis-)translation of rule 5(h) that allowed TCRA to refer to sedition in their decision. Can their decision be valid when a significant part of it is based on a misinterpretation / mistranslation of the regulations?

Third, where other laws, specifically the Media Services Act and the Penal Code, define sedition, there are important protections that make it clear that it is acceptable for media houses (and others) to criticise the government and the justice system, and that this does not constitute sedition. These protections would seem to apply in the case of the five TV stations’ coverage of the LHRC press conference. Further, they would also seem to apply to many of the other recent cases of politicians and journalists arrested or charged with sedition. The law is clear that pointing out errors in the actions of government is not seditious. The constitution itself provides further protection. How, then, can the police and courts be given guidance to ensure they do not arrest, charge or convict journalists, editors, politicians or anyone else with sedition merely for criticising government actions? Can the high court provide such guidance?

## References:

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- <sup>i</sup> Five TV stations incur TCRA wrath, The Citizen, January 2, 2018. See <http://www.thecitizen.co.tz/News/5-TV-stations-incur-TCRA-wrath/1840340-4249112-13kj4nfz/index.html>
- <sup>ii</sup> Video of the LHRC Press Conference: <https://www.youtube.com/watch?v=DVKJF5jZDmY&pbjreload=10>
- <sup>iii</sup> LHRC Report: tathmini ya ukiukwaji wa haki za binadamu katika uchaguzi mdogo wa madiwani uliofanyika Novemba 26, 2017. Available from <http://www.humanrights.or.tz/posts/b/News/tathmini-ya-ukiukwaji-wa-haki-za-binadamu-katika-uchaguzi-mdogo-wa-madiwani-uliofanyika-novemba-26-2017>
- <sup>iv</sup> No text of the TCRA decision has been made public, but the press conference at which the decision was read out is available in full at <https://www.youtube.com/watch?v=fz-hdXeKuuE>
- <sup>v</sup> Broadcasting Services (Content) Regulations, 2005, available from TCRA at <https://tcra.go.tz/images/documents/regulations/Content%20Services%20Regulations.pdf>
- <sup>vi</sup> Broadcasting Services Act, 1993, available from TCRA at <https://tcra.go.tz/images/documents/policies/Tanzania%20broadcasting%20Act%206%20of%201993.pdf>
- <sup>vii</sup> Tanzania Communications Regulatory Authority Act, 2003, available from TCRA at <https://tcra.go.tz/images/documents/policies/Tanzania%20Communications%20Regulatory%20Act-2003.pdf>
- <sup>viii</sup> Electronic and Postal Communications Act, 2010, available from TCRA at <https://tcra.go.tz/images/documents/policies/epoca.pdf>
- <sup>ix</sup> Translation begins at 9 minutes and 25 seconds in the video of the press conference: <https://youtu.be/fz-hdXeKuuE?t=9m25s>
- <sup>x</sup> Media Services Act, 2016, available from the Parliament of Tanzania at <http://parliament.go.tz/polis/uploads/bills/acts/1480403201-THE%20MEDIA%20SERVICES%20ACT,%20%20No.%2012%20of%202016.doc%20Print%20Hansard.pdf>
- <sup>xi</sup> Penal Code, available from the Law Reform Commission of Tanzania at [www.lrc.go.tz/?wpfb\\_dl=170](http://www.lrc.go.tz/?wpfb_dl=170)
- <sup>xii</sup> Constitution of the United Republic of Tanzania, available from tanzania.go.tz at [https://tanzania.go.tz/egov\\_uploads/documents/Katiba%20ya%20Jamhuri%20ya%20Muungano%20wa%20Tanzania%20\\_English%20Version\\_%202009.pdf](https://tanzania.go.tz/egov_uploads/documents/Katiba%20ya%20Jamhuri%20ya%20Muungano%20wa%20Tanzania%20_English%20Version_%202009.pdf)