

KNOW YOUR RIGHTS:



Freedom of Expression



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ABOUT LHRC

Legal and Human Rights Centre (LHRC) is a private, autonomous, voluntary non-governmental, non-partisan and non-profit-sharing organization envisioning a just and equitable society. Its mission is to empower the people of Tanzania in an effort to promote reinforce and safeguard human rights and good governance in the country. Its broad objective is to create legal and human rights awareness among the public, and in particular the underprivileged section of the society, through legal and civic education, advocacy linked with legal aid provision, research and human rights monitoring. LHRC was established in 1995 and its operations mainly focus on Tanzania Mainland, with specific interventions in Zanzibar.

Vision

LHRC envisions a JUST and EQUITABLE society in which the three arms of the State as well as non-state actors practice accountability and transparency and there is rule of law; and where there is public awareness, respect and engagement for human rights and good governance, justice and respect for human dignity.

Mission

To empower the public, promote, reinforce and safeguard human rights and good governance in Tanzania through legal and civic education and information; sound legal research and advice; monitoring and following-up on human rights violations; and advocacy for reforms of policies, laws and practices in conformity with international human rights standards.

LHRC's Values

Integrity

Equality

Transparency

Accountability

Professionalism

Voluntarism and Volunteerism



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Address: Justice Lugakingira House
PO BOX 75254 Dar es Salaam, Tanzania

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ABOUT THIS HANDBOOK

Legal and Human Rights Centre (LHRC) has produced this handbook as an informational tool for interested and affected stakeholders. The handbook presents a general overview of the key concepts on Freedom of Expression, taking into account both national and international standards. It includes information gathered from various sources including LHRC's internal legal analyses, legal analyses by the International Center for Not-for-Profit Law, and relevant research websites and international human rights reports.

The handbook examines the pillars of Freedom of Expression and discusses legitimate restrictions on it. It then provides information on laws and regulations that have an impact on Freedom of Expression in Tanzania, namely, the Cybercrimes Act, 2015; Media Services Act, 2016; Statistics Act, 2015; Access to Information Act, 2016; and the Electronic and Postal Communication Act (Online Content) Regulations, 2018, all in light of existing international standards on Freedom of Expression. It later highlights key concerns that need to be addressed for better promotion and protection of the right to Freedom of Expression in Tanzania.

The handbook is intended as a self-study guide and a reference for lawyers, paralegals, human rights defenders, journalists, politicians, government officials, students, and any other interested reader.

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I. BASIC PRINCIPLES

OF FREEDOM OF EXPRESSION

Freedom of Expression (FoE) refers to the right to hold and freely share information and ideas. It is a fundamental human right and a cornerstone of all other rights and freedoms. It is also one of the core foundations of democratic societies. Every human being has a right to seek, receive and share information on issues that affect their life. Governments are required to take all necessary steps to facilitate the free flow of information. It is an obligation that extends beyond the scope of domestic law, as enjoyment of free expression is also protected at regional and global levels.

International Protection

Tanzania is a signatory to a number of international Covenants, Treaties, and Conventions, including the **International Covenant on Civil and Political Rights** (ICCPR), which it ratified in 1976. By signing and ratifying such international instruments, the Government of Tanzania accepts that it has a responsibility to respect, protect, observe, fulfill and promote the rights in those instruments.

Article 19 of the **Universal Declaration of Human Rights** (1948) and Article 19 of the ICCPR are two of the major international human rights instruments that protect the right to Freedom of Expression. Every individual is entitled to freedom of expression and the government must refrain from interfering with this right except under very specific circumstances.

Regional Protection

At continental level, the right to FoE is guaranteed under Article 9 of the **African Charter on Human and Peoples' Rights**, which provides that "Every individual shall have the right to receive information," as well as "the right to express and disseminate his opinions within the law."

National Protection

The **Constitution of the United Republic of Tanzania** (1977), with the purpose of complying with its international commitments, protects FoE in Article 18:



What does freedom of expression include?

Under international law, the right to FoE has three pillars, namely:

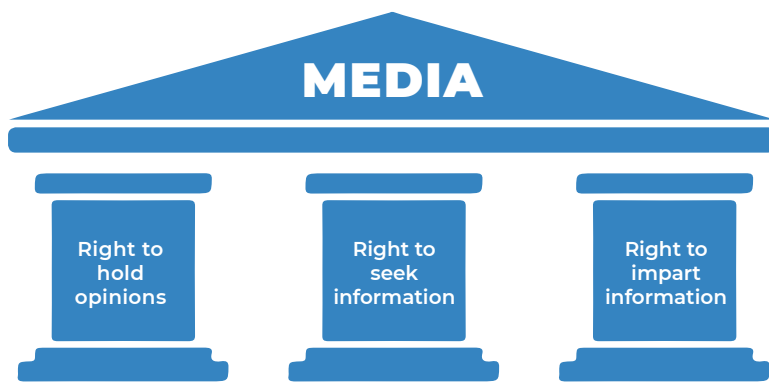
- (1) the right to seek information,
- (2) the right to receive information, and
- (3) the right to impart information and ideas.

Expression can be oral, in writing, in the form of art, or through any media of a person's choice. There are multiple media platforms through which this right can be exercised, including print media, radio, television, internet and social media.

Freedom of Information

“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; (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”.

This provision upholds the three pillars of FoE as outlined in international law. Each pillar must be safeguarded as an essential component of the right to FoE or else this right will not be fully realized. The figure below illustrates how the three pillars are all important to sustain the viability of media as a tool of human development.



Six Main Features of Freedom of Expression

1. **It applies to everyone** without any distinction based on race, color, sex, language, religion, political persuasion.
2. **It applies regardless of frontiers**, and its geographical scope is unlimited.
3. **It has a broad substantive scope**: it covers information and ideas of all kinds.
4. **It covers the rights of both listeners and speakers**, both the right to receive and to impart information and ideas.
5. **It imposes a positive obligation on the state to protect** the right by adopting appropriate laws, and offering appropriate remedies for violations.
6. **It protects the right to impart ideas using any form of media.**

Freedom of expression goes hand in hand with the right to access information, including information held by public bodies. Freedom of information legislation should adhere to the following guiding principles so as to avoid unjust restriction:

Principle 1: Freedom of information legislation should be guided by the principle of maximum disclosure.

Principle 2: Public bodies should be under an obligation to publish key information.

Principle 3: Public bodies must actively promote open government.

Principle 4: The grounds for exception to disclose information should be clearly and narrowly defined and subject to strict “harm” and “public interest” tests.

Principle 5: Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available.

Principle 6: Individuals should not be deterred from making requests for information by excessive costs.

Principle 7: Meetings of public bodies should be open to the public.

Principle 8: Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed.

Principle 9: Individuals who release information on wrongdoing (whistleblowers) must be protected.

II. LIMITATIONS

ON FREEDOM OF EXPRESSION

Various tactics are used to undermine people’s right to FoE. These include censorship, restrictive press legislation, harassment of journalists, bloggers, political activists and others who voice their opinions, as well as crackdowns on religious minorities and other forms of suppression of religious freedom.

Although international and national standards favor a wide enjoyment of FoE, Article 19(3) of the ICCPR permits certain restrictions. However, states that intend to impose any restriction to freedom of expression must ensure that the proposed restriction complies with the principles of legality, proportionality and legitimacy.

The Three-Part test used to assess the legality of restrictions to FoE

LEGALITY

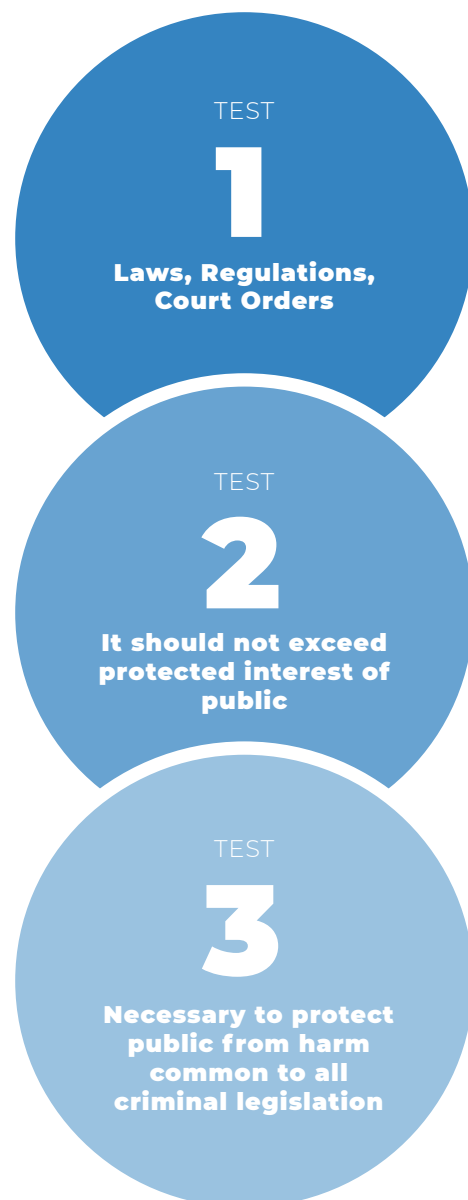
This prong requires that the restrictions on FoE be provided by laws or regulations that are clear and precise.

LEGITIMACY

This prong requires that laws or regulations interfering with FoE be narrowly tailored to achieve a limited number of legitimate aims, namely for the respect of the rights or reputations of others, or for the protection of national security or public order, or of public health or morals.

PROPORTIONALITY

This prong requires that limitations on FoE should apply only when it is necessary, and should meet the criterion of fairness or justice. No restriction should outweigh the interests of the people.



III. LEGAL HURDLES

TO FREEDOM OF EXPRESSION IN TANZANIA

In the past few years, Tanzania has enacted various laws which may have a negative impact on the enjoyment of Freedom of Expression. Below are some examples of legal challenges that these pieces of legislation pose to the enjoyment of the right to Freedom of Expression.



1. The Cybercrimes Act, 2015

The National Assembly enacted the Cybercrimes Act and it was signed into law on 25 April 2015. The law criminalizes offenses relating to computer systems and Information Communication Technologies. It also provides for investigation, collection, and use of electronic evidence and related matters. Some provisions of this law pose a real threat to the enjoyment of FoE in Tanzania, including the following:

- The Act contains a number of vaguely-defined offences.
- It criminalizes sharing of information.
- It legalizes surveillance without proper court warrants.
- It grants broad powers of search and seizure to police.



2. The Media Services Act, 2016

The National Assembly enacted this law on 5 November 2016 with the purpose of promoting professionalism in the media industry. This has resulted in the establishment of such bodies as the Journalists' Accreditation Board and the Independent Media Council. The Act seeks to provide a legal framework for the regulation of media and other related services. Key concerns with this law are as follows:

- It criminalizes defamation with absolute privilege to the government officials.
- It criminalizes publication, distribution and importation of seditious material which is overly broad and vague.
- It criminalizes publication of a false statement, report or rumors and imposes a penalty without considering the intention of the maker.
- It gives absolute powers and discretion to the minister to prohibit publications.

3. The Statistics Act, 2015



This Act mandates the National Bureau of Statistics (NBS) to provide official statistics to the Government, business community and the public at large. The Act also mandates the NBS to play the role of a co-coordinating agency, within the National Statistical System (NSS) to ensure that quality official statistics are produced.

Key concerns with this Act are as follows:

- The provisions on the dissemination of survey micro-data are unnecessarily restrictive.
- Rules appear to be inconsistent with principles of open government and open data.
- It includes obstacles to whistleblowing without any public interest protections.
- It requires approval from the NBS prior to producing or publishing statistics.
- It restricts publication or communication of any contentious statistical information and makes it illegal to publish or communicate “false statistical information” that “may result in the distortion of facts.” These restrictions disregard the fact that dispute in statistics is an essential part of academic and policy debate.



4. The Access to Information Act, 2016

The National Assembly passed this Act on 7 September 2016. It was amended slightly from the Bill presented to the Tanzanian parliament for first reading on 23 June 2016, and was revised more substantially from a Bill that the government planned to bring before parliament in 2015 under a certificate of urgency, but which was withdrawn following media and public pressure. Key concerns with this Act include:

- Contrary to international best practice, other domestic laws governing access to information take precedence when in conflict with the provisions of this Act.
- The appeals process is skewed in favor of information holders as it gives the final say to the minister in charge of legal affairs rather than the courts.
- Severe penalties are imposed on information holders who wrongly release information, which promotes self-censorship and withholding of information.



5. Electronic and Postal Communications (Online Content)

(2018 Regulations)
GN: 133 Of 16/03/2018

These Regulations were drafted by the Ministry of Information, Culture, Arts, and Sports with the intention of regulating all online contents providers with the mandatory requirement of registering to Tanzania Communication Regulatory Authority (TCRA). The Regulations were issued on 16 March 2018. Key concerns include:

- Mandatory registration of all bloggers, online forums, online radio and television, social media users, business and civil society organizations that publish online with the TCRA.
- The Regulations prohibit online content service providers from publishing “false content which is likely to mislead or deceive the public” unless publication is preceded by a statement that the content is not factual.
- The Regulations impose an ambiguous restriction on content providers which automatically limits freedom of opinion, the right to disseminate information, criticism of the government and other legitimate forms of expression.



Legal And Human Rights Centre
PO BOX 75254
Justice Rugakingira House, Kijitonyama
Dar es Salaam, Tanzania



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